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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Edward W Miller, Circuit Court Judge

Case No 2011-CP-23-8578
Appellate Case No 2014-002638

Francis P Maybank and Jane H P Maybank, as trustee for the Francis P Maybank Family Insurance Trust,

Of whom Francis P Maybank is the, Respondent/Appellant,

Plaintiffs,

v

BB&T Corporation, Branch Banking and Trust Company, Successor in merger to Branch Banking and Trust Company of SC, and Sterling Capital Management, LLC, Successor in merger to BB&T Asset Management, LLC,

Appellants/Respondents

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Certificate of Counsel

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	
FRANCIS P. MAYBANK AND JANE H P MAYBANK, AS TRUSTEE FOR THE FRANCIS P MAYBANK FAMILY INSURANCE TRUST,	TRANSCRIPT OF RECORD 2011-CP-23-08578
PLAINTIFFS,	JUNE 16, 2014 GREENVILLE, SOUTH CAROLINA
-vs-	
BB&T CORPORATION, BRANCH BANKING AND TRUST COMPANY, SUCCESSOR IN MERGER TO BRANCH BANKING AND TRUST COMPANY OF SC, AND STERLING CAPITAL MANAGEMENT, LLC, SUCCESSOR IN MERGER TO BB&T ASSET MANAGEMENT, LLC,	
DEFENDANTS	

(VOLUME I)

B E F O R E:

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72	SPREADSHEETS AND CV OF DR CRAIG MCCANN, DATED 12/3/2014, BATES NO MAYBANK 8870-8972		172
73	CV OF PROFESSOR JOHN FREEMAN, DATED 12/3/2014, BATES NO MAYBANK 8980-85		172
74	CHART AND CV OF SCOTT BRAWLEY, DATED 12/3/2014, BATES NO. MAYBANK 8989-91		172
75	SUPPLEMENTAL CHART OF SCOTT BRAWLEY, DATED 12/13/13, BATES NO MAYBANK 9014-16		172

PLAINTIFFS' EXHIBITS

NO	DESCRIPTION	ID.	EV.
76	2005 ANNUAL REVIEW		303
77	2006 ANNUAL REVIEW		303
78	2007 ANNUAL REVIEW		303
79	2008 ANNUAL REVIEW		303
80	2009 ANNUAL REVIEW		303
81	2010 ANNUAL REVIEW		303
82	2010 10-K		305
83	2011 10-K		305
84	2012 10-K		305
85	2013 10-K		305
86	OPTIONS INFORMATION FORM AND AGREEMENT		320
87	RISK DISCLOSURE FOR THE TRADING OF OVER-THE-COUNTER DERIVATIVE CONTRACTS		320
88	THE LAST WILL AND TESTAMENT OF FRANCIS MAYBANK		347
89	BB&T PERSONAL DEVELOPMENT PLAN		646
90	FEE CHART		646
91	FORM LETTER		689
92	VALUE-ADDED APPLICATIONS OF EQUITY DERIVATIVES	710	
93	CHART		940
94	DEMONSTRATIVE CHART		1011
95	DEMONSTRATIVE CHART		1011

PLAINTIFFS' EXHIBITS

NO	DESCRIPTION	ID.	EV.
96	DEMONSTRATIVE CHART		1011
97	DEMONSTRATIVE CHART		1011
98	DAMAGES DOCUMENT	1016	
99	DAMAGES DOCUMENT	1016	
100	E-MAIL, DATED 9/3/2004		1077
101	BB&T WEALTH MANAGEMENT AGREEMENT FOR EFFIE BOWERS		1152
102	BB&T WEALTH MANAGEMENT AGREEMENT FOR EFFIE BOWERS		1153
103	WEALTH MANAGEMENT AGREEMENT SALES REPORT		1349
104	SALES TRACKING AND INCENTIVES REPORT		1358
105	LETTER FROM ROSS WALTERS TO PAT OLIVER, DATED 8/11/06		1438
106	PERSONAL DEVELOPMENT PLAN FOR ROSS WALTERS FOR 2006		1440
107	E-MAIL, DATED 1/5/06		1449
108	PERSONAL DEVELOPMENT PLAN FOR ROSS WALTERS, DATED 7/9/13		1456
109	E-MAIL CHAIN		1459
110	E-MAIL		1462
111	BB&T PESRONAL DEVELOPMENT PLAN FOR P NATHAN DEAL, DATED 4/8/08		1628

PLAINTIFFS' EXHIBITS

NO.	DESCRIPTION	ID.	EV.
112	BB&T PERSONAL DEVELOPMENT PLAN FOR P. NATHAN DEAL FOR PLAN YEAR 2008	1630	
113	E-MAIL CHAIN, DATED 1/20/09	1640	
114	BB&T ASSET MANAGEMENT COMPLIANCE POLICIES AND PROCEDURES MANUAL	1646	
115	E-MAIL CHAIN, DATED 4/21/10	1651	

DEFENDANTS' EXHIBITS

NO.	DESCRIPTION	ID.	EV
2	SCOTT & STRINGFELLOW OVERVIEW OF PRE-PAID CONTRACTS, BATES NO: MAYBANK 1859 TO 1866		460
4	E-MAIL FROM CLARK ANDERSON TO FRANK MAYBANK, DATED 7/24/06, BATES NO BB&T 01132	128	
10	E-MAIL FROM ANTHONY MAHFOOD TO SHAWN GIBSON, DATED 4/27/07, BATES NO. BB&T 36956		1303
12	MEMORANDUM FROM MAHFOOD TO OLIVER, DATED 8/11/06, BATES NO MAYBANK 1746-1747		469
15	SETTLEMENT OVERVIEW PROPOSAL FOR 2006 PRE-PAID, BATES NO BB&T 04256-04257		1312
16	SETTLEMENT OVERVIEW 2006 PRE-PAID, BATES NO. BB&T 09650		475
20	CONCENTRATED STOCK RISK MANAGEMENT ADDENDUM, DATED 7/10/06, BATES NO BB&T 00105-107		462
23	INSTRUCTIONS TO DELIVER SHARES, DATED 8/11/06, BATES NO. BB&T 00132		579

DEFENDANTS' EXHIBITS

NO	DESCRIPTION	ID.	EV.
25	WIRE INSTRUCTIONS, DATED 8/15/06, BATES NO. BB&T 00127		472
27	WEALTH MANAGEMENT AGREEMENT AND ATTACHMENTS, INCLUDING FORM ADV PART II, BATES NO BB&T 00003-00038	129	
32	CLIENT INVESTMENT OBJECTIVE FORM, DATED 12/22/08, BATES NO MAYBANK 000120		497
36	HANDWRITTEN NOTES OF MIKE LACKEY, DATED 1/9/09, BATES NO BB&T 01137		1357
43	SETTLEMENT OVERVIEW, BATES NO. ARGO(BB&T) 02081		1552
57	SETTLEMENT OVERVIEW 2009 PRE-PAID, DATED 1/21/09, BATES NO BB&T 01929		1608
58	WRITTEN INSTRUCTIONS FROM FRANK MAYBANK TO SELL POSITIONS, DATED 6/17/09, BATES NO. BB&T 44989		514
59	WEALTH MANAGEMENT AGREEMENT, DATED 11/2/09, BATES NO. MAYBANK 000085-0089	130	
63-17	BB&T MANAGED PORTFOLIO ACCOUNT STATEMENT, DATED 12/31/2007, BATES NO BB&T 02231 - 02242		490

DEFENDANTS' EXHIBITS

NO	DESCRIPTION	ID	EV.
63-25	BB&T MANAGED PORTFOLIO ACCOUNT STATEMENT, DATED 8/31/2008, BATES NO BB&T 02416 - 024020		494
64	SCOTT & STRINGFELLOW ACCOUNT STATEMENT, DATED 1/31/2003, BATES NO BB&T 03358 - 03360		421
64-11	SCOTT & STRINGFELLOW ACCOUNT STATEMENT, DATED 12/31/2003, BATES NO BB&T 03404 - 03407		424
64-23	SCOTT & STRINGFELLOW ACCOUNT STATEMENT, DATED 12/31/2004, BATES NO BB&T 03454 - 03458		426
64-35	SCOTT & STRINGFELLOW ACCOUNT STATEMENT, DATED 12/31/2005, BATES NO BB&T 03492 - 03494		428
64-42	SCOTT & STRINGFELLOW ACCOUNT STATEMENT, DATED 7/31/2006, BATES NO BB&T 03514 - 03519		430
64-43	SCOTT & STRINGFELLOW ACCOUNT STATEMENT, DATED 8/31/2006, BATES NO BB&T 035-16 - 03519		501

DEFENDANTS' EXHIBITS

NO	DESCRIPTION	ID.	EV.
64-44	SCOTT & STRINGFELLOW ACCOUNT STATEMENT, DATED 9/30/2006, BATES NO. BB&T 03520 - 03522		503
64-65	SCOTT & STRINGFELLOW ACCOUNT STATEMENT, DATED 6/30/2008, BATES NO. BB&T 03582 - 03585		505
64-72	SCOTT & STRINGFELLOW ACCOUNT STATEMENT, DATED 1/31/2009, BATES NO. BB&T 42033 - 42038		529
64-77	SCOTT & STRINGFELLOW ACCOUNT STATEMENT, DATED 6/30/2009, BATES NO. BB&T 03625 - 03627		519
64-120	COMPILATION OF SCOTT & STRINGFELLOW STATEMENTS FROM 2003 - 2012		1376
65	CHARLES SCHWAB ACCOUNT STATEMENTS	132	
65-2	CHARLES SCHWAB ACCOUNT STATEMENT 2681, DATED 12/31/2012, BATES NO. SCHWAB SUB RESP 00015 - 00024		524

DEFENDANTS' EXHIBITS

NO.	DESCRIPTION	ID	EV
65-7	CHARLES SCHWAB ACCOUNT STATEMENT 2681, DATED 5/31/2013, BATES NO. SCHWAB SUB RESP 00067 - 00076		525
66	BB&T CREDIT LINE AGREEMENT AND SECURITY AGREEMENT, BATES NO BB&T 45030 - 45031, BB&T 01356 - 01363		1408
67	BB&T CREDIT LINE TRANSACTION SUMMARY, BATES NO BB&T 41513 TO 41515		1410
68	CHECKING ACCOUNT STATEMENTS, CHECKS, AND DEPOSIT SLIPS (ACCT NO [redacted]), 10/2006 THRU 12/2010, BATES NO 44643 - 44825, 46238 - 46256, CHECKS BB&T 45867 - 46237		1127
71	CORRESPONDENCE FROM BB&T TO BENEFICIARIES OF MAYBANK FAMILY, BATES NO MAYBANK 009061, MAYBANK 00967, BB&T 20177 - 20178, BB&T 20151 - 20152, BB&T 20141 - 20142, BB&T 20132 - 20133, BB&T 20128 - 20131		838
72	ITEMIZED CATEGORIES REPORT, 2002, BATES NO ARGO (BB&T) 04321 - 04341		435
73	ITEMIZED CATEGORIES REPORT, 2004, BATES NO ARGO (BB&T) 00166 - 00183		439

DEFENDANTS' EXHIBITS

NO.	DESCRIPTION	ID.	EV.
74	ITEMIZED CATEGORIES REPORT, 2005, BATES NO. ARGO (BB&T) 00283 - 00305		441
75	ITEMIZED CATEGORIES REPORT, 2006, BATES NO. ARGO (BB&T) 00429 - 00445		443
76	ITEMIZED CATEGORIES REPORT, 2008, BATES NO ARGO (BB&T) 01004 - 01019		506
77	ITEMIZED CATEGORIES REPORT, 2009, BATES NO. ARGO (BB&T) 02265 - 02280		516
79	HANDWRITTEN NOTES OF KEITH GRAY, DATED 08/09/06, BATES NO ARGO (BB&T) 004357	1547	
80	HANDWRITTEN NOTES OF KEITH GRAY, DATED 01/12/09, BATES NO. ARGO (BB&T) 002440	1553	
81	REALIZED GAIN/LOSS REPORT, DATED 6/25/09, BATES NO ARGO 001714 TO 001722	1551	
85	E-MAIL FROM DEBORAH MAYBANK (FRANK) TO CHILDREN (JANE EX.5), DATED 10/19/10, BATES NO. MAYBANK 09032		526
86	SCHEDULE OF LIFE INSURANCE POLICIES, (JANE EX 6), BATES NO. MAYBANK 009036		805
87	INSURANCE OPTIONS MEMORANDUM (JANE EX 9), BATES NO 009038 TO 009040		811

DEENDANTS'S EXHIBITS

NO.	DESCRIPTION	ID.	EV
94	LISTING OF EMPLOYEES & JOB DESCRIPTION FOR BB&T'S GREENVILLE WEALTH DIVISION, BATES NO BB&T 48080 TO 48082	1390	
96	E-MAIL FROM MAHFOOD TO DEAL, DATED 1/13/09, BATES NO BB&T 05273 - 5274	1322	
102	FRANCIS MAYBANK INSURANCE OPTIONS RELATIVE TO CASH VALUE (JANE EX 7), BATES NO MAYBANK 009041	805	
107	MAYBANK CLOSING DOCUMENTS (JANE EX 13), DATED 12/14/2010, BATES NO CHESSON SUB RESP 97-138	822	
109	SHIVAR E-MAIL TO JANE MAYBANK (JANE EX. 15), DATED 12/2/2010, BATES NO. 06021 - 06049	816	
113	BB&T LETTER TO AMERICAN GENERAL, DATED 1/24/2011, BATES NO MAYBANK 009062 - 009064	819	
114	JANE MAYBANK LETTER TO JUDY SCHOEMER (JANE EX 20), DATED 1/7/2011, BATES NO MAYBANK 090072	818	
115	CLIENT CENTRAL NEW ACCOUNT OPENING ACCT [redacted] (JANE EX. 21), DATED 2/1/2011, BATES NO MAYBANK 007985	820	

DEFENDATNS' EXHIBITS

NO	DESCRIPTION	ID	EV.
116	BB&T STATEMENT AND WIRE TRANSFER (JANE EX. 22), DATED 3/22/2011, BATES NO MAYBANK 007982, 7989		823
118	BB&T STATEMENT AND DEPOSIT SLIP AND CHECKS (JANE EX. 24), DATED 4/21/2011, BATES NO MAYBANK 007987, BB&T 45032 - 45034		824
119	BB&T STATEMENT AND DEPOSIT SLIP AND CHECK (JANE EX 25), DTAED 8/23/2011, BATES NO MAYBANK 007999, BB&T 45035 - 45036		825
120	BB&T STATEMENT AND CHECK (JANE EX. 26), DATED 7/21/2011, BATES NO. MAYBANK 007996, BB&T 45054		826
121	BB&T STATEMENT AND CHECK (JANE EX. 27), DATED 7/21/2011, BATES NO. MAYBANK 007996, BB&T 45053		828
122	BB&T STATEMENT AND DEBIT (JANE EX 28), DATED 8/23/2011, BATES NO. MAYBANK 007999, BB&T 45052		829
123	BB&T STATEMENT AND CHECK (JANE EX 29), DATED 9/22/2011, BATES NO. MAYBANK 008001, BB&T 45051		830

DEFENDANTS' EXHIBITS

NO	DESCRIPTION	ID	EV.
125	BB&T STATEMENT AND WIRE TRANSFER (JANE EX. 31), DATED 11/21/2011, BATES NO. MAYBANK 008007, 008009		835
128	BB&T STATEMENT AND CHECK (JANE EX. 34), DATED 1/23/2012, BATES NO MAYBANK 008012, BB&T 045048		831
129	BB&T STATEMENT AND CHECK (JANE EX. 35), DATED 3/21/2012, BATES NO. MAYBANK O8016, BB&T 45047		831
133	BB&T STATEMENT AND CHECK (JANE EX 39), DATED 7/23/2012, MAYBANK 008025, BB&T 45044		833
134	BB&T STATEMENT AND CHECK (JANE EX 40), DATED 7/23/2012, BATES NO. MAYBANK 008025, BB&T 45043		833
135	BB&T STATEMENT AND CHECK (JANE EX 41), DATED 5/22/2013, BATES NO. MAYBANK 008049, BB&T 45041		834
137	BB&T STATEMENT AND CHECK (JANE EX 43), DATED 7/23/2013, BATES NO BB&T 45068, 45040		835
146	MILLER LETTER TO MAYBANK, (SCHOEMER EX. 23), DATED 12/1/2010, BATES NO 19655		1128

DEFENDANTS' EXHIBITS

NO	DESCRIPTION	ID	EV
148	MAYBANK LETTER TO SCHOEMER, DATED 2/23/2010, BATES NO. BB&T 01346		1133
149	MAYBANK NOTE, DATED 6/17/2009, BATES NO BB&T 01460		1132
152	GIBSON E-MAIL TO MAHFOOD, DATED 8/11/06, BATES NO. BB&T 04255		1309
167	LACKEY AND DEAL E-MAILS, DATED 8/7/09, BATES NO BB&T 01155		1612
170	VPFC PRESENTATION, UNDATED, BATES NO. BB&T 02723 - 02755		1593
172	SCOTT & STRINGFELLOW RECORD OF TRANSACTION, DATED 9/27/2006, BATES NO. MAYBANK 001272		1379
173	COMPARISON OF VFPC TO OUTRIGHT STOCK SALE HYPOTHETICAL		1195
174	HUGH PENNY EXHIBIT 1, DATED 4/28/2014, BATES NO. BB&T 48090		1724
175	HUGH PENNY EXHIBIT III, DATED 4/28/2014, BATES NO BB&T 48092		1728
177	E-MAIL FROM MAHFOOD TO GIBSON, DATED 7/14/06, BATES NO BB&T 10472		1301

DEFENDANTS' EXHIBITS

NO.	DESCRIPTION	ID	EV.
178	E-MAIL FROM GIBSON TO MAHFOOD WITH WITH ATTACHMENT, DATED 8/14/06, BATES NO BB&T 9648 - 9650		1315
180	E-MAIL FROM LACKEY TO MAHFOOD, DATED 12/23/08, BATES NO BB&T 5238		1562
182	E-MAIL FROM LACKEY TO DEAL, DATED 12/29/08, BATES NO. BB&T 5239		1563
188	E-MAIL FROM MAHFOOD TO DEAL, DATED 4/21/09, BATES NO BB&T 5454 - 5455		1330
192	E-MAIL FROM MAHFOOD TO DEAL, DATED 4/23/2010, BATES NO 5723		1332
194	E-MAIL FROM DEAL TO MAHFOOD, LACKEY, WITH ATTACHMENTS (ATTACHMENTS PRODUCED NATIVELY), DATED 01/14/09, BATES NO BB&T 35325		1323
197	EDGAR NORRIS & CO STATEMENT, MARCH 1997, DATED 03/1997, BATES NO. BB&T 39671 - 39672		419
198	SCHEDULE C HORSE RACING (MAYBANK DEPOSITION EXHIBIT 24), BATES NO. ARGO (BB&T) 4579-4581, 4676-4678, 4872-4874, 4979-4981, 5063-5064, 5168-5169, 5327-5328, 5552-5553		445

DEFENDANTS' EXHIBITS

NO.	DESCRIPTION	ID.	EV.
199	BEAR STEARNS RISK DISCLOSURE, DATED 07/10/06, BATES NO. MAYBANK 1750-1751		465
200	PRE-PAID ILLUSTRATION, BATES NO MAYBANK 1745		467
201	2006 PRE-PAID CONFIRMATION, BATES NO. MAYBANK 1847 - 1848		470
202	SETTLEMENT OVERVIEW (MAYBANK DEP. EX. 114); BATES NO MAYBANK 2115		512
203	SETTLEMENT OVERVIEW (MAYBANK DEP. EX 115), BATES NO MAYBANK 2142		512
204	SETTLEMENT OVERVIEW (MAYBANK DEP EX 116), BATES NO MAYBANK 5470		512
205	SETTLEMENT OVERVIEW (MAYBANK DEP. EX. 117), BATES NO. MAYBANK 5555		512
207	DEUTSCHE BANK LETTER, DATED 12/13/2010, BATES NO. ARGO (BB&T) 04428 - 4431		522
208	DEUTSCHE BANK LETTER, DATED 12/13/2010, BATES NO. ARGO (BB&T) 04432 - 4439		522
209	DEUTSCHE BANK LETTER, DATED 08/16/2011, BATES NO MAYBANK 005649 - 5653		522
210	DEUTSCHE BANK LETTER, DATED 08/15/2011, BATES NO MAYBANK 005713 - 5720		522

DEFENDANTS' EXHIBITS

NO.	DESCRIPTION	ID.	EV.
211	DEUTSCHE BANK LETTER, DATED 01/04/2012, BATES NO. ARGO (BB&T) 04093 - 4096		523
212	DEUTSCHE BANK LETTER, DATED 01/03/2012, BATES NO. ARGO (BB&T) 04097 - 4104		523
214	KAPOOR E-MAIL TO CLARK ANDERSON, DATED 7/2/8/2006, BATES NO BB&T 04041		1039
216	SETTLEMENT OVERVIEW, BATES NO BB&T 19023, BB&T 19025		1575
220	PENNY CHART EXHIBIT II, BATES NO BB&T 48091		1726
221	TEACHEY SPREADSHEET PROJECTION, BATES NO BB&T 48071		1523
222	TEACHEY SPREADSHEET BB&T, BATES NO BB&T 48071		1526
223	TEACHEY SPREADSHEET INTEREST RATES, BATES NO BB&T 48071		1525
224	TEACHEY SPREADHSEET MARGIN CALLS, BATES NO. BB&T 48071		1529

COURTS EXHIBITS

NO	DESCRIPTION	ID.	EV.
1	JURY NOTE 944		
2	VIDEOTAPED DEPOSITION OF RALPH BORELLO & VIDEOTAPE DESIGNATIONS	1249	
3	DEPOSITION OF RALPH BORELLO	1249	
4	VIDEOTAPED DEPOSITION OF DAVID FISHER AND VIDEOTAPE DESIGNATIONS	1249	
5	DEPOSITION OF DAVID FISHER	1249	
6	VIDEOTAPED DEPOSITION OF ROSS WALTERS AND VIDEOTAPE DESIGNATIONS	1249	
7	DEPOSITION OF ROSS WALTERS	1249	
8	JURY NOTE	1249	
9	JURY NOTE	1374	
10	DEPOSITION OF TRACY MEYERS	1616	
11	DEPOSITION OF CRAIG MCCANN	1616	
12	JURY NOTE	1616	
13	VIDEOTAPED DEPOSITION OF SHAWN GIBSON AND VIDEOTAPE DESIGNATIONS	2029	
14	DEPOSITION OF SHAWN GIBSON	2029	
15	JURY NOTE	2029	
16	JURY INSTRUCTIONS	2096	
17	JURY NOTE	2029	
18	JURY NOTE	2096	
19	DEPOSITION OF KEITH GRAY	2096	

let you go to lunch

THE CLERK. If you would please raise your right hand

Your response should be I will

You shall well and truly try Case Number 2011-CP-23-08578 in the matter of Francis P. Maybank and Jane H.P Maybank, as Trustee for the Francis P Maybank Family Insurance Trust, plaintiffs, versus BB&T Corporation, Branch Banking and Trust Company, Successor in merger to Branch Banking and Trust Company of SC, South Carolina, and Sterling Capital Management, LLC, Successor in merger to BB&T Asset Management, LLC, and a true verdict according to the law and the evidence, so help you God

JURY PANEL. (Collectively said I will).

THE CLERK. Thank you. You may be seated

THE COURT: Nope, you all don't have to sit down. You all go lunch.

(The following takes place outside the presence of the jury panel)

THE COURT. Okay What do you all want to talk about now?

MR. WILLOUGHBY: Your Honor, I think the only thing pending for the court right now is the motions in limine that -- they have motions in limine. We have very brief ones and --

THE COURT: Okay. Well, let's do it.

MR. WILLOUGHBY: Our three, if you want us to go first, Your Honor, are essentially we have a motion in limine relating to evidence for one of our experts, Dr. Craig McCann.

Dr. McCann has testified several years ago in an arbitration that was appealed to U.S. District Court. And in that U.S. District Court case the District Court of Texas basically made a finding. And then the finding was appealed to the Court of Appeals, the Fifth Circuit Court of Appeals, which reversed it. And basically what the District Court had concluded was that Dr. McCann had his -- the award may have been procured by fraud. The Circuit Court said this -- I mean the Fifth Circuit said this: "We note, however, the total absence of any evidence supporting a finding that Dr. McCann committed intentional fraud. The evidence we think supports nothing more than a conclusion that a member of Dr. McCann's staff made calculation error that he did not discover until after he testified in the Garrett arbitration."

So based upon the fact that the Fifth Circuit reversed the District Court, we would ask the court not to permit any cross-examination.

What we anticipate is that counsel will try to use the District Court decision, which is no longer applicable,

and so we would argue that that should not be permitted

MR. KRISTINIK: Your Honor, while I find it curious that Dr. McCann was accused of fraud by a sitting trial judge, I just -- I want to try a clean case and I'm not going to go there.

THE COURT: Okay.

MR. KRISTINIK: I will agree to his motion.

THE COURT: Yeah, there is no telling what a trial judge would do.

All right. Yes, sir.

MR. WILLOUGHBY: That one was fairly easy, Your Honor.

Next, there was a -- our next motion is a motion to exclude evidence related to the Bowers family and the Pre-Paid Derivative Contract sold by defendants to the Bowers family.

The Bowers family is a family that was friends of Mr. Maybank. Mr. Maybank introduced the Bowers family to the bank. One of the things that they asked that he do is introduce them to his friends and family members that may have an interest in investment opportunities. He introduced the Bowers family to the bank. The bank, in fact, sold Mrs. Bowers and one of her children a Variable Pre-Paid Derivative Contract and we would suggest that that information should be excluded. It doesn't have any bearing

on Mr. Maybank's case and we think it's going to take time and effort that will be unnecessary We would ask that it be excluded

THE COURT He says it's not relevant

MR BROWN Your Honor, if you will remember, in April Mr. Willoughby was standing before you making a motion to compel us to disclose information about the Bowers saying it was essential, it was critical to his case And now when it comes out and it's harmful to him, he says "oh, no, now I change my mind It's not relevant "

We don't want information about the Bowers The only thing that we intend to offer is Mr Maybank's conduct and how Mr Maybank has recommended the very product that he used to other people We don't intend to even name the Bowers, but we do intend to say that he did have other customers that he recommended the Variable Pre-Paid to

THE COURT. Okay I don't think there is any problem with that

MR WILLOUGHBY. Well, Your Honor, it goes a little more What Mr Brown indicated was a --

If you will remember, we were asked to go down to Columbus, Georgia to take Mr Miller's deposition So if we are going to go into the Bowers family, then I'm fine with that, but we are going to have to go -- what they want to do, Your Honor, is stove pocket They just want a little

bit of information --

THE COURT Well, I tell you, I'm -- you know, based on what I have been told, and I haven't heard any evidence, what Mr. Brown has talked about is fine. It would be, I presume, impeaching your client's credibility is what it sounds like, and I have no problem with that.

MR WILLOUGHBY I think it -- we don't have a problem with that either. We are more than willing to testify. I'm just alerting the court that if we go into it a little bit, we may have to go into it a little bit more, depending upon what they do.

THE COURT. Well, we will see. I mean, I can't make a ruling at this time on that.

MR. WILLOUGHBY: I understand.

THE COURT: Okay.

MR. WILLOUGHBY: I'm just alerting the court that --

THE COURT: All right.

MR WILLOUGHBY: -- they will have a few questions and then we may have some additional questions through Mr Miller's deposition and the like that we would present --

THE COURT. Okay.

MR WILLOUGBY: -- to show a different side to the story that they wish to share.

THE COURT: All right.

MR. WILLOUGHBY: And the final motion that we have is -- and this is an evidentiary issue Mr Ross Walters, who is the corporate representative of BB&T Bank, which I understand it. I don't know if he's also the corporate representative of both BB&T Asset Management and BB&T Corporation, but I understand he's the corporate representative of Branch Banking and Trust Company And I would ask counsel if he's going to be the corporate representative for all three corporate defendants, but Mr. Walters had a meeting with Mr Maybank in August of 2010, and at that meeting he took some notes and then ultimately he prepared a memorandum We don't know if they planned to introduce the memorandum It's a clear hearsay document He can testify as to his recollection of the meeting, if he chooses to do so, but as far as the notes and the memorandum that he prepared, we would object to any introduction of that as being a hearsay document.

MR. KRISTINIK Your Honor, I would like the opportunity, once Mr. Walters is on the stand, to lay the foundation for admissibility one of three ways, either present sense impression, business records, or to allow it to be read into evidence under the recorded recollection exception I think that this -- you ought to wait until you hear my foundation laid.

THE COURT Yeah, I don't think I can make a

judgment on the -- okay. Thank you for alerting me of that.

All right

MR. WILLOUGHBY: Those are all the motions of the plaintiff.

THE COURT. Have you all got some?

MR. BROWN: Yes, Your Honor, we filed ours awhile back

The first is a motion to exclude evidence regarding the defendants' finances, in particular Oliver Wood's opinions regarding finances He specifically made opinions regarding daily income He made opinions regarding specific assets held by the defendants He also made opinions as to appropriate measure of punitive damages being based upon salaries and bonuses of the senior level employees. We would contend that all of that is specifically barred by the Branham case, Your Honor

In that case Justice Kittredge speaking on behalf for this component of the opinion of unanimous Supreme Court, and I have a copy of the case I can hand up, Your Honor. The court addresses the issue of punitive damages at the top of page 26 of 31 -- and actually it starts on page -- the prior page, but the court specifically notes the exact same types of thing in headnote 21 that were offered in Branham, being cash flow, income, revenues, and notes that some older Court of Appeals cases support that, but

then goes on to say those predated the State Farm v. Campbell opinion from the United States Supreme Court, that under the State Farm v. Campbell case and says that it gave a cautionary observation that references the defendants' assets has little to do with the actual harm sustained by the plaintiff and militates against venturing beyond net worth and extrapolation from net worth. And then our Supreme Court says on retrial you are limited to just net worth and extrapolations from net worth, if you are seeking to demonstrate ability to pay under punitive damages

That's exactly what we are asking the court to do, is to follow Branham and say they can't talk about assets, they can't talk about income, they can't, because all of that is intended to inflame the jury and not appropriately measure the proper punitive damages.

The next provision in Branham specifically addresses Oliver Wood's testimony that the proper measure of punitive damages is the bonuses received by executives.

And it further says that in making that same exact type of evidence in Branham, Branham went far beyond the pail in submitting evidence of forward senior management compensation.

So the information about compensation, the information about income, the information about assets under Branham are expressly prohibited as a measure of ability to

pay for punitive damages Branham says that net worth and extrapolations from net worth are what you should be allowed to do, and that's all we are asking to be done

The plaintiff has cited in their opposition that they filed today the older cases that Branham notes, the Orangeburg Sausage case, but Branham expressly says those predated the Supreme Court's limitation and we are not going to follow them any more So we believe that because of that Oliver Wood's testimony in that regard should be excluded

THE COURT Okay

MR JOHNSON Your Honor, good afternoon May it please the court?

THE COURT Uh-huh

MR. JOHNSON The Defendants are really extracting this limited part of Dr Wood's testimony in them saying when then all of Dr Wood's testimony should not come in related to punitive damages

As the court knows, you denied their motion for summary judgment with respect to punitive damages This information is relevant The defendants are really trying to hide the evidence of their finances, other than their net worth

Now, as they are doing this, they have produced to us copies of basically every check stub that Mr Maybank and the Insurance Trust has paid for fifteen years, going back

fifteen years, and they are going to trot that out and say that's appropriate for this court to consider and the jury to consider, but they don't want anything, other than the net worth or the net income of BB&T, to be considered by the jury.

Now, notwithstanding their motion, defendants contend that any attempt by the plaintiffs to present any evidence on their ability to pay punitive damages is improper. However, the courts have routinely allowed this evidence beyond a mere statement of net income. In fact, Dr Wood has testified in many of these cases. Dr Wood has been permitted to testify on, for instance, daily earnings of a company, which the Court of Appeals permitted, as clearly relevant in the Orangeburg Sausage case

Dr Wood has also been allowed to testify as to shareholders equity, annual operating revenue, annual operating revenue per day, net income per day That was the Bryant v. Waste Management case, also a Court of Appeals case

The defendants' position is not supported by the case law in this state

And, further, the defendants misrepresent Dr. Wood's testimony. And, like I said, they extract that limited portion about the five executive salaries He said he did consider that, but that's not the basis of his

report In fact, it's not even in the report, so we would submit that this motion is without merit We will address it when we present Dr. Wood.

MR. BROWN: Your Honor, briefly, Dr Wood expressly said in his deposition that the day before his deposition he was asked to render an additional opinion, and his additional opinion was what is a proper measure of punitive damages He said "it's my opinion that the salaries of executives is a proper measure of punitive damages." That's an opinion he has offered in his deposition We think Branham expressly says that that's improper.

The two cases that were just cited for why you should go beyond net worth were the Orangeburg Sausage case and the Bryant case, both of which were specifically repudiated in Branham by the Supreme Court. The Supreme Court noted that that law existed and said that it's not consistent with State Farm v Campbell, and, therefore, should be limited to just net worth or extrapolations from net worth

THE COURT Okay Well, when is he going to testify?

MR. WILLOUGHBY: Your Honor, he will probably be near the very last of our witnesses.

THE COURT: So tomorrow?

MR. WILLOUGHBY: Well, my guess would be probably Wednesday is what I'm hoping, Your Honor, depending upon the length of time of cross-examination.

THE COURT: All right. Well, I have got some time to think about that.

All right, anything else?

MR. BROWN: Yes, Your Honor, we also have a motion in limine regarding Tracy Meyers. We had addressed the court previously, and I gave Mr. Willoughby a copy of our supplemental memorandum that we filed.

We took her deposition and expressly asked her about what information she had that would be factual, and, in essence, she said she had done no investigation. She had been handed information by Mr. Willoughby and that that is all she considered. She didn't do any independent investigation. She said that she had someone in her office look up information in computer records, but that she dian't personally do that. So she has no personal knowledge of any facts. And the mere existence of documents being handed to her and her reading them doesn't make her a fact witness. Counsel can't create fact witnesses who had no personal involvement by handing them documents to review. That's the role of an expert, and the court has already ruled that she's not an appropriate expert, because she was not named in time to be allowed to be so. And so all of her testimony

is in the role of an expert. She has no personal knowledge upon which to provide any testimony, and she's acknowledged that in her deposition And, in fact, she's acknowledged that the vast majority of her affidavit is, in fact, legal opinions It is her legal analysis, which would be something that is clearly beyond the knowledge of the jury and would require specific knowledge and expertise in order to give that testimony, if it's even allowed, and, therefore, would require her to be an expert under Rule 702.

Under Rule 701 she cannot give those opinions, and we would contend that's improper.

We have not found any law in South Carolina that specifically addresses it, but we have found some Fourth Circuit law in which a witness was attempting to give this type of testimony in a criminal case, United States v Johnson The Fourth Circuit reversed Judge Floyd, when Judge Floyd was on the district bench, for allowing a lay witness to give this type of opinion We would contend that the same result would have to occur here, that this testimony should be excluded

MR WILLOUGHBY. Your Honor, very simply, Ms Meyers is going to give factual-based testimony. What we have said before is still very true I mean, she is the Deputy Securities Commissioner for the State of South Carolina She is in the enforcement of the securities laws

of the State of South Carolina, but what she does every day is review documents that comes in, makes decisions about whether or not an investigation ought to be instituted. So we will be asking her to talk about the policies that's within her office, to talk about how her office proceeds with their determinations about making enforcement decisions, what she's reviewed here, issues how they view the issues that she's seen.

So we are not claiming at this stage to ask her to render a legal opinion. We were going to ask her about what her office does, how she does it, what the information she reviewed in this case, a review of files that she's made in her case relating to issues, how all of that relates. That's going to be -- and it's all going to be factual.

And so we would argue that she should not be excluded if we put Ms Meyers on. And as you pointed out, she's not -- she's a state employee. We haven't hired her. We are not paying her. We have got her under subpoena, so we would ask that she would be permitted to testify. They are certainly able to cross-examine her. They have taken her deposition, got a chance to ask her all of the questions that they may desire to ask, and so she's -- she's free to testify.

Obviously if she goes beyond what the judge believes is permitted, then that would be a ruling that you

would make based upon her testimony, but she is factual Every day her job is to audit securities firms, make determinations about what their conduct might be, make a determination, and that's what we are going to be asking her about.

THE COURT All right

MR BROWN Your Honor, that's exactly my point Making a determination is legal analysis in her situation. She is applying the law to make a determination as to whether a law has been violated That is a legal opinion she would have to make in order to say "I made this legal determination "

They have also just said that she's going to talk about their office policies and enforcement decisions. Those are wholly irrelevant in this case because there is no enforcement action by the State Securities Division in this case, and what the policies are for such an enforcement proceeding has no application to this case

He also said that she's going to talk about what she's reviewed That basically says Mr Willoughby gets to hand her documents and say, "okay, you reviewed that; therefore, testify to that " That isn't how a fact witness exists Fact witnesses have to have been involved in the circumstances They don't get to be shown documents that they had no involvement with whatsoever and opine as to what

their significance is. That's where they step over the line into being an expert.

THE COURT. Okay. Well, when is she going to be called?

MR WILLOUGHBY. Your Honor, depending upon how long Mr Maybank's testimony may go, we were hoping that she would testify tomorrow afternoon, but --

THE COURT: All right.

MR. WILLOUGHBY. -- I believe it depends on how long cross-examination would be.

THE COURT. All right. Okay. What else? Is that it?

MR. KRISTINIK: I have a few, Your Honor. I didn't want Mr Brown have to do all the work today.

Your Honor, we have a motion that is similar to their motion related to Dr. McCann. This motion relates to one of our experts, Paul Merolla.

As Mr Willoughby was deposing Mr Merolla, he learned that Mr Merolla in the past, over twenty years ago, worked for Drexel Burnham and it was at the time that Drexel Burnham went into bankruptcy, that Michael Milkin got all the negative press. There was no testimony that Mr. Merolla had anything to do with bad actions or bad activities. And I don't even know if Mr. Willoughby would be interested in asking my expert about this anyway, but I would like to ask

the court for a ruling that there can be no questioning of Mr. Merolla about his prior employment with Drexel Burnham.

THE COURT: You got any problem with that?

MR. WILLOUGHBY: Your Honor, on his resume there is -- he lists his professional experience and it does list his time at Drexel Burnham, which was a firm -- he was in the general counsel's office, had some responsibilities related to compliance issues for the firm. And so the firm ultimately, as Your Honor will recall, the late 1980's pled guilty to securities fraud, ultimately went into bankruptcy, all while he was in the general counsel's office. As it goes into bankruptcy he becomes the general counsel and obviously worked with the firm until it ultimately is going out of business. I think that is information that is listed on his resume, that's part of his history. I don't plan to ask him -- there is no evidence that he had any involvement. I don't plan to ask about that, but the fact that he had -- as part of his resume that he has that history and what he did would, I think, be fair game to cross-examine a person on.

THE COURT: For what?

MR. JOHNSON: Your Honor, if I could interject as well, he's being offered for testimony on BB&T's compliance with their securities regulations. Clearly his employment history is relevant to his credibility and qualifications to

testify as an expert

The defendants argument that this discussion of his prior employment is somehow prejudicial is really unavarling. All evidence is prejudicial. I mean, what could be more relevant to Merolla's credibility than an examination into his former employer pleading guilty to mail and securities fraud, all while he's providing advice in the general counsel's office. He lists it on his resume as part of his employment history. We think it's clearly relevant to his credibility as an expert witness.

MR. KRISTINIK: Your Honor, they want to try the Drexel Burnham bankruptcy in your courtroom. They want to try Michael Milkin's criminal convictions in your courtroom, because if you allow them to get into that, that's exactly -- those are all the questions that they are going to get into. While it's okay to ask him if he worked at Drexel Burnham, and it is on his resume, there should be no questions about the bankruptcy of Drexel Burnham. There should be no questions about criminal indictments.

THE COURT: You all have anything that connects him with it?

MR WILLOUGHBY: Your Honor, we don't have anything that says he participated in securities fraud

THE COURT: Well, the connection with the advice that led to that, other than the fact that he's in the firm?

MR. WILLOUGHBY: Well, he's in the general counsel's office when all of these activities were ongoing and they went over several years. I mean --

THE COURT: Do you have anything that specifically hooks him into that?

MR WILLOUGHBY We have -- we have no evidence, Your Honor, that says he participated in anything.

THE COURT: Well, just -- you know, it's not guilt by association, so I got some real trepidation about allowing that, okay?

MR WILLOUGHBY. I understand

THE COURT All right

Anything else?

MR KRISTINIK. I have a few more, Your Honor

THE COURT Well, I tell you this. I don't think this jury is going to be as patient as I have been and I don't think I'm going to be patient as I have been I'm not picking on you, but this is going to have to move along And this is not an esoteric exercise any more. We have got fourteen people over there and you all saw who they are, so what I'm -- you know, if you just -- as we talked about, a jury trial is generally a beauty contest and this is highly complex stuff and if this kind of -- if these esoteric argument is going to be presented to a jury, this jury, I'm not sure how well that's going to sell

My other point, the other thing I need to disclose is that I have a committee meeting in Columbia on Friday, so I may not be able to hold court on Friday.

This jury is already very concerned about two weeks. We lost a number of, I thought, highly qualified jurors because of the length of the trial, so what I'm telling you guys is we need to be very efficient about how we move this case along.

All right, sorry to interrupt you. Go ahead, what's your next motion?

MR. KRISTINIK: And, Your Honor, our motions in limine are intended to try to narrow the case. It's also intended to try to take some issues out of the case that we think are going to confuse the jury and that's what my next is motion is about. It's a motion in limine to exclude evidence relating to New York Stock Exchange Rule 312.

Professor Freeman initially offered an opinion. He's their expert. He initially offered an opinion that Rule 312 prevents a member of the New York Stock Exchange from offering advice to a customer about its own stock.

And then as I'm examining him during his deposition, I turned -- I think I turned a light on for him and he realizes that neither BB&T, the bank, or BB&T Asset Management have ever been members of the New York Stock Exchange and that this rule would not have application to

them. And the only two entities that could be giving advice in this case would be BB&T, the bank, and BB&T Asset Management Neither one was a member of the New York Stock Exchange and, therefore, Rule 312 of the New York Stock Exchange can't have any application

So we would say, Your Honor, please exclude any evidence or any reference to that rule It would do nothing but confuse the jury. If they start talking about it, then I'm going to have to bring in an expert to talk about why it doesn't apply. It's because these two entities were never members of the New York Stock Exchange

THE COURT. Okay How about that?

MR JOHNSON Your Honor, we have not and we do not allege violation of Rule 12 of the New York Stock Exchange

THE COURT: 312

MR JOHNSON: 312, excuse me. However, 312 was and is still an industry standard in the financial services industry saying you cannot make recommendations on your own company's stock You can't make a recommendation to buy, sell, or hold it It's a clear conflict of interest The New York Stock Exchange rule recognizes this fact. The FDIC recognizes this fact. In fact, BB&T recognizes this And as a preview of another motion coming, they have their own rule which says you can't make a recommendation on BB&T

Corporation stock, except they say that that rule doesn't apply to them.

You know, this Rule 312 is really the New York Stock Exchange, the leading industry, the leading institution in the investment industry, they recognize that a conflict of interest is an industry standard, and Professor Freeman is prepared to talk about the industry standards, which is you cannot make recommendations on your own company stock.

MR KRISTINIK: Nowhere in that argument did Mr Johnson that Rule 312 actually applies. He even concedes, you know, we don't even allege a violation of it.

They want to bring in this inapplicable rule that says "look, there is this general rule that doesn't apply here, but this general rule that says you can't recommend your own stock."

THE COURT: Well, let's -- if Freeman gets up and says "it's a conflict of interest to recommend your own stock."

"Well, what do you base that expert opinion on?"

He's going to -- he's allowed to testify to what he bases that on. You all can cross him and bring all that out, but how can I -- if that forms the basis for his opinion, you know, how can I prevent him from --

MR KRISTINIK: Your Honor, I don't think that

forms the basis of his opinion at all

THE COURT: Well, I don't know if it is or not, but if that's what he testifies to, that's different from him going "well, these guys violated Rule 312."

MR KRISTINIK: Well --

THE COURT: I mean, there is a distinction there Not much of a difference, but there is a distinction, and -- I mean, he's got to be allowed to testify to what -- and then you can cross-examine him

MR KRISTINIK. Okay

THE COURT: Just because they weren't members, you know, that doesn't apply in this circumstance.

MR KRISTINIK: It's true, Your Honor, I can cross-examine him on that, but it also causes me to bring in an expert witness

THE COURT: Well, he's not going to go far -- I mean, I don't know what he's going to testify to You guys are assuming that I have some understanding of what the testimony is. I can't make -- it's very difficult to make these judgments in a vacuum, which is what you are asking me -- I'm being asked to do a lot of this stuff

So, you know, experts are generally allowed to testify to their opinion and what was the basis of their opinion And I have been in some cases where experts get blown out of the water because they relied on some stuff,

but -- okay I mean, it's a dual-edged sword.

MR. KRISTINIK: Okay.

THE COURT: Okay.

MR. KRISTINIK: And I understand ruling, Your Honor.

THE COURT: Okay.

MR. KRISTINIK: The next motion is our motion to exclude evidence related to Section 5.4.4 of the BB&T Asset Management Compliance Manual. And this section of the compliance manual says that to avoid potential conflicts of interests, that BB&T portfolio managers cannot recommend transactions of BB&T stock for any client accounts. And it sets up a rule that you cannot have BB&T stock in a client account.

Now, the plaintiff is going to try to offer evidence of this policy to say "BB&T Asset Management, you are not allowed to deal with anyone who has got BB&T stock," and they are going to reference this provision, but this provision states expressly that the BB&T stock must be in a client account.

It is undisputed in this case that Mr. Maybank's BB&T stock was never in his BB&T account. That stock was with Scott & Stringfellow before he even became a customer, and then it moves from Scott & Stringfellow to Bear Stearns. It never went through a BB&T account. This policy expressly

applies only to when the stock goes into a BB&T account So reference to this policy would be irrelevant. It's also going to have the potential to mislead or confuse the jury.

They have plenty of ways that they can claim that this is a conflict of interest without having to use a policy that's completely inapplicable

THE COURT. Okay.

MR JOHNSON Your Honor, this is their own policy manual They don't contend that the policy manual doesn't apply at all in this situation, because they can't. BB&T Asset Management employees advised Mr Maybank for fees on both of the pre-paids, as well as BB&T Asset Management employees managed his account It's a question in fact whether or not this provision of their own policy manual applies here. We suggests that it does.

Now, you heard Mr. Kristinik say, well, it's in dispute, which is just really another way to say there is no genuine issue of material fact. All this is is a motion for summary judgment, which I would suggest the filing deadline was May 7th on and for that reason alone they should be denied.

The defendant seemed to be under the impression that they could just say that, "well, this portion of our policy manual doesn't apply," and the court and we are just supposed to accept that It's a question at issue in this

case and we are prepared to show that it does apply.

THE COURT: Okay.

MR. KRISTINIK: And not one time did Mr. Johnson say that in the managed portfolio account was there a single share of BB&T stock. It's because there is not --

THE COURT: Okay. Well, you know, if I start making rulings like that, then I --

What's in evidence? I don't have -- there is nothing in evidence. You are asking me to make a factual determination. It may well be that it comes out that that turns out to be true; but it's a fact in dispute and you can -- I think you can fight over it with the jury, okay?

MR. KRISTINIK: Your Honor, the next motion has some inner-play with the Tracy Meyers motion as well. It's our motion to exclude certain opinions of Professor John Freeman.

And, first, let me say, you know, our motion begins with the request to not allow his written report into evidence; but it's my understanding in talking with Mr. Willoughby that he has no intention of trying to put that written report into evidence.

THE COURT: Okay.

MR. KRISTINIK: So that I think would address the first part of my motion.

The next part deals with some specific opinions;

One deals with Rule 312 Your Honor has already addressed Rule 312 issues

The most troublesome opinion that we have is Opinion Number 15 In Opinion Number 15 he comments on the one-time advisory fee that is charged by BB&T Asset Management for a pre-paid contract. He states "I view it as sales remuneration or compensation It looks like a selling commission to me "

In his deposition he says "I think it's more likely than not in a legal fee," but when I asked him whether he was relying on any specific rule or regulation, he simply answered "just my research My research tells me if you receive what amounts to a loaded up of a selling product that the regulators tend to classify as a sales-based commission to touch tone broker status So where is your license?"

So he's being critical of the fee as being a broker fee, but he never offers opinion, and he was never asked to offer an opinion, as to whether BB&T Asset Management was a broker under the South Carolina Securities Act

He was never asked to make the determination of whether the definition of broker-dealer in Section 102 of that Act applies to BB&T Asset Management He was not asked to do that This is why tney went out and got Tracy Meyers

Tracy Meyers comes in with her affidavit, an eight page affidavit, and does an analysis where she says "yeah, here is the definition of broker-dealer. And even though it doesn't mention fees, I think they are a broker-dealer, because they charged a transaction fee." They tried to bring in Ms. Meyers to make this link.

They have -- if they can't say that BB&T Asset Management falls into the definition of a broker-dealer, then they can't say that the fee is illegal

You have already said that Ms. Meyers cannot offer an expert opinion. I would presume that that means that you are not going to allow her to offer an opinion that BB&T was illegally operating as a broker-dealer. And if she can't do that, Professor Freeman should not be able to be allowed to sit here in court and tell the jury that this is an illegal broker fee.

He was never asked to do the analysis under the definition of the Securities Act. When I asked him what his basis was during his deposition, he never references the Securities Act, or any other particular regulation.

They have no witness that can say that we were acting as a broker-dealer without a license. And to let him testify without that fact being established, it would confuse the jury, it would be an unfounded opinion, and we would ask that that particular opinion be excluded.

MR JOHNSON. Your Honor, he's essentially criticizing Professor Freeman for not offering a legal opinion that they were a broker-dealer. And just as soon as he did, I'm sure they would step up and say "Your Honor, that's a legal opinion. He can't say that "

Professor Freeman, what he actually testified to was, "well, what I'm saying is that if you charge a fee based on the transaction, and that's a transaction-based compensation for selling a security, that you are starting to look like a broker in the brokerage business and you really ought to have a broker's license "

We have alleged a violation under the Securities Act specifically for affecting a transaction and securities without being a broker. It's Rule 35.1 509(d)

Your Honor denied the motion for summary judgment that they filed with respect to the Securities Act It's a question in issue Professor Freeman has submitted testimony

Tracy Meyers has submitted factual testimony as to whether they are, in fact, registered as a broker-dealer It's the same issue.

Your Honor, we have Professor Freeman testifying here and we think it's proper and that it's nothing more than they're being critical for him not offering a legal opinion, which would not be appropriate

MR. KRISTINIK Your Honor, they never disclosed in their December disclosures that he was going to offer an opinion that we were acting as a broker-dealer. Not disclosed in December.

And then even in his deposition he doesn't go that far to say that we were a broker-dealer. He just wants to say that it's an illegal brokerage fee.

Without Tracy Meyers opinion to establish with expert testimony that we were, in fact, acting as a broker, it makes any discussion of the fee being broker-esque irrelevant.

THE COURT: Well, you know, again, I'm going to have to hear his testimony. I cannot make a ruling now based on that, okay? So thank you for alerting me to it.

MR. KRISTINIK: There is a legal conclusion that Professor Freeman wants to offer. It's opinion number 21, and it's a part of our motion. He says that "if the conduct of defendants was reckless or grossly imprudent, then such conduct would warrant the assessment of punitive damages."

THE COURT: Punitive damages. What about that? He's not allowed to do that.

MR. WILLOUGHBY: Your Honor, I believe a -- I think again let's get to the testimony.

THE COURT: Yeah. Well if he says that, he's not allowed to do that. He can't make that conclusion.

MR WILLOUGHBY I think he can make a conclusion as to whether or not conduct, in his judgment, in his opinion, is egregious and is reckless, based upon a standard.

THE COURT That may be, and then you can argue what that means to a jury

He's not allowed to go in there and say, you know, this is conduct that warrants punitive damages You can't -- that's not up to him

MR WILLOUGHBY: Well, maybe we -- maybe we say -- maybe the limitation would be that he says the conduct is egregious and it's reckless and then we address it otherwise.

THE COURT Okay

MR. KRISTINIK That would be acceptable.

THE COURT All right

MR. KRISTINIK And then lastly with Professor Freeman, he offers three opinions where he says that the purported breach of contract is also a breach of fiduciary standards, because a fiduciary is supposed to adhere to a contract They are simply putting an expert loss on a breach of contract. This is his opinions of one, two and three, his very first three opinions, where he tries to say that a breach of contract is a breach of fiduciary duty And the standards for whether you have to adhere to a

contract is the contract. You don't need expert testimony to come in to try to describe it as something else, to say the standard is something else

Under Rule 702 the opinions of the expert have to assist the trier of fact. And coming in to say, well, a fiduciary is required to adhere to the terms of his or her contract, that doesn't -- the party to a contract is already required to adhere to the terms. You don't have to dress it up by calling it a fiduciary violation

THE COURT: Okay.

MR JOHNSON: Your Honor, this is simply not what Professor Freeman had in his report What he did say was that fiduciary standards of BB&T presenting a contract to Mr Maybank, which they knew at the outset that they could not fulfill, they did not, in fact, fulfill, and that they had no intention of fulfilling was a breach of the fiduciary standards of the industry That testimony is clearly relevant to the issues in this case. It's not a finding on a breach of contract. In fact, a breach of contract doesn't appear on that opinion whatsoever. He is opining on the defendants conduct toward Mr Maybank because they were his fiduciary

THE COURT Okay. I'll have to -- we are not there yet.

MR KRISTINIK: I'm trying to find the easy ways

to decide -- I only have two left. I want to try to dispose of them as quickly as possible.

Your Honor, we have filed a motion in limine to exclude any evidence regarding broker-dealer registration requirements based on the same prior arguments, that being that there is no expert witness on their side who says that we were acting as a broker-dealer under the State Securities Act. And without that foundation, without that expert testimony, it would make any reference to broker-dealer requirements irrelevant, and so we filed a motion in limine on that issue.

MR. JOHNSON: Your Honor, the same issues that we dealt with five minutes ago is we have pled a violation of the Securities Act, 35-1-509(d), that prohibits a person from affecting a transaction in securities without a brokerage license.

We submit that it's clearly relevant here whether or not they had a brokerage license or acting like a broker-dealer based on transaction-based compensation that they were charging Mr. Maybank.

THE COURT: Okay. It's a matter of proof. I mean, we got to see what they got. Okay.

MR. KRISTINIK: And then our last motion in limine is our motion in limine to exclude evidence of BB&T Corporation public comments regarding financial performance

in dividends. This goes back to the earnings cause

We did find written transcripts of the earning cause We produced that per your prior order the last time we met We actually found some audio tapes going back into part of 2008, forward . The client has had difficulty with technology to get, you know, copies of those recordings made It's now in the hands of my office in Columbia and we are going to work to get that to them, but the purpose of this motion is to ask Your Honor to exclude this, to limit the evidence in this case To have comments from executives of BB&T, public comments about the performance of the company, just has nothing to do with Mr Maybank's decision to buy a Pre-Paid Forward Contract

What this case needs to be about is was it a prudent reasonable step to buy a Pre-Paid Forward Contract? Were his investments properly managed in his managed portfolio account? Those are the real issues in this case

They can't even -- they don't even have evidence -- they can't -- Mr . Maybank can't even say which calls he may or may not have heard He can't say -- he won't be able to remember "I heard a call on X date "

THE COURT Okay

MR KRISTINIK These were just publicly made statements, Your Honor

MR JOHNSON Your Honor, once again they are

trying to limit the admission of publicly available comments that their own executives made

Mr Maybank was a significant shareholder in BB&T stock, 246,000 shares He received annual reports that BB&T sent out every year He listened to the company's quarterly calls This information informed his judgment as to what he was going to do with this highly concentrated position of BB&T stock It's clearly relevant here

It's clearly relevant on the conflict of interest. Particularly BB&T is making recommendations with respect to what to do with its own company stock

A person in Mr Maybank's position, a client, is inherently at a disadvantage of information as compared to the company and its employees When you have company executives who are touting their payment of dividends You know, they would say they were dividend aristocrats, had paying dividends ever increasing for twenty-five years, and you have employees recommending a strategy based on that inherent -- based on your own company's stock, it informs the client's judgement as to what he is going to do That's what we are arguing

We haven't a made a fraud on the dividend argument, as they suggests in their motion That's not what we are alleging here We are saying that it informed Mr Maybank's judgment when he was considering what to do with

this BB&T stock

MR. KRISTINIK: That's our point, Your Honor. They are not saying that any of these statements to the public are fraudulent. They are not trying to bring a shareholder's claim, but they can't -- also they can't say which one of these Mr. Maybank may or may not have heard.

Mr. Maybank is free to testify, "you know, generally I heard positive things from BB&T." He can testify to that all day long, but for them to bring in a transcript, when they can't --

THE COURT: Well, what about if they --

I tend to agree with you. He can't specifically say what he heard, but, you know, if your people testify and they are examined on that issue, can they not be impeached with those? That would be my thought that pops into my head.

Again, you guys know what these people have said. I don't, and I kind of need to hear it before I can make these judgments.

MR KRISTINIK Your Honor --

THE COURT. So --

MR. KRISTINIK: -- I would limit that these earnings calls then to impeachment evidence.

First of all, we are not bringing in --

THE COURT: I don't know that, okay? I have got

to hear what these people say I don't know how many times testimony changes pretrial to trial. I can't tell you how many times that happens, so I have got to hear it before, you know, I'm going to make a judgment to cut something off at this stage. Okay? All right

MR KRISTINIK, Your Honor, those are all our motions in limine.

Just a couple of other things.

One is as, you are aware, we have objected to there not being personal jurisdiction over BB&T Corporation, and we just want to make it clear on the record as we press through trial that we continue to maintain that objection, that there is not personal jurisdiction over BB&T Corporation At an appropriate point in the trial we will asking Your Honor to dismiss BB&T Corporation.

THE COURT. Okay

MR. KRISTINIK Also we received a large number of deposition designations from the plaintiffs yesterday You set the deadline of last Thursday to make sure that my team had time to look at that We got it yesterday We haven't had time to plow through that and figure out what it is. And if Your Honor is going to allow late deposition designations into evidence, then we would ask that Your Honor require that to be -- that those -- if they are going to play testimony be done late in their case in chief to

A wealth advisor who is working for a retired senior citizen cannot recommend any investments or strategies that contain unreasonable risks because the senior citizen no longer has the ability to make money through a job

When a company agrees to serve as a fiduciary investment advisor for their clients, they agree that they are competent to do so and agree to always place the client's interests first and ahead of their own.

Other words for fiduciary is trusted advisor. If you are dealing with a trusted advisor, you are allowed and encouraged to put your trust in your advisor You need not question or second guess their advice because the trusted advisor is required to put your interests first

Branch Banking and Trust Company today is among the largest banks in the U.S, but it was not always so The bank was founded in 1872 by Alpheus Branch and a partner in Wilson, North Carolina Although many banks failed during the Great Depression, BB&T survived that period, and then was able to grow during World War II and afterwards. By 1994, BB&T Bank had become the largest bank in North Carolina serving 138 cities in North and South Carolina. But due to competition, BB&T lost its first in the North Carolina ranking to the larger nationally known Bank of America.

In 1995, BB&T executed a merger with another large bank, Southern National Bank. Then, as its appetite to grow bigger, BB&T went on a buying spree, acquiring smaller banks in Virginia, Maryland, West Virginia and Georgia.

The buying spree continued into the 2000 to 2005 time frame as BB&T Bank expanded into Tennessee, Kentucky and Florida. By the end of 2005 BB&T Bank was a much larger bank of assets nearly $110 billion and operating more than 1,500 branches in eleven states and the District of Columbia with more than 28,000 employees.

As it grew, BB&T wanted to compete with larger full service banks with brokerage and wealth management services. BB&T had to broaden its services. So among its acquisitions, it acquired a brokerage firm called Scott & Stringfellow that had offices in the Carolinas, Virginia and West Virginia. At the time BB&T told the public that BB&T's clients were asking for more sophisticated financial products, including corporate finance, equity underwriting and distribution, advisory services and research. We believe there are significant synergies among BB&T's commercial middle market lending, investment counseling, insurance and trust business with Scott & Stringfellow's business. In other words, we can cross sell and make more money.

As part of its ambition for growth, in 2001 BB&T

also acquired an independent trust company based in Greenville called Southeastern Trust Company It was an old school, conservative trust company At the time BB&T stated that Southeastern Trust is one of the most highly regarded fiduciary and asset management companies in the Southeast. As part of the deal, BB&T hired all the Southeastern Trust Company's employees It required the founder, Frank Maybank, to sign a five-year employment contract to promote BB&T to Southeastern Trust customers. Rather than pay cash for his company, BB&T paid Mr. Maybank with 246,000 shares of stock in BB&T itself, known in the corporate world as a cashless transaction

When BB&T bought Southeastern Trust, it also took over Southeastern's existing fiduciary obligations to its clients . These obligations included to act as the corporate trustee of the Maybank Family Insurance Trust, an insurance trust created by Mr Maybank in 1993 to provide for his children upon his death When BB&T became a trustee, it promised to act as a fiduciary, the highest duty recognized under the law

When BB&T bought out its company, Mr Maybank was nearly 70 years of age BB&T did not want Mr Maybank to manage client investments like he did in the past His only role was to assist Southeastern Trust clients during the transition into BB&T's business culture BB&T also told Mr

Maybank he could not work with any other continued company even after his five-year employment contract expired

All money management responsibilities are transitioned to younger people at BB&T.

In 2002 BB&T hired a Ross Walters, a former Bank of America employee In about 2004 BB&T created a new department in the bank called the Wealth Management Department, which was really a combination of a financial services entity and the Trust Department The financial people in the department were called wealth management advisors. BB&T told the public that its wealth advisors were well trained, knowledgeable, professional, ethical and client centric BB&T also adopted the BB&T Code of Ethics for itself and its employees The BB&T Code of Ethics was posted on BB&T's website to tell the public about BB&T's stated commitment to the corporate values of honesty, integrity and justice

As the new Wealth Department was created, BB&T assigned Mr Maybank to the Wealth Department reporting to Mr. Walters However, Mr. Maybank's role remained the same No clients were assigned to him He has no duty to manage client assets. His only responsibility is to assist former clients, some of whom he had known for years, if they called with questions. BB&T also encouraged Mr. Maybank to assist the bank in generating new business opportunity from Mr.

Maybank's network of friends and business associates developed over a lifetime

As the Management Department is stood up, BB&T starts selling new financial products called alternative investments These new products involved derivatives and were more complex than the plain vanilla stocks and bonds that Mr Maybank had managed when he was actively involved in the management of client assets BB&T aggressively marketed these products to its clients and his advisors were encouraged to sell them to meet performance goals set by BB&T.

You will see among the performance -- Mr. Walters personal performance set a plan for 2002 -- correction, 2006. "Ross can be counted on to support division initiatives."

Thank you very much for the lighting

"Ross can be counted on to support division initiatives, such as the introduction of alternative investments, as well as develop and implement many on his own team."

The next one, Lindsey Next page

Ross took -- this is at the year end "Ross took a leadership role in the introduction and delivery of alternative investments and closed some significant business in 2006."

Thank you.

An inexperienced broker named Shawn Gibson was assigned to promote these alternative investments. Mr. Gibson was initially employed by Scott & Stringfellow, which was a BB&T Corporation subsidiary. Mr Gibson put together presentations to teach employees at BB&T's employees wealth management departments, including Mr Walters and his team in Greenville, about alternative investors. In fact, Mr. Gibson was thought to have special knowledge about these complex products, but BB&T did not provide Mr. Gibson with any special training. Rather his only information about these complex derivative products came from what he could teach himself.

As BB&T sets goals for Mr. Walters' team in selling alternative investments, Mr. Maybank is not really involved He receives a flat salary of $100,000 per year and nothing more. During his years in the trust business Mr. Maybank never received commissions or any other transaction-based compensation for selling insurance or investment products to his clients

In 2006, as the alternative investment initiative has taken hold, Mr. Maybank is planning for his approaching retirement. During the five years of his employment as he promoted BB&T to his Southeastern Trust clients, he had come to believe BB&T's promises of being trustworthy and capable.

His five year contract with BB&T will end in November of 2006, and BB&T has decided to end the relationship. Mr. Walters is told to ease Mr. Maybank out of BB&T as they no longer believed Mr. Maybank is able to contribute to BB&T's bottom line.

Also working for BB&T on Mr. Walters' team in Greenville is a Mr. Anthony Mahfood. BB&T and its wealth managers know that Mr. Maybank has a concentrated stock position in BB&T's own stock from when he sold Southeastern Trust So in mid 2006, as he heads into retirement, Mr. Maybank asked the bank to manage his financial life and become his trusted advisor BB&T now sees Mr Maybank as a potential customer for a complex derivative product known as a Variable Pre-Paid Forward Contract.

Mr Maybank was approaching 74 years of age He was aware of the uncertainties of life and health He knew he was not as sharp as he had been 20 years before, not even 10 years before Mr Maybank had had no responsibility to manage money for the past five years The world had changed He had no knowledge of Pre-Paid Derivative Contracts They were new, but he had come to trust the bank's expertise and thus placed his entire faith and trust in BB&T

In August 2006, on BB&T's advice, Mr. Maybank tendered 220,000 shares of his 246,000 shares of BB&T stock

Derivative Contract recommendation. They are two sides to the same coin, a strategy that all their witnesses acknowledge is virtually impossible to achieve

Remember that everyone agrees that Mr Maybank was endeavoring to reduce his investment and retirement asset risk exposure and that the Pre-Paid Derivative Contract was BB&T's preferred strategy for accomplishing these goals So the seemingly aggressive strategy in the managed portfolio didn't indicate that Mr. Maybank wanted risk, because it was part of the strategy which BB&T advised would reduce risk

We also considered whether Mr Maybank's spending to help his children and grandchildren and improve farming operations should be an issue You will hear that an important part of financial planning is setting limits The BB&T Wealth Management Agreement promises comprehensive services based on the client's financial situation and needs and recommendation to the client for an investment program which is designed to meet these needs We also saw that the wealth advisors told BB&T's general counsel that they had conducted a financial planning process with Mr Maybank You will hear Professor John Freeman, who is an expert on financial services and fiduciary obligations, testify that the client who is paying for financial services should get advice about whether his current outlays are consistent with his assets and his long-term goals, recommendations about

Underwriter with expertise in the areas of life insurance and estate planning, has determined the cost of replacing the $5 million in life insurance which was lost to the Trust as a result of BB&T's failure to protect the Trust's interests.

Before Mr Maybank hired BB&T as his trusted advisor, he was the owner of over $9 3 million in stock, representing the 220,000 share value This represents the fruits of a lifetime of work and professional achievement He had established an insurance trust for the benefit of his children which held $5 million of life insurance policies at the time of the loss. He was looking forward to using these assets to fund a happy and prosperous retirement and leaving a legacy to his children

From beginning to end, everything I show you in the trial is for you to see what caused harms and losses to Mr Maybank and the Insurance Trust and how much money it will take to make him whole

The evidence that we present, as the judge has told you, will be by a preponderance of the evidence. That's the greater weight, is it more likely than not, more likely than not Nothing is to a mathematical certainty More likely than not. You will hear me ask witnesses sometimes "is the testimony that you are giving and opinions that you are giving, the conclusions that you reach, is it

about exactly what a pre-paid contract is. The full name is this: Variable Pre-Paid Forward Contract.

And what I want to do, I want to use -- as an example to tell you what one is, I want to actually use Mr. Maybank's situation, his first pre-paid. I want to talk through that with you. In this way educate you on what a pre-paid is. All right.

So Mr. Maybank had 246,000 shares of BB&T stock.

This is called a settlement overview. After you complete a pre-paid contract, one of these will be prepared. You will have all the terms at the top. That's what the top part is, and then it has settlement choices at the bottom. I'm going to explain the bottom in just a minute.

Let's look at the top first. This tells you that 220,000 shares are going to be part of the pre-paid. The contract date was August 11th, 2006. The value of the shares on that date, $9.3 million.

There are two parties to the pre-paid contract, Mr. Maybank and Bear Stearns. BB&T is not a party to the contract. Bear Stearns is an investment bank located in New York City.

On the day that Mr. Maybank enters into his pre-paid contract, Bear Stearns sends to him, through his broker Scott & Stringfellow, a little over $7.1 million called the up-front proceeds. $7.1 million. This amount

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(PROCEEDINGS, JUNE 17, 2014)

THE COURT All right, let's get the jury

THE BAILIFF: Yes, sir.

(The following takes place in the presence of the jury panel)

THE COURT: All right, ladies and gentlemen, welcome back and I'm glad to hear that those seats are so comfortable.

All right. Mr Willoughby

MR. WILLOUGHBY May it please the court, we would call as our first witness Mr. Frank Maybank

THE COURT: All right.

MR WILLOUGHBY Come around Mr Maybank.

Mr Maybank, come right up to the gentleman and be sworn in and then he will show you where to take the seat.

FRANCIS P MAYBANK, having been first duly sworn, testified as follows:

THE CLERK: Please state your name for the record.

THE WITNESS. Francis P. Maybank.

THE CLERK: Thank you. You may be seated.

DIRECT EXAMINATION BY MR WILLOUGHBY

Q Now, Mr Maybank, I'm going to stand here, because it's important that the jury be able to hear and see you as you testify. If you will kind of face me

Would you please state your -- introduce yourself to

the ladies and gentlemen of the jury.

A. My name is Frank Maybank.

Q. Mr. Maybank, what is your address here in Greenville?

A It is 124 Hidden Hills, Greenville, South Carolina.

Q And Mr. Maybank, what is your date of birth?

A [redacted]

Q Where did you grow up?

A I grew up in Charleston, South Carolina.

Q And how old are you today?

A I'm 81

Q Did you go to college?

A Yes, I did

Q And where did you go?

A I went to Harvard, Class of 1955.

Q Did you graduate?

A. Yes, I did

Q. What degree did you take?

A I had a BA in History.

Q Following college, what did you do?

A I went into the Army.

Q. And what military occupation or specialty, MOS, did you have?

A I was in the infantry.

Q. And where were you stationed?

A. I was stationed most of the time in Fort Jackson, South

Carolina.

Q And while there what did you do?

A. I instructed heavy weapons infantry I was an instructor for heavy weapons infantry.

Q And so you trained other soldiers in the infantry?

A That's correct

Q And what years were you on active duty with the Army?

A. Let's see, '55 through '57.

Q. And following your active duty service, did you also serve time in the Army Reserve?

A. Yes, I was in for four years

Q. And where was your duty station for the Army Reserve training?

A. I was -- it was in New York City.

Q Did you receive a discharge from the Army?

A Yes, I did.

Q. And what were the terms of the discharge?

A. It was an honorable discharge

Q When you completed your Army service, what did you do?

A I went to New York and went to work for Fiduciary Trust Company.

Q And at Fiduciary Trust Company, what did you do with them?

A Well, I started out in the research department.

Q And did you -- what did you do in the research

department?

A We studied various companies with an eye to invest in them

Q. And how long did you work with Fiduciary Trust Company?

A I worked with Fiduciary Trust Company up until --

Q. Approximately.

A 1969, I think.

Q. Approximately -- could it have been the early 1970s?

A No, I think it was '69, '70 we was up there.

Q. And by the time you left Fiduciary Trust Company --

Well, let me ask that. For the ladies and gentlemen of the jury, what did Fiduciary Trust Company do for its clients?

A Fiduciary Trust Company was a trust company. It was not a -- it did not have banking powers. I mean, it did not make loans, and it acted as a manage -- you know, investment managers and trustees under the terms of trust agreements. Acted as executer under the terms of wills, and it was pretty much an investment management operation.

Q And its name is Fiduciary. Did it serve as fiduciary to its clients?

A. For all of them, yes.

Q And what did you understand then and now the responsibilities of a fiduciary are?

A. A fiduciary is to act in the best interests of the

client, or the trust beneficiary, or the beneficiary of an estate, and there should be no conflict of interest. You should put their interest before the interests of either the corporation or your personal interest

Q Okay When you left Fiduciary Trust what did you do?

A I started an investment counseling firm with some others

Q And what was the name of the firm?

A That was Maybank, Grigsby & Company

Q And where was Maybank, Grigsby & Company located?

A 55 Wall Street was our first location. We moved after that and I think it was 25 Broad Street, or -- I'm not exactly sure I can't -- it was on Broad Street, but I think it was 25

Q Okay And what business was Maybank, Grigsby in?

A It was a registered investment counseling firm.

Q And how long did you operate that firm?

A I operated that firm through -- with others through 1979

Q And what kind of services did Maybank, Grigsby provide?

A We were portfolio managers and investment advisors

Q. And did you serve in a fiduciary capacity for your customers?

A Yes

Q And following Maybank, Grigsby, what did you do?

A. I wanted to move back to South Carolina, so I sold my interests in the firm to the other people and I moved back to Greenville.

Q. And what year was that, approximately?

A. 1980

Q. And when you returned to Greenville, what did you do?

A. I set up an investment counseling firm named Maybank Management.

Q. And I think, Mr Maybank, you had indicated that you grew up in Charleston What was your connection with Greenville?

A. As -- from about age sixteen, college years, and so forth, I came to Greenville quite often My mother moved here and came to know Greenville at that time

Q. And did you know Greenville to be a great business community?

A. Yeah, that's why I moved to Greenville Greenville is a great place to start a business, operate a business, to be in business, generally.

Q. And when you first returned to Greenville, what kind of business did you start?

A I started an investment counseling firm

Q And what was the name of the firm?

A. Maybank Management

Q And what did Maybank Management do?

A. We managed portfolios and rendered investment advice.
Q Did Maybank Management serve as fiduciary to some of its clients?
A. To all of them, yes.
Q. Do you need a great deal of capital to start an investment advisory firm?
A No, you do not You don't need capital, really. You just need to be approved by the SEC.
Q. And in -- later in the 1980's did you found another firm?
A Yes, I started Southeastern Trust Company.
Q. And what year did you start Southeastern Trust Company?
A 1988
Q. Okay. And tell me what the business of Southeastern Trust Company was.
A. We got approved by the state. We got a charter to operate a trust company. We did not have banking powers. We had trust powers, and so we were put under the supervision of the State Board of Financial Institutions.
Q So you were regulated by the State Board of Financial Institutions?
A That's correct.
Q Did Southeastern Trust Company have capital requirements that it had to meet?
A Yes, it did, and insurance requirements.

Q. And what sort of services did Southeastern Trust Company provide for its clients?

A We were trustee under will, or personal representative under wills We were trustee under the terms of various trusts, and we were investment managers and advisors to individuals, companies, and profit sharing trusts, that sort of thing

Q And so did the company provide fiduciary services to its clients?

A To all of them

Q By 2001 --

So you started in 1988, found Southeastern Trust in 1988?

A Uh-huh

Q How long did Southeastern Trust operate as an independent company?

A It operated from 1988, and until I think it was October of 2001

Q And during that period of time how many -- by the time of 2001, how many offices did Southeastern Trust operate in South Carolina?

A We had -- the main office was in Greenville We had another one in Columbia, and a third one in Charleston, and we had just a small office in Anderson, South Carolina.

Q How many employees were there?

A. We had thirteen.
Q. Okay And at some point in there did you create -- in 1993, did you create a Francis P. Maybank Family Life Insurance Trust?
A Yes, I did, in 1993, I believe
Q. Okay What was the purpose of that trust?
A. The purpose of the trust originally was if I died, it would provide capitals for the trust company and they would be able to buy out my interests. That was the original purpose of it And then after the merger, I kept it -- I converted it into a Family Trust, so I could continue to hold the insurance policies
Q And when you converted it to hold the insurance policies, who were the beneficiaries of the trust?
A My four children.
Q And their names?
A My oldest daughter is Jane
Q And Jane is in the courtroom here with us, correct?
A. She is right here, correct
My son is named John Preston. And I have -- my third child is Deborah Alexis Maybank, and my youngest is Alana Maybank.
Q. And those were the -- those four children were the beneficiaries of the trust fund?
A Of the trust, yes.

Q. Did the trust become an essential part of your estate planning?

A Yes, that was the central part, because the proceeds of the insurance policies could pass directly to my children

Q. And were there -- if it passed directly to your children, did it pass with favorable tax treatment?

A That's right There was no inheritance taxes on it.

Q. And in 2001, what happened with Southeastern Trust Company?

A. After negotiations, we were approached by BB&T, the idea of acquiring the Southeastern Trust Company, so they -- that was what happened

Q. So in about -- do you remember when in 2001 BB&T approached you?

A. I think it was in the late winter or early spring and the negotiations lasted most of the summer They came and audited everything, and we closed I believe maybe the first week in November, last week of October. I don't remember exactly when.

Q. When BB&T first approached you, did they invite you to come to Charlotte to talk about the terms of a deal?

A Yes, they did We had several meetings in Charlotte and -- I believe it was in the airport. They have conference rooms there, and we discussed it. And my -- you know, I told them everything that they wanted to know And

then they made an offer, but they wanted to come and look at the books and look through everything, which they did.

Q. Did they carefully review the books and the lists of customers and --

A Yes

Q -- the relationships that you had with your customers?

A That's right, yes

Q. Did they have any interests in the employees of Southeastern Trust?

A Yeah, that was one of the main things that they wanted were the employees They offered a job to everybody and employment contracts and so forth, and they still -- I would say five or six employees are still with the company

Q In addition to the employees, were they also interested in acquiring, and a great part of the deal was acquiring the client base of Southeastern Trust?

A. Yes, and we had I think it was 3 2 million in capital

Q And I think you had talked about early on in this conversation that capital was a requirement to be a trust company regulated by the State Board of Financial Institutions, is that correct?

A Yes, you have to have capital in a trust company. And the -- and the oversight by the State Board of -- the South Carolina Board of Financial Institution is very careful.

Q We are going to talk -- you heard Mr. Kristinik and me,

of course, talk about a margin debt that you had in Scott & Stringfellow that we will talk about a little bit later, but did you use some of the proceeds from that margin debt to infuse capital into Southeastern Trust during the period of time that you operated it?

A Yes, I did. I had some securities that were very low cost and so I would borrow money from my margin account, plus from banks and so forth, and invest it in Southeastern Trust Company, but Southeastern Trust Company only used it to buy government bonds, U.S Treasuries. So I regarded that as my fixed income, you know, for protection. And that's how a great deal of my margin account came to be I would take the money and invest it in the trust company and then we would turn around and buy U.S. Government bonds with it.

Q When the state regulators would come and audit --

A. Yes.

Q -- the Southeastern Trust Company, would one of the things that they would do is look at the portfolio of Southeastern Trust, its own investment portfolio? Did they insist upon those portfolios being in government bonds and other instruments that were safe?

A. That is correct, yes. So it served as a -- it's protection for the clients of the trust company

Q. How about -- when you are talking with BB&T, how about

you? What did BB&T ask of you as to deal with the -- for BB&T to buy your company and close?

A. Well, they offered us stock in BB&T. There was no cash involved, and all of the stockholders of the trust company got stock in BB&T And they -- there is a -- I think four or five of the partners or officers of Southeastern Trust Company got employment contracts, and all of the employees got jobs.

Q Mr. Maybank, while you were the principal owner of Southeastern Trust, or the principal shareholder of Southeastern Trust, did other employees of the corporation have some interest in that business?

A Oh, yeah, they all had an opportunity to invest in it, because the -- the State Board of Financial Institutions would audit us and they would say everything is in fine shape, but we want you to put more capital in. So that's how -- that's how it happened I would go and borrow money from wherever I could and put in it, because if you are ever in a position like that, you do exactly what the regulators ask you to do

Q Mr. Maybank, there is a bunch of exhibits that the parties have agreed to that have been introduced into the record already. They are exhibits 1 through I believe the number is 75 on the agreed list

And Exhibit 1 I'm going to hand to you is your

employment agreement. Is that the employment agreement that BB&T asked you to sign when they bought your business?

A. Yes What is the date of this?

Q If you look on the very last page, Mr. Maybank, I believe it's dated -- it's executed as of November 8th, 2001, is on the first page of it.

A. That's right. That was the closing date

Q. Was the -- was the date on the -- did you sign that contract?

A I'm sure I did. Let me just take a look

Yes, I did. That's my signature

Q And how long was that contract -- how long were you committed to work for BB&T?

A. For five years

Q. And tell me what BB&T told you your duties would be during that five years.

A To aid in the transition of the employees and of the clients to the BB&T system

Q Did you -- did they want you to continue to manage client assets?

A. No, they did not

Q. So beginning when the transition took place, you no longer had any money management responsibilities for the client?

A. That is correct

Q Did -- what was your salary?
A I had $100,000 a year
Q, Did you also -- did the contract also include a no compete agreement?
A It did, yes
Q. And that no compete agreement would continue for two years after you left the employment of BB&T, would it not?
A That's correct
Q Now, at the time the purchase is complete --
A Yes
Q -- I believe your shares of privately held stock in Southeastern Trust are tendered to BB&T and they give you shares of their stock in return, is that correct?
A Tnat's correct, yes
Q Was there any cash paid to you for this transaction?
A No
Q So it was a cashless transaction?
A Yes, that's right.
Q So one moment you hold Southeastern Trust shares, the next moment when the transaction is completed you are issued approximately 246,000 shares of BB&T stock, is that correct?
A That's correct, yes
Q Now, Southeastern Trust has been serving as the trustee, the corporate trustee, of your life insurance trust, is that correct?

A That's correct, yes.
Q. What happened --
I'm going to show you, Mr. Maybank, Exhibit 2, which is a copy of the Irrevocable Trust Agreement between Francis P Maybank as grantor and the Southeastern Trust Company and Francis P. Maybank as trustee. Are you -- is that the trust that was created for you?
A. That's correct, yes.
Q Okay. Following -- well, the caption says Southeastern Trust Company, following the closing of the deal with BB&T, does BB&T assume the responsibilities of being the trustee, the corporate trustee, under that instrument?
A. That's correct, and they also assumed the responsibility of being trustee under any other estate or trust that we had that we were acting as trustee for.
Q. And so what happened upon that closing is the responsibilities of Southeastern Trust Company for all of the client relationship, all of the trusts for which Southeastern Trust served as trustee were transitioned and BB&T assumed all of those responsibilities?
A That is correct, yes
Q. Did you have a lawyer helping you with the transaction or the sale of your business, or the purchase of your business by BB&T?
A. Yes, I did.

Q And who was that lawyer?
A. That was Mr John Campbell of the firm of Nelson, Mullins.
Q. The same firm that -- he worked with the same firm that Mr. Kristinik and Mr Brown worked for?
A. That's correct, yes
Q When you completed your business, or the business transaction was complete and BB&T was then the owner of the client relationship, did you change the physical location of where you were working?
A. Yes, we moved into the old First National -- I mean First Federal Building, and all of the people in the Greenville office moved there and that's where we were originally located
Q And was that where BB&T's Trust Department was at the time?
A. That's correct, yes.
Q. Where was your business, the Southeastern Trust business, integrated into?
A. It was there at the First Federal Building, and I think we were on the second floor, third floor, and that's where that process began.
Q So the people that had previously worked with Southeastern Trust then were integrated into BB&T's operation?

A Yes, that's right That's correct.
Q And your duties, when the transition was completed, was to do what?
A. My business was to assist in the transition for the employees and for the clients of Southeastern Trust Company to get them used to the BB&T system.
Q And who was your boss initially? Who did you report to initially?
A. Jerry Kramer was the trust officer in the Trust Department in Greenville and we worked with him for about the first two and a half years
Q Was he an old time trust officer?
A Yes, he was. He -- we had a lot of things in common He was -- he had gone to a lot of the same trust schools and things like that some of our employees had gone to and he was, you know -- you know, we very much spoke the same language.
Q Did your offices move from the First Federal Building at some time to another BB&T location?
A Yeah, right on Broadus Street at -- they had a branch there, and we moved over there after about two, two and a half years I think two years
Q And about two and a half years you say?
A Yes, sir
Q Were all of the trust officers and the portfolio

managers during the period of time that you worked at BB&T all located on the same floor?

A. Yes, we were all in adjoining offices and we were always right on the same floor.

Q And you were in the Trust Department to begin with and you had been a trust officer for much of your career, is that correct?

A That's right, yeah.

Q. When you relocated from the First Federal Building to the new location, did the portfolio managers and the trust officers all relocate?

A. Yeah, everybody in the Trust Department went over there.

Q. And were they then still working on the same floor?

A. Yes, right adjoining offices.

Q Did you -- at any point in time did you have any clients assigned to you that you had direct responsibility to manage their affairs?

A. No, they were trying to wean everybody away from me.

Q. Did you manage money for anyone?

A No.

Q. In order to properly manage money, do you need to have research and other materials available to you?

A Yes, you do.

Q Is it a position that requires you keeping close

abreast of the market and market trend?
A. That's correct, and direct contact with other people in the business.
Q When did you first meet Mr. Walters?
A. When we moved over to the new quarters, it might have been a little bit before that, but that's pretty much what I remember is when we went over to Broadus Avenue.
Q So was Mr Walters, when you first met him, was he working in the Trust Division, or Trust Department, or some other division with the bank?
A. I think he had been working there before, but the first time I met him is when I became associated with the Trust Department
Q. And at some point in time were you assigned to work under Mr. Ross Walters?
A. That was my understanding, yes
Q And was there any formal meeting that you remember saying that "Mr. Maybank, we are transitioning you from here to there?"
A Yeah, I remember some discussion of it, but I was really not too much involved in the move. I just -- you know, I was going from one office complex to another.
Q Now, you talked -- when you say going from one office complex to another, are you talking about the physical move from --

A That's right, yes
Q. Do you remember the bank creating at some point in time a Wealth Management Department?
A. Yeah, I think about that time they started calling it the Wealth Management Department, not the Trust Department
Q So do you understand that it would essentially be just a name change?
A. That's what I thought it was, yeah You know, they just -- I thought it was. It was all the same people. They were all the same responsibilities, and so I just thought they were calling the Trust Department Wealth Management or Wealth Advisors
Q Did your job responsibilities change in any way?
A No.
Q Did you observe any change in the people or their job functions?
A I really didn't, no
Q. Were the trust officers and portfolio managers still located on the same floor?
A They were
Q Did you have any responsibilities under the new Wealth Management Advisors Division, any responsibilities to manage client's money?
A. No, I did not.
Q Did BB&T encourage you to introduce the company to your

friends and associates and encourage them to use BB&T services?

A Yes, they did

Q Moving forward into 2006, Mr Maybank, tell the ladies and gentlemen of the jury what is happening in Mr. Maybank's life, as you enter into 2006 and you are looking at your contract with BB&T and your relationship with the bank entity.

A Well, I knew the contract was ending and I was approaching retirement and I began to make some plans about my financial life And so that's where I was, but halfway, you know, through 2006 I knew the retirement was coming up towards the end of October, the first part of November

Q. You had been working now with BB&T for nearly five years Had you come to believe in BB&T's stated commitment for honesty, integrity, and the high standards of ethical and professional conduct?

A. I did

Q. That was part of their Code of Ethics, was it not?

A Yes

Q. Did you hear them talk about -- given the period of time that you were there, did you hear people talk about those kinds of standards that you could expect of BB&T for honesty, integrity, and the high standards of ethical and professional conduct?

A Yes, I did The chief executive officers would come through Greenville at least twice a year

Q And in addition to talking with you about those standards of conduct -- strike that

Let me ask it this way.

Who were those chief executive officers?

A. Well, when we first got there, John Allison was the CEO, but shortly before I retired, I don't remember the dates, a man named Kelly King took over as CEO, and he still serves as CEO, is my understanding

Q Would the two of them come in person to Greenville?

A That's right, yes

Q And you indicated that they would do this maybe a couple of times a year?

A Well, at least once, but I think more likely it was more like twice a year.

Q And in those meetings, where were those meetings held?

A Sometimes they were held in hotels, and sometimes it was in the Poinsette Club, and sometimes in the offices of BB&T

Q And who would be in attendance?

A Virtually everybody that worked for BB&T.

Q And in addition to honesty, integrity, those corporate values that they may discuss with you, did they talk about BB&T's dividend discipline?

A. Every power point presentation that I ever went to, they wound up by stating -- posting of BB&T's dividend record. They always paid a dividend. They raised the dividend every year for 25 years. And they were a dividend aristocrat, which meant that they -- there were very few people that met that standard, so -- not people, but companies that met that standard, and really the dividend was the chief reason to invest in BB&T stock.

Q. Did they use the term dividend aristocrat?

A Yes, they did.

Q And how did they explain that term to you as to what it meant?

A. Well, I think one of the rating agencies -- I think it's Standard & Poor's, but it could be Moody's, every year they came out, and they are still doing it, came out with a list of dividend aristocrats.

Q. Bear with me one moment, Mr. Maybank.

(Off the record)

(Back on the record)

BY MR WILLOUGHBY:

Q So they ended each presentation with a discussion about BB&T being a dividend aristocrat, is that correct?

A. Yes, that's correct.

Q Did the company from time to time -- since you were a shareholder, as with any shareholder, did the company send

to you annual filings that they made with the Securities and Exchange Commission?

A. They did.

Q. And part of those filings would be annual reviews and then financial reports that they would present to the Securities and Exchange Commission as a required filing?

A. That's correct.

Q. And you got those routinely?

A. Yes.

Q. And did you from time to time listen -- strike that

Did BB&T also have quarterly earnings calls in which it would report to securities analysts that may be following the stock about the results of the last quarter and the prospects for the future?

A. Yes, anybody can listen.

Q And did you listen in on some of those calls?

A. Yes, I did.

Q. And you were able to hear the chief executives make a presentation orally and listen to questions that the analysts may ask of them?

A. That's correct

Q And that information, as I think you indicated, anyone can join, if they choose to do so?

A Yes, that's right You just have to give them your name.

Q. Mr. Maybank, I'm going to hand to you a 2005 Annual Review and ask if that's the type document that you would receive from time to time?

A. That's correct, yeah. It has --

Q Did you see those on an annual basis?

A Yeah, they're required to file these and distribute them.

Q And here is one for 2006 Would you have received that one?

A. Yes, I would.

Q And 2007?

A. Yes, I would

Q 2008?

A. Yes.

Q 2009?

A. Yes

Q And 2010?

A. Correct

Q. And in these annual reviews, did they report on the financial results of the corporation during the preceding period and have some discussion about dividends and their prospects for the future?

A. Yes, they did

MR WILLOUGHBY Your Honor, we would move the introduction -- I need to have the court reporter mark these

as -- we'll start with 2005 as the next exhibit number.

THE COURT: Defense counsel, are you aware of what he's talking about?

MR KRISTINIK I am, Your Honor, and we would have no objection to the admission of these exhibits.

(2005 Annual Review was marked as Plaintiffs' Exhibit No 76 and entered into the record as evidence).

(2006 Annual Review was marked as Plaintiffs' Exhibit No 77 and entered into the record as evidence).

(2007 Annual Review was marked as Plaintiffs' Exhibit No. 78 and entered into the record as evidence).

(2008 Annual Review was marked as Plaintiffs' Exhibit No. 79 and entered into the record as evidence).

(2009 Annual Review was marked as Plaintiffs' Exhibit No. 80 and entered into the record as evidence).

(2010 Annual Review was marked as Plaintiffs' Exhibit No 81 and entered into the record as evidence).

MR. WILLOUGHBY Your Honor, for the record, so record will be clear, what we have introduced, without objection, is Plaintiffs' Exhibit 76, which is the 2005 annual review

Exhibit 77 is the 2006 annual review

Exhibit 78 is the 2007 annual review.

Exhibit 79 is the 2008 annual review.

Exhibit 80 is the 2009 annual review

And the Exhibit 81 is the 2010 annual review.

BY MR WILLOUGHBY:

Q And Mr Maybank, did you also receive annual reports -- correction, 10-K Filings from the Securities and Exchange Commission on an annual basis?

A That's correct, yes.

Q I'm going to hand to you, Mr Maybank -- I'm going to keep them in the file folder, but I'm going to hand to you the 2010 10-K, the 2011 10-K, the 2012 10-K, and the 2013 10-K. Would you have received those normally as a shareholder of BB&T?

A. Yes I'm not sure about 2013, but the others I would have.

Q Okay.

A I would to go back and check on the 2013.

Q Okay

MR. WILLOUGHBY: Your Honor, we would move the introduction of the 2010, 2011, 2012, and 2013 10-K's as the next four exhibits.

THE COURT: Any objection?

MR KRISTINIK Your Honor, even though the witness seems a little unsure about whether he got the 2013 10-K, we are not going to have any objection These can be admitted.

THE COURT All right

(2010 10-K Filings marked as Plaintiffs' Exhibit No. 82 and entered into the record as evidence)

(2011 10-K Filings marked as Plaintiffs' Exhibit No. 83 and entered into the record as evidence)

(2012 10-K Filings marked as Plaintiffs' Exhibit No. 84 and entered into the record as evidence).

(2013 10-K Filings marked as Plaintiffs' Exhibit No 85 and entered into the record as evidence)

MR WILLOUGHBY 82 is the 2010 10-K

83 is the 2011 10-K

84 is the 2012 10-K.

And Exhibit 85 is the 2013 10-K.

MR KRISTINIK Very good

BY MR. WILLOUGHBY:

Q. Mr. Maybank, at some time in the summer of 2006, I think you have indicated that as you were looking at your retirement plans, you had made a decision to use the bank as your trusted fiduciary?

A That is correct, yes.

Q And tell me how you went about talking to the bank

A Well, I was pretty far out of touch with the investment world at that time and I needed to have a trustee for a number of relationships which I had that were already the trustee of the Family Trust, and they -- I had purchased some life insurance from them. I was -- I had pretty much

made up my mind to sell the BB&T stock, pay off all debts and diversify my financial situation, and so I began talking to them about assuming responsibility for my financial situation

Q Let's let the ladies and gentlemen of the jury know, so at that point, as you are approaching the bank to be your trusted advisor, you have got 246,000 shares of BB&T stock --

A. Yes.

Q -- in the Scott & Stringfellow account, is that correct?

A. Yes, that's correct

Q. And the company is known as BB&T Scott & Stringfellow, is that also correct?

A. I -- I -- I had kind of lost track of some of the titles to these divisions of BB&T, because they frequently changed the names

Q But you did know that Scott & Stringfellow --

A. And I was with -- you know, to my knowledge it was Scott & Stringfellow, which was the investment banking arm of BB&T

Q Okay Who did you talk with initially about BB&T becoming your trusted advisor?

A. I talked to Ross Walters, Anthony Mahfood, and, you know, the other people that were in the office there in

Greenville

Q And why did you want a bank to be your trusted advisor?

A Well, I think that that's the path that most people take Banks are generally there forever and they have capital requirements Although they go through mergers and another bank appears to take over the responsibilities of the existing bank, it's just a much more stable and durable type of operation than either an investment advisory firm or an individual or other choices that might be made. It's just -- a bank is a bank is a bank and it's pretty much there forever

Q. So as you are talking with the bank about being your trusted advisor --

A. Yes

Q -- did you understand that the bank agreed to serve in that role?

A Yes, that was the business they were in as well

Q As the process starts and the wealth advisors are advising you, what are you told about the proper strategy for your investment situation?

A At that time they were recommending for a concentrated position, like I had, a lot of stock in one account Rather than just selling it and paying the taxes and diversifying, they were recommending the Pre-Paid Variable Derivative

Q Had the bank -- were you aware that the bank had been

marketing Pre-Paid Derivative Contracts prior to your meeting?

A Yes, they were

Q Had you been involved in that marketing?

A No, I had not been.

Q. Had you participated -- did you become aware that some presentations were made from time to time to customers of BB&T about the alternative investment?

A That's correct, I think in both Greenville and Spartanburg

Q Did you attend those presentations?

A No, and I was not invited.

Q Did the bank provide you in your role with any training in Pre-Paid Variable Contracts?

A No, they did not.

Q So let's identify for the ladies and gentlemen of the jury your situation as you are approaching. You have 246,000 shares, approximately --

A Yes

Q. -- of BB&T stock --

A. Yes.

Q -- in your Scott & Stringfellow account?

A Yes

Q You have a margin position against it of two and a half million dollars, approximately --

A. Yes
Q -- correct?
A Yes
Q Now, tell the ladies and gentlemen of the jury how that margin position, worth approximately two and a half million dollars, how do you use those monies?
A Well, I went into the merger with this margin account, because I had invested -- I think, as I told you, Southeastern Trust had about 2 2 million in capital, all of which was invested in government bonds So I would -- from whatever sources, monies that I had, monies that I earned, monies that I could borrow, I would -- as we were being urged by the Banking Commission to beef up the capital and I would invest it in Southeastern Trust Company I didn't consider that I was very exposed, because all of my securities were marketable and the money was being invested in U S Government Bonds, so it was a pretty conservative setup, and I was basically taking money out of one pocket and putting it in another, and at the same time having that capital would allow us to ride through any rough times that might come up
Q That's while Southeastern Trust was operating?
A That's correct
Q Then in 2001, with the acquisition, you didn't have to place capital with Southeastern Trust Did you also use

funds to help your children and grandchildren and repair and improve farms and that sort of thing?

A. Well, at that time most of the monies that had gone into the buildup of the debt there at Scott & Stringfellow, I would say the most expensive thing I had was life insurance premiums.

And I also was helping my children pay school bills. And everybody who has children in today's world know that these tuitions are brutal at schools and colleges. They are extremely expensive, or else the young person gets deeply into debt. And so I would say that was the second biggest thing that I did

I also purchased some land that was adjoining a farm that I already had and I improved that land by clearing it and fencing it, and I would say that's the third thing I did.

Q. I think I heard Mr Kristinik in his opening statement say something about a horse racing operation Could you explain to the ladies and gentlemen of the jury about your horse trade?

A. Well, what exactly that refers to is this. I had been in the cattle business in Abbeville, South Carolina since about 1983, and that business -- that had built up, and it's been profitable for quite awhile Some years you don't make a whole lot of money The last few years have been very

good, but I improved it and built it up

And basically if I -- again, as I looked at it, I was borrowing money from the margin account, but I was investing it in a very tangible hard asset that -- you know, land never goes away, right? So that's the way I was looking at it. This is farm land This is not timberland, or hunting preserves, or any of that kind of stuff

And I had some friends that were breeding horses, sending them up to Kentucky and selling them. One was -- I don't know if -- most people in this room are pretty young, but the sheriff of Greenville County before Johnny Mack Brown was Sheriff Martin and he and his family owned a dairy in Simpsonville, and I knew Francis Willis and Max Willis, who had farms down in Laurens County, around Gray Court And so what we -- they were doing, and I started doing, was breeding horses. Now, I only had three mares and we would -- we were all sending them up to the same guy and they would use them in the fairs races and -- I mean, fairs racing, if anybody in this room comes from Ohio, or Indiana, or Kentucky, or, you know, Illinois, all those states is a big deal and a lot of people are into it, and so we were sending them up there He would train them for awhile and then sell them, of course Well, unfortunately he died. I tried some other people and it didn't work, so I -- I was pulling out of the business that had proven to be too

expensive, but most people would find it very expensive to do this, unless you already had a farm, and I had -- I had a big farm in Abbeville. They had farms in Laurens County. They were all friends of mine. I don't know if any of you know John Martin. He's another one of the people in the dairy business down there in Simpsonville. I think they moved that dairy over to Georgia, but, anyway, it was four of us were doing it and it worked pretty well, as long as Scotty Harris up in Kentucky was handling it for us, but then he died, and, you know, it just didn't work out too well and I got out of it.

Q. So you closed that?

A. I don't think -- we are talking about losses. I don't think it amounted to more than $150,000. It might have been 200,000, but including, you know, the purchasing, the breeding, that kind of thing, but that was the deal.

Q. Did you close that -- did you close that down?

A. Yeah, that's right, we did. I closed it down as fast as I could What do you do, do you go out and shoot the horses? You know, you got to kind of get out easily. You got to send them off and get somebody to buy them, and so that's what I did. I mean, you know, you are dealing with animals It's a lot like people You get tired of them, you just can't take them out and shoot them, that's the way -- so I pulled out as fast as I could, though

Q So, Mr. Maybank, did you close out that operation?
A Yes.
Q Were you going into retirement --
A Uh-huh.
Q -- planning.
So you have got this debt that has accumulated?
A Right, yes.
Q. And you have got this stock position and you are being advised that this Pre-Paid Variable is the strategy that would work perfectly for your situation?
A. That is what they recommended, yeah.
Q Now, tell me what they told you the key features were that were explained to you of this product
A Well, first of all, it would protect my dividends from BB&T, which was important to me.
Secondarily, it would postpone any tax liability.
And, thirdly, that these contracts could be rolled over for very minor costs almost indefinitely, in fact, until I die
And those are the three key elements And, you know, I -- you know, it seemed attractive at the time, but that -- that was basically what they told me.
Q What did they indicate to you about the cash that would be generated from the Pre-Paid Derivative Contract and how it could be used to further provide for retirement income

for you and your family and also pay the insurance premiums for the trust?

A That's correct. First of all, I would pay off the margin account Then I would be left with money for a portfolio, which was an integral part of the Pre-Paid Variable strategy, and the bank would manage the portfolio for me And the monies would be used -- as I say, I have always carried a lot of life insurance, to pay life insurance premiums

They also arranged for the bank to be the -- to insure my house in Charleston, my two farmhouses, and my wife's house here in Greenville And the -- this was the strategy was to buy the Pre-Paid Variable, and for this they were going to charge me a fee

Q Let's look at that, Mr Maybank

When they first started talking with you about this strategy --

A Uh-huh

MR WILLOUGHBY Lindsay, we are going to look at Exhibit 3

BY MR WILLOUGHBY

Q Mr Maybank, I'm handing you Exhibit 3 that's into evidence That's a document that's entitled Concentrated Stock Risk Management Addendum

Would you turn to the third page of that document? And

is that your signature?
A. Yes, it is.
Q. Okay. And is that your printing above your signature?
A. No, it is not.
Q Is that your writing where the date of July 10th of '06 is?
A No, that's not my -- that's not my writing
Q So you signed the document, but everything else that's printed on the document was put there by someone else?
A That's correct
Q Now, do you remember --
MR WILLOUGHBY. And I'm sorry if I'm standing in your way So maybe you can -- am I okay?
BY MR WILLOUGHBY
Q So if you would --
MR WILLOUGHBY. Lindsay, if you would move back to the first page
BY MR WILLOUGHBY.
Q. So this -- on the first page, Mr Maybank --
MR WILLOUGHBY The larger print, Lindsay, I think would be fine. There you go.
BY MR WILLOUGHBY
Q Addendum to Wealth Management Agreement dated, and it's blank, between bank investment advisor and client Do -- is this the first document as you recall that was presented to

you?
A Yeah, this document was gathered by the wealth managers and it was presented to me, and I was -- they told me that they needed me to sign this in order to move forward with the -- with a Pre-Paid Variable Derivative
Q So this was -- was any other explanation given you of this document?
A No, it's just -- they said this was just the first step they would have to be to implement their strategy
Q Okay. So you signed it?
A I signed it.
Q Were you relying on their advice at that time?
A. Yes, I was
Q Now, you indicated that one of the key selling points that they told you was that it would protect your dividend?
A That's correct
Q And where you had come to them with the idea that you would sell the stock, pay the margin?
A Yeah, that is exactly what I was considering before this --
Q You heard this --
A. -- strategy
Q You heard Mr. Kristinik tell the ladies and gentlemen in his opening that you wouldn't sell the stock, or would not have sold the stock, even if you had been advised to

Is that true?

A No, that is not true.

Q. Okay. If the bank had advised you that the right strategy was to sell the stock, pay the margin position, create a diversified portfolio with the balance of the proceeds, would you have done that?

A Yes, I would have.

Q As you sit here today, can you remember -- up until 2010, when they kicked you out, can you remember any advice that the bank gave you that you did not follow?

A I can't think of anything.

Q Now, Mr Maybank, they are going to say that in this document --

MR. KRISTINIK. Your Honor --

THE COURT. Yeah.

MR KRISTINIK -- I have been allowing a lot of leading questions just to keep things --

THE COURT. Sustained.

MR. KRISTINIK -- moving forward.

BY MR WILLOUGHBY

Q Mr Maybank, did they review this document with you?

A. Yeah, they presented it with me as the first step that needed to be taken in order to accomplish the strategy which they were recommending.

Q. Did they say anything else to you about this document?

A I can't remember anything else
Q Okay.
MR. WILLOUGHBY: Let's turn to the second page, Lindsay.
BY MR WILLOUGHBY.
Q This document says, Mr. Maybank, "investors may not receive dividends from the contributing shares."
Did the bank review that with you?
A. My recollection is if these things were structured properly, you were protected on your dividends for the life of the contract
Q So the explanation they gave you was that through the structure of the Pre-Paid Contract --
A Yes.
Q. -- they could protect the dividend?
A Yes, and they had experts in, I have forgotten whether it was Richmond or Roanoke, to handle these things.
Q Okay. And if you would, read into the record, Mr Maybank -- if you will turn to the second page of the document that you have there for you, read this sentence and the next sentence. The first two sentences under C.
A. "The implementation of these strategies requires a significant amount of time and expertise of BB&T professionals. As a result, the bank will be compensated a one time up-front advisory fee from your account based on

the principle value of these investments This fee is in addition to the standard advisory fee charged for the entire amount."

Q That's good enough You can stop there

Did the bank review the details of that particular provision about their fees with you?

A. They advised me they were going to charge a fee.

Q Okay Mr Maybank, did you also --

MR WILLOUGHBY If we can have the lights, please

BY MR WILLOUGHBY

Q Mr Maybank, let me hand to you a document that's entitled Options Information Form and Agreement.

A Yes

Q Let me ask you if you have seen that document before?

A Yes I don't really remember much about it, though

Q Do you -- is that your signature?

A It is, yes

Q. Okay And I'm going to hand you another document. It's called -- on a Bear Stearns letterhead called Risk Disclosure Form for the Trading of Over-the-Counter Derivative Contracts, and there is a signature there Is that your signature?

A Yes, it is.

Q Is the handwriting, other than the signature, yours?

A No, it is not.
Q The date is not yours?
A. No.
Q Okay. And the printing is not yours?
A No
Q Okay
MR. WILLOUGHBY. We will move the introduction of these as the next two exhibits, Your Honor.
THE COURT. Any objection?
MR. KRISTINIK. No objection from the defense
THE COURT. All right
(Options Information Form and Agreement marked and entered into evidence as Plaintiffs' Exhibit No. 86)
(Risk Disclosure Form for the Trading of Over-the-Counter Derivative Contracts marked and entered into evidence as Plaintiffs' Exhibit No. 87)
MR. WILLOUGHBY: Your Honor, into evidence is Exhibits 86 and 87.
BY MR. WILLOUGHBY
Q. Now, Mr. Maybank, if you would, tell the ladies and gentlemen of the jury, those documents are dated July 10 of 2006 as well, are they not?
A Yes, they are. These are the documents that were gathered by the wealth managers and presented to me.
Q And I'm going to come over here so I don't block anyone

in the jury's ability to see

Now, Mr. Maybank, were these documents presented to you along with the other document that we have just looked at, which was Exhibit 3, I believe?

A Yeah, I think there were a number of documents that were gathered by the Wealth Management Department and presented to me I was told they needed to be signed in order to move forward with their strategy.

Q. Now, at the point in time you are doing this strategy, the bank is advising you to move forward with it?

A. Yes.

Q. Had you ever been had any experience in your career in trading options?

A I have never bought for myself either a put or a call. I have never sold for myself either a put or a call, and I have never bought or sold a put or a call for anybody else. And I'm a babe in arms when it comes to puts and calls. To this day I do not understand them.

Q. Have you ever sold or advised a client about an alternative investment?

A. No

Q A derivative contract?

A No, I didn't even -- I believe that that phrase only came in after the merger. I had never heard of it before.

Q. Would you describe to the ladies and gentlemen of the

jury that your investing experience as a trust officer over many years had basically been plain vanilla?

A That's correct, we bought and sold stocks and bonds, primarily, and money market funds, and that was it. And I would -- I'm not sure of this, but I think during most of my career a trust officer might even have been breaking the law if they sold a put or a call. I mean, it's just not -- it was not done

Q So now, Mr. Maybank, you have no experience, but on this form that bears your signature, they are saying --

MR. WILLOUGHBY: Can you highlight this so -- make it larger, Lindsay? And if you can't, that's fine.

BY MR. WILLOUGHBY

Q It says a -- it says years experience.

MR WILLOUGHBY There we go. Perfect

BY MR WILLOUGHBY.

Q It says years past investment experience, Mr Maybank Years experience. Now, it's got activity. It's got stocks and bonds, 50 years Options, 50 Commodities, 50. Is that your handwriting?

A No

Q Did you put that information in there?

A No, I did not.

Q Did you check under the activity box extensive experience in any of those activities?

A. I did not.
Q. Do you know whether or not the document was filled in when you signed it?
A. I don't think so, because I wouldn't have signed it if it said that on there I think it was filled in after I signed it
Q. Mr. Maybank, you heard me talk to the ladies and gentlemen of the jury about more likely than not.
Let me ask this question Is it more likely than not that the document did not have that information filled in when you signed it?
A. I don't think that document -- that information was filled in, because I wouldn't have signed it with that type of information on it
Q And beyond just more likely than not, are you certain that you did not sign that document with that information filled in and called to your attention?
A I am certain.
Q. Now, the next document, Mr. Maybank, bearing Exhibit 87, what was explained to you about this document?
A. This document was gathered by the Wealth Management Advisors and it was presented to me among a bunch of -- a lot of other documents that needed to be signed in order for them to move forward with their strategy for my investment account

Q. Now, Mr. Maybank, how many meetings do you have with the wealth advisors in the summer of 2006, as this strategy is being promoted to you?

A. I would say maybe a half dozen, or a dozen. I don't remember exactly how many.

Q. And who were the primary people that were in the meetings and who was the principle person that was advising?

A. Anthony Mahfood, Ross Walters, Kris Kapoor, and --

Q. Are those the primary ones?

A. I think those were the primary ones, yes.

Q. Was Mr. Mahfood the person that was most centrally involved?

A. I would say so, yes.

MR. KRISTINIK: Your Honor, once again --

THE COURT: Yeah?

MR. KRISTINIK: -- leading questions.

THE COURT: Sustained.

BY MR. WILLOUGHBY:

Q. Who was principally involved, Mr. Maybank?

A. Anthony Mahfood, Ross Walters, Kris Kapoor.

Q. And --

A. And then they had these people in either Charlotte or Raleigh. I'm not sure about that. Raleigh or Richmond that were involved, too, and his name was Shawn Gibson.

Q. Mr. Gibson.

Did you ever have any personal communications with Mr. Shawn Gibson?

A. I did not.

Q Did you have a telephone call to Mr. Shawn Gibson?

A. I did not

Q Did Mr. Gibson send you information through e-mail?

A No, I never got any e-mails from him.

Q Now, let's --

A That I know about. I didn't do e-mail. You know, people at my age, I'm not very good at e-mails

Q And did you do e-mails when you were at BB&T?

A I did not I never sent them or received them

Q Now, at the same time that this transaction is being promoted to you, this strategy, are you also aware that the bank is simultaneously selling this strategy to Ms. Effie Bowers?

A. I was

Q. Now, tell the ladies and gentlemen of the jury who is Ms. Effie Bowers.

A Effie Bowers is a lady that I have known for many, many years. I can't -- I don't know, going back 50 years maybe, 60 years, I don't remember, and --

Q She grew up in Charleston?

A She grew up in Charleston, but she married and lived most of her life in Columbus, Georgia

Q. But you still maintained contact with her?
A Yes. Yes
Q. And did the bank ask you to introduce them to Ms. Effie Bowers?
A. When I was -- she has been depending upon me for certain advice for many years, and I was reaching the end of the line, as far as being any kind of an advisor or knowledgeable about a lot of things, so I recommended that she higher BB&T to manage her financial affairs, and that -- that is what I did And then after that they seemed to be receptive and --
Q Let me ask you this Did you introduce the bank to Ms Effie Bowers and did you attend a meeting in Columbus, Georgia with other bank officers?
A. That's correct, yes.
Q. And do you remember who from the bank went to the meeting in Columbus, Georgia?
A Anthony Mahfood was the wealth advisor, and they took -- Kris Kapoor went down there as the portfolio manager And there -- I think Judy Schoemer may have been there. Those are the ones that I took down there to explain the services of the bank to the Bowers family
Q And one of those meetings did the bank arrange to have Mr Gibson on a telephone conference call to make a presentation to the Bowers' CPA, attorney, and maybe some

family members?
A That's correct
Q And did you listen in on that presentation?
A. I did
Q. Did that presentation confirm for you some of the things that you were being told directly?
A. That's correct.
Q Did you hear anything in that presentation that was -- that dissuaded you from the strategy that the bank was promoting to you?
A I didn't hear anything that neither did Mrs Bowers accountant or lawyer
Q Did you advise Mrs Bowers to do a Pre-Paid Variable Forward?
A. I advised Ms Bowers to take the bank on as her financial advisor and fiduciary, her trustee, and to do what the bank advised.
Q So if the bank were advising that is the strategy, you had no information to object to it?
A I did not.
Q Now, Mr Maybank, let's come forward to August of 2006, and I wanted to show you Exhibit 7.
Do you have Exhibit 7 in front of you?
A I do.
Q. I think it's up on the screen as well

Once the bank has moved forward, does the bank coordinate all of the activities for the pre-paid?

A For me?

Q Yes, for you.

A Yes, they did

Q And did -- and tell me when the -- once they decided to move forward with the pre-paid, tell me the steps that you were advised to do.

A They arranged for me to transfer 220,000 shares of BB&T stock from Scott & Stringfellow to Bear Stearns. They handled that transaction

Q Let's talk about the details of that transaction first

Now, at some point did they provide you with this letter or this memorandum that's on the board?

A Yes, they did.

Q And let's look at this It's from Mr. Mahfood --

A Yes.

Q -- from the wealth advisors. It's the same Mr Mahfood that's been advising you?

A Yes, that's correct.

Q And to Mr -- to Ms Pat Oliver, Executive Vice President, Secretary and General Counsel of BB&T Corporation And then --

MR WILLOUGHBY If you can cull out this, Lindsay

BY MR WILLOUGHBY:

Q "At age 74, Mr. Maybank is contemplating his retirement in the next several years and is endeavoring to reduce his investment and retirement asset risk exposure."

Were you -- is that what you had told the bank, that you wanted to reduce your investment and retirement asset risk exposure?

A That's correct.

Q These assets that you were entrusting to the bank was going to be for the purpose of what, Mr. Maybank?

A This particular asset, these were the 220,000 shares that were transferred from Scott & Stringfellow to Bear Stearns and these were to be used to fund the Pre-Paid Variable Derivative

Q And did you understand that the cash generated, that your debt, your margin debt would be paid off fully?

A Yes, to the Scott & Stringfellow

Q And that then a portfolio would be created with the balance of the funds?

A. That's right, yes

Q And --

MR. WILLOUGHBY: Let's scroll up Lindsay, or scroll down.

BY MR. WILLOUGHBY:

Q Mr. Maybank, right here

"A Pre-Paid Variable Forward may allow Mr. Maybank to reduce the risk of his concentrated position in BB&T while raising cash to create a diversified portfolio "

Is that what they told you the strategy was?

A. That was the strategy that was explained to me.

Q And "the strategy is structured as such that Mr Maybank will continue to retain ownership of his shares through the expiration date, at which time he can choose to either sell his shares, or continue to retain ownership of the BB&T stock."

What did they tell you about retaining ownership and rolling over the pre-paid?

A My understanding was that it could be rolled over at very little cost.

Q For how long?

A More or less indefinitely.

Q Was this kind of one of the selling features it sensed?

A Absolutely.

Q That you were an elderly gentleman, that it could be rolled over with the idea that it rolls over until you pass away and then the children get the asset in a stepped-up basis?

MR KRISTINIK Your Honor, again, leading questions.

THE COURT: Yeah.

Let me just tell the ladies and gentlemen of the jury what lawyers tell you is not evidence, okay? Just keep that in mind.

All right. Go ahead.

BY MR. WILLOUGHBY:

Q Well, if you would, put it in your own words, Mr Maybank. What were you told about the reason that you could roll over the pre-paid indefinitely?

A Well, this was part of the plan, you know, for both investment and for estate planning purposes

When you get to be 74, I mean, almost every other year something is going to go wrong physically, so the idea was that you could -- you could roll this contract over at minimal expense and you would both continue to protect your dividend income, you would be able to maintain your ownership of BB&T stock, and you would -- and you would be able to continue this more or less indefinitely That's why I did it, you know, as simple as that.

MR. WILLOUGHBY If you scroll up, Lindsay. Scroll on up.

BY MR WILLOUGHBY

Q Now, Mr Maybank, this sentence here, "implementation of this PPVF will protect Mr. Maybank from an extraordinary reduction," protect, "in the overall value of his investment portfolio and resulting net worth "

Were you told that the strategy would do those things?
A. Yes, I was advised that this would protect you in a bear market, which means that securities go down in value. That was another selling point.
Q. And then read the next sentence into the record, if you would
A "Neither"--
Q No, "it will also help --
A "It would also help him achieve important diversification goals we have discussed throughout this financial planning process."
Q Okay And did they share that information with you?
A. Yes
Q Did the fact that --
MR. WILLOUGHBY: Next page, Lindsay, and we will be through with this document.
BY MR. WILLOUGHBY:
Q This sentence here, "furthermore, we feel that this transaction allows Mr. Maybank to maintain long-term share ownership, in line with the values put forth in the Code of Ethics."
Was it discussed with you about maintaining long-term ownership of the BB&T shares?
A. Yes.
Q And so dividend would be protected, maintain long-term

ownership?
A That's correct
Q. Thank you, sir
Now, when the pre-paid is closed --
A Yes
Q Let me hand you Exhibit 9, Mr Maybank
When the contract is closed, tell the ladies and gentlemen of the jury how the closing takes place
A Well, the wealth managers would arrange a telephone call with the Bear Stearns department that did Pre-Paid Variable Derivatives, and the -- they would provide you with a piece of paper with certain numbers on it and --
Q So let me understand this So you are called -- you are told to come to their offices at an appointed time?
A That's correct, yes
Q And when you get to the office, who is there?
A The wealth managers and I guess the portfolio manager, but I'm not sure about that, and maybe also some of the administrative people
Q Do you remember Mr Walters and Mr Mahfood being there?
A I believe so, yes
Q Now, do they give you anything?
A Yes, they give you a piece of paper with certain answers that you would give, because the people are at Bear

Stearns are going to ask you a series of questions and you provide those answers

Q And if you -- so this is the confirm that you have in front of you, Exhibit 9, Mr. Maybank?

A Yes, it is This is where -- you don't get this for maybe a week after this transaction has taken place

Q So you don't have it available to you when you are having the telephone call?

A. No, you do not.

MR. WILLOUGHBY: And go to the second page, Lindsay.

BY MR WILLOUGHBY.

Q. And the information here about trade date, payment amounts, number of shares, is all that information what is discussed in the telephone call?

A. I think some of this information is, and some of it you couldn't really know -- you couldn't really know until after the transaction had taken place, but I have forgotten exactly what was on the sheet of paper that was provided with me to answer when the Bear Stearns people asked the questions

Q But you followed the advice that you were given?

A Yes, I just sat there and read back what was on the paper

Q. And then once the transaction was concluded, then what

is the next -- what is the next thing that was done?
A. Well, the next thing that was done was the -- they paid off the loan at Scott & Stringfellow and they funded the portfolio for BB&T to manage
Q. Mr Maybank, I'm going to hand to you Exhibit 11, which is a one page exhibit. Does that bear your signature?
A. Yes, it does
Q. And what do you call that document is designed to do?
A I see here that it was to provide BB&T with a commission.
Q Was it the authorization by you --
A Yes.
Q -- to allow the funds to be transferred?
A. That's correct.
Q Okay. And what is the amount?
A It's $32,614
Q Now, Mr Maybank, did anyone explain to you -- other than that $32,000 fee that you authorized, did anyone explain to you the costs associated with the Pre-Paid Variable Forward?
A They did not
Q Tell the ladies and gentlemen of the jury what you believed the difference was between the 9 3 million of stock that you tendered and the 7.1 million that you got back.
A I thought it was like a margin account that where you

had to keep a certain amount of equity in the account and -- that's what I thought it was.

Q. Let me hand to you Exhibit 12.

A. Uh-huh

Q. Is that one of the account statements of Bear Stearns?

MR. WILLOUGHBY: If you will turn to the second page of it, Lindsay.

A. I'm sure it is. I just don't see Bear Stearns name on here

BY MR. WILLOUGHBY

Q It's a little --

A Oh, yeah, there it is up there

Q A little small on the right side

A Yeah, that's what they would send you. They send you these statements.

Q And if you would turn to the third page, right here.

MR. WILLOUGHBY. The other page we were just on, Lindsay. Right here -- no. Go back. Right here

Can you pull this out, Lindsay?

BY MR. WILLOUGHBY

Q So under that column, Mr. Maybank, the abbreviation is MRGN. Do you understand that to be --

What was your understanding of the difference between the 9 3 and the 7.1 million? Did you understand that that was the cost of the product?

A No, I did not -

Q - And how did you believe then -- if you tendered 220,000 shares worth 9 3, and you get cash of 7 1, what did you think that $2 2 million differential was for?

A. I just thought that was the equity that you had to maintain in the account, in a margin account, and I didn't realize that that money is gone forever.

Q. Now, within a few days --

I'm going to hand to you Exhibit 14 --

A Uh-huh

Q -- and ask you, that's a document entitled BB&T Wealth Management Agreement

Would you turn to the -- let's see Let me show you

On page Maybank 15, there is -- there are signatures there. Are those your signatures?

A. Two of them are. The one at the top of the page and the one at the bottom of the page

Q So is any of the other writing on that document your writing?

A No

Q Did you fill in the dates?

A. No, I did not

Q. And this document was a document agreement. How did you think this document fit into the overall arrangement that you had with BB&T?

A Well, this was just part of the Pre-Paid Variable strategy and it was another document that was gathered by the wealth managers and filled in by the wealth managers and I needed to sign it to move forward with this plan

MR. WILLOUGHBY: Now, go back to the first page, Lindsay, and pull out this language here

BY MR. WILLOUGHBY:

Q "Service of bank as wealth manager."

Mr. Maybank, it states "as wealth manager, bank shall, (1), gather information from the client regarding the client's investment objectives, risk tolerance and investment horizons, tax status, financial situation and needs."

Did you provide the bank with every bit of information about your financial affairs that they needed or that they asked for?

A. I certainly did.

Q Did you have all of your -- most of your financial relationships with BB&T?

A I did

Q Checking accounts with them?

A. I did

Q Did I hear you say earlier that they had sold you insurance policies for insurance on your house?

A Yes, for the house and my wife's house too

Q. And so was there any information that they needed from you that you withheld from them?
A I did not They had everything. They knew everything that I -- everything about me financially
Q They also promised to make recommendations to the client, that's you, regarding an investment program and investment guidelines for the account Did they do that?
A Yes, they did To a certain extent they did anyway
Q At least the strategy was a strategy that they recommended to you?
A That's correct
Q And that strategy brings us here today because of the losses that strategy caused?
A. That's correct
Q Now, was it important to you that the bank performed the functions that it said it was going to perform?
A. Yes, I wanted a bank, because the reasons I already outlined, the capital, the stability, the longevity of the bank, and that's why I sought out a bank to be my financial advisor
Q Is there any mistake on your part in saying that anybody could have done those functions? Did you hire the bank to do those functions?
A I hired the bank and I wanted the bank to take responsibility

Q If the bank says that it delegated some of those responsibilities to an affiliate, did they ever inform you that they were going to delegate or assign any responsibilities?

A They did not.

Q Do you have any idea on August the 23rd of 2006 that they -- of how this -- or any concern at that point in time about this strategy that the bank has recommended for you?

A. No, I thought it had been thoroughly researched, and a letter from Ms Oliver confirmed it at the highest levels of the bank were informed about the strategy.

THE COURT All right Ladies and gentlemen, I hate to break it up, but we have been going for about two hours and we will just take a short morning recess, okay? Don't discuss the case, please.

Stay there until they leave, please.

(The following takes place outside the presence of the jury panel)

THE COURT: All right. We will take a recess.

Mr Maybank, you may excuse yourself. Don't discuss your testimony with anybody

THE WITNESS Thank you

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

THE COURT How much longer is this witness?

MR WILLOUGHBY: Your Honor, we are making as much progress as we can, but there is a number of documents I would say we have got an hour would be my guess.

THE COURT We need to pick up the pace

Okay Let's get the jury.

(The following takes place in the presence of the jury panel)

THE COURT Okay.

MR WILLOUGHBY: May it please the court?

THE COURT Yes.

BY MR. WILLOUGHBY:

Q Mr Maybank, before the break we were talking about the Wealth Management Agreement I want to pull that agreement back up and go to the investment guidelines.

And Mr Maybank, this is -- does this contain your signature?

A Yes, it does

Q And this is investment guidelines that were part of the Wealth Management Agreement, is that correct?

A That's correct.

Q. Now, tell the ladies and gentlemen of the jury how aggressive growth was --

Is that your X mark in aggressive growth there?

A It is not

Q. Does anything on this form contain your signature

other -- or contain your writing, other than your signature?
A That is correct.
Q So tell the ladies and gentlemen of the jury whose recommendation it was that all of the assets be invested in an aggressive growth strategy.
A The -- what the protocol is for this is that the portfolio manager and the wealth managers meet with the customer and they discuss their situation. And when there is a meeting of minds, then it's filled in and everybody signs it and the -- the customer signs it And in this particular case there were two officers of the bank, they signed it So it is a document that is signed after the consultation, and if officers of the bank think that's the wrong X to put on the box, they shouldn't sign it and most managers will not sign it.
Q. Mr Maybank, did you have any understanding, based upon what the bank advisors had told you, as to whether or not this strategy was the strategy that went with a Pre-Paid Variable Contract?
A These -- the investment portfolio and the Pre-Paid Variable are just two sides of the same coin. This is part of the strategy I thought for the -- as the way that you are supposed to manage these things, and I was told that this was the strategy that the bank had.
Q Now, Mr. Maybank, after the transaction was completed

and the managed portfolio is established, does the bank sell you, through its advisors, other services?

A. Oh, yeah, I had many services from the bank, everything from checking accounts. I had virtually bought everything they had. I was their perfect customer.

Q. Did --

A. I bought, as I told you, the various types of insurance. I bought a -- I had a loan line. I --

Q. And I'm coming to that. Let's do them one at a time.

A. Okay.

Q. A credit line. Did the bank advise you to take out a credit line?

A. Yes, they recommended I get a credit line. Mr. Mahfood came to me and recommended it would be a good thing for me to have in case I needed any rapid cash.

Q. That's Exhibit 18, I believe.

And this document appears to be dated 5 September 2006, just shortly after the Pre-Paid Derivative Contract was then completed.

What was the collateral for this loan?

A. Well, there wasn't any actual loan. It was just a standby agreement, but the collateral was going to be the securities and the managed account.

Q. And did you understand that the bank would charge fees for this security and control for the loan agreement?

A Yes, that's correct
Q. And if you actually drew down on the credit line, that there would be additional fees that you would pay for interest?
A Yes, that's correct
Q. Now, moving into 2007, did the bank propose and recommend that you buy additional insurance?
A Yes, they did.
Q And at the time, in 2006, what was the amount of insurance policies under the insurance trust?
A The face value was $3 million
Q. And the premiums -- do you remember what the premiums levels were at that time?
A I really don't remember it, but --
Q Would about $70,000 be approximately right?
A Yeah, that probably was around $70,000, that's right.
Q. And how many additional policies did the bank sell?
A. They sold me two more.
Q And each policy was how much?
A A million dollars face value
Q. And based upon those two policies, do you know how much additional premium was required?
A. I don't think it quite doubled it, but it came close
Q. So approximately another 65,000 in insurance premium?
A Something like that, yes

Q Was the bank aware that your source of income to pay the insurance premiums for the trust was coming out of the managed portfolio?
A. Yes.
Q Now, Mr. Maybank, there is a couple other --
Well, we come to the end of 2006 --
A Uh-huh.
Q -- and your employment agreement with BB&T has ended --
A Yes
Q -- does the bank -- does Mr. Walters reach out to you about staying on with the bank in a limited consulting role?
A. Yes, he did
Q Explain how that came about
A I don't remember exactly, but I think that he just came and suggested it and I think it went on for maybe 11 months, 10 months, I don't know, 12 months. It was somewhere in there
Q And what was the compensation that you were going to receive?
A I was going to get a $1,000 a month
Q And did the agreement have a non-competition clause in it?
A I don't remember, but -- I really don't remember I think that probably was true, though.
Q. Okay, I can pull it for you, Mr Maybank It's

A Oh, is it? I'm sorry
Q. So look here, if you would, please Does that indicate --
A Yeah, it was December -- the 1st day of December, 2006.
Q. 2006?
A Uh-huh.

MR. WILLOUGHBY. Now, I would move the introduction of this as the next trial exhibit, Your Honor.

THE COURT: Any objection?

MR KRISTINIK No objection, Your Honor.

THE COURT: All right.

(The Last Will and Testament of Francis Maybank marked and received into evidence as Plaintiffs' Exhibit No 88)

MR WILLOUGHBY Into evidence as Plaintiffs' Exhibit 88, the Last Will and Testament of Francis Pelzer Maybank

BY MR WILLOUGHBY

Q Mr Maybank, under the terms of this will, did -- what did you do -- what appointments did you make, as far as BB&T was confirmed?

A. I appointed them as my personal representative, and I appointed them as trustee for a trust that was being created by this will.

Q So at your death a trust would be created for assets

and they were going to be the trustee of those?
A. That's correct, yes.
Q. And did the bank -- was the bank aware that they were being appointed?
A Yes
Q Did they want to be appointed?
A Sure, that's the business that they were in.
Q Okay And who drafted this will for you?
A John Campbell at Nelson, Mullins
Q. The same gentleman that had represented you when you sold your business to BB&T?
A That's correct, yes.
Q Now, as we move forward, you have purchased insurance in 2007, you now have $5 million worth of insurance --
A Yes
Q. -- in the Insurance Trust
Does anyone ever come to you from the bank at any time and tell you that there is any difficulty or problem with the strategy that they have sold?
A. No
Q. And then we come forward and if we will look at Exhibit 24
MR. WILLOUGHBY If you will put that up, Lindsay
BY MR. WILLOUGHBY
Q. Now, Mr. Maybank --

A Yes
Q -- Exhibit 24 bears your signature?
A. Uh-huh, that's correct.
Q. Is that your signature?
A Yes, it is.
Q Is any of the other writing on this form your writing?
A No, it is not.
Q Is the date your writing?
A No, it's not
Q The form has an X preprinted in the form for aggressive growth. Did you preprint this form?
A No, I did not
Q. Was the form presented to you? Do you know or can you remember whether or not the form was already X'd when you signed it?
A. I can't remember
Q. Who were you relying upon, as far as what was the appropriate strategy for the account, on June the 5th of 2008?
A I was relying on the bank.
Q Did they tell you at that time that your assets were too aggressively invested?
A. No, they did not
Q Did they tell you at that time you were spending too much money?

A. No, they did not.
Q Did they tell you at that time that the strategy that they had developed and advised you to follow would not generate the funds that you needed to live on, given your spending and to fund the Insurance Trust?
A. No, they did not.
Q If they had advised you of any of those things, what would you have done?
A I had -- I was doing virtually everything they advised
Q So would you have followed their advice?
A Yes

MR WILLOUGHBY You can take that one down, Lindsay, and we will now turn to Exhibit 27.

BY MR WILLOUGHBY
Q. Mr. Maybank, I'm handing you exhibit -- strike that

MR WILLOUGHBY Let's do 28, Lindsay.

BY MR. WILLOUGHBY
Q. I'm handing you Exhibit 28, Mr Maybank.
And Mr Maybank, is that your signature?
A. Yes, it is.
Q Is any of the other writing on this document your writing?
A I initialed FPM underneath a star.
Q So that FPM is you?
A Yes

Q It's your initials?
A. Yes.
Q. Is that a signature there?
A It's not a signature. It's initialed
Q I know, but right the above that?
A. Yes, that is my signature.
Q And do you remember any discussion related to this particular investment guidelines being executed?
A Yes, the team was in -- I was in with the team having a conference and this was what they recommended and I went along with the recommendation
Q Did they recommend as well the aggressive growth continuation of that strategy?
A That's correct
Q On this meeting, which by the date is December the 22nd of '08 --
A Yes
Q. -- did anyone tell you that the strategy was inappropriate and unsuitable for you?
A No, I thought it was part of the Pre-Paid Variable strategy
Q Did anyone tell you that you were spending too much money?
A No
Q Did anyone tell you that the ability to pay the

insurance premiums would be jeopardized by this strategy?
A They did not, no.
Q If they had told you those things, would you have followed their advice?
A Yes, they were my trusted advisor
Q Now, Mr. Maybank, in the fall of 2008 you authorized the credit line to be used to borrow about $400,000. Do you remember that?
A Yes, I do
MR. KRISTINIK: Your Honor, again, it's okay with some leading questions --
THE COURT Yeah
MR KRISTINIK -- but --
MR. WILLOUGHBY Well, I'm pointing his attention to an area of discussion, Your Honor, but I'll do my best
THE COURT Okay
BY MR WILLOUGHBY.
Q. Mr Maybank, tell me about the exercise of the credit line.
A I executed with Mr Mahfood, and perhaps Mr Walters, that I wanted to borrow $400,000 to add it to my investment account
Q And where did the funds go?
A They went into the portfolio that the bank was managing.

Q. So the bank loaned the money, is that right?
A Right.
Q And then the money was transferred into the managed portfolio that the bank was managing?
A Yes. That was the first time I had -- I had had that credit line for three years, but this was the first time I actually signed it
Q So does the bank earn fees on the managed portfolio?
A Yes, they do
Q And did they earn fees for interest on borrowing the money?
A Yes, they did
Q. Did you use that 400,000 to do anything other than put it in the managed portfolio account?
A. No, I did not.
Q So as we come forward to the end of 2008, early 2009, do you have a conversation with the bank about the Pre-Paid Contract that was coming due in August of 2009?
A Yes, I did
Q. And tell the ladies and gentlemen of the jury about that conversation.
A. I wanted to know if it made sense to roll the contract over early, and we had several conferences about it, and --
Q Why were you asking about whether to roll it over early?

A Well, I just didn't want it to come up to the last minute if this was a good time to do it I didn't -- I didn't really know, so I brought it up to the Wealth Management team and that's how it got started.
Q Did you have any understanding that there could be huge costs associated with rolling the Pre-Paid Derivative Contract early?
A. I did not
Q Did they tell you that there would be huge costs?
A They did not
Q. Did you think that there was any advantage in rolling it early as a protective measure?
A I thought it would protect my dividend income for two years
Q Mr. Maybank, I'm going to hand to you Exhibit 29 Sorry, wrong one Exhibit 30
MR WILLOUGHBY We will put that up, Lindsay. Thank you
BY MR WILLOUGHBY:
Q And, Mr. Maybank, you have told the ladies and gentlemen of the jury that you believe that the Pre-Paid Contract structured by the bank kept your dividends of BB&T, is that correct?
A Yes
Q Now, this is an internal e-mail You are not on it

It's Exhibit 30. Do you know a Mr Mike Lackey?
A Yes
Q And who was Mr. Lackey at the time, in 2009?
A He was a recent -- recently been hired by the bank and was part of their Wealth Management team.
Q. Do you remember whether or not you had any real contact with Mr Lackey during this period?
A I really remember very little contact with him He had just joined the bank and I didn't think he -- I didn't know that he had any expertise in Pre-Paid Variable Derivatives.
Q Do you have any recollection of really having any discussions with him?
A I really don't
Q And who were you primarily talking with about this, rolling over this pre-paid?
A. Anthony Mahfood I think everything was being channeled through him
Q Now, Mr Maybank, what Mr. Lackey says in this e-mail --
MR WILLOUGHBY. Can you pull this out, Lindsay?
BY MR. WILLOUGHBY:
Q "Frank wants to know whether a dividend cut between now and the valuation date of his contract causes an increase in the cash settlement amount or otherwise adversely affects him. He knows that the dividend cut will reduce the

dividend payout that is passed along to him during the course of the contract."

Did you receive this e-mail, Mr. Maybank?

A No, I did not. When I was at BB&T, I never sent or received an e-mail

Q Now, Mr. Maybank, did anyone ever, the wealth advisors, or anyone at the bank, tell you that the structure of the pre-paid contract could not protect the dividend payment?

A I thought the dividend payment was secure during the life of the contract.

Q Now, you know that a corporation -- Mr. Kristinik said this in his opening. You know that a corporation can reduce the level of its dividend, is that correct?

A Yes, I do.

Q. What caused you to believe that the structure of the contract of the pre-paid could protect that dividend if the corporation decided to cut its dividend?

A I thought that it could be built into the structure of the Pre-Paid Variable. I was told that the bank had special expertise in doing this

Q And so what Mr Lackey is communicating internally here --

A Yes.

Q -- was never communicated to you?

A No, I think he was dealing -- gathering information for

the wealth advisors.

Q Mr. Maybank, do you remember leading up to a second pre-paid, the rollover pre-paid? Do you remember having any conversations with Mr. Nate Deal?

A I never had any conversation with Mr Nate Deal, directly or indirectly.

Q Did you ask to have conversations?

A. I did.

Q. And what were you told about why you couldn't have a conversation with Mr Deal?

A They said he was too busy.

Q. And who were you getting this information from?

A. Mr Mahfood and Mr Russ Walters.

MR WILLOUGHBY: Exhibit 31

BY MR. WILLOUGHBY:

Q Mr Maybank, Exhibit 31 is an internal document. Your name is not on the document. Do you have any recollection of receiving this document?

A No, I do not.

Q If you would turn to the second page of it.

This is a settlement overview and someone has got a handwritten note at the top of "1/8/2009". Did anyone share a settlement overview like this with you prior to the pre-paid being rolled over?

A These settlement overviews were only given to you after

the trade was done, because they had to have the numbers to go into them.

Q So did anyone try to give you an example and sit down and go through an example with you of here is what it may look like, here is what might happen? Did any of that occur?

A I don't think so, no

MR WILLOUGHBY: Exhibit 34

BY MR. WILLOUGHBY:

Q Mr Maybank, Exhibit 34 and Exhibit 35, I'm going to hand them both to you This is --

MR WILLOUGHBY And I know, ladies and gentlemen -- Your Honor, and ladies and gentlemen of the jury, this is probably hard to read You will have the document with you in the jury room.

BY MR WILLOUGHBY.

Q Concentrated Stock Risk Management Addendum, but Mr Maybank, you signed this document, is that correct?

A - Yes, I did

Q Is the hand -- is the printing your printing?

A No, it is not.

Q Is the date your printing?

A. No, it is not.

Q. Is there a blank at the top of the page?

A Yes.

Q Now, there are similar disclosures to the one that we talked about before the first pre-paid was done --

A Yes.

Q -- talking about dividends and the like.

Was there any representation to you that the structure of this contract, as structured by the bank, could not protect the dividend income that you were relying upon from BB&T?

A No. The reason I entered into this was to protect my dividend income.

MR WILLOUGHBY And turn to the next exhibit, Lindsay

BY MR WILLOUGHBY:

Q Now, we see on this next one, the same form --

A Yes.

Q -- additional writing, dates filled in as of 1-15-09. You didn't -- did you fill any of that in?

A No, I did not.

Q Did anything on this form, the information on it, inform you that what you had been told was not true?

A That's correct. This document was assembled by the wealth managers, given to me by the wealth managers, and they told me I needed to sign it to move forward.

MR. WILLOUGHBY. And let's turn to Exhibit 39.

BY MR WILLOUGHBY

Q. Mr. Maybank, Exhibit 39 is the confirm for the rollover pre-paid that was done on January the 20th of 2009.

MR WILLOUGHBY: Turn to the second page, Lindsay

Next page.

See if you can make this larger.

BY MR WILLOUGHBY

Q It says the valuation date is January 20.

220,000 shares

And, if you would, Mr Maybank, tell the ladies and gentlemen of the jury how this transaction is completed compared to the first one, or are they just alike?

A As far as I know, they are just alike

Q. And was an appointed time set up for you to come to the offices?

A Yeah, the wealth management team had me come to the office.

Q Who arranged everything?

A. They arranged everything

Q. Who had all of the -- rather than Bear Stearns, this one was done through Deutsche Bank?

A Correct

Q Who arranged all of the communications with Deutsche Bank?

A The wealth managers

Q And when you arrived at the appointed time --

A Yes
Q -- what did they give you?
A They told me that I was going to be asked a series of questions by -- on the telephone call, and they gave me a sheet of paper with the answers on it
Q Just like before?
A Just like before.
Q You get on the telephone call and questions are asked of you?
A Yes, that's correct.
Q And you deliver the information that's on the sheet?
A Yes, I did
Q Who put the information on the sheet, do you know?
A I do not know It was -- it was probably the wealth managers
Q Do you know whether or not Mr Deal was on the telephone call when you were on the call with Deutsche Bank?
A I think he was, but I don't know for sure I don't think he said anything
Q Now, there is a --

MR WILLOUGHBY: Go to where the dividends are.

Bates No 5224

If you can cull that out, Lindsay

BY MR. WILLOUGHBY
Q Mr Maybank, there is an expected regular dividend

that's included in this contract?
A. Yes
Q Did you put that in there?
A. No, I did not.
Q. Who decided what the expected regular dividend would be?
A. That was on the sheet of paper that I was reading from
Q. And did you understand that your dividends would be protected at that level?
A. Through the course of the contract, yes
Q. So if the corporation cut the dividends during the two years, you were protected because of this contract?
A Yes
Q Did they tell you -- were you told what the cost of this transaction would be?
A They did not
Q So tell the ladies and gentlemen of the jury what happened after this deal had been closed
A After it was closed, I was told the cost was about a million and a quarter dollars
Q About 1.3 million?
A Yes
Q. When you said a million and a quarter, you meant 1,250,000?
A Yeah, or -- I have forgotten the exact figure, but it

was at a million three, I guess.
Q Okay. And the bank had a fee of about 42,000 of their own, correct?
A Yes, that was charged simultaneously
Q Now, you understood that the bank was going to have their fee, is that correct?
A. That's correct.
Q But did you have an understanding that that 1 3 million was going to be taken out of your account?
A I did not
Q And tell me when you learned that that transaction had cost $1 3 million, roughly
A They told me that when they started liquidating all the securities in the portfolio to pay the expenses of the rollover.
Q. So they started selling stock in the managed portfolio to pay the fee?
A That's correct.
Q And that's the first time that you were alerted to that fact?
A That's right.
Q So, now, that's the same account that you put that $400,000 in that you borrowed from the bank?
A That's correct
Q. So they strip out that 400,000 and other cash --

MR. KRISTINIK Your Honor --

THE COURT. Yeah, sustained

MR. KRISTINIK. Thank you.

BY MR WILLOUGHBY.

Q Well, what did they do to your account?

A. They took all the cash and then they started liquidating securities in order to fund the Pre-Paid Variable.

Q And what did you do?

A I complained.

Q And who did you complain to?

A I told them I thought they done a terrible job

Q Did you talk with them about unwinding the trade?

A I asked them if they could break the trade.

Q And what were you told?

A. They said they could not

Q Did you take any other action after the bank told you that?

A Yes, I tried to -- these confirms and the relationship with Deutsche Bank or Bear Stearns were all channeled through the wealth managers and the people like Nathan Deal, so you have no direct contact with them. I had to -- when I got a -- they give me a confirm, there was nobody to consult on the confirm, so I found a signature of a woman in the back of it.

Q. And what did you do?
A I called up Deutsche Bank and asked them where this woman was.
Q And what did you learn?
A I learned that she was in London
Q And what did you do?
A I asked for her telephone number
Q Did you call her?
A. I called her up
Q And what did you ask her?
A I asked them did she do -- was she responsible for this transaction and she said no
Q And were you --

MR. KRISTINIK: Your Honor, it's hearsay.

MR. WILLOUGHBY: It's not offered for the truth of the matter asserted, Your Honor

THE COURT What's it offered for?

MR. WILLOUGHBY Just to show what he is doing

THE COURT Well, you can -- he can testify to what -- as a result of a conversation what he did

THE WITNESS Okay.

BY MR WILLOUGHBY.
Q So as a result of the conversation, Mr Maybank, what step did you do next?
A Well, she told me that the broker that actually --

MR KRISTINIK Your Honor --

BY MR WILLOUGHBY

Q Mr Maybank, just --

THE COURT Sustained

MR KRISTINIK Your Honor, I understand he doesn't understand the hearsay rules

THE COURT Mr Maybank, you cannot say what some other person said, okay? You can't talk about what someone else said, all right?

THE WITNESS All right

BY MR WILLOUGHBY

Q So, Mr Maybank, let me ask it this way After you talked with the lady in London --

A Yes

Q -- what step did you do next?

A I had the name of a broker in New York.

Q And so -- and what was the purpose of you making these calls?

A I was trying to get the trade cancelled or reversed

Q The bank had told you that they couldn't do it?

A That's right

Q And so as a result of the information, did you call somebody?

A I called the New York office of Deutsche Bank and asked for Jeremy Levine

Q. And did you talk to Mr. Levine?
A I did
Q Without saying what Mr. Levine said, did you conclude as a result of that call whether or not the trade could be broken?
A He stated that it could not be
Q So you made every effort you could to reverse the trade?
A And then I asked him about reversing the trade
Q Did the bank help you do any of these steps?
A No.
Q Now, after you tried to reverse the trade, Mr Maybank, did you receive any other bad news from the bank?
A I received a lot of bad news from the bank, but not immediately after I called Mr Levine
Q Did you receive any information about taxes that may be owed?
A Oh, yes, about four or five weeks later Mr. Mahfood and Lackey came to me and said they had received information from the bank that I may have incurred a million dollars of ordinary income in this transaction and I would have to pay taxes on it
Q What did you think about that?
A Well, I was floored I mean, I had been wiped out financially at that point and I was smart enough to know it.

Q And what had you been led to believe throughout the history, going back all the way to 2006, about the tax consequences associated with the pre-paid?

A I thought as long as the securities was in a Pre-Paid Variable Forward Contract, you were protected from any tax liability

Q Was that one of the promises that had been made to you?

A That was one of the key selling points.

Q And then following that information, what is the next step that happened?

A At the bank?

Q At the bank

A They called the loan.

Q So --

A I was a financial basket case at that point, so they called the loan

Q So the 400,000 that you had borrowed was called by the bank in the summer of 2009, is that your recollection?

A. It was called before that, but -- I think it was called at the end of May

Q And did you meet with anybody? Did anyone talk with you about them alerting you to the fact that they were going to call the loan?

A Yes, Mr Mahfood and Lackey came to me telling me that they wanted the loan paid off

Q And what did you have to do to pay off the loan?
A. I had to liquidate more securities in my managed account to pay off the loan --
Q And --
A -- and to raise money for tax liabilities
Q. At that point in time were you trying to figure out how you were going to address what could be a huge tax liability?
A That's right, yeah, because I knew the following April, I think it was, that I would have to pay the taxes, and I didn't know whether it was ordinary income, or capital gain, or what I could do about it.
Q Is there a big difference in the --
A. Oh, yeah, the rates are different It's much higher for ordinary income.
Q So they called the loan?
A. Yes.
Q And then -- but the bank is still your trusted advisor at this time?
A I believe so, yes
Q. And then as you moved forward into 2010, what happened?
A. Towards 2010? They asked me to sign a new management contract, and then --
Q. Mr Maybank, let me show to you what is Exhibit 42?
A. Okay.

Q Is this the new management contract, Exhibit 42?
A. Yes, it was, yeah
Q. And if you will turn to the last page of the management contract, is that your signature there, Mr. Maybank?
A Yes, it is, on two places
Q And that's your signature there?
A Yes, and above as well.
Q So here and here?
A Yes
Q. Did you print in -- is that your printing?
A No, it's not
Q Is that your filling in your Social Security number?
A No, it's not
Q. Did you fill in the date of November the 2nd of '09?
A No, it's not.
Q. And what were you told about executing this document?
A. They said it was just a new form. It was the same document that I had signed before
Q. So it was a new form of the Wealth Management group?
A. Yes.
Q. So after that form is signed in late -- or in November
A. Yes
Q Early November --
A Yes
Q -- do you have any further conversations with the bank

about your financial affairs?
A. Yes, they terminated my account. They threw me out.
Q So about when did they tell you that they were going to terminate the relationship with you?
A I believe it was in December, maybe early January I don't remember exactly
Q Of '09, or early 2010?
A. Yes
Q. And why did they say they were going to terminate the relationship?
A My account was too small for them to manage
Q Your account was too small?
A That's correct
Q What did they tell you to do with the remaining assets?
A They sent the remaining assets back to Scott & Stringfellow, which I -- where I had a brokerage account
Q And you had -- you still had a Pre-Paid Derivative Contract at this point?
A That's correct, yes.
Q Did they advise you about that contract?
A. I tried desperately in many conferences, you know, with questions, trying to figure out how to get out of the trap
Q And when you say trap, what do you mean?
A Well, if I had terminated the contract or let it expire, I was going to lose all the -- most of the 220,000

shares of stock

Q So you now -- the relationship with the bank is terminating. You still owned this pre-paid they advised you to purchase?

A. Right

Q. So what do you do with the pre-paid?

A. Well, I wanted to make sure that I had paid the taxes, because I knew that no matter what, I was not going to get out of paying the taxes. And Argo & Company and Keith Gray gave me a lot of good advice on that, so I paid the taxes on April the 15th.

Q 2010?

A 2010

Q And then you are still left with the pre-paid?

A Right

Q. What do you do with the pre-paid that's coming due in early -- about a year -- nine months later, in early January of 2011?

A Well, at that point I asked Ross Walters to put me in touch with a senior officer of the bank, somebody with some real signing power, because I wanted this whole disaster reviewed by the bank.

Q. And so this was in?

A The summer of 2010.

Q You talked to Mr Walters?

A. Yes, I did.
Q. And what did you tell Mr. Walters?
A. I told him how damaged the whole relationship, the tremendous damage it had caused me, and I asked him to have a senior officer retained and we could either go see them or they would come and see me, and that's where -- that was in the summer of 2010. I didn't feel like --
Q Did he arrange a meeting?
A I didn't ask it for earlier because I wanted to pay the taxes first.
Q Did you -- did he arrange such a meeting?
A He did
Q And with whom did he arrange the meeting?
A He arranged the meeting with a -- Fisher was his name. He was presented to me as the head of the Wealth Management Department.
Q And where did that meeting take place?
A It took place in Greenville.
Q BB&T's offices?
A. That's correct.
Q. And who was at that meeting?
A. Ross Walters and Fisher.
Q And what do you recall the conclusion of that meeting?
A. I told them I thought that the Wealth Management strategy had cost me millions, and the way that the whole

thing was handled. And at that meeting they threatened -- they promised to get an outside accountant to review the whole transaction and get back to me.

Q And did they get back to you?

A. Ross Walters did, that they really didn't want to have any more meetings And --

Q Did you learn at some point in time that they had -- rather than doing a review, had turned the matter over to --

A Yeah, they turned it over to their legal department And as luck would have it, the great fanfare they announced at the legal department -- in their legal department they had 70 lawyers

Q Did you think that you needed at least one?

A I asked them if I could bring just one to that next meeting.

Q And did you have a conversation with Mr Fisher about that?

A They refused to meet if I had a lawyer.

Q And what did you then do?

A. I -- it's very difficult in this state to get attorneys to represent you, you know, if a bank is involved, so I had a guy that I went to college with very, well known and respected attorney, named Steve Lowey, and he tried to set up a meeting with the --

Well, first of all I had to call Fisher to get the

telephone number of who at the legal department he should talk to.

Q. Did you have a conversation with Mr Fisher?

A. I did

Q. On the telephone?

A. On the telephone.

Q. And what did Mr. Fisher say to you on that call?

A. He got very nasty.

Q. And what did he say to you?

A. He said I had disgraced myself by asking to be represented by an attorney and that the whole thing was my fault and then he hung up the phone.

Q. Did he say it would cost you a lot of money?

A. He said that if I brought lawyers into the situation, it would cost me a lot of money, that it would be -- that it would be useless to spend.

Q. Did he say anything else?

A. He hung up the phone. He probably said some other things, I don't know

Q. Did he say it would end badly?

A. Oh, yeah, he said it would be very end badly, it was going to cost you a lot of money and that I was disgracing myself

Q. Now, following that conversation, did you receive any information from Mr Lowey's contact with BB&T?

A. Well, I had to -- I had to call up the legal department I got ahold of a lady and found out that the -- the lawyer in charge of the Trust Department or the Wealth Management Department was a guy named Fisher -- not Fisher, but Peters, and I got his telephone number and Mr. Lowey called him up.

Q And as a result of those communications, did you have -- did you get information back from BB&T as to whether or not they would review the situation and try to make amends for their bad advice?

A They refused to meet with me with Mr Lowey, and he -- he had many -- several conversations with Mr. Lowey. Mr. Lowey was trying to avoid having any kind of lawsuit or anything like that And eventually he -- he wrote a letter to Mr. Fisher in which he basically told us to go to the devil, or to pound sand, or --

MR. KRISTINIK. Objection, Your Honor. He's talking about a letter not in evidence

If they want to read from the letter, we would -- that would be fine with us.

THE COURT: All right Okay Sustained.

BY MR WILLOUGHBY

Q Did he essentially tell you that you had to sue him?

A He said that the only way they -- that what I should do is higher some South Carolina attorneys, because this

lawsuit could not be brought in the State of New York, is where Mr. Lowey practices, and that I should seek South Carolina counsel and sue them

Q. And, Mr. Maybank, what about the Trust? It's now October of 2010 What about your Trust?

A. I -- at that point I had -- you know, I was faced with the fact that I didn't have the money to pay the insurance premiums, so I went to Ross Walters and the others at the bank to see if they could help me sell these policies And it's one of the biggest insurance companies in the country and they said they couldn't and wouldn't And at that point I sought the aid of another insurance broker

Q And at some point in time did BB&T inform you that they were going to resign?

A. Yeah, they resigned almost immediately at that point as the trustee of the Insurance Trust

Q. Now, Mr Maybank, the Insurance Trust is a plaintiff in this case?

A. Uh-huh

Q. What was the method or what was the means by which you were paid premiums that were due to the Insurance Trust?

A. It was out of the proceeds that had come out of the Pre-Paid Variable account and that was at the managed account at BB&T

Q And the bank knew this?

A Yes
Q The bank had been the corporate trustee since 2001, is that correct?
A That's correct.
Q All the way to the end of 2010, going into 2011, almost ten years?
A Uh-huh
Q So they resigned?
A That's correct.
Q And what did you -- what is done then?
A. Well, I went to my four children and asked if any of them wanted to -- I mean, these policies had been bought a long time ago, so the premiums were low compared to what I could get at that time, and they all -- my four children, they all had children and a lot of responsibilities and expenses. Two of them were just embarking on their careers, and they said that they did not have the money to pay those insurance premiums.
Q Let me ask this question of you, Mr. Maybank. So what was done? What happened to the insurance policies?
A. Well, a firm up in North Carolina that had been introduced to me by Mr. Mahfood helped me to sell one of the policies. They tried to sell the others, but they couldn't. And -- because that market had kind of collapsed at that point with the other markets, but they did successfully sell

one of the policies.

Q What about all the others?

A We turned them in for the cash value, because that was -- it's better to get something back on them than nothing.

Q So the policies were then lost?

A That's right, they were lost, except for one policy that I kept in place.

Q Now, all of the policies under the insurance premium or under the Insurance Trust, all $5 million of coverages is lost?

A. Right.

Q Mr. Maybank, is it your testimony that the loss of those policies was directly related to the bad investment advice you got from the bank?

MR KRISTINIK. Objection, Your Honor.

THE COURT: Sustained.

MR KRISTINIK: That's not even for opposing counsel.

THE COURT: And I tell you what, we have been going for quite awhile. Ladies and gentlemen, we are going to -- we will break for lunch at this time. If I give you until 2:30, would that be enough time for each of you for lunch? Okay. Y'all go to lunch. We will see you back at 2:30. Thank you very much. Don't talk about this case

(The following takes place outside the presence of the jury panel)

THE COURT: Okay. My policy as a judge is to try to stay out of the way and let lawyers try the case, but, Mr Willoughby, in your questioning you are testifying and you are basically laying out your closing argument in each of your questions This is -- we have got to pick the pace up

MR WILLOUGHBY: Well, judge, I understand it and I understand that admonition I would say the very last question I don't think was leading and I don't think there was nothing wrong with it.

THE COURT: Well, that's fine If this case goes to a higher court, then you can argue about it there, but we are going to have to pick up the pace You told me yesterday his testimony would be a couple hours

MR WILLOUGHBY And there is a lot of documents

THE COURT: It's almost three and we are not done

MR WILLOUGHBY. There's a lot of documents, judge. It takes time to go through them.

THE COURT: Okay Well, then what I'm telling you is to limit your editorializing in each question I'm trying -- I'm -- okay

See you at 2:30.

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

THE COURT Bring the jury back in

(The following takes place in the presence of the jury panel)

THE COURT Okay

MR. WILLOUGHBY: May it please the court?

THE COURT: Yes, sir

BY MR. WILLOUGHBY

Q Mr Maybank, I wanted to go back a little bit. There was a couple of documents that I need to discuss with you.

I'm going to hand to you Exhibit 5, Mr Maybank, and it's on the screen, but it's there in front of you.

When the first pre-paid was done, did you receive Exhibit 5 at some point during that process?

A. Yes, I did

Q. And from whom did you receive the document?

A. I think it was from the wealth advisors,

Q. Now, this document has a Scott & Stringfellow logo on it?

A. Yes, sir,

Q But you were being advised by the BB&T Bank, is that correct?

A That's correct

Q What did this document do? What was that document explained to you or given to you for, if you recall?

A. This was to reassure me about the tax consequences at that time I would not be stuck with the tax bill if I entered into this Pre-Paid Variable

MR. WILLOUGHBY: And, Lindsay, if you may cull out right about in there.

BY MR. WILLOUGHBY

Q So are you referring to some of this language, Mr. Maybank?

A. Yes, the tax implications.

Q. Would you read that sentence?

A "Many of our valued clients, such as you, are faced with a situation in which a large portion of your net worth is concentrated in one individual stock position."

Q. Mr. Maybank, I have directed you to the wrong place. Let me get you -- can you see this?

A. Overview?

Q. No, read the very last sentence of that paragraph.

A. "Finally, if structured properly, you will not incur a taxable event on the sale of your concentrated position until the end of the contract, effectively deferring a taxable event."

Q Well, Mr. Maybank, it does say to the end of the contract. What about when the contract ended in three years, did you think the rollover had any impact on that?

A. My understanding was that if you rolled over the

contract, you would be further protected from taxes. That was one of the main reasons I entered into it

Q. Okay Thank you.

Now, Mr. Maybank, there is another subject I wish to discuss with you In 2006, September 2006 --

A. Yes.

Q. -- just a few weeks --

A. Yes.

Q. -- after the pre-paid is done, in your Scott & Stringfellow account you purchased some additional shares of BB&T stock?

A That is correct.

Q And I think you purchased that on March, is that correct?

A. That's right.

Q Now, the letter that we showed from Ms. Oliver had a comment in there, handwritten comment, that says "you can't buy any more BB&T stock using the proceeds from the Pre-Paid Variable " Do you remember that language?

A Yes, that's right.

Q. Did you use any of the money from the Pre-Paid Variable to purchase that additional -- those two additional shares of BB&T stock?

A. I did not.

Q Now, you have indicated in that letter, that Oliver

letter as well, there is an indication in there that one of your objectives was to reduce risks, is that right?

A That's correct

Q Now, some would argue that by encouraging a margin position --

MR KRISTINIK Your Honor, I have got to --

THE COURT Yeah

MR KRISTINIK Testimony from counsel.

MR WILLOUGHBY: I'll rephrase it, Your Honor.

THE COURT: Thank you

BY MR. WILLOUGHBY

Q Did you see or did you believe that the activities that you were doing in the Scott & Stringfellow account had any impact on the protected position that you had at BB&T?

A. I don't think so, no.

Q They were totally separate?

A. They were totally separate

Q Did you seek BB&T's advice about what you were doing at the Scott & Stringfellow account?

A I think I did, yes, to see if that paragraph applied I don't remember who I talked to about it.

Q And do you remember what they told you?

A The Scott & Stringfellow, our account, was totally separate from the Pre-Paid Variable strategy.

Q And that there would be no problem with you taking

action in your Scott & Stringfellow account?
A That's correct.
Q But you were doing the transactions that you did at the Scott & Stringfellow account --
A Yes.
Q -- were done separate and apart?
A. That's correct.
Q Well, why were you doing -- why were you taking those actions?
A Which action are you talking about now?
Q In buying a few additional shares of BB&T stock in your Scott & Stringfellow account, why did you do that?
A Well, I had two reasons. I thought that it was a good buy at that level, and I also thought that -- I wanted to show loyalty to the bank.
Q. Now, Mr Maybank, I want to talk with you the final subject
MR WILLOUGHBY: If you will pull up Exhibit 50.
BY MR WILLOUGHBY:
Q I'll hand it to you, Mr Maybank
A Yes
Q This is a -- do you remember me providing this letter to you at some point?
A Yes, I do.
Q And the date of this letter is November the 30th of

2012?
A That's right
Q And this is a letter to me from Mr. Kristinik enclosing a 79,000 plus dollar check, is that correct?
A That's correct
MR WILLOUGHBY Turn to the second page, Lindsay, and let's cull out this paragraph here
BY MR. WILLOUGHBY:
Q Read that paragraph, the top paragraph that's on your screen there, Mr Maybank
A "Recently, as part of a review of client accounts we discovered that a fee was charged to your account that we wished to refund to you. While we are not required to rebate these fees, we choose to do so as a reflection of our corporate values.
"Several years" --
Q That's far enough
A Yeah
Q. That's far enough
Did anyone have any discussions with you about that refund before it was sent to you?
A No, I think the lawsuit had already started
Q Had the lawsuit been pending for almost a year?
A That's correct
Q Mr. Maybank, do you believe that the refund of these

fees in any way excuses BB&T?

A. No, the refund was almost -- it was six years later and only came through after I started the lawsuit.

Q. Thank you.

MR WILLOUGHBY. If the court will give me one indulgence, I think we are just about through with Mr. Maybank's testimony.

(Off the record)

(Back on the record)

MR WILLOUGHBY: Your Honor, we have no additional questions of Mr Maybank at this time

We would -- Mr Maybank, we would ask that you answer any questions that Mr Kristinik may have

THE COURT Cross-examination

MR KRISTINIK: Your Honor, if I may beg your indulgence for a moment, Your Honor, so I may get my exhibits set up?

THE COURT. Okay

(Off the record)

(Back on the record)

MR KRISTINIK Your Honor, I will not be using this whole box of exhibits

THE COURT: Okay, let's get going.

CROSS EXAMINATION BY MR KRISTINIK

Q Good afternoon, Mr Maybank

A Good afternoon.

Q You have been on the stand for quite awhile, so -- and it's getting late in the day, and if you we need to stop and take a break, you just let the judge know.

A I don't need to stop.

Q Okay. Thank you, sir.

All right, Mr. Maybank, we have heard a little bit about your background early on in your testimony. I have a few followup questions as well.

Now, we know you graduated from Harvard around 1955, a couple years in the Army, and then your first job was in Manhattan, in New York City, right?

A Yes.

Q Okay. And that was with Fiduciary Trust Company, correct?

A. That's correct.

Q And you remember -- you remember where it was located? The address was 1 Wall Street, is that right?

A It was in those days. Yeah, way back then, that's correct.

Q. Back on the corner of Wall Street and Broadway?

A. That's correct, yeah.

Q Okay. Now, the business of that company was to construct portfolios and provide investment plans for clients? That's what that company did?

A Yes, and acted as trustee and executor as well.
Q Now, you started out in the research department, but after a few years you moved up to assistant portfolio manager, right?
A That's correct.
Q Okay. And your primary duty as an assistant portfolio manager was to construct client investment portfolios using stocks and bonds, right?
A That's correct.
Q Okay. After two or three years you were promoted to the position of portfolio manager?
A After about five years, yes.
Q. Okay. And as portfolio manager, one of your jobs was to review information from the research department and then you would use that to select securities for your clients' accounts, right?
A. Yes.
Q And you were successful there, were you not? You were promoted? You received raises?
A. That's correct.
Q. Now, you worked there probably for over a decade, is that correct?
A. Yes.
Q. Okay. And then near the end of your time there you thought that maybe you could do better going off on your own

and so you left the Fiduciary Trust Company with some other people and you started a new business called Maybank, Grigsby, right?

A. That's correct.

Q Okay. That was also located on Wall Street?

A No, that was on Water Street.

Q Okay. Did you tell me during your deposition it was located on 100 Wall Street?

A No, it was wrong It was on Water Street. I'm sorry, I got it messed up

Q Okay Now, the main business of Maybank, Grigsby was to manage portfolios for clients?

A That's correct

Q Okay Those clients, they included businessmen, lawyers, accountants, and retired people?

A We had a mix, yeah. I don't remember exactly what it was.

Q You viewed the business -- Maybank, Grigsby, you viewed it as being successful when you were there?

A I think it was It did pretty well.

Q Around 1979 or 1980 you decided to move back to South Carolina and you came back to Greenville, right?

A That's correct.

Q And you started Maybank Management?

A That's correct

Q. All right Now, when you started Maybank Management, you had to go register with the Securities and Exchange Commission, right?

A That's correct.

Q Okay. When you registered with the SEC, you were registering on what is commonly called the 40 Act, right, the Investment Advisors Act of 1940?

A Whatever Act was in play at that time is what we used

Q So you went and you got the proper registrations, both from the SEC and from the State of South Carolina, right?

A Yeah, but I didn't do it myself I got an attorney to do it.

Q Okay. Well, after you had completed the registration process, with the help of an attorney, then you officially became a registered investment advisor, the firm did, right?

A That's correct, yes

Q Now, you didn't have any other owners. You were the sole owner of Maybank Management, right?

A That's correct.

Q You had only one employee You had a secretary to help you, right?

A Well, there was some other people, but that basically was it, yeah.

Q Okay You had no research analyst?

A No, we used what's known as Wall Street Research,

Street Research, provided by Wall Street firms
Q We will get back to Value Line in just a minute
So it's just you and your secretary, and in a period of eight years, by 1988, you had built up your assets under management to around $200 million, is that right?
A. That's correct
Q. Okay
THE COURT Mr Maybank, keep your voice up, please. Thank you
THE WITNESS Okay I'm sorry
BY MR. KRISTINIK
Q So to help you provide investment advice to your clients --
A Yes
Q -- you had resources that you would rely on For example, you would rely on research from investment bankers located in Atlanta, Charlotte, and New York, is that right?
A. Yes
Q Okay. And then you mentioned Value Line Value Line, that's something that you had a subscription to, right?
A. Yes, I paid them a small subscription.
Q A weekly publication, came out every week, is that right?
A. No, I have forgotten now how frequently they published
Q But periodically?

A. Yeah, they sent you updates of their research.
Q And they provide independent investment research, right?
A Yes
Q Highly respected in the industry, correct?
A I liked them. Yeah, I think they are very good.
Q And you would read it regularly when you were with Maybank Management?
A Yeah, but I must admit I haven't read them for many years
Q Now, before you would make recommendations to your clients at Maybank Management, you would make sure that you understood what you were recommending, right?
A That's correct, I studied it very carefully the companies that I followed
Q And you would not recommend -- you would not recommend something that you did not understand, right?
A Yes, I would not, because I knew my clients were depending upon me to do that
Q Right
And that's how you conducted yourself during your entire career, is that right?
A Yes
Q Now, when you were bringing in a new client to Maybank Management, you would sit down with them and you would talk

with them about what their investment objectives should be, correct?

A. That's correct.

Q You would try to arrive at an investment objection that both you and the client thought was appropriate for their circumstances, right?

A. That's correct.

Q. You would capture that objective in writing?

A. Yes

Q. And you would try to adhere to that objective as you worked with them on the positions that was going into their portfolio?

A. That's right, but I would not sign one of those objective unless I agreed with it.

Q. Now, a typical portfolio for one of your clients at Maybank Management would have maybe 25 to 35 different securities in it?

A. Yes

Q. Okay. And for some of those portfolios, the client actually gave you discretionary authority, right?

A. Practically all of them did.

Q And, of course, you know what discretionary authority is?

A. Yes

Q. That's where you have got the ability to do what you

think is best for their account?
A. That's correct.
Q. Okay.
A. We also had advisory -- I mean, I also had some advisory accounts
Q. Mr. Maybank, you would always be careful to explain to your clients of Maybank Management that you cannot guarantee that stock prices would not go down for positions in their account, right?
A I didn't give any guarantees
Q. And you were a fiduciary, right?
A. That's correct.
Q. And even though you were a fiduciary, you still don't give guarantees, right?
A No, I don't gave any guarantees.
Q. Some of your clients at Maybank Management had stocks that would pay dividends, right?
A. Yes
Q. Okay. You would explain to those clients also that there was no guarantee that those dividends would continue to be paid, right?
A That's correct.
Q. Okay. And you explained to your clients that there is no guarantee that the company that issued the stock may not in the future cut the dividend?

A. That's correct
Q. Okay. You operated Maybank Management for about eight years and then you decided to organize a state chartered trust company in 1988, right?
A. That is correct.
Q. All right. This required you to file an application with the State Board of Financial Institutions?
A Yes.
Q. And you, in fact, did that and you received the authorization to start your business, right?
A. That is correct.
Q Now, you started Southeastern Trust, you actually started it all by yourself, but you quickly brought in some other people, right?
A Yes, within a matter of a few weeks
Q. Okay You had to form a board of directors for the company?
A. Uh-huh. That's right.
Q And pretty much all of your clients for Maybank Management came over and became clients of Southeastern Trust, right?
A Yes.
Q Southeastern Trust would give investment advice to its clients, right?
A Yes.

Q It also served as a trustee for clients?
A That's right.
Q Now, there was one service that Southeastern Trust did not provide. It did not prepare financial plans, right?
A We did some planning, yeah.
Q. Well, now, didn't you tell me during your deposition that it did not provide financial plans?
A. I don't remember exactly. I might have said that, but we did do some planning, especially estate planning. We had three lawyers on the staff and they did that.
Q Okay. So you would do estate planning?
A Uh-huh
Q But you didn't have a certified financial planner that worked for Southeastern Trust, did you?
A I'm not sure they existed in those days back then.
Q Well, by 2001, the business of Southeastern Trust had grown signifricantly By that point in time it had assets under management of $700 million, right?
A That's correct
Q. Okay And you had the largest ownership of Southeastern Trust You had the majority interests, meaning more than 50 percent, right?
A Yes
Q One of the people that worked with you at Southeastern Trust was Clark Anderson?

A. That's correct.
Q. Mr. Anderson was a lawyer, but his job at Southeastern Trust was portfolio manager and trust officer, right?
A. That's right.
Q Okay And you considered Mr Anderson to be competent, intelligent, and a trustworthy individual, right?
A I did.
Q. You had great confidence in his abilities?
A. Yes.
Q Now, another employee at Southeastern Trust was "Bam" Gressette?
A Yes.
Q He worked as the chief investment officer for Southeastern Trust, right?
A. That's correct.
Q Mr. Gressette would provide investment advice to clients?
A. Yes.
Q And you believed him to be a competent portfolio manager and you thought he performed well at that task, right?
A. Yes.
Q. One of your responsibilities at Southeastern Trust was to actually supervise Mr. Gressette, right?
A Yes.

Q. Now, you also --
A Along with the board, our board of directors
Q. Now, you also served as a member of the investment committee for Southeastern Trust, right?
A That's correct
Q. As a member of the investment committee, from time to time you would review portfolios to ensure that they were in line with the client objectives That was one of your roles, right?
A I don't remember exactly what the role was there.
Q. Okay. Let's talk about another employee at Southeastern Trust, Judy Schoemer Do you remember Judy Schoemer?
A. Yes, I do.
Q She was employed there, right?
A That's correct
Q. And she was an administrator of Southeastern Trust, right?
A Yes
Q Now, you believe that Ms Schoemer was competent at her job In fact, you would say that she was very competent at her job?
A. She was very good when she was at Southeastern Trust Company
Q Now, you believed also that she was an honest person,

right?
A. Yes.
Q. Now, when you were at Southeastern Trust, you always believed that Ms. Schoemer was trying to act in the best interests of the clients, based on what you had perceived?
A. I think everybody there at Southeastern Trust Company was educated to act in the best interests of the trust company. We marketed no conflict of interest That was one of the major things that we stressed
Q. Now, these three people we just discussed - Clark Anderson, "Bam" Gressette, and Judy Schoemer - they all became employees of BB&T, right?
A That's right.
Q That was part of the deal when BB&T acquired Southeastern Trust, right?
A They hired everybody that wanted to be hired
Q Do you understand that a fixed income portfolio is a portfolio that has bonds in it, right?
A Right
Q If the client invests only in bonds, that client is being exposed to a significant risk, and that risk is called inflation risks, right?
A Yes, but all clients are not the same. You really couldn't generalize with a statement like that
Q. Well, that's true, Mr Maybank, but you would

characterize inflation risks as being a huge risk, right?
A. That's correct, but there are certain accounts where you have short-time horizon and the bonds might be very inappropriate.
Q. Well, is one of the things that you would do to protect against inflation risks, one thing would be to make sure that you have some equities in the account, including stocks that pay dividends? That's one way to protect --
A. And stocks that didn't pay dividends as well.
Q But it's important to have equities in an account to help minimize inflation risks?
A. Over a long period of time that usually works out
Q Okay. Now, while you worked -- while you were operating Maybank Management, you understood the concept market risks. You knew that there was market risks?
A. Yes.
Q. And market risks is the risk that the stock market goes down because of an unexpected event, right?
A. Yes.
Q. Things like a war in the Middle East, or a surge of inflation, political turmoil. Those would be unexpected events that could cause market risks?
A. Yes.
Q. You would agree that from time to time even the finest companies have volatility with their stock and their stock

prices can drop sharply due to unexpected events?
A. How do you describe volatility?
Q Well, let me ask you this. Would you agree that some of the finest companies go through bad periods that affect their stock?
A. Yes, I agree.
Q And diversifying your portfolio, that's a way that you protect against market risks, right?
A. It's a way that you protect against a concentration in a single stock
Q. All right Let's go back to Southeastern Trust.
Sometime in the year 2001 you were called by some people at BB&T They were interested in acquiring Southeastern Trust, right?
A. Yes
Q. The sale occurred somewhere around October, November of 2001, is that right?
A Let's see, the closing --
Q. It was the first week of November, is that what you testified on direct?
A Yeah, I think it was on that document. I can't remember It was the 3rd, maybe, something like that
Q. Now, you thought selling Southeastern Trust to BB&T was a good idea, because you were getting older and the transaction, in your opinion, would be good thing for the

clients of Southeastern Trust, right?
A. That's correct.
Q. You felt confident that BB&T could provide competent services to the clients of Southeastern Trust, and you thought that BB&T would act in the best interests of your clients of Southeastern Trust, right?
A That's correct.
Q. You would not have agreed to sell Southeastern Trust to BB&T if you did not believe those things were true, correct?
A That was the leading consideration on the sale.
Q. In fact, you made careful inquiries prior to the closing of the transaction, careful inquiries into the reputation of BB&T And after those inquiries you were satisfied that your clients would receive quality service at BB&T, right?
A Yes
Q. All right. So your share of the purchase price paid by BB&T was 246,640 shares, right?
A. Yes
Q. Before the transaction was completed, you consulted with your tax advisor, which at the time was Green & Company, located in Anderson, South Carolina, right?
A. I don't believe we sought tax advice from them They were my personal accountants.
Q Well, would you personally have sought advice from

Green & Company about whether you were going to incur a taxable event at the time of the sale of Southeastern Trust to BB&T?

A Yes, but I don't think BB&T itself consulted them at all -- I mean, I didn't think Southeastern Trust Company consulted them at all. We had different accountants.

Q Well, there is no tax event for you personally as a result of the sale of Southeastern Trust to BB&T? That's correct?

A That's correct

Q But you ended up with a very low basis in your stock, right?

A That's correct

Q And later at some point in time it was calculated to be just over $3.00 a share, right?

A It was more than that I think it was -- I think he -- I would suggest you ask Mr. Argo that question. That's an accounting question.

Q Now, as part of the deal with BB&T, you were required to hold your stock You were required to hold it for a period of at least two years, right?

A There was a holding period, yes

Q Okay It was two years?

A I believe so, yeah.

Q. And that's a pretty standard term for a deal like that,

right?
A. Yes, right.
Q. And in 2001, the BB&T stock paid a dividend, right?
A That's correct.
Q. And, in fact, receiving that dividend on that BB&T stock, that was one aspect of the transaction that was attractive to you, right?
A. Yes, dividend is always attractive.
Q After you received your shares of BB&T stock as part of the sale, it went into your brokerage account with Scott & Stringfellow, right?
A. That's correct
Q. Now, you recognized, even back in 2001, after you received the 246,000 shares of stock, you recognized at that time that you had a concentrated position, right?
A That's correct.
Q Okay. And that caused you some concern back in 2001, that you had so much of your net worth tied up in just one stock, right?
A. Well, I wasn't really totally concerned about it, because I knew I couldn't sell it for at least two years.
Q Okay When you started at BB&T, you began in the Trust Department?
A. Right
Q. And your starting salary was $100,000 a year, right?

A That's correct.
Q. Now, you have testified earlier you weren't doing a whole lot while you were working at BB&T, but you always received your 100,000 a year salary, right?
A. I disagree with you I did quite a bit when I was there.
Q. You did, okay?
You did a lot of things when you were at BB&T working as a wealth advisor, right?
A. I was never working as a wealth advisor.
Q. Okay. Well, you said you did a lot of things at BB&T.
A I was helping in the transition from Southeastern Trust Company to the BB&T, but I was never a wealth advisor.
Q. Let's talk about your only personal investing. You opened your own brokerage account back in 1959?
A. It was a long ago.
Q. A long time ago.
And your account would go from -- you ended up using several different brokers while you were in New York, right?
A Yeah, I had some of the -- when I was up there, a lot of the brokerage firms began to emerge and fail, or fail.
Q. Now, when you came to South Carolina, you went to someone you knew and trusted, someone named Edgar Norris, Jr., right?
A. Yes, a Greenville firm. I knew Mr. Edgar very well.

Q. Now, there were two Edgar Norrises. One was Edgar Norris, Sr., and there is another Edgar Norris, Jr., right?
A. That's correct.
Q. And for most of the time you were working with Edgar Norris, Jr., right?
A. No, I was working with his dad, and Bruce McPherson was another partner there. I worked with him quite a bit, and John Shipper I worked with a lot of different people there.
Q Well, after 2001, were you mostly working with Edgar Norris, Jr.?
A Edgar Norris, Jr., yeah.
Q. Okay Now, when your account was first with Edgar Norris, that was when it was called Edgar Norris & Company, right?
A. That's right.
Q. And then it was later acquired by -- it became a part of Scott & Stringfellow, right?
A. I believe that's right.
Q. And when it did, your brokerage account was then housed at Scott & Stringfellow, correct?
A. Yeah, but they went through a merger with Scott & Stringfellow, yes.
Q. And your financial advisor for that, your brokerage account at Scott & Stringfellow, was Edgar Norris, Jr.?

Q We will talk more about that a little bit later

We talked earlier about financial plans and whether they were offered by Southeastern Trust?

A Uh-huh.

Q Isn't it true, though, that you viewed financial plans back then as a way that financial planners would try to sell insurance or sell mutual funds?

A Back in those days a financial planner was -- and I think maybe he still today is somebody who is basically selling mutual funds and annuities

Q Over the years you have had estate planning done, you have had accountants help with tax planning, but you have never paid a certified financial planner to do a financial plan for you, correct?

A That is correct

Q Because you have had -- because you already have an estate plan, because you have had an accountant help you with your taxes, and because you have had someone help you with your insurance needs, quite frankly you haven't seen the need to have a financial plan done, right?

A That's correct

Q. You already thought that you were receiving adequate planning from your other advisors, right?

A. That's correct

Q. In fact, to this day, even after the filing of this

lawsuit, you still have never paid a certified financial planner to create a financial plan for you, right?

A. After the collapse of my account in 2009, I don't have enough money to justify paying for a financial planner.

Q. You don't have enough money. You have a million dollar farm, don't you?

A. I don't really know what it's worth. It's a very nice farm, though.

Q You still have over $600,000 of cash in your Charles Schwab account, even today?

A. Most of that money has had to go to meet expenses.

Q But that's not enough money to justify hiring a certified financial planner?

A. I already had a will drawn, so I don't know what they would have to work with, really.

Q. Well, let's talk more about your assets.

We know about your receipt of the 246,000 shares

Let's go back further in time, back to the 1960's, 1970's, your mother gave you a half interest in a summer house in Flat Rock, North Carolina, right?

A. That's correct

Q And your brother was given the other half?

A That's correct

Q. All right. That house had been in the family for quite a number of years owned by your parents, right?

A. That's correct
Q Now, in the 1990's your mother would give you large amounts of stocks to you and your brother, with the idea of being to avoid paying taxes, you know, when she later died, right?
A. She didn't -- I wouldn't say it was large amounts of money, but she had a -- she would regularly give you those days whether it was $3,000 a year, or --
Q It was not large amounts --
A. It eventually got up to -- I don't think it ever got up above $10,000 a year
Q Okay. Not large amounts of money, but it was $400,000 or $500,000 that she left you when she passed away in the year 2000?
A I don't really remember how much she left me, but that doesn't sound too far off.
Q. Do you remember telling me in your deposition that when your mother passed away in the year 2000, you inherited around 400 to $500,000 in stocks and bonds? Is that you what you told me in your deposition?
A I think that's close, but I don't remember exactly what I told you.
Q Your mother also gave you an interest in another house and that was the house located at 30 Meeting Street, right?
A. That's correct.

Q Now, later on you and your brothers traded your half interests so that he would have the Flat Rock house and you would own the house at 30 Meeting Street outright?
A That's right
Q You owned some other property. You owned a house in Gray Court with 160 acres of land, is that right?
A That's correct.
Q You had acquired that back in 1980, and other parts in 1985, sometime around then?
A I -- yeah, I -- the original was about 1985, maybe a little earlier than that, and the rest of it was maybe 1990
Q Now, you have given -- you have since given that property to your children probably eight to ten years ago? It's been a while?
A Something like that.
Q So your children own that?
A Yes
Q The Gray Court property now, right?
A Yes, sir
Q Let's talk about Calhoun Creek Farms
A Right.
Q That was the cattle farm located in Abbeville, right?
A That's right
Q. It had a hay barn, a horse barn, and a machine shop, and a three bedroom house?

A. Yeah.
Q And originally Calhoun Creek Farms -- well, still today it's an S-Corp formed in the 1980's, and there were a total of four owners and you were one of them, right?
A That's right.
Q. And y'all bought the farm at a bankruptcy sale, right?
A Right.
Q And you later acquired the interests of the other three owners. And so at one point in time you had a total 100 percent ownership of Calhoun Creek Farms?
A. That's right.
Q In fact, you still have a majority interests in the farm? You have given 15 to 20 percent to your children?
A That's correct.
Q. Okay. You would estimate that the current market value of Calhoun Creek Farms is probably over a million dollars today?
A. I don't know. I think -- that sounds a little high. You know, it's hard to get people to buy property that far away from Greenville or Columbia.
Q. It sounds a little high, but you also owned a 185 acres of land that you bought next to the farm. You bought that later, right?
A. That's right.
Q. And that was worth you would estimate about $2,000 an

acre?
A. No, it's -- I think I bought it for $1,500 an acre I think I bought the original -- the cost on the original was maybe eight or nine hundred dollars an acre.
Q. Let's talk about the Meeting Street house, just another couple of questions for you on that. That's about a 4,000 square foot house?
A That sounds about right.
Q. Okay. And it has an annex in back and an apartment that could be rented, is that right?
A. Yes
Q Now, at the end of the 1990's, that's when you had a 100 ownership. That's when you obtained the half ownership from your brother?
A. That's right.
Q. And there has never been a mortgage on that house, right?
A. No.
Q. Now, you don't hold title to the Charleston house any more. You have put it into what's called a personal residency trust, correct?
A. That's right
Q And the beneficiaries of that trust are your four children?
A. That's correct.

Q. Today you would estimate that that house is worth at least $1 5 million?
A. I guess so. I'm not an expert on that.
Q. That's what you guessed at your deposition, right?
A. Yeah, I think -- it may be pretty close to the appraised value.
Q Now, you and your wife, you currently live in a house in Hidden Hills in Shannon Clear in Greenville, but your wife owns that house?
A. That's right.
Q. Is it correct that the only mortgage loan you have ever had on any of this property that you have owned was the Calhoun Creek Farms? You had a mortgage early on, but you paid it off pretty quickly, right?
A. As soon as I could, yes
Q. Now, we have mentioned some of your family members We have mentioned your brother and your mother. You have -- you have had four children during your life, right?
A. That's correct.
Q. You had Jane and Preston when you married your first wife?
A. That's right
Q. And you had Alexis and I think you said Helena, but it's actually -- she goes by Lillie, is that right?
A. That's her nickname, yes

Q. Okay. Alexis and Lillie, and you had them with your second wife, correct?
A That's correct.
Q. And in 2002, you married your third wife, Debbie Rhodes, and you are still married to Debbie, is that correct?
A. That's correct
Q. And you and Debbie -- but you know Debbie had no children?
A. No, we have no children
Q And you also have some grandchildren You have a total of six grandchildren and they live in Charleston -- two live in Charleston, two live in Los Angeles, and two live in New York City, right?
A That's right.
Q. So all toll four children and six grandchildren, right?
A Right
Q. All right. Let's look at an exhibit
Let me show you what's been marked as Defendants' Exhibit 197 This is an account statement of Edgar Norris & Company, correct?
A. Yes, in 1997, March 15th.
Q That was going to be my next question for you, Mr Maybank.
Now, when you would -- this statement would have been

sent to you, correct?
A Yes Yes, that's right
Q And when you received statements from your brokerage accounts, you would always look at them, correct?
A Yes
Q And sometimes you would read them carefully and sometimes it would just be a quick look, right?
A I was familiar with what I got
Q Does this look like an accurate copy of your --
A Yes
Q -- Edgar Norris statement?
A Yes
MR KRISTINIK Your Honor, we would move to admit Defendants' Exhibit 197 into evidence.
MR. WILLOUGHBY. May I see it, Your Honor?
THE COURT. Yeah
MR WILLOUGHBY No objection.
THE COURT: Okay
(Whereupon, Defendants' Exhibit No. 197 was entered into the record as evidence)
BY MR KRISTINIK
Q Now, back at this point in time, back in March of 1997, you were, what, 64 years old? Is that about right?
A If you say so, I'll agree with it
Q. Okay Well, born in 1932. This is March of 1997.

Your birthday is actually in September of 1932, so that would make you 64.

This statement indicates, if you look on the first page, that you had stocks of a little over $509,000?

A Yes

Q. Now, this account doesn't have any bonds in it None, correct?

A. Correct. These are all appreciated securities

Q You had no cash in this account?

A No

Q. This is 100 percent stocks

So when you were 64 years old, you were invested 100 percent stocks, no bonds, no fixed income, no cash, right?

A Well, I wouldn't say that I don't think that's right.

Q. Well, for this account that would be correct?

A For this account, but that's not the only account I had

Q Now, the stocks that are reflected on this statement, most of this is what you inherited from your mother, is that right?

A Some of which I bought myself, yes Some of that she gifted to me over the years I think she gave me the Sunoco Products I'm not sure about the other one

Q Now, if you take a look on the right-hand side of that exhibit, you will see next to liabilities there is a margin

debt, right?
A. That's right, yes
Q. It's over $200,000?
A. Yes.
Q Okay Let me show you our next exhibit, Defense Exhibit No. 64. This is a Scott & Stringfellow statement, is that right?
A That's right, yeah.
Q And this is a statement from your brokerage account at Scott & Stringfellow, right?
A. Right, yeah.
Q. And if you look at the date, the upper right-hand corner, this is for January of 2003, is that correct?
A. Right.
Q. And you would have received a copy of your statement, the statement from Scott & Stringfellow?
A. That's right, yeah.
MR. KRISTINIK Your Honor, we would move to admit into evidence Defense Exhibit No. 64.
MR. WILLOUGHBY: No objection
THE COURT Okay.
(Whereupon, Defendants' Exhibit No 64 was entered into the record as evidence)
BY MR. KRISTINIK:
Q This statement shows that you have over $8.8 million in

securities in the account, right?
A. That's correct
Q. And most of that is from your 246,000 shares of BB&T stock, right?
A. That's correct
Q. Okay. There are no bonds in this account. Not one bond in this account, right?
A Not in this account, no
Q This first page of this document indicates you have a margin debt, right?
A That's correct
Q It's over $1 5 million?
A. That's correct
Q Some of that margin debt is due to expenses that you had for the farm, maintaining the house on Meeting Street. That's what some of this margin debt is for, right?
A I would say the largest part of the margin debt was the need to put money into Southeastern Trust Company. So the margin debt, I would have debt in this account, and then Southeastern Trust Company would move it there and we would buy government bonds. So it was not true that I did not have any bonds
Q Well, Mr Maybank, at this point in time you don't own Southeastern Trust any more, right?
A That's right, yeah

Q It's 2003.
A Yes, but the margin was greatly covered a lot better than it had been in the past.
Q The margin debt is $15 million How much of that margin debt do you believe is related to capital contributions to Southeastern Trust?
A I would say between eight hundred and a million.
Q. Mr Maybank, how could you have eight hundred to a million dollars, or eight to nine hundred thousand dollars of margin debt for capital contributions to Southeastern Trust before the BB&T stock was in your account? How can you do that?
A I might have borrowed money at banks to put into Southeastern Trust Company, and when the merger went through, I paid off those debts and moved all of that into this brokerage account
Q. So all these capital contributions that you were talking about previously that you were borrowing on margin, what you really meant is you were using credit lines with other banks?
A. Some -- I used both.
Q Okay If you would please flip to page two for me, Exhibit No 64
A What are we looking at, a brokerage statement?
Q Yes, it's your Scott & Stringfellow statement.

A Okay
Q Please look at page two
This indicates that your margin interest for the month of January 2003 was over $6,000, right?
A That's right
Q And each time that you incur monthly interest, it gets added to your margin balance, right?
A. That's correct, yes
Q. Let me show you another document.
MR KRISTINIK. I have got one for Mitchell.
BY MR KRISTINIK
Q Mr Maybank, let me show you what's been marked as Defendants' Exhibit 64-11 Is that a Scott & Stringfellow account statement for the month of December of 2003?
A Yes, uh-huh
Q. And this does, in fact, appear to be a statement for your brokerage account at Scott & Stringfellow, right?
A Yes, that's right.
MR KRISTINIK: Your Honor, we move to admit into evidence Defendants' Exhibit 64-11
MR WILLOUGHBY No objection
THE COURT Okay
(Whereupon, Defendants' Exhibit No 64-11 was entered into the record as evidence)
BY MR. KRISTINIK:

Q. Now, if you look at the first page, the margin debt by the end of 2003 has now increased to over $2 2 million, right?

A. Yes.

Q If you look at the second page, you now are incurring interests, monthly interests, to a little over $8,000, right?

A. Yes.

Q Those also shows a withdrawal from your Scott & Stringfellow account in the amount of $60,000 on page two, right?

A Yes

Q That would have been things for payment of property insurance, school bills, maintaining your property, that sort of thing?

A Yes

Q And when you took out that $60,000, it goes straight into your margin balance and increases your margin balance, right?

A. That's correct

Q. Let's look at another exhibit

Let me show you what's been marked as Defendants' Exhibit 64-23.

This is an account statement for your Scott & Stringfellow account dated for the month of December of

2004, right?
A. Yes.
Q. And this, in fact, does appear to be a statement for your brokerage account?
A That's correct
MR. KRISTINIK. Your Honor, we move to admit into evidence Defendants' Exhibit 64-23.
MR WILLOUGHBY. No objection.
THE COURT Okay.
(Whereupon, Defendants' Exhibit No. 64-23 was entered into the record as evidence).
BY MR KRISTINIK.
Q If you look at the first page, you will see that your margin debt at the end of 2004 exceeds $2 million, right?
A That's correct.
Q So it's still over $2 million
Flip to the fourth page
Now, if you look at that page, down near the bottom you will see that you are incurring margin interests, monthly margin interests, of over $10,000, right?
A That's right, yes
Q Now, you still own all 246,640 shares, right?
A That's correct.
Q. The two year restriction on your ability to sell those shares, that two year restriction is now expired. By

December of 2004, you are free to sell your shares, if you wanted to, right?

A. That's correct.

Q But as of this date you had not sold a single share, not a single one of those BB&T shares, right?

A. No, that's correct.

Q. Now, you would agree that the primary reason that you had not sold any of your shares by that point in time is because of the dividends? You wanted to continue to receive the dividend?

A. That's correct.

Q Okay. There is a secondary consideration as well. The secondary consideration is that you did not want to have to incur a large capital gains tax, right?

A That's correct.

Q All right. Let's look at another document.

Let me show you what's marked as Defendants' Exhibit 64-35. This is an account statement for your Scott & Stringfellow brokerage account for the month of December of 2005, correct?

A. That's right.

Q. And this is -- this appears to be a true and accurate copy of the statement that you would have received?

A That's right, yes.

MR. KRISTINIK Your Honor, we move to admit into

evidence Defendants' Exhibit 64-35.

MR WILLOUGHBY. No objections, Your Honor.

THE COURT: Okay.

(Whereupon, Defendants' Exhibit No. 64-35 was entered into the record as evidence)

BY MR. KRISTINIK:

Q. At this point in time your margin balance is now over $2.7 million, right? Look on the first page

A Yes, that's correct

Q The size of your margin balance at this point in time was causing you concern, correct?

A. That's correct

Q But at that point in time you are still using margin loans to pay for things like insurance, school bills, and maintaining your property, right?

A That's correct.

Q Let's turn to the second page

The second page shows your monthly interests is now up to $17,000 a month?

A. That's correct

Q Now, if you look at the first page, you still have all equities, right?

A. Yes.

Q Not a single bond in your account, right?

A. No.

Q No fixed income?
A No
Q You are in your -- you are 73 years old at the time and you have no fixed income at all in your brokerage account?
A That's right, but I had no mortgages on any of my houses or on my farms
Q Now, also the value of your BB&T stock in this account, it represented over 95 percent of the positions you had in the brokerage account, right?
A That's correct.
Q. Back in 2005, right?
A Yes
Q That caused you some concern, some concern that you had a concentrated position?
A Yes.
Q How are you doing, Mr Maybank? Are you doing okay?
A I'm doing fine
Q Do you want me to keep going?
A I'm doing fine I have been waiting five years for this day.
Q All right So has BB&T
A All right I bet they have
THE COURT Okay. Enough of that
MR KRISTINIK We will move on, Your Honor.
BY MR. KRISTINIK:

Q. Mr Maybank, let me show you what's marked as Exhibit 64-42.
A. Okay.
Q This is another statement from your account with BB&T, right?
A. Yes, sir.
Q. I'm sorry, with Scott & Stringfellow?
A This is right.
Q And it's for July of 2006, right?
A That's right, yes
Q. This does, in fact, to be a true and accurate copy of your Scott & Stringfellow account statement for that month?
A That's correct
MR KRISTINIK: Your Honor, we move to admit into evidence Defendants' Exhibit 64-42.
MR. WILLOUGHBY: No objections, Your Honor
THE COURT: Okay.
(Whereupon, Defendants' Exhibit No 64-42 was entered into the record as evidence)
BY MR KRISTINIK
Q. Now, if you look at the first page, you will see that the margin balance is still over $2 7 million, correct?
A That's correct.
Q. And if you look at page two, your monthly interests is now over $19,000 a month, right?

A. That's correct, yes
Q. You own only three stocks at this time and no bonds, right?
A That's correct, but I had other assets
Q You still haven't sold a single one of your BB&T shares, right?
A That's correct
Q. You still own them all?
A. That's right.
Q All right I want to -- let's move away from your brokerage account for a little bit.
I want to talk a little more right now about what your expenses were back at this time.
Let me show you what's been marked as Defendants' Exhibit 72
Now, this document is entitled Itemized Categories Report, right?
A Yes
Q This is for the year 2000?
A Yes
Q And it was created by your bookkeeper and her name was Dorothy McGuckin?
A That's right
Q And she was living in Charleston at the time she would prepare these reports for you?

A I think so, yes
Q She created this report at your request?
A. Yes.
Q And you paid her for her services, right?
A That's correct.
Q. The source of the information for this report was from your checking account, correct?
A. That's right, yeah
Q She would look at the checks written and the deposits made, right?
A. Yes.
Q Okay. She would also look at brokerage account statements, right?
A. I don't know about the brokerage account statements.
Q. Okay. Well, didn't you tell me during your deposition that she would, in fact, look at brokerage account statements?
A I was looking through here to see if there was anything information
Q Why don't you look at the first page under draw on margin, in the middle?
A Well, that -- yeah, but that -- that was to categorize interests
Q Well, if you take a look at the numbers on the right, $10,000, $50,000, do those look like interests?

(Whereupon, Defendants' Exhibit No. 72 was entered into the record as evidence)

BY MR. KRISTINIK.

Q Now, if you look at the very first page of this report, it shows that you are receiving the quarterly dividends from BB&T, right?

A I don't know. What's --

Q It's on the first page

A 72?

Q. Right

A This is 72?

Q Yes Yes, sir, it is. Here, the quarterly Do you see where I'm pointing?

A Oh, yeah. Yeah, that's right.

Q So you received four quarterly payments from BB&T, right?

A. Uh-huh

Q And I don't mean to get in your space, sir, but two of them were 64,000?

A Yes

Q And then two others were a little over 71,000?

A That's correct

Q Okay Now, the first page also indicates where you were borrowing on margin from Scott & Stringfellow, right?

A. Yes

Q. Okay. And if you look at the total for the borrowing on margin for the year 2002, it's $160,000, right?
A. Yes.
Q Flip to page three, please.
Now, if you look under club dues, it shows club dues of a little over $3,200, right?
A. Yes, $3,200.
Q. 3,200 and some change
A. I'm not sure I know where you are talking about This right here?
Q. Yeah, the writing is small. It's right here, sir.
A. Oh, yeah, yeah, she got -- that's right, she did
Q And this was dues listed here for four private clubs?
A. That's right
Q Carolina Yacht Club, the Palmetto Club, the Poinsette Club, and the Harvard Club, right?
A. That's right
Q. There is also another club that you were a member of that's not listed on this page and that's the Springdale Hall located in Camden, right? That was a fifth club?
A. That's right
Q Okay Now, flip to page five for me, if you would, please
This shows that you paid over $47,000 of expenses for your daughter Alexis, right? It included things like rent,

allowance, and her tuition at Harvard?
A. That's correct.
Q. Now, there is a category of expenses for your daughter Jane that shows over $3,000 paid to a Montessori Schools. So you were paying for private school for one of your grandchildren, right?
A. That's right.
Q. There was a category of expenses for your daughter Lillie. Now, it looks like you spent over $87,000 on Lillie. You will see that on page six of the report.
A. That's correct.
Q. Now, on page six there are also $18,000 of expenses for your son Preston, right?
A. That's correct, that's for his children.
Q. Okay. You are paying for private school for his two children, is that right?
A. That's right.
Q. Now, near the bottom of page six there is a total next to the line family expenses and that totals $156,869, right?
A. That's correct.
Q. Now, if you look at page nine -- let's go to page nine for a moment.
There is a listing here for Calhoun Creek Farms.
A. That's right, yes.
Q. And the annual expense for 2002 for Calhoun Creek was

over $84,000, right?
A. That's correct, yes.
Q. And that would have been for improvements to the farm, right?
A. And equipment.
Q. Okay. Let's go through a few more things. Let's go to page 11
This indicates expense of over $44,000 on the Meeting Street house, right?
A. Let me see
Yes Yes, uh-huh
Q We are going to look at another itemized report.
Let me show you what's been marked as Defendants' Exhibit No. 73
A Uh-huh.
Q I'm not going to go through as much in this one. I just want to hit on a few items
First of all, take a look at it and I want you to confirm that this is, in fact, your Itemized Categories Report for the year 2004?
A Yes, uh-huh
Q I may have said 2003. It's 2004, right?
A. Uh-huh.
Q Okay
MR KRISTINIK: Your Honor, we would move to admit

into evidence Defendants' Exhibit No 73

MR WILLOUGHBY We have no objection

THE COURT: All right.

(Whereupon, Defendants' Exhibit No. 73 was entered into the record as evidence)

BY MR. KRISTINIK

Q. Now, Mr. Maybank, this was also prepared by your bookkeeper, Ms McGuckin, right?

A That's correct

Q. And would it have been sent to your accountant to help with the preparation of your taxes, correct?

A. Yes, uh-huh

Q. If you look at page one, the first page, this indicates that your dividend income is over $330,000, right?

A Yes

Q Okay. And that would have been coming from your BB&T dividends, right?

A That's correct

Q Now, if you look down under draws on margin, this indicates that you were continuing to borrow on margin from Scott & Stringfellow, right?

A That's correct.

Q And the total is over $229,000, right?

A That's right, yes.

Q. And if you look at pages five and six, you are still

paying for expenses for your children and grandchildren, is that right?

A. That's correct.

Q. Is it fair to say those expenses would have been well over a $100,000?

A. Yes, it could well be.

Q. Please flip back to page 13, if you would, and it's Bates page 178, the lower right-hand corner, if that helps you. Let me know if you are there.

Are you there, sir? Mr. Maybank?

A. Yes, I'm looking at it.

Q All right. You will see here a lot of entries for BB&T Visa and First USA Visa, right?

A. Yes.

Q. Now, these were credit cards that were used by you and your wife, right?

A. And I believe also by one of my children.

Q This shows that the spend on these credit cards was over $63,000 for the year for the BB&T Visa and over $17,000 for the year for the First USA Visa, right?

A. Yes.

Q So in just one year you and your wife had spent over $80,000 on credit cards, correct?

A. Yes.

Q. Let me show you what's been marked as Defendants'

Exhibit 74 This is your Itemized Categories Report for the year 2005, correct?
A Yes
Q And this would have been prepared by Ms. McGuckin?
A I think this was prepared by Joe Argo
Q. Would he have used this for the preparation of your tax returns?
A. Yes
Q. Do you believe that this would have been accurate and reliable?
A. Yes

MR KRISTINIK: Your Honor, we would move to admit into evidence Defendants' Exhibit No. 74.

MR WILLOUGHBY We have no objection.

THE COURT Okay.

(Whereupon, Defendants' Exhibit No. 74 was entered into the record as evidence)

BY MR KRISTINIK
Q. Now, if you look at the first page of this report, this indicates that your dividends exceed $360,000 from BB&T, right?
A. That's correct, yes
Q. And it also indicates that your draws on margin total $300,000 for that year?
A Yes

Q You said on direct that before you began working for BB&T -- or before you went to BB&T to ask for their advice and what to do, you had been thinking about selling your BB&T stock, right?

A That's correct

Q Okay But if you look at this report, you are receiving $360,000 of dividends, but you are still borrowing an additional $300,000 If your plan was to sell the stock, what was going to be your plan to replace the $360,000 of dividends?

A I thought that I could reinvest the proceeds in preferred stocks and fixed income instruments, perhaps tax exempts, and also high dividend paying stocks, like electric utilities

Q And had you spoken to any broker or investment advisor about that plan?

A. I was talking to Edgar I was talking to a lot of different people

Q Okay So you talked to Edgar Norris about that?

A I talked to him about some investment ideas Over the years I have talked to him about a lot of investment ideas

THE COURT. Mr Maybank, please keep close to the mike

THE WITNESS I'm sorry

A A lot of this is ancient history It's hard to

remember everything
BY MR. KRISTINIK
Q. Mr Maybank, I just want to put one more of these into evidence Mr. Maybank, would this be your Itemized Categories Report for the year 2006?
A Yes.
Q And this is Defendants' Exhibit 75 that I just handed you?
A Yes
MR KRISTINIK Your Honor, we would move to --
BY MR KRISTINIK
Q And did Ms McGuckin or Mr Argo prepare this for you?
A I think it's probably Mr Argo
MR KRISTINIK Your Honor, we would move to admit into evidence Defendants' Exhibit 75
MR WILLOUGHBY We have no objection
THE COURT No objection
(Whereupon, Defendants' Exhibit No 75 was entered into the record as evidence)
BY MR. KRISTINIK
Q All right Let's talk about the horse racing business for a moment, because that's another expense I want to ask you a few questions about
A Yes
Q You were operating a horse racing business that was out

of Calhoun Creek Farms, right?

A Yes, but it -- I kept it separate from Calhoun Creek Farms.

Q. Okay You would generate revenue by selling race horses and sometimes by actually entering some of the horses into races, is that right?

A. The plan was to sell them after they -- after they had been trained -- had some training Training was expensive

Q Let me show what's been marked as Defendants' Exhibit 198

A. Yes

Q. I want you to take a moment and flip through that Does this appear to be the Schedule C from your federal tax returns for the year 2003?

A. Yes, that's what it says.

Q Through the year 2011?

A That's right

Q Is that right?

MR KRISTINIK: Your Honor, we would move to admit into evidence

A Through when?

BY MR KRISTINIK

Q Through the year 2011 If you look in the back, the last one

A These are all --

Q. Yeah, for each year Take your time and look through it

A. That's right, yeah, okay

Q. And these appear to be true and accurate copies of the Schedule C from your federal tax returns for those years?

A Yes.

MR KRISTINIK: Your Honor, we would move to admit into evidence Defendants' Exhibit 198.

MR. WILLOUGHBY: We have no objection

THE COURT: Okay.

(Whereupon, Defendants' Exhibit No 198 was entered into the record as evidence)

BY MR KRISTINIK

Q. Looking at the very first page of this exhibit, in 2003 the horse racing business had income of around $34,000?

A Yes.

Q. Now, your actual out-of-pocket expenses for that year, they are shown on line 27. Why don't you take a look at line 27.

A Uh-huh.

Q. And that amount is a little over $24,000, right?

A. Yes

Q So those out-of-pocket expenses, those are for things like veterinarian expenses, stable costs, transportation costs, and other expenses?

A. Right, yeah.
Q Now, let's flip to the year 2004. Flip back a few pages
Are you there?
A Okay.
Q If you would look at the page 2004, are you there, sir?
A Hold a minute.
Q. It's going to be bates page 4676.
A Okay.
Q There you go. There you go.
This year you had $37,000 of income, correct?
A That's correct
Q. But you had over $50,000 of expenses, right?
A. That's correct, yes.
Q Mr. Maybank, did you -- from 2004, forward, did you ever have a year where you made a profit in the horse racing business?
A I don't think so, but I might have.
Give me a minute.
No, I don't believe I did
Q Can I hold the exhibit for a moment?
Let's stop there at 2008 Let's just look at one more year. Just one more year. 2008.
Your total revenue for the year 2008 was zero dollars, right?

A That's right, yeah
Q. But your out-of-pocket expenses were $102,631, correct?
A. That's correct.
Q. Okay. So that was a loss of over $100,000 that year?
A That's right.
Q. Mr. Maybank, you testified earlier on direct -- you testified earlier that no one at BB&T told you that you were spending too much?
A That's right
Q My question for you is don't you have some responsibility for your spending?
A. Yes.
Q. Don't you have access to information about your spending? We saw the Itemized Categories Reports, correct?
A. Yes, of course
Q So you are not blaming BB&T for your spending, right?
A. No, but -- well, I won't say anything.
Q Let's talk about your employment and --
You still doing fine? We have been going for a while
A I'm doing great. Let's keep going
Q. Okay. Let's talk about your employment at BB&T.
You started working there back in 2000 -- late 2001, right?
A. Yes. That's right, yeah.
Q You started in the Trust Department and they gave you

the title of senior vice president, right?
A. That's right.
Q. Now, later you had the title wealth management advisor, but you had no clients assigned to you?
A No clients assigned to me. I didn't realize I had that title until maybe a year ago.
Q Your job was to be a relationship manager?
A. Yes, sir.
Q. So the client came in for a conference with a trust officer or portfolio manager, you might sit in on those meetings, right?
A Yes
Q If a client needed information about the bank, you would get them the information, or try to put them in touch with someone who could get them information, right?
A. I tried to put them in touch with somebody that would give it. I would try to supply information myself
Q All right. Well, if they needed an insurance person, you would connect them with someone who knew something about insurance? If they had investment questions --
A. No, I didn't do that. I would put them in touch with one of the other trust officers in that department.
Q Okay. Well, wouldn't you set up meetings with portfolio managers for clients?
A Portfolio managers, trust officers, but that was the

extent of it.

Q. Right.

And you would sometimes try to introduce new customers to the bank, right?

A. That's correct, yes.

Q. And those were your job responsibilities?

A. That's right.

Q One thing that you absolutely were not asked to do, you were not asked to give investment advice?

A. Never.

Q. In fact, you were carefully instructed to not give clients investment advice, right?

A. They were trying to wean me away from my clients.

I didn't have any clients at BB&T, but if somebody would come to me with a question, I would defer it to a portfolio manager or a trust officer.

Q So your testimony that you never actually gave investment advice while you were employed by BB&T, right?

A. No.

Q. No, meaning you never gave advice?

A. That's right.

Q. Now, after you worked for BB&T for a couple of years, the department changed its name to the Wealth Management Division, is that right?

A I think it was about two and a half years. About

halfway through the contract they did that.

Q. And some of the other people in the Wealth Management Division, once it had changed its names, were Anthony Mahfood, Ross Walters, Judy Schoemer, Clark Anderson, right?

A Yes.

Q Well, Kris Kapoor worked in that office too, right?

A Yes.

Q He was the portfolio manager?

A Yes.

Q. Sometimes when you worked in the department, there would be department meetings on Mondays. You would see Mr Walters and others at these meetings, right?

A. That's correct.

Q. Okay In 2006, you knew these people pretty well, your co-workers?

A Yes, I knew them very pleasantly.

Q You would have been at meetings with them and you would have seen them regularly around the office?

A. That's right.

Q. Now, as a requirement of your employment at BB&T, you at some point were required to take the Series VII Securities Examination, right?

A That's correct.

Q. And that's an exam that has to be passed to obtain a license, the type of license that a broker would normally

have, right?
A That's right
Q Now, because you were working for BB&T, you were aware that one of the services offered by BB&T was financial planning services, right?
A Yes, they had financial planners.
Q Okay And you knew that Clark Anderson was one of those?
A Yes
Q A person you trusted, right?
A Yes
Q But at no time during the five years that you were employed at BB&T did you ever ask Clark to prepare a financial plan for you, correct?
A That's correct
THE COURT: How much longer do you anticipate you are going to be?
MR KRISTINIK I'm making good progress, Your Honor, I would hope to be done by five would be my goal
THE COURT Do y'all want to keep going or do you want a short break?
Keep going Okay.
MR KRISTINIK Push through
THE COURT: Let me know if you need a break
MR. KRISTINIK: Okay. Let's keep going, Mr.

Maybank.

BY MR. KRISTINIK:

Q. All right. Let's talk about Effie Bowers for a minute. You had mentioned her on your direct.

You have known her for a long time, right?

A Yes.

Q And she currently lives in Columbus, Georgia?

A That's correct

Q. Okay And she became a client of BB&T sometime back in the summer of 2006, right?

A Yes

Q And you had estimated that she's -- she's fairly old She's maybe in her late eighties now?

A Now?

Q Well, back then I guess she was in her late eighties?

A She was about 95 now.

Q She was a few years older than -- maybe ten years older than you, maybe more.

A That sounds about right, ten years

Q Okay Now, you recall that she started working with Anthony Mahfood and Kris Kapoor at BB&T, right?

A I believe that that was the team originally.

Q All right And you understood that you had some general familiarity with her financial situation and you understood that she owned a large amount of stock in one

company, right?
A That's correct, yeah.
Q. Okay. And you also knew that she a had low basis in her stock, right?
A I did.
Q Okay Which means that she sold her stock, she would incur a large capital gains tax, right?
A That's correct
Q And you also knew that she had a large margin debt, correct?
A. Yes.
Q So in many ways Ms Bowers' situation and your situation were very similar?
A. That's correct
Q Ms Bowers had been considering just selling her concentrated stock position That's something that you were aware of?
A Yes, it was getting to the point that, you know, that she should sell some of the stock pay off the margin
Q. Now, you participated in a meeting with Ms. Bowers and other people in Columbus, Georgia, right?
A. That's correct.
Q And that was held at her lawyer's office, right?
A. Yes.
Q And Mr. Mahfood and Mr Kapoor would have also been

physically present?
A. Yes.
Q And Shawn Gibson, he would have participated on the phone for BB&T Asset Management, right?
A Yes.
Q Now, you think Ms. Bowers' CPA may have also been participating by phone, Tom Miller?
A. It's certainly possible.
Q Mr. Gibson, he did most of the talking about the pre-paid, right?
A Yes.
Q And ultimately Ms Bowers did, in fact, enter into a pre-paid contract, is that right?
A After she had hired the bank to be her financial advisor and her trustee.
Q. Now, you testified a little bit earlier that you never gave advice to anyone -- never gave any investment advice to anyone while you worked at BB&T, right?
A That's certainly true, yeah.
Q But isn't it true that you called up Tom Miller and had a phone call with him and recommended that Ms. Bowers enter into the pre-paid contract?
A. No.
Q. It's your testimony under oath that that call did not happen?

A. I have talked to Tom Miller many times, but what happened was I advised Mrs. Bowers and some of her children to hire BB&T as their investment advisor, a fiduciary, to take over all responsibility for the family as well, and that's what I advised her to do And then I advised her and others to do exactly what the bank recommended.

Q Now, Ms. Bowers had several children, right?

A That's right.

Q And one was a daughter named Sarah Bowen, correct?

A. Sarah Bowen, yeah.

Q Okay Let me show you an e-mail.

Mr. Maybank, this document appears to be an e-mail from you to Sarah Bowen discussing the pre-paid for her, and it's dated August 9, 2006 Did you prepare this e-mail and send it to Ms Bowen?

A No, somebody else did, I'm sure At that time I didn't know how to send e-mails.

Q. Well, it has your name at the top as the sender, right?

A They may have used my name, but as I have testified, back in those days I didn't know how to send e-mails.

Q Who do you think would have sent this e-mail?

A. It could have been Mr. Mahfood It could have been one of the girls in the office. It could have been a lot of people, but I have no recollection of ever sending an e-mail when I was at BB&T.

Q. All right. Let's go back to your position in July of 2006. At that point in time 95 percent of the value of your account is in BB&T stock, right?

A. Yes.

Q. And we have already talked, you know at that time that your BB&T stock has a low tax basis, correct?

A Correct.

Q. You got over $2.7 million in margin debt?

A. Yes.

Q So you needed to do something, right?

A. I had made up my mind to do something, yes.

Q. You would agree that you had to do something at that point in time? You couldn't keep doing what you were doing?

A. I was planning to pay off the margin before I retired. I was getting ready to retire.

Q All right. Selling stock is a way to diversify, but in August of 2006, you didn't want to sell your stock, because if you did, then you would no longer receive the large dividend payments, right?

A That's correct.

Q Now, earlier in your testimony we pointed out that you had received over $330,000 in dividends in 2004, but you were still -- and over 360,000 dividends in 2005, so those dividends were continuing to increase, right?

A. Yes.

Q If you sell that stock, the dividends are gone, correct?
A Yes.
Q. So sometime during the summer of 2006 you started talking with Anthony Mahfood about your situation, right?
A. And others.
Q Others with BB&T?
A Yes
Q You had maybe five or six meetings with the people at BB&T to discuss a pre-paid before you entered into the transaction, right? Several meetings?
A That's right
Q. You had some questions about the pre-paid and you asked Anthony to look at the questions for you, right?
A I had some questions about it, yes
Q And you believed that Clark Anderson may have been assisting Anthony with the analysis of a pre-paid contract for you, right?
A He may well have had Anthony -- I mean Clark Anderson do things on that
Q. Now, did you personally go to Clark Anderson and ask him some questions about the pre-paid you were considering?
A I don't have any recollection of that
Q Let me show you another e-mail, Mr. Maybank
Mr Maybank, this document appears to be an e-mail from

Clark Anderson to you, dated July 24th, 2006, correct?
A. Yes.
Q. And this e-mail provides answers to questions, right?
A. "Answers to your questions," yes
Q. Okay. Did you -- do you remember receiving this e-mail from Mr. Anderson back in July of 2006?
A. No
Q. You don't remember reading that e-mail, the information that Mr. Anderson provided you?
A I don't think so I think Mr Anderson was providing information to Mr. Mahfood.
Q. Do you remember reviewing a break-even spreadsheet prepared by Mr Anderson for you to review as you analyzed whether to enter into a pre-paid contract?
A. Those spreadsheets only came to me after the contracts were completed If I'm --
Could you show me a copy of what a spreadsheet looks like so that I can see what you are talking about and make sure we are both talking about the same thing?
Q We will get you some more documents, sir
A I don't think I ever saw any spreadsheets until after the pre-paid derivatives were completed.
Q. Mr Maybank, let me show you what's been marked as Defendants' Exhibit No. 2
A Yes.

Q This -- we have already seen another copy of this marked earlier in your deposition --
A Yes.
Q -- but out of convenience I'm going to use the one that's here in my stack
This is a description of Pre-Paid Variable Forward Contracts prepared by Shawn Gibson, correct?
A Yes This is a what?
Q Turn to the second page
A. This is a tax study, right?
Q On the first page it says Pre-Paid Variable Forward Contracts, right?
A Yes
Q And it says -- under Shawn's name it says "overview," right?
A Uh-huh
Q And this is something that would have been given to you around the same time as other papers relating to your pre-paid transaction, right?
A Right, yes
Q And you actually kept a copy of this in your file at home, right?
A I did
Q Okay
MR KRISTINIK Your Honor, we move to admit into

evidence Defendants' Exhibit No. 2

MR. WILLOUGHBY: No objection.

THE COURT: No objection, all right.

(Whereupon, Defendants' Exhibit No. 2 was entered into the record as evidence)

BY MR. KRISTINIK:

Q. Now, when you would have received this, Mr. Maybank, you would have read through it, correct?

A. I would have looked through it, yes.

Q. Do you agree that you read it prior to executing your pre-paid transaction?

A. Yes.

Q. If you take a look at page two, it lists a number of different advantages and disadvantages, right?

A. Yes. I suppose so, yes.

Q. And then if you go down to the bottom half of the page, the bottom half of the page gives a complete description showing an example of a pre-paid transaction, right?

A. I see an example in here, yes.

Q. Okay. Let's flip to the fifth page.

A. What is the bates number?

Q. Sir, the bates number is 1864.

A. Yeah.

Q. At the top it says tax considerations, right?

A. Yes.

Q And it says -- if you look in that paragraph, "Scott & Stringfellow strongly encourages our clients to consult a tax expert."

A Yes

Q Well, back in 2006 you had a tax expert, right?

A Yes

Q It was Green & Company?

A Green & Company, yes.

Q Mr. Maybank, you would agree that nowhere in this description of Variable Pre-Paid Forward Contracts prepared by Shawn Gibson, nowhere in here does it guarantee that your dividend will be protected by a pre-paid? It's not in here, is it?

A I'm not sure I would have to sit down and read it Do you want me to read it?

Q No, in the interests of time let's move forward

Now, the accountant that you worked with back in 2006 at Green & Company, his name was Keith Gray, is that correct?

A. That's correct

Q And he had been handling your taxes for several years at that point?

A. Yes.

Q And prior to you entering into the pre-paid contract, you had -- or someone else had made him aware that you are

considering entering into a pre-paid, right?
A. I'm not sure whether he was made aware or not.
Q. And didn't you tell me during your deposition that he had actually been made aware of your 2006 pre-paid transaction before you entered into it?
A. I think it was in 2009 we made him aware. I think we dumped it on him afterwards.
Q Mr Maybank, let me show you what's been marked as Defendants' Exhibit No. 20, and this is something that we have already seen earlier in your testimony. It's a Concentrated Stock Risk Management Addendum and this was for your 2006 pre-paid transaction, right?
A. Right.
Q. And if you look at this copy, you have signed it, correct?
A Yes.
MR KRISTINIK: Your Honor, we would move to admit into evidence Defendants' Exhibit No. 20.
MR. WILLOUGHBY: No objection.
THE COURT: Okay.
(Whereupon, Defendants' Exhibit No 20 was entered into the record as evidence)
BY MR KRISTINIK
Q Now, you would have received this addendum prior to executing the pre-paid contract and you would have read

through it, all three pages you would have read through?
A. Yes
Q. And that was all prior to the execution of your pre-paid, right?
A Right
Q Now, if you look on the first page, it lists five different strategies for handling concentrated positions, right?
A Yes
Q Pre-paid is one of them, but also it lists exchange funds and equity collars, protective puts, covered calls, right?
A. That's what it says here, but I don't think studies were ever done on any of those for my account
Q Now, at the top of -- let's turn to second page
Those bullet points at the top part of the page, those are risks. This is giving you -- it's a discloser about risks, right?
A. Which page is it?
Q Page two
A Yeah, it says risks
Q If you look at the second bullet point -- if you look at the second bullet point, it says "some strategies may have limited liquidity, making it difficult, impossible, or expensive to dispose of the securities and unwind the

position prior to its contractual maturity," right?
A I have learned all about that
Q Okay You would have read this bullet point back in 2006, prior to entering into your pre-paid transaction, right?
A. That's correct
Q. Now, if you look at the bottom of page two, you will see a fee disclosure, right?
A Right
Q And it shows that the fee can go up to one percent, right?
A. That's correct
Q. The lowest fee on this fee schedule is 50 basis points, correct?
A Yes.
Q. But your fee was discounted by BB&T. They only charged you 35 basis points, right?
A For what?
Q For your fee -- for your fee for your first pre-paid contract
A Well, let's see, $9 2 million in market value times
35
Q It gives you about $32,000?
A $32,000. That sounds about right.
Q So you would agree your fee was discounted, right?

A Yes.
Q: And Ross Walters helped you get your fee discounted?
A. I thought they discounted fees for all employees at the bank I didn't think it was anything special for me
Q Let me show you what's been marked as Exhibit 199?
A. Uh-huh
Q Is this another disclosure that you would have had to sign and this one was from Bear Stearns, is that right?
A This is one of the many documents that were assembled by the wealth managers and I was told that I needed to sign it before they could move forward with their strategy.
Q And you signed this on page two, right?
A. Yes, I did.

MR KRISTINIK. Your Honor, we would move to admit into evidence Defendants' Exhibit No. 199.

MR. WILLOUGHBY: No objection

THE COURT: Without objection

(Whereupon, Defendants' Exhibit No. 199 was entered into the record as evidence)

BY MR KRISTINIK:
Q Mr. Maybank, let me show you what's been marked as Defendants' Exhibit 200.
A. Yes.
Q This is entitled Variable -- Pre-Paid Variable Forward Settlement Illustration And let's see if we can get this

one pulled up on the screen.

MR. KRISTINIK: Take it down for a moment

BY MR. KRISTINIK

Q Mr. Maybank, let me ask you a question so we can get this admitted into evidence first.

This is a document that you would have received, as indicated by your bates number in the lower right-hand corner?

A Yes

Q And you would have received this from someone with BB&T, probably Anthony Manfood?

A Or Kris Kapoor or Ross Walters

Q And you made some handwritten notes on this document? For example, you wrote August 16th on the right-hand side, and you would have written the things beneath that. Not the thing above it, but the things beneath it, right?

A. Not the what?

Q You would have written the handwritten notes around the date August 16th?

A I believe that I'm starting -- the thing that says August 16th settlement, and the numbers below I wrote I wrote that in my handwriting

The stamps, the libor and the price I think were written by somebody else

Q. Okay

MR KRISTINIK. Your Honor, we would move to admit Defendants' Exhibit 200 into evidence.

MR WILLOUGHBY We don't have any objection

THE COURT: All right, no objection

(Whereupon, Defendants' Exhibit No 200 was entered into the record as evidence)

MR. KRISTINIK Okay Let's put it up on the screen for a moment

BY MR KRISTINIK:

Q. Now, Mr. Maybank --

A. Yes

Q -- if you look at this document --

I don't want to block the jury

Do you know if this illustration is the one for your actual pre-paid contract, the one that you executed in 2006?

A. It looks close, but where is the date?

Q Let's look at --

A. Is there a date on this thing?

Q There is no date, but let's look at the amount of up-front proceeds that you received You see the $7 million figure?

A. Yes.

Q $7,096,732?

A Yes

Q Now, with your actual pre-paid you received over $7.1

million, right?
A I'm not sure It sounds close, but I don't know exactly what it was.
Q Mr Maybank, did you ever receive settlement illustrations prior to your pre-paid transactions?
A Never.
Q. Did you ever receive settlement illustrations like this one from Anthony Mahfood or Mike Lackey prior to the execution of the pre-paid transactions?
A Never It only came after it was done
Q Did you ever receive these pre-paid illustrations so it would show you what the terms were that were coming back from Bear Stearns or from Deutsche Bank so that you could review and consider them before you executed your transaction?
A. Not before, no
MR KRISTINIK You can turn the lights back on Thank you
A. I relied on the bank entirely
BY MR KRISTINIK
Q Mr Maybank, let me show you what's been marked as Defense Exhibit No 12 This is the memo from Anthony Mahfood to Pat Oliver?
A Yes
Q And does this look like a copy of the one that was

given to you?
A Yes
MR KRISTINIK: Your Honor, we would move to admit into evidence Defendants' Exhibit No. 12.
MR WILLOUGHBY: No objection
THE COURT All right.
(Whereupon, Defendants' Exhibit No 12 was entered into the record as evidence)
BY MR KRISTINIK
Q If you look at the second page, Mr Maybank, there is some handwriting on this page --
A Yes
Q -- under the signature of the general counsel Patricia Oliver and it says "this approval by general counsel is conditioned on Mr Maybank not purchasing additional shares of BB&T Corporation with proceeds from the Pre-Paid Variable Forward transaction "
A Yes
Q And you were informed -- so you were informed that BB&T was not going to allow you to purchase more BB&T stock with the proceeds from the pre-paid, right?
A That's correct
Q In fact, you adhered to that You never bought more BB&T stock in your managed portfolio account, correct?
A That's correct They didn't buy it for me I think is

more accurate Portfolio managers bought all the stocks in the managed account.

Q. Let me show you what's been marked as Defendants' Exhibit 201

This is the confirmation letter that you would have received from Bear Stearns regarding your first pre-paid contract?

A Right.

Q And if you take a look at the very last page, this is your signature on that page, is that correct?

A Yes

MR KRISTINIK Your Honor, we move to admit into evidence Defendants' Exhibit 201.

MR WILLOUGHBY No objection.

THE COURT. All right

(Whereupon, Defendants' Exhibit No 201 was entered into the record as evidence)

BY MR KRISTINIK

Q Mr Maybank, let me show you what's been marked as Defendants' Exhibit No 23. Is this a letter to Bear Stearns from you that would have been prepared for your signature and you, in fact, did sign at the bottom?

A. This was prepared by the wealth managers, and I was told I needed to sign it if we are going to move forward on the BB&T strategy for my account

Q And that is your signature at the bottom, correct?
A Yes
Q And this is your authorization to Scott & Stringfellow to transfer your 220,000 shares of your BB&T stock to Bear Stearns, right?
A That's correct
Q And this letter also authorizes Bear Stearns to transfer funds to Scott & Stringfellow sufficient to pay off your margin debt, right?
A That's correct
Q Your margin debt was, in fact, paid off in full, correct?
A That's correct
Q Okay And that was one of the objectives that you had with the pre-paid was to pay off the margin debt?
A I wanted to pay off all debt before I retired
Q Let me show you what's been marked as Defendants' Exhibit No 25
Now, this is another letter prepared for your signature from you to Bear Stearns, dated August 15th, 2006, right?
A Yes
Q So this is shortly after your pre-paid transaction?
A Yes
Q Is that correct?
A That's correct.

Q And you signed down at the bottom, right?
A. That's one of the documents prepared for me by the wealth managers.
MR KRISTINIK: Your Honor, we move to admit into evidence Defendants' Exhibit No 25.
MR WILLOUGHBY: No objection.
THE COURT: All right
(Whereupon, Defendants' Exhibit No 25 was entered into the record as evidence)
BY MR. KRISTINIK
Q. Now, if you look at this document, it is authorizing -- it's instruction to Bear Stearns authorizing the transfer to BB&T the funds in the amount of $32,614, right?
A. Right.
Q And you understood that that amount represented the one time advisory fee charged by BB&T Asset Management --
A Yes.
Q -- for your pre-paid contract, right?
A That's right.
Q Let me show you what's been marked as Defendants' Exhibit No 26
This is another letter prepared for your signature to Bear Stearns, dated August 15th, 2006, is that right?
A This is -- this was one of the documents prepared by the wealth advisors to be sent to Bear Stearns

Q You signed this at the bottom?
A Yes
MR KRISTINIK Your Honor, we move to admit into evidence Defendants' Exhibit No 26
MR WILLOUGHBY. No objection
THE COURT Admitted
(Whereupon, Defendants' Exhibit No 26 was entered into the record as evidence)
BY MR KRISTNIK
Q Mr Maybank, this letter is authorizing Bear Stearns to transfer to Scott & Stringfellow the sum of $7,083,820 59, right?
A That's correct
Q Now, you knew that some of this money was going to be used to pay off your margin debt and the rest would go to Kris Kapoor to be put to the managed portfolio account, right?
A Right.
Q And this letter also authorizes that future dividend payments related to BB&T stock are going to be deposited into your checking account with BB&T, right?
A That's correct
Q Now, you testified on your direct examination that someone at BB&T told you that the pre-paid contract was going to protect your dividend. Did I get that right?

A That's right
Q Okay
A In fact, the letter that Mr Mahfood wrote to Mrs. Oliver said that the contract would protect me
Q Who told you that, though? Did anyone tell you that verbally?
A They told me that, yes
Q Who is they? Who is they?
A The wealth managers
Basically I dealt with the wealth managers, so it was the wealth managers that told me that
Q Which wealth manager, Mr Maybank?
A Mr Mahfood
Q Okay Were there any others that told -- that gave you that message, that your dividends were going to be protected by a pre-paid? Any other wealth managers, or was it just Mr Mahfood?
A I'm trying to think -
I think it was pretty much Mr Mahfood I'm sure, maybe Mr Walters was sitting in
Q Okay So it's your testimony that if someone from BB&T told you that your dividends were going to be protected by pre-paids, then it was Anthony Mahfood, and maybe Ross Walters was sitting in on the meeting?
A Yes

Q Did I get it right?
A Yes.
Q Let me show you what's been marked as Defendants' Exhibit No 16
All right This is entitled Settlement Overview, and it has your name Frank Maybank at the top Do you see that?
A Yes
Q All right You would have received this sometime after your August 2006 pre-paid transaction, correct?
A I believe so, yes
MR KRISTINIK. Your Honor --
A I don't see any date on this one Where is the date?
BY MR KRISTINIK
Q But you would have received this, correct?
A Well, where is the date?
Q There is not a date on here
A All right It looks close to what happened, yeah
MR KRISTINIK. Your Honor, we would move to admit into evidence Defendants' Exhibit No 16
MR WILLOUGHBY We don't have any objections
THE COURT All right
(Whereupon, Defendants' Exhibit No 16 was entered into the record as evidence)
BY MR KRISTINIK·
Q. Mr Maybank, let me hand you what's been marked as

Exhibit No 14.

All right. If you look at the top of this document, it's entitled BB&T Wealth Management Agreement, right?

A Right.

Q All right This is the agreement that you had to sign to open up your managed portfolio account, is that right?

A Yes, this was part of the strategy for a Pre-Paid Variable.

Q If you look near the back of this document, you have signed it on page eight, is that right?

A Yes

Q And if you look at the next page, Appendix A, the Client Investment Objective Form, you have also signed that page, correct?

A. Yes

Q And you have signed the very last page, which is Appendix B, correct?

A Yes

MR KRISTINIK: Your Honor, we would move to admit into evidence Exhibit 14

MR WILLOUGHBY No objection.

THE COURT: No objection.

(Whereupon, Defendants' Exhibit No 14 was entered into the record as evidence)

BY MR KRISTINIK

Q All right This agreement was signed in the Greenville office of BB&T. That was the same office that you worked in, right?
A Right
Q And that you were probably on the second floor conference room when this was signed?
A. I with imagine so, yes.
Q And two of the people that would have been there would have been Judy Schoemer and Kris Kapoor, right?
A Yes, because they signed it
Q. And you would have seen them sign this agreement, right?
A Yes, uh-huh
Q. Now, Kris Kapoor's signature is in the middle of page eight, is that right? Take a look at page eight.
A. Uh-huh
Q Tell me when you are there
A. I'm there
Q He has signed on behalf of BB&T Asset Management, right?
A Yes
Q So you knew at the time that you entered into this agreement that Kris Kapoor was acting as a representative of BB&T Asset Management, right?
A No, I thought he was a representative of the bank.

Q It says above his name BB&T Asset Management.
A I thought that was his title
Q. You were given an opportunity to sit down and read through this before you signed it, right?
A That's correct.
Q Judy Schoemer, she didn't try to hurry you?
A No
Q She and Kris, they let you take your time that day to look through it?
A I'm sure they allowed me to look at anything I wanted to
Q Okay And they were there to answer any questions about this agreement that you would have had?
A Yes
Q. Now, you had already had, prior to this meeting, several meetings with Kris Kapoor already, right?
A. Yes
Q Kris Kapoor, based on those earlier meetings, he already -- you and he had already discussed what your investment objective was going to be?
A Yes, we had ongoing discussions about that
Q Y'all had some long discussions about it, right?
A That's correct
Q And you and Kris Kapoor, y'all talked about how much risk you wanted to take?

A He -- I think that we were basically discussing how this whole -- how this whole strategy was going to work.
Q. Well, you and Kris, y'all talked about how you wanted the proceeds to be invested in the managed portfolio account, right?
A Yes, but I think that that was what we were discussing I don't think it was -- it --
If they had been discussing risks, they should have discussed the risks of the whole strategy, which I don't think we discussed at that time.
Q Did Mr. Kapoor give you his opinion that you didn't think you should invest in too many financial stocks because he thought that was going to be too risky?
A Yeah, he -- he had a lot of other ideas
As a matter of fact, what we ended up with, that we weren't going to invest in any financial stocks
Q. Instead y'all invested over ten different sectors, right? That was the agreement?
A. I have forgotten how many sectors we discussed at that time.
Q Were you and Kris, y'all did reach a meeting of the minds Y'all reached an agreement that the investment objective for you for your managed portfolio should be aggressive growth, a 100 percent stocks, right?
A That's right, and I thought that was the proper way to

invest the proceeds of a Pre-Paid Variable

Q That was also the way that you had been running your Scott & Stringfellow brokerage account for just about the whole time that you had it at Scott & Stringfellow, right?

A No, that's not true. I -- I was -- generally Scott & Stringfellow might have had a, you know, a debit balance, but I had other assets in my overall investment plan to offset it, so I may have had debt in the margin account, but I had no debt in terms of mortgages or anything like that

Q Mr. Maybank, we looked at your Scott & Stringfellow brokerage account at the end of 2005. You had a 100 percent --

A I agree that they had growth -- they had margin accounts, but I say that is not what I had been doing. I usually would borrow money against my margin account and I would put it into something else and that basically was what was going on I did have some heavy expenses. I admit that

Q All right. If you would look at the first page and look down at the third paragraph Do you see where it says "as wealth manager, bank shall"?

A. Yes

Q If you look at number two, two little lines --

A Uh-huh

Q. -- it says "the bank is going to make recommendations

to the client regarding investment program and investment guidelines for the account," right?

A That's correct.

Q We just talked about your meeting with Kris Kapoor and the fact that y'all agreed and then signed off on any investment objective form, right?

A Right.

Q So would you agree that that part of the Wealth Management Agreement was done for you?

A That part of it, yes

Q Now, under investment --

Let's turn to page two. Let's turn to page two here.

I want you to look at the top Focus on the top.

There it says -- that paragraph says basically that the investment advisor, which was BB&T Asset Management, investment advisor is granted complete --

A. Why wasn't the investment advisor the bank?

Q Excuse me, sir?

A I thought the investment advisor was the bank.

Q. Well, let's look back at the first page, because that tells us what investment advisor means. If you look at the very top paragraph, it says that investment advisor in parenthesis, that's next to the name BB&T Asset Management.

A Most of the time when I was at the bank, everybody worked for the bank. I didn't know what kind of distinction

you are trying to make. The bank is what I hired. The bank is what I wanted --

Q. This contract --

A. -- to be responsible for my investments.

Q. This contract is with Branch Banking and Trust Company, with you, and with a third party, and it says so at the top, and it says it's BB&T Asset Management, right?

A. No, the bank -- what I -- my agreement was with the bank.

Q. Let's look at paragraph two. It says -- I'm just going to read first sentence.

"Within those established objectives and subject to any investment restrictions that client has notified investment advisor of in writing, investment advisor is hereby granted complete discretion to purchase or sell the assets in the account at any time and in any manner," and then goes on and on.

Did I read that correctly?

A. Could you show me which paragraph you are talking about?

Q. Page two.

A. Page two. Okay. I was looking at the wrong page.

Q. Doesn't paragraph two confer upon investment advisor, it uses those words, complete discretion to manage the assets in the account?

A I thought the investment advisor was the bank
Q When you signed this agreement, you knew that Kris Kapoor was going to be the portfolio manager --
A Right
Q -- handling your account, right?
A Yes, and I believed most of the time that Kris Kapoor worked at BB&T, he worked for the bank
Q Okay You believed he worked for the bank, right?
A Absolutely.
Q But he signed as a representative of BB&T Asset Management, right?
A I thought that was his title, asset manager
You had administrators You had -- you had many -- you had portfolio managers People had titles at the bank. They usually related to what they did, but they were all working for the bank
Q. Mr Maybank, I want you to turn to page six, please. I just want to talk about a couple more things in this agreement.
You see -- are you at paragraph six?
A Yes.
Q Okay If you looked down at heading G, it says "acknowledgement of receipt " Do you see that?
A "Receipt, integration and serviceability "
Q And if you look at paragraph one, I only want to go

through one of these, and it's very short, it says "client acknowledges receipt of a copy of investment advisor's most recent ADV Form, Part II."

Is that right? Did you received an ADV Form, Part II?

A. I don't think I ever saw one, no.

Q. But you signed this acknowledging that you received a copy?

A. This was one of the many documents that was assembled by the wealth managers and I signed it, because they said it was necessary to move forward

Q But you read through it before you signed it, right?

A Yes, I did

Q. If you look, please, sir, at the very last page, it's Appendix B?

A Yeah

Q. Tell me when you are there.

A. Last page?

Q Very last page

A Yes

Q. Okay Appendix B, and that first paragraph -- the first paragraph says "investment advisory services are available through BB&T Asset Management, a subsidiary of BB&T Corporation."

It goes on to say "BB&T Asset Management, Inc., advises customized investment portfolios, provides asset allocation

analysis and offers other investment related services to affluent individuals and businesses."

And then the last sentence, "Wealth Management and custody services are available through Branch Banking and Trust Company, a subsidiary of BB&T Corporation "

Did I say that right?

A Yes

Q. Isn't this letting you know that BB&T Asset Management, that it's the entity that's providing the investment advice and assisting you with your portfolio?

A. Like I said, these things are being provided by BB&T Banking and Trust Company and the -- I thought those were the titles that people had, Wealth Management custody service --

I thought a lot of these subsidiaries -- the banks are constantly under reorganization. Departments are reorganized They are renamed The only thing that's constant in my mind is the bank.

Q. Mr Maybank, one last question about the Wealth Management Agreement. We know that applies to your managed portfolio account, but you would agree that the terms of this agreement also apply to both of your pre-paid contracts?

A Yes

Q Okay

A And other services that I got from the bank, which were numerous.

MR KRISTINIK: Your Honor, I believe I have probably got still another 20 or 25 minutes.

THE COURT: Well, let's get done with it Let's go

BY MR KRISTINIK

Q Mr Maybank, you are still doing well?

A Yup

Q All right

Let's talk for a moment about the securities and managed portfolio account You and Kris Kapoor discussed what securities were going to be in it, right?

A Yes

Q And y'all met maybe just three or four times during 2006, but y'all did have some conversations about it?

A. Yes.

Q And the one special request that you had is you wanted him to buy one share of Berkshire Hathaway stock, right?

A That's correct

Q That's because you admired Warren Buffet, like a lot of people?

A Yes

Q And one share of Berkshire Hathaway, that may have been valued at around $80,000 per share, correct?

A. That's right.
Q. Pretty expensive stock.
Now, Kris Kapoor suggested to you early on that you maintain a large part of your managed portfolio account in fixed income early on, right?
A. There were always fixed income securities in that account. There was always pretty large cash balances.
Q. Okay. So it wasn't a 100 percent equities?
A. No. They had discretion to see it all in cash, if they wanted to.
Q. Now, you think Mr. Kapoor did a good job of buying blue chip stocks for your account?
A. Yes, he did.
Q. And do you believe that Kris Kapoor followed a generally conservative approach with your managed portfolio account?
A. I think he did, yes.
Q. You understand that Mr. Kapoor had spread equity positions over a number of different sectors?
A. That's right.
Q. You were comfortable that you had -- you were comfortable with what Kris was doing, because you felt that the account was providing you with diversification?
A. That's correct.
Q. All right. Then overall you believed that Mr. Kapoor

was doing a good job with your managed portfolio account, right?

A. Yes

Q. Now, you would review your monthly statements from your account, correct?

A That's correct.

Q. All right You would receive them each month. You would review them and then you would file them away, is that correct?

A Yes

Q Okay Now, one of the things you would look at is you would look at the different positions in your account just to see what stocks were in there, right?

A Yes

Q You also looked at the overall account value?

A. Yes.

Q And you would agree that by December of 2006, the account had been opened just four months, but you were generally pleased with how it was being managed, right?

A Yes

Q Sometime in 2007 Mr Kapoor left BB&T and then another portfolio manager took over and his name was Alston Gore, right?

A No, there were several in between.

Q Was a Greg Towne one of them?

A That sounds familiar, but I don't really remember too much about him I think he was there just for a very short period of time

Q Was Alston Gore one of your portfolio managers?

A. He was

Q. And was he your portfolio manager during the difficult financial times in 2008?

A Part of those times, yes

Q And you believe that Mr Gore was competent and capable of serving as a portfolio manager?

A Yes, Mr -- he was -- I think he was

Q And you believe that Mr Gore continued to invest in securities that were on the BB&T approved list?

A I'm sure he did, yes.

Q All right Let's take a look at one of your account statements

I'm going to hand you Defendants' Exhibit 63-17.

A. What's the date on this?

Q On the upper right-hand side, December 2007 account statement for your managed portfolio account at BB&T, is that right?

A That's correct

MR. KRISTINIK Your Honor, we would move to admit into evidence Defendants' Exhibit 63-17

MR. WILLOUGHBY Your Honor, we have no objection

I would note for the record that many of these exhibits are already in, but we have no objection.

THE COURT. All right.

(Whereupon, Defendants' Exhibit No 63-17 was entered into the record as evidence)

BY MR KRISTINIK

Q Now, if you look at the first page of this managed portfolio account statement, if you look down near the bottom for year-to-date income, it's over $162,000, right?

A This is on the first page?

Q Yeah.

If you put it up here, I'll point it out to you. The writing is small

Right here

A Yeah, yeah.

Q And that's for the income line?

A Yeah, that's year to date

Q Were you satisfied with that level of income for the year 2007?

A Uh-huh Yes, I was

Q Now, the account statement also shows on the first page, if you look at the very next line down, it shows that you had disbursements out of your account of over $503,000, right?

A Yes

Q. So in just one year alone you withdrew over 10 percent of the value of the account, right?
A. Yes That's what it shows here, but I don't -- I don't have any recollection of what kind of account it was
Q. All right So for the year 2007, income of $162,000, withdrawals and disbursements over $500,000, right?
A That's what it says on this statement, yes.
Q On June of 2007 you bought two life insurance policies issued by Lincoln National Life, right?
A That's correct
Q Did you go to Edgar Norris? Did Edgar Norris help you with the purchase of those two policies?
A Mr Mahfood suggested that I buy more life insurance and those were some of the policies that I bought
Q Well, you didn't answer my question.
Did you go to Edgar Norris for help to buy those policies?
A. Yes I mean, I told Mr Mahfood I wanted to buy them through Edgar Norris.
Q Okay. So you are saying Mr Mahfood had told you to go buy those policies, but BB&T didn't sell those to you? You got those through your friend Edgar Norris?
A Yeah, but that's just a division of BB&T
Q The total premiums for those two policies, $64,000 a year, is that right?

A. That's right.
Q. Do you think that Chesson & Company, they were probably borrowing the money for the premium payments, and then if you died, they would get some of the benefits to pay off the loan?
A. Yes, I think that's the way it worked.
Q. Let's take a look at another account statement. This is also for your managed portfolio account at BB&T.
I'm going to show you Defendants' Exhibit 63-25. All right, if you take a look at this.
A. What is the date of this?
Q. This is for the month of August 2008.
A. Right.
Q. Do you see that? And this is for the account, the account number ending 3949. That was your managed portfolio account, right?
A. This looks like my managed portfolio account.
MR. KRISTINIK: Your Honor, we would move to admit into evidence Defendants' Exhibit 63-25.
MR. WILLOUGHBY: No objection.
THE COURT: Okay.
(Whereupon, Defendants' Exhibit No. 63-25 was entered into the record as evidence)
BY MR. KRISTINIK:
Q. So this account statement, it's for the month of August

of 2008

Now, I point it out because this is just before the financial turmoil in the U S really gets going, right?

A Yes

Q Hadn't quite started by this point in time

Now, in the first page it indicates that 89 5 percent of your account is in stocks, right?

A. Right.

Q The rest is cash, correct?

A I guess

Q And there is no bonds in the account, no fixed income at this point?

A Yes

Q And you are comfortable with that? You would have reviewed this and you would have been comfortable, because you still saw that you were in blue chip stocks, right?

A. Right

Now, you have regarded the Pre-Paid Variable at that time as a bond substitute

Q. Well, speaking of bond substitute, you had stocks in here that you called defensive stocks, stocks like drug companies and utility companies. In fact, you would call a utility company stock a bond substitute, isn't that right?

A. Well, to a certain extent they are called that, but I really think bond substitutes are preferred stocks and other

types of fixed income products.

Q All right. Let's look at an additional account statement.

I'm sure you want to save us a little time and move on, let me hand you what's been marked as Defendants' Exhibit No. 32.

A Right

Q All right, Mr Maybank, this is another Client Investment Objective Form that you signed in December of 2008, right?

A Correct.

Q And BB&T asked you to come in and sign this, right?

A. Yes

Q. Okay. And you did, in fact, sign it? That's your signature at the bottom?

A Yes And what is the date on this?

Q It's December 22, 2008

A Right

MR. KRISTINIK: Your Honor, we would move to admit into evidence Defendants' Exhibit No. 32

MR. WILLOUGHBY: It's already into evidence, but we have no objection

THE COURT: Well, do you know the exhibit number? We don't need to fill the record up with duplicate.

MR KRISTINIK: Your Honor, it's in the interest

of saving time, if I do it through the stack.

THE COURT. All right, that's fine Do it that way Go ahead.

(Whereupon, Defendants' Exhibit No 32 was entered into the record as evidence)

MR. KRISTINIK Let's cue it up.

BY MR. KRISTINIK

Q. All right, Mr Maybank, we've already taken a look at this I want to ask you some followup questions about this Client Investment Objective Form.

Now, it still indicates that aggressive growth 100 percent equity is the objective, right?

A Right

Q. Okay. And you have signed and put your initials under someone's handwriting, correct?

A Yes

Q. And that handwriting, it's your recollection that it belongs to someone at BB&T, right?

A. Yes.

Q Now, if you look at the handwriting, it says that "the recommendation was for equity only for total return."

And then it also says "cash M/M", month to month, "balances will vary widely pending market fundamentals. Therefore, large cash balances may be appropriate from time to time "

So that was the recommendation to you at that time, correct?

A. Right, and I think that was, in fact, the way that it had been set up from the beginning.

Q. You understood that recommendation?

A. Yes.

Q Okay. You were comfortable with it, correct?

A Yes.

Q. As indicated by the fact that you initialed under it and signed under it?

A. Yes

MR KRISTINIK We can put the light back on. Thank you.

BY MR KRISTINIK.

Q. Let me show you what's been marked as Defendants' Exhibit No. 59.

This is entitled Wealth Management Agreement, correct?

A. Correct, yeah

Q. And it's dated at the top November 2nd, 2009?

A. Yes.

Q If you turn to the next to the last page, does your signature appear on that page?

A Yes.

Q Okay.

MR KRISTINIK Your Honor, we would move to admit

into evidence Defendants' Exhibit No 59.

MR WILLOUGHBY Your Honor, there are -- all of these documents are in the record, first of all

Mr Kristinik has appended the Appendix A to this form

MR KRISTINIK I need to ask one more question to the witness, Your Honor, and then let me move to admit into evidence to correct what he --

THE COURT All right,

MR KRISTINIK -- pointed out

BY MR KRISTINIK:

Q. Mr Maybank, if you take a look at the back of this, it has Appendix A at the back, correct?

A Are you talking about the last page, not the back, right?

Q. The very last page of the exhibit that I handed you.

A Right.

Q. Okay. That's the Client Investment Objective Form that you signed that we just looked at on the screen, correct?

A Yes.

MR WILLOUGHBY Your Honor, I object, and let me explain the basis of my objection

The document is dated November 2nd, 2009. The Client Investment Objective is dated December 22nd, 2008 They are not related.

A. 1277. Yeah, okay.
Q. Are you there, sir?
A. Right.
Q. Okay. Now, this shows that you still own 26,640 shares of BB&T stock, right?
A Right.
Q And that stock, that was the remaining stock, the part of the stock that did not go into the pre-paid, right?
A That's correct.
Q So it stayed in the Scott & Stringfellow account?
A That's right.
Q Back in August of 2006, it was worth a little over $1 1 million, right?
A Right.
Q And if you look at the very first page, your margin debt in August of 2006, it was only a little over $13,000, because the large payment came in to pay it down, right?
A That's right.
Q And so maybe this was some interest charge that was left over?
A I don't know. I would have to examine the statement. It sounds reasonable.
Q But still only $13,000, right?
A Right.
Q Okay. Let's look at the next month, September of 2006

Let me hand you what's been marked as Defendants' Exhibit 64-44.

A. What is the date on this one?

Q. This one is for September 2006.

A Okay.

Q. If you will take a look at this Is this, in fact, your Scott & Stringfellow account statement for the month of September of 2006?

A Yes

MR KRISTINIK: Your Honor, we would move to admit into evidence Defendants' Exhibit 64-44.

MR WILLOUGHBY No objection

THE COURT All right

(Whereupon, Defendants' Exhibit No 64-44 was entered into the record as evidence)

BY MR KRISTINIK

Q. If you look at the second of page of this exhibit, you will see that this indicates that you purchased an additional 4,000 shares of BB&T stock, right?

A. Right.

Q. Okay And so now you had a total of 30,640 shares of BB&T stock, right?

A Yes

Q. It's worth a little over $1 3 million?

A. Yes.

Q And, in fact, the BB&T stock was the only thing you had in your Scott & Stringfellow account at this time, right?
A. Yes
Q. If you look at the first page, your margin debt has increased It's increased from $13,000 to up to $189,000, right?
A Right.
Q And that's because you bought the additional BB&T stock using margin borrowing, right?
A. Yes
Q Now, you said in your direct testimony that you wanted to buy this additional stock because you wanted to be loyal to the bank, right?
A Right.
Q. The bank had sent you a message from the general counsel saying you don't have to buy more of our BB&T stock In fact, the general counsel gave you an instruction not to buy BB&T stock in your managed portfolio account, right?
A That was from the proceeds of the Pre-Paid Variable Derivative That only applied to that
Q All right. Let's look at your account statement for Scott & Stringfellow This is for the month of June 2008
A. June 2008
Q. Correct.
Please take a look at that And does this appear to be

your account statement for that month for your Scott & Stringfellow account

A. Yes, it did.

MR. KRISTINIK: Your Honor, we would move to admit into evidence Defendants' Exhibit 64-65.

MR WILLOUGHBY No objection

THE COURT: It's in

(Whereupon, Defendants' Exhibit No. 64-65 was entered into the record as evidence)

BY MR KRISTINIK

Q If you look at the first page of this account statement, it shows that at the end of June 2008 --

A Yes

Q -- your margin debt is the now over $700,000?

A Right

Q. The equity in your account on this date is only $482,000, right?

A Right

Q. Comparing this to August of 2006, it's correct that the equity in your Scott & Stringfellow account decreased from over a million dollars to under $500,000, is that right?

A Tnat's correct

Q Let me show you what's been marked as Defendants' Exhibit No 76.

A What is the date on this one?

Q. This is an Itemized Categories Report for the year 2008.

A. Right.

Q. You can see at the top --

Do you believe that this is a report that would have been prepared for you by Ms. McGuckin or by your accountant?

A. This was by Joe Argo's firm.

MR. KRISTINIK: Your Honor, we would move to admit into evidence Defendants' Exhibit 76.

MR. WILLOUGHBY: No objection.

THE COURT: All right.

(Whereupon, Defendants' Exhibit No. 76 was entered into the record as evidence.)

BY MR. KRISTINIK:

Q. If you look on page one of this exhibit, this again from 2008, this is after your Pre-Paid Forward Contract, it shows draws on margin for the year totaling $113,000, correct?

A. Correct.

Q. So you are still receiving your full BB&T dividend, but you were still -- it's still necessary for you to take draws on margin, right?

A. That's correct.

Q. So you were still spending more money than you were bringing in, correct?

A. That's correct

Q. All right Let's change subjects and go to something else.

I want to talk about the second pre-paid

Now, the first pre-paid was set to expire in August of 2009, right?

A. Right.

Q. So your second pre-paid, that was in January of 2009, right?

A Yes.

Q. So you terminated your first pre-paid early, correct?

A. I was advised to do so

Q Well, you would agree, though, that your original idea to consider rolling it in January was your idea?

A I -- I approached them with the -- to inquire about the idea and they recommended that I do it

Q Okay And one of the reasons that you had the idea and went to them was because you thought the market was pretty low at that time, so it would have made it favorable time to roll, right?

A. That might have been a consideration, but I was primarily interested in making sure my dividend income continued.

Q. Now, as you were considering the roll with BB&T, you would have had many meetings with Mike Lackey and Anthony

Mahfood back in early January of 2009, is that right?
A. I had virtually no recollection of Mike Lackey at that time. He just joined the bank and I think most of the work he did was for Mr. Mahfood.
Q Prior to entering into the second pre-paid, you discussed with BB&T employees the possibility of a BB&T dividend cut, right?
A No Only in regard to what effect it might have on the final wind-up of the contract
Q And were you asking that question because you thought there was a possibility that in those financial times, 2008, and early 2009, that BB&T might have to cut its dividend?
A That was a consideration, but I thought that I was covered with the Pre-Paid Variable on the dividends for the next two years
Q Well, you knew that there was no guarantee that the dividend was going to continue to be paid by BB&T, right?
A. I -- I didn't know. I know that dividends can be cut.
Q. Including BB&T's dividends, right?
A Yes, anybody's dividends can be cut.
Q. Now, prior to the pre-paid, the second pre-paid transaction, you had alerted your tax advisor to let him know that this transaction was going to occur, right?
A. Yes, that -- he was -- he was notified it was coming, so he would be -- he would be knowledgeable

Q. You or someone else would have called him up and said that you were going to enter into a pre-paid, right?
A That's right.
Q. Mr. Maybank, let me hand you what's been marked as Defendants' Exhibit No. 45?
A Yeah
Q At the top it's titled Unrealized Gains and Losses That has your name underneath it, Frank Maybank
A What date is this on this document?
Q. The date under it, immediately under it, is January 8th, 2009.
A Yes
Q Do you see that?
A Yes, uh-huh.
Q And would this be an Unrealized Gain and Loss Report for your managed portfolio account?
A It would appear to be, yes.
Q. Okay.

MR KRISTINIK Your Honor, we would move to admit into evidence Defendants' Exhibit No. 45

MR WILLOUGHBY We object He didn't complete this -- prepare this exhibit I don't think he received it, so we would object to its introduction

A This appears to be something that came from Argo.
BY MR KRISTINIK

Q. All right

THE COURT All right?

MR KRISTINIK I'll take it back. We will withdraw the exhibit, Your Honor.

THE COURT 30 minutes ago you said 15 or 20 minutes. How much longer?

MR KRISTINIK I'm close I would say ten minutes I know you are going to hold me to it, Your Honor.

THE COURT That's all right Okay.

BY MR. KRISTINIK:

Q Let me show you another exhibit, Mr. Maybank.

A Yes

Q Defendants' Exhibit No. 202. At the top it says Settlement Overview Frank Maybank, correct?

A. Yes.

Q This shows terms for a pre-paid contract, right?

A. This is one of the spreadsheets that they do What is the date on this one?

Q There is not a date on it that I see, Mr. Maybank.

A Okay.

Q What I want to do to help us save time, Mr. Maybank, is I'm going to hand you several of these at one time. Let me hand you what's been marked as Defendants' Exhibits No 203, 204 and 205

A All right. What were the dates on these?

Q. Well, every one of these has a bates number with your name on it, Maybank. These all came from your files, right?
A. I suppose so, but I don't see any dates on them.
Q. Well, you would agree that if all these came from your files, that these were provided to you at some point in time by BB&T, correct?
A. Yes, but I didn't -- I never really understood how these things worked and I don't know who prepared these. I kept them in my files if it has Maybank written on the file
Q. You didn't -- you didn't understand how they worked, but you kept every one of them in your files, right?
A. Yeah, I tried to keep as complete files as possible.
Q. Okay.

MR. KRISTINIK: Your Honor, we would move to admit into evidence Defendants' Exhibits 202, 203, 204, and 205

MR. WILLOUGHBY Your Honor, the question I have is it appears that 205 is identical to 204, and that would be my only question of Mr. Kristinik if he objected --

THE COURT: It's the same thing, it's cumulative. That's what he's saying

MR. KRISTINIK Your Honor, I don't know if that particular page is cumulative. We could stop and I could look at it, but if it's cumulative, then what does it matter if he says he's received them all?

MR. WILLOUGHBY: We don't object, Your Honor.

THE COURT: Okay.

MR. WILLOUGHBY We don't object.

THE COURT: Move along. Let's go.

(Whereupon, Defendants' Exhibit No. 202 was entered into the record as evidence).

(Whereupon, Defendants' Exhibit No. 203 was entered into the record as evidence).

(Whereupon, Defendants' Exhibit No. 204 was entered into the record as evidence)

(Whereupon, Defendants' Exhibit No 205 was entered into the record as evidence)

BY MR. KRISTINIK.

Q Mr. Maybank, you did move forward and executed your second pre-paid contract, right?

A. Yes, that's what the bank advised and that's what I did.

Q. There was a call to Deutsche Bank to execute the transaction, right?

A. Yes I didn't call them up, but a call was set up by wealth managers of BB&T.

Q Now, you said that you didn't know about the $1.3 million out-of-pocket costs. You didn't know about that before the pre-paid? That's your testimony?

A. That was my testimony

Q And then after you learned about it, immediately after

the transaction, you complained to who, Anthony Mahfood?
A. Yes, I said I thought they done a terrible job
Q. And you actually even called up Deutsche Bank to try to reverse the transaction, right?
A. As soon as I was able to get ahold of somebody at Deutsche Bank, but it was set up so you had to go through the BB&T system to get to Deutsche Bank. There are really nobody on the statements that you could call
Q Mr Maybank, did you ever go to Ross Walters to complain about the $1.3 million out of pocket?
A I can't believe he didn't hear about it, because I had complained to everybody else
Q Did you ever go to the leader of the Wealth Management Division in Greenville? Did you ever go to him to complain to him about the 1.3 million?
A I went to them all I complained to them all I can't specifically say that exactly who was there and who wasn't, but I complained loudly about it. I can't believe he didn't hear about it.
Q Okay Mr Maybank, let me show you what's been marked as Exhibit No. 58 Is this an authorization that you signed, was prepared for you and you signed, that authorizes the sale of positions in your managed portfolio account back on June 17th, 2009?
A I had to do that in order to get ready to pay the taxes

the following year and so I signed this This was prepared by the wealth managers of BB&T and they knew that I was facing a large tax liability.

MR KRISTINIK Your Honor, we would move to admit into document into evidence, Defendants' Exhibit 58?

MR WILLOUGHBY. No objection.

THE COURT: No objection All right.

(Whereupon, Defendants' Exhibit No 58 was entered into the record as evidence)

BY MR. KRISTINIK:

Q Taxes weren't the only thing you paid off with that money that was generated from those proceeds, though, correct?

A I also paid off the loan that BB&T called on me

Q Well, and you also paid off your margin debt, correct, with Scott & Stringfellow?

A It's possible, yes

Q. And you also paid a $64,000 life insurance premium, right?

A. That's correct, yes

Q BB&T cuts dividend in June of 2009, right?

A That's right

Q. And your dividend payments went from 400,000 a year to an annualized basis of maybe around 130,000?

A Yes, that came as a real shock.

Q That made it difficult for you to make payments to pay living experiences, property taxes, school bills? All that more difficult to pay, right?

A. Yes, including insurance premiums.

Q Right

The dividend cut also was a reason why you had trouble paying your life insurance premiums?

A. Exactly

Q I'm going to show you what's been marked as Exhibit No 77

A Right

Q Is this another Itemized Categories Report? This one is for the year 2009, is that right?

A Right, yeah

Q. This would have been prepared by you believe Joe Argo or Ms- McGuckin?

A. This one -- I am not sure who prepared this one

Q. Okay

A. It might have been prepared by my wife.

Q. Do you think it would have been prepared like the other ones, by looking at your records?

A I don't know. It looks like other ones that I would have had in the past I would have to study this thing for awhile.

Q. During your deposition did you tell me that it was

Q Let me show you your Scott & Stringfellow account statement for June of 2009, Defendants' Exhibit 64-77.
A Yes
Q Does this appear to be true and accurate copy of your account statement?
A That's correct, yes
MR KRISTINIK: Your Honor, we would move into evidence Defendants' Exhibit 64-77.
MR WILLOUGHBY: No objections
THE COURT: All right.
(Whereupon, Defendants' Exhibit No. 64-77 was entered into the record as evidence)
BY MR KRISTINIK
Q Okay This indicate that the margin balance has now been paid down to $433
A Right
Q And did you make that payment -- did you pay it down to that level again because you thought -- you were concerned about more margin calls from Scott & Stringfellow?
A Well, I mean, there was equity in there, but I was just paying off as much debt as possible
Q Mr Maybank, in 2010 you were in the middle of your two year term for your second pre-paid contract, right?
A Right, yes
Q. It's not due to expire until January of 2011?

A Yes

What was that date again?

Q. It was -- your second pre-paid would have expired January of 2011.

A Yeah, right

Q. That's a two year term.

So in December of 2010 you decided to roll your pre-paid into a third pre-paid contract, right?

A. That's correct, yes

Q And you negotiated that roll on your own, correct?

A. Yes, the bank had thrown me out by that point.

Q. You contacted directly and with no assistance Jeremy Levine, who worked with Deutsche Bank, right?

A Right

Q. And you negotiated the terms for that roll directly with Mr. Levine?

A. Yes, but Mr. Levine gave me a lot of very good information

Q. Okay And you were able to work directly with him, right?

A Yes.

Q Okay At any time during that roll did he show you a breakdown of the costs of puts and calls, the options or funding charges? Did he show you any information like that?

A. He did not, but he -- as far as back as the winter of

2009, when I first went to him, he explained to me how the huge expenses involved in rolling that contract over early. And he also told me that pre-paid variables do not work in a bear market, and he gave me a lot -- a lot better information that I ever got out of the bank.

He did tell me that most of the costs in pre-paids were in the puts He did not tell me exactly how, but -- I'm not sure, but you don't get very much for the calls, but he explained a lot of things to me at that point, but I was fighting for my financial life I didn't have any -- I didn't have any money to pay anybody else I was wiped out

Q. Mr Maybank, we are close to being done

I am going to admit a group of exhibits related to your pre-paids.

Now, you rolled it, not just once, but a total of three times, right?

A Yes.

Q. And each time that you rolled it, you negotiated it yourself directly with Jeremy Levine with Deutsche Bank, right?

A. Yeah. Jeremy Levine told me to do it much shorter periods of time.

Q Let me show you what's been marked as Defendants' Exhibits 2007, 2008, 2009, 2010, 2011, and 2012.

Take a look at those and tell me if you believe those

to be the confirmation -- I'm sorry, the termination letters and then confirmation letter for each of the additional three pre-paid transactions that you negotiated.

A. Yeah, these are statements from Deutsche Bank, but I would have to sit down and study these things to confirm everything that you say, but I'll take your word for it.

Q Well, I don't want you to have to answer to something without looking at it, but I am going to hand these documents, a copy to your lawyer

MR KRISTINIK Mitchell, is the 2007 -- do you have any problems with these?

Your Honor, we move --

MR WILLOUGHBY We have no objection, Your Honor

THE COURT All right, let's move them in.

COURT REPORTER Put the numbers in, please.

MR KRISTINIK 2007 --

COURT REPORTER Exhibit numbers.

MR KRISTINIK Exhibit 207 to 212.

(Whereupon, Defendants' Exhibit No. 207 was entered into the record as evidence).

(Whereupon, Defendants' Exhibit No 208 was entered into the record as evidence)

(Whereupon, Defendants' Exhibit No 209 was entered into the record as evidence).

(Whereupon, Defendants' Exhibit No. 210 was

entered into the record as evidence).

(Whereupon, Defendants' Exhibit No 211 was entered into the record as evidence).

(Whereupon, Defendants' Exhibit No. 212 was entered into the record as evidence)

BY MR. KRISTINIK:

Q. MR. KRISTINIK Mr Maybank, you allowed the expiration of the last pre-paid in December of 2012, right?

A. Right, yeah.

Q And you contacted Jeremy Levine and you worked with him for the termination agreement --

A That's correct.

Q -- is that right?

A. Yes.

Q And when it terminated, you received back from Deutsche Bank 27,978 shares of stock, right?

A That's correct.

Q Let me show you what's been marked as Defense Exhibit 65-2.

MR KRISTINIK: Your Honor, I only have two exhibits after this one

BY MR KRISTINIK

Q This is the December 2012 account statement from your Charles Schwab account, correct?

A Correct.

Q. And if you look -- flip through to page eight of nine This shows the receipt of the 27,978 shares from Deutsche Bank and its transfer into your Charles Schwab brokerage account on December 24th, 2012 Do you see that?
A Yes.
Q So that would have happened as a result of the termination of your Deutsche Bank your final pre-paid contract, right?
A. Right.
Q And the value of that stock that you received back from Deutsche Bank was a little over $818,000, correct?
A. Right.
Q. Okay And Charles Schwab, this is where you moved your brokerage account to from Scott & Stringfellow, is that right?
A. That's correct.

MR KRISTINIK: Your Honor, we move to admit into evidence Defense Exhibit 65-2.

MR WILLOUGHBY No objection

(Whereupon, Defendants' Exhibit No. 65-2 was entered into the record as evidence)

BY MR KRISTINIK
Q Mr Maybank, let me show you what's been marked as Defendants' Exhibit No. 65-7. This is a Charles Schwab statement for the month of May of 2013 Does this appear to

be your account statement for that month, for the month of May 2013?

A. It appears to be that, yes.

MR KRISTINIK: Your Honor, we would move to admit into evidence Defendants' Exhibit No. 65-7.

MR WILLOUGHBY. No objection.

THE COURT: All right

(Whereupon, Defendants' Exhibit 65-7 was entered into the record as evidence)

BY MR. KRISTINIK:

Q If you will please turn to --

A. Where was the -- okay

Q If you will please turn to the fourth page, it's bates page 18.

A Are you talking bates pages now?

Q. I'm sorry, if you will please turn to -- in this document, turn to -- turn to page four, the fourth page of the exhibit

A Yes

Q Now, this indicates that as of May of 2013, of the -- by the end of May you had $1 6 million of value in your Charles Schwab account, right?

A Yes, that's more or less right

Q. And that would have been after the payment of your tax liability, that -- any tax liability that would have

MR WILLOUGHBY Now, judge, do you want me to go through her entire testimony?

THE COURT: The issue is -- no, just go through the relevant -- what we talked about in chambers, what we have talked about here

And we will put on the record we had a chambers meeting to see if we could resolve this issue We cannot

Okay Go ahead

DIRECT EXAMINATION BY MR WILLOUGHBY

Q Ms Meyers, would you introduce yourself for the record?

A My name is Tracy Meyers

Q And what is your position?

A I am the Assistant Attorney General over the Securities Division of the Attorney General's Office and also the Deputy Securities Commissioner for the State

Q And how long have you worked with the Securities Commissioner's Office?

A. Over 20 years.

Q And are you a lawyer?

A Yes

Q And when did you graduate from law school?

A 1991.

Q And have you -- are you Bar certified?

A Yes

Q Which states?
A South Carolina, and I'm admitted to the U S Supreme Court and District Court
Q And you have been consistently or continuously admitted to the Bar since you were first admitted?
A Correct
Q Now, at some point on behalf of Mr. Frank Maybank, did I and other members of my office come and meet with you and others at the Attorney General's Office?
A Yes
Q. And did we provide information to you?
A Yes
Q. Do you have available to you the information that we provided?
A Yes
Q Would you inform the court the documents that you looked at initially?
A The documents that I looked at initially are contained in this white notebook, tabs 1 through 9
Q Would you just briefly review, identify each one, and I think I can coordinate those two exhibits that are in this record
A The first is captioned BB&T Wealth Management Agreement
Q And what is the date on that document?

A. It was executed --
Q. August the 23rd of --
A. August the 23rd of 2006.
Q. And the next one?
A. The Concentrated Stock Risk Management Addendum, executed July 10th of 2006
Q And the next?
A The Bear Stearns Equity Derivatives Confirmation, dated August 14th of 2006
Q. And next?
A. An account statement for Francis P Maybank from Bear Stearns, with a statement date of August 1st, 2006, through August 31st, 2006
Q And next?
A Wiring instructions from Mr Maybank, dated August 15th, 2006.
Q And what was the amount of the fee related in that wiring instructions?
A. $32,614.
Q And next?
A A one-page summary with information relating to the Pre-Paid Forward Variable Contract
Q Does it show a calculation as to how that fee was derived?
A That's correct

Q And did you make a determination as to how many basis points were charged to calculate the fee?
A. That's correct, 35.
Q. 35 basis points
Next
A A Deutsche Bank transmission dated January 21st, 2009, is the confirmation again for another forwards contract.
Q And that was the 2009 Pre-Paid Derivative Contract?
A Correct.
Q Okay Next?
A A BB&T Wealth Management account statement for Maybank account, dated for the period January 1, 2009, to January 31st, 2009.
Q And in the back of that is there an indication that a fee was assessed to Mr. Maybank?
A Yes, there is. There is an additional page after the account statement that indicates the fee paid to BB&T Asset Management and it corresponds to one of the fees on the account statement.
Q And what is the amount of the fee?
A $43,655
Q And does that appear to be one percent or 100 basis points of the transaction that was involved?
A Correct, the 2009 transaction.
Q Correct

And what else?

A A letter dated November 29th, 2012, signed by Mr. Ralph Borrello

Q And is that the refund letter? Is there a check attached to that letter?

A That's correct

Q And what is the amount of check?

A $79,682 16

Q And next?

A 19 cents, I'm sorry.

Q Next?

A An e-mail from Larry Kristinik to you, dated January 3rd, 2013

Q And does that explain some of the calculations of interest?

A That's correct

Q And next?

A That was all the documents that were initially from you

Q And did -- did at some --

Now, tell the court this, Ms. Meyers. How does matters generally come to the attention of the Attorney General's Office or the Securities Commissioner's Office about investor-related matters and complaints?

A Quite often they come through the door as an investor

complaints. The investor may not have the same issue that the Securities Commission does, but they come through the door because an investor says that they have lost money and want action or want their money back

Q. Want y'all to look and see what may have gone awry?

A. Usually they just want their money back, but, yes, they -- we do look to see what went wrong, if anything

Q. And if someone brings -- if a customer, an investor, brings an issue to your office, what do y'all do?

A. We look into it

Q. Did you do anything different when we brought information to you about Mr Maybank's situation than you normally do?

A. No

Q. And what did you do, once you had the information?

A. I reviewed the information, checked -- I had my staff check the registration status of the entities involved, and just started down the road after that.

Q. So you did what you would normally routinely do to initiate an inquiry into the facts?

A. That's correct

Q. And as you made an inquiry into the facts, did you ultimately, after your initial, you gave an affidavit, correct?

A. That's correct.

of the exhibits mentioned there, and the jury will have them, will be Exhibit 50 is the Borrello letter that he mentioned, Exhibit 51 was the e-mails from Mr Kristinik, and Exhibit 6 in the record is the Code of Ethics that were mentioned on the deposition Those would be available to the --

THE COURT Okay, call your next witness

MR WILLOUGHBY The next witness will be Mr Dave Fisher and he will be by video as well, Your Honor

Your Honor, I'm reminded by my very capable folks here that Mr Fisher gave two depositions One is the personal deposition and one is a 30(b)(6) deposition He was designated as a 30(b)(6) witness, so the first play would be the personal deposition So there are two segments that will -- there would be a break between the two

(Whereupon, the Videotaped Deposition of David Fisher was played to the jury panel).

MR WILLOUGHBY Your Honor, that completes the personal deposition and now we move to the 30(b)(6) deposition

THE COURT All right, this gentleman is testifying as a representative of the corporation Okay All right

(Whereupon, the Videotaped Deposition of David Fisher was played to the jury panel).

THE COURT· Okay We will just talk a few minutes Don't discuss the case We will get right back to you

(The following takes place outside the presence of the jury panel)

THE COURT All right, what's next?

MR WILLOUGHBY Professor John Freeman will be next

THE COURT How long will that take?

MR WILLOUGHBY I believe his direct would probably be in the range of about 45 minutes to an hour

THE COURT All right. 45 minutes Okay See y'all in ten minutes

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

MR KRISTINIK Your Honor, I understand they are going to seek to qualify him as an expert, and he is an expert in certain fields and areas, there is no doubt about that, but one thing that he is not an expert in, after I took his deposition, is Pre-Paid Forward Contracts I asked him a bunch questions about that This is his first case involving one He really doesn't have any experience in pre-paids, and so we don't know exactly -- I don't know exactly what Mitch is going to want to designate him for, but if Mr -- in his deposition he talked a lot about what

should or should not happen with a client who wants a pre-paid, and I have got objection to that And if they want to get into those sorts -- that sort of testimony when Mr. Freeman is testifying about what a fiduciary should advise with a pre-paid transaction, then he needs to be qualified as an expert with respect to pre-paid transactions. He's not so qualified. He can offer his other testimony, but we would ask that he not be allowed to delve into pre-paids, unless they can satisfy you that he is an expert in them

THE COURT What are you going to seek to have him qualified as an expert in?

MR WILLOUGHBY Your Honor, we are going to tender Professor Freeman as an expert in the field of proper conduct and misconduct, financial advising of planning professionals, trustees, and factual settings involving the offer of sale, of investment insurance products for service.

THE COURT Are you going to object to that?

MR KRISTINIK We are fine with that, but if he starts talking about what happened with respect to Mr Maybank and his pre-paid --

THE COURT. Well, if he gets outside the area of expertise, you can stand up and object.

MR KRISTINIK Okay. All right, Your Honor

THE COURT Okay. Let's get the jury in.

(The following takes place in the presence of the jury panel)

THE COURT: Okay, call your next witness

MR WILLOUGHBY. Your Honor, before we call Professor Freeman, two exhibits we will tender from Mr Fisher's deposition. He mentioned them both in his clip. One was identified in his testimony as Plaintiffs' Exhibit 3 It is the personal -- it was part of the personal development plan for Mr Ross Walters for plan year 2006, and we would offer it as the next trial exhibit

THE COURT: Any objection?

MR BROWN: No, Your Honor.

THE COURT: All right

MR WILLOUGHBY And then he also offered or talked about his Plaintiffs' Exhibit 2, which is the listing of all of the clients to which refunds were issued and we would offer --

THE COURT: Any objection?

MR BROWN: No objection.

THE COURT: All right

(BB&T Personal Development Plan marked and entered into the record as evidence as Plaintiffs' Exhibit No 89)

(Fee Chart marked and entered into evidence as Plaintiffs' Exhibit No 90)

THE COURT. Come around, Professor Freeman.

PROFESSOR JOHN FREEMAN, having been first duly sworn, testified as follows.

THE CLERK: Please state your name for the record

THE WITNESS: John Patrick Freeman, F-R-E-E-M-A-N

THE CLERK: Thank you You may be seated

DIRECT EXAMINATION BY MR. WILLOUGHBY:

Q Please state your name and address for the record

A John Patrick Freeman, [redacted]

Q Please describe your educational background

A. Bachelors Degree in Accounting from Notre Dame, 1967

JD Notre Dame, 1970

I received also a LLM from the University of Pennsylvania in 1976.

Q Okay What did you do after law school?

A. After law school I went to work for the Jones, Day Law Firm in Cleveland, Ohio, and I practiced there for two years

Q. And then after that position?

A After that I went and studied for my Masters in Law at the University of Pennsylvania Law School. I received my Masters of Law ultimately, and then in 1973 I came to the University of South Carolina Law School, where I taught for 35 years

Q And what courses did you teach while at USC Law School?

A Two main areas: Business and investment, as well as lawyers duties and responsibilities, including professional ethics and legal malpractice.

In the business area I taught corporations for about 35 years, securities regulation for about 30 years, corporate finance, business planning I taught agency and partnership I taught a white collar crime course as well. Those were my main courses over the 35 years that I taught there

Q. What was your rank at the time that you retired?

A I was the John Campbell Chair in Professional and Business Ethics at the time I retired

Q Have you received any awards or honors for your teaching and practice?

A I was voted the best teacher by the students four different times, and also I received various honors from various power groups.

Q And what did your agency courses cover?

A. The agency courses -- agents are people who work for other people The person you are working for is called the principal. The agent is the worker who has gone and working for a company, or for any type of business, or for another person And so you -- when you teach that material, you teach about the duties that are owed by the people, and particularly the duties that are owed by the agents, the

workers to their principals, and also how they interact with and deal with the public and the different responsibilities in that area. It's a very practical course.

Q How long did you teach it?

A. It was in my corporations -- first, it was a free-standing course, but it was blended into corporations, so I was teaching that, really agency principles every year.

Q. And what did your securities courses cover?

A The basic gamut of securities. Securities are investments, whether it's stocks, bonds. Here you have a derivative product that is involved in this case. Different types of investments And the course covers creating these investments, selling these investments

You hear about people going public or having publicly-traded stocks. We deal with that.

We deal with the responsibilities of the people who buy and sell stocks and sell to other people and their duties to other people And.

Then there is a whole issue of tne broker-dealer community and the investment advisory community and the duties that they owe the public when they are dealing with the public and selling these investments

Q Are you still active in teaching such materials?

A Yes, I am. I lecture a fair amount I will be giving a bar course on business-related matters in October I gave

a lecture to a board of trustees last month. I'm often out there talking to people

Q What other dealings have you had concerning securities or broker-dealers or investment advisory services?

A Lots of dealings I have worked for the Securities & Exchange Commission I have worked with them in the seventies I worked --

I have worked with the State Securities Commissioner a fair amount.

I have worked with the State Attorney General's office involved in various matters, various prosecutions, including the Home Gold Carolina Investors criminal proceedings, really from the start, and testified in those trials.

I have been a securities arbitrator with the -- arbitration is a type of a legal proceeding like a courtroom, but it's kind of private and you have people instead of judges Typically it's a panel And I have served as a panel in arbitration of securities matters for the American Arbitration Association.

I have been involved as a lawyer in these cases. I have testified in these cases, and I have been a consultant where you are helping lawyers, but not testifying, and I have done this many times over the years

Q All right Any other experience of legislative?

A Well, yes, I have testified before Congress on

securities matters.

I testified before the South Carolina Legislature on securities related matters.

I have written about it extensively. Really from the time I was a law student in the sixties, the first thing I published was in 1968, or '69, and then I have just kept up with the investment field ever since then.

Q. Did you receive any feedback regarding the article that you mentioned that you wrote on dealing with finance?

A. There was one that I did in '69 that was very extensive, and, yes, I got feedback. It was used by Congress when Congress passed the new law in 1970 concerning the mutual funds and it -- it was well recognized.

Q Explain what you did

A Well, we studied -- mutual funds are investments, and people -- a lot of people own them We wrote about it at that time I -- subsequently when I went to the University of Pennsylvania was in a thing called the Center For Study of Financial Institutions

As a fellow getting my graduate degree I wrote further about it.

The SEC was aware of my writings and that's why the SEC brought me in to work at the SEC. They were having -- the mutual fund industry was having trouble and it was -- a group of us were tasked with trying to help sell more mutual

funds At that time it was about $35 billion. Today there is $17 trillion in mutual fund assets, so it's gone 17,000 billion up from 35 billion. It's been successful.

And I have written about that in selling investments pretty consistently ever since I was in law school

Q Other items of mutual fund assets paying marketing costs?

A Well, yeah, I have written about the mutual fund industry at considerable length, fees at considerable length. I'm called upon to talk about those things, and have Meeting with the press or on television And it's really been a lot of fun analyzing that over the years, really from the time I was a kid

Q Do you have any experience in evaluating the compensation charged by the financial industry for managing money or the sale of securities?

A Yeah, that's a lot of what I have done in the mutual fund industry, because it's so big and the money is so huge. You are talking $17 trillion. That's a lot of money and the fees can be staggering and abuses can be very serious, and I have studied that and studied fees in other areas as well, and very -- I think I'm very well versed on compensation

Q. Are you sometimes interviewed by the news media about compensation for the financial services industry?

A Yeah, as I mentioned, in New York Times, Wall Street

Journal, other folks around

Q Anybody recently?

A. Last night at eight o'clock I was interviewed by a reporter from Money Magazine, Ian Salsbury. I gave him comments.

Q Have you been involved in cases where the behavior of agents who were financial advisors came under attack?

A Often I was involved in cases as a lawyer involving various types of investment wrongdoing, or alleged wrongdoing. I have been involved as a consultant. I have been involved as an expert. And in plenty of those cases whether they are in court or in arbitrations

Q Have you served as an expert witness concerning the duties that are owed in such cases?

A Many times

Q Did any of the cases that you have been involved with in the past involve allegations of agent misconduct in factual settings involving alleged participation in breaches of duty of care or loyalty owed by agents to their principals in the business setting?

A Yeah For example, I was involved in a bunch of cases involving alleged misconduct by agents, people who worked for investors who abused the investors in fraudulent transactions involving derivatives and very exotic things. Deutsche Bank was involved in probably fifteen of those

cases, puts and calls, you name it.

Q Have you taught agency loyalty principles outside of USC?

A. Oh, sure, I taught the Bar review course where -- students, when you get out of law school, you take the Bar exam. And then you typically people will take a course to prepare them for the Bar exam, and I taught all of that stuff that I have discussed for about 25 years on the Bar exam, and I teach lawyers all the time. I typically, you know, teach numerous times a year, but less now that I have retired, but I will still teach maybe seven or eight hours to lawyers different subjects this year.

Q In your teaching, in teaching activities, have you focused and do you focus on the duties that agents owe in dealing with their principals?

A Yeah, I mean, that's -- a lot of it is -- a lot of agency deals with the agent's duty of loyalty and the agent's duty and discharge of their duties, such as the duty to act competently, and to act loyally, and to give information, and so forth, and it's just been something I have dealt with constantly over the years.

Q Your teachings of securities practice experience, do you ever focus on the suitability obligation owed by persons when offering and selling investments to clients?

A Yes, a lot of the investment-related cases that I have

been involved in deal with suitability That is the question of whether or not the investment product, given the attributes that it has, is a suitable investment for the customer under all the circumstances. How much money the customer has, the income of the customer, or age of the customer, and many of those facets, and that's often the case where people complain that they were sold an investment that wasn't right for them under the circumstances, and I have been involved in many, many of those cases

Q On your teaching or securities practice experience, did you ever focus on the disclosure obligation owed by persons when offering or selling investments to clients?

A Yes, one of the obligations that you owe in the investment area is the obligation to give to the investor in a buy purchase or sale transaction what's called a full and fair disclosure of all material facts That means give them a fair insight into what they are getting into and what the product or investment can do for them And oftentimes people complain that they were misled or somehow tricked or they weren't told what they needed to be told at the time they made their investment decision I have been involved in many, many of those cases

Q In your teaching securities practical experience, did you ever focus on the registration requirements for professionals who deals with securities?

A Yes, I have been involved in cases where people have been attacked, and I have been an expert with the claim that they are an illegally unregistered investment advisor or a illegally unregistered broker-dealer, and I have worked with the State Securities Commissioner in cases of that sort as well

Oftentimes when you are looking at certain exemptions under the securities laws there is an issue of whether or not somebody has the registration as well and you look at that

Q In your teaching securities practice experience, did you ever focus on the so-called know your customer obligation owed by persons when offering or selling investments to clients?

A Yes, and that goes back to this concept of suitability, which is that investments are too important to just reward you if you can get rid of it and sell it to somebody

MR KRISTINIK: Your Honor, if I can object, I think he's getting into his opinions. I think this is the qualification stage

THE COURT. Let's get him qualified first

BY MR. WILLOUGHBY:

Q. Let me ask the next question, Professor Freeman In your teaching of securities practice experience, did you ever focus on the duty of advisors or registered

representative to know the securities when offering or selling investments to clients?

A. Yes, I did I have, and it's something that I have done in this case in analyzing the circumstances and analyzing the product that's involved and learning about the product and developing expertise concerning the product

Q Outside the classroom have you ever focused on the duty of loyalty that agents or investment advisors or broker-dealers owe in dealing with clients?

A. The answer is yes

Q. Please describe your experience.

A. Duty of loyalty customarily involves an area where there is a conflict of interest.

MR KRISTINIK Your Honor, again he's giving his opinions, which will be appropriate time for that, but he needs to be qualified This is the qualification stage

MR WILLOUGHBY Judge, I think he can tell his experience

THE COURT I think -- I think this is okay. This is what he's done to qualifying him to be --

MR KRISTINIK Thank you, Your Honor

THE COURT Okay.

A The question was loyalty I was trying to explain that when we talk about the duty of loyalty, oftentimes it comes up in cases involving conflict of interest, and I have seen

an awful lot of that I have seen it in the investment area. I have seen it in the agency area I see a lot of it in the legal area involving lawyers, where lawyers are accused of having an improper conflict of interest, and it's a very hot button area that I have dealt with constantly over the years.

BY MR. WILLOUGHBY

Q Do you give lectures on duties owed by agents in handling business matters?

A Yes, sir

Q Have been involved in lawsuits involving challenges to the care, loyalty, and fairness of persons in investment advisory positions?

A. Yes, sir, I have.

Q Please describe your experience

A. Well, for example, there have been numerous cases I have been involved in involving the mutual fund industry and the fees that are charged in the mutual fund industry

I mentioned all of these cases that involved tax shelters Some people went to jail in those cases That involved derivatives That involved banks That involved alleged abuse of investors, and I was actively involved in those cases Less as an expert and more as a legal counsel

Q Are you familiar with standards of conduct generally applicable to the behavior of persons who serve as trustees?

A Yes, I am.
Q What is your background that gives you that familiarity?
A You encounter that in the courses that I taught, the duties that trustees are owed and then the standards to which trustees are held.

In addition, I have been involved in cases involving trust matters, trustees, and I have lectured to trustees as to their responsibilities.

Q Is there anything you covered in your teachings, writings, or work experience that you rely upon to form the opinions that you hold concerning the facts of this case?
A Much of my experience I rely upon, including my study for this case and the work that I have done to prepare for this case and the experience and training that I bring to the courtroom here today
Q Have you ever been offered as an expert witness but not been allowed to testify because the court found you to be unqualified?
A No, sir
Q Are you here today to express legal conclusions?
A No, I'm not here to preach about what law is or to inform you what the legal standards are That is for the court. I'm here only to analyze the standard of conduct of these folks under the facts of the case

Q. Have you ever been a broker, been licensed as a broker, or been an investment advisor?

A No, I have never held those positions

Q So what do you draw from to inform your judgment about behavior of the financial professionals in this case?

A Yes, I started working in this area and writing about it in the 1960's. I have written about it. I have worked for the Securities & Exchange Commission I have worked for the state regulators I have testified in these cases And it's coming at the subject matter from a different direction, but, nonetheless, an informed viewpoint.

Q What are you here to do today, Professor Freeman?

A. I'm here to express professional views concerning the conduct of the BB&T defendants and their people and the handling, the sale of the Pre-Paid Variable Forward Contract in 2006 and 2009 to Mr Maybank, and analyze their conduct, based on my understanding of the standards that apply and the facts that have been presented in this case

Q Thank you, Professor Freeman

MR WILLOUGHBY: Your Honor, we would tender Professor Freeman as an expert in the field of proper conduct and misconduct by financial professionals advising -- financial advising and planning professionals and trustees, and factual settings involving the offer and sale of investments and insurance products and services

THE COURT: Any voir dire? Or any objections, I should add?

MR. KRISTINIK: Your Honor, I don't have to do voir dire on the -- in the field -- in the lengthy field that Mr Willoughby has articulated, but I will note -- we would not have objection to his qualification in that field, but previously I noted on the record a limitation that I believe --

THE COURT: Well, we will --

MR KRISTINIK. I will raise that, once it comes up in his testimony

THE COURT: Okay.

Ladies and gentlemen, Professor Freeman is qualified as an expert in the field that was described to you by Mr. Willoughby. I will not the attempt to repeat it All right. Thank you.

MR WILLOUGHBY: I can restate it, Your Honor, if it would be a help.

BY MR. WILLOUGHBY:

Q. Professor Freeman, tell the jury about the importance of investments to American society.

A Yeah, I will be brief.

This is a capitalistic society. You remember Russia collapsed and Communism collapsed and free markets went out? That's because Capitalism works and the free market works.

And free market is based on investment It's based on decision making by people with their money

And we learned from the great crash, the Great Depression, that if people lose confidence in the investment markets, we all suffer, because people don't make investments and the economy dries up, and we had the securities laws come in to offer protections.

You have securities laws that came in in 1933 and 1934, right after the crash They came in for that purpose of helping people begin to have confidence that if you risk your money by buying a stock or buying a bond, you are going to get a fair shake And you have these standards that have been in place ever since That's the field of securities regulation It is the centerpiece of a capitalistic society and it's those standards that are being applied in this case

Q. What have you done to prepare to testify here today in front of this jury?

A A wealth of -- a wealth of things. I have first of all done --- read depositions. Mr. Maybank's deposition took place over five days It's 1,088 pages long. That's before he got to the courtroom for the full day on Tuesday

And I have been here from the opening statements, just as you folks have

So reading depositions Mr Walters deposition, Mr,

Kapoor's, Mr. Mahfood's deposition There is a gentleman in Georgia named Miller Mr. Fisher's deposition I have read And, of course, I have seen excerpts here with you today.

And reading this testimony of different folks gives you a flavor for the background, and there are lots and lots of documents out there, too, that describe what happened

In order to be able to testify in a case like this, you have to gain an understanding of what a Pre-Paid Forward Contract is, how it works, what its possible strengths are and what its possible weaknesses are. And so you have to understand that, and I have learned about that and studied that and come to court informed and ready to testify about that.

I have also consulted with, to some extent, with the State's Securities Commissioner about some issues in this case.

I have done an awful lot of reading and I'm here ready to go, Mr Willoughby

Q Thank you

Professor Freeman, in your preparation, have you conducted the kind of investigation that is common for experts in your field testifying in cases such as this?

A The answer is yes

Q. And, Professor Freeman, have you conducted an investigation concerning the behavior of the BB&T entities

in connection with their dealings with Mr. Maybank in 2006, through the termination of the relationship?

A Yes, I have.

Q And what did your investigation conclude?

A My investigation concluded very, very serious misconduct on the part of BB&T and its people from a number of different directions.

Q Let's talk about the facts, Professor Freeman.

I'm going to hand you the Exhibit 14, which is the Wealth Management Agreement.

MR. WILLOUGHBY And if Lindsay can cull it up.

BY MR WILLOUGHBY

Q Do you see in that document what BB&T -- do you see in that document in the third paragraph what the bank promised to do for Mr Maybank?

A Yes.

Q And would you read those promises?

A Well, promise number one, the "bank shall gather information from the client regarding the client's investment objectives, risk tolerance and investment horizon, tax status, financial situation and needs." That's the first one.

Secondly, "make recommendations to the client regarding investment program and investment guidelines for the account "

And, three, "coordinate and supervise the services of the investment advisor and the custodian for the account "

Q Let's take the first promise where the bank promised to gather information from Mr Maybank regarding his investment objectives Was that, in your opinion, an important promise?

A. Yes.

Q Why is it?

MR KRISTINIK Objection, Your Honor

While the Wealth Management Agreement is appropriate for lay witnesses, we have got plenty of fact witnesses that are going to come in and testify about it; it's inappropriate under Rule 702 for an expert witness, because it does not meet the standard of being assistance to the trier of fact. And so we would assert that as a ground for not allowing Professor Freeman to offer testimony about the Wealth Management Agreement.

We would also incorporate the arguments asserted in our prior motion in limine.

THE COURT Well, he's testifying as to the importance of it, and so your objection is well stated and noted for the record. It's denied.

MR KRISTINIK Thank you, Your Honor

A I'll go ahead and answer your question

Gathering information is crucial. You cannot make good

investment decisions or give good investment advice without information. It's really the mainspring of the engine that drives decision making.

So if you are going to give somebody advise, you need to know as much as possible about them and all their needs, and that's one reason that we talk about the know your customer rule, where you are supposed to fully understand everything about the customer, including assets, liability, what they own, how old they are, what health they are in, what their family is like, what their tax status is, what their dreams are, what their possible problems are, and take all of that into account in order to give the best possible advice to the customer, and that means doing digging.

Q. Based upon your investigation and testimony that you have heard in this courtroom, did the bank do that?

A. No.

Q. Please explain.

A. Well, for example, I read in Mr. Kapoor's -- let's see, it was Mr. Mahfood's deposition, I think Mr. Kapoor said the same thing, Ross Walters deposition about checking out suitability, and in particular checking out the suitability of the client, Mr. Maybank, for the Pre-Paid Variable Forward Contract, which is a major, major issue when you are making a $9 million investment.

MR. KRISTINIK: Objection, Your Honor. Now

Professor Freeman is starting to testify about Pre-Paid Variable Forward Contracts and he would need to be qualified as an expert in that field, and I would have several questions on voir dire, if he wants to go there

THE COURT Well, are you tendering him as an expert for Variable Pre-Paid Forward Contracts?

MR WILLOUGHBY We absolutely are tendering him as an expert on the investment products that were used in this case

THE COURT: Okay Well, let's turn the lights back on and let him voir dire on that issue.

MR KRISTINIK May I, Your Honor

THE COURT. Yes.

MR. KRISTINIK Thank you

VOIR DIRE EXAMINATION BY MR KRISTINIK

Q. Good afternoon, Professor Freeman.

A. Good afternoon, Mr. Kristinik

Q Now, I believe you have already informed the jury that you have never served as an investment advisor for a client, is that right?

A That's right

Q So you have never served as an investment advisor for a client to assist them with the execution of a Pre-Paid Contract?

A That's right, I have never served as an investment

advisor to assist a client as to anything

Q You have never given advice to an individual investor about whether or not they should enter into a Pre-Paid Forward Contract, is that right?

A Not ahead of that decision, no.

Q You have never written any articles on Pre-Paid Forward Contracts?

A I have not

Q. You have never taught any courses on Pre-Paid Forward Contracts?

A Not explicitly

Q You have never designed a training program to educate investment advisors about Pre-Paid Contracts?

A No, sir

Q You have never prepared any written materials that would be used for a training program for Pre-Paid Contracts?

A I have not.

Q You have never even reviewed any articles or publications addressing the appropriate disclosure of costs for Pre-Paid Contracts, is that correct?

A That would be false.

Q. Well, do you remember what you told me during your deposition?

A. Well, since that time I have gone back over materials and the Bernstein -- there is a Bernstein article about

Pre-Paid Variable Forward Contracts that explains the importance of costs and explains the fact that these are not valid long-term investments, something that I discussed at my deposition. And I have concluded that, yes, that article does talk about disclosure of costs and it is an important issue

Q. And so you read that article as part of your work in this case?

A Yes

Q Okay After you were already retained in this case?

A. Yes, sir It's very common for me as an expert, if I'm retained as an expert in a case that has certain issues, to do research concerning those things.

Q Professor Freeman, you have never before handled a case prior to this one involving a Pre-Paid Forward Contract?

A Not a Pre-Paid Forward Contract

Q This --

A Puts and calls, yes, sir

Q. This is your first case involving a Pre-Paid Forward Contract --

A Yes, sir.

Q -- is that correct?

A That's true

Q And my last question to you, you have never attended any courses that discuss the appropriate disclosure of costs

in a pre-paid situation, is that right?

A No, only insofar as it's covered in the Bernstein article.

MR. KRISTINIK. Your Honor, those are my questions. It would be our position that Professor Freeman has insufficient experience, no training, no work for any professional organizations where he's exposed to Pre-Paid Contracts, and he should not be permitted to offer opinions with respect to Pre-Paid Contracts in this case.

THE COURT. Anything that you want to ask him specifically about the voir dire?

MR WILLOUGHBY I think the information is in the record, but let me ask this question

DIRECT EXAMINATION BY MR KRISTINIK

Q. Professor freeman, in order to offer opinions in this case, given your vast experience, what specific things did you do to prepare and inform your judgment about investment products that were used in this case?

A I read the sales literature concerning it. I have read what all the people who were offering or selling or recommending or involved in the sale had to say about it. I have talked to Mr Maybank about it I have talked to Mr. McCann, who is an expert in the area about it I have conducted my own research about it. And I understand that product and I understand its strengths and its weaknesses

and I'm here to testify about what happened

MR. KRISTINIK. Your Honor, there is certainly plenty that Professor Freeman can testify to today. He can testify about fiduciary duties.

THE COURT Wait, wait, wait

Ladies and gentlemen, I'm going to discuss this out of your presence, so y'all head on back. We will be with you very shortly, I promise

(The following takes place outside the presence of the jury panel)

THE COURT. Okay. Now, go ahead.

MR KRISTINIK. Professor Freeman can certainly talk about agency principles, fiduciary duties. He can talk about suitability with respect to the managed portfolio accounts and whether that was properly vested He can talk about suitability generally, but once he starts getting specific about what makes a pre-paid suitable or not suitable, you have to have more knowledge than just coming into a case and reading about it If ne wants to talk about disclosures of the extensive puts and funding charges

If he wants to get into the minutia of how a pre-paid transaction should be handled, if he wants to get into the minutia about whether or not it's appropriate for someone, they have Professor McCann who can come in and testify all day long about pre-paids. I'm not going to

challenge any qualifications for Professor McCann -- or for Dr McCann, but Professor Freeman just doesn't have that, not with respect to --

THE COURT Well, wait, let me get clear. What is it that -- what opinions are you looking for him to state with respect to this transaction?

MR WILLOUGHBY: Well, Your Honor, the question that was tendered on the floor I don't think had anything to do with pre-paids at all. All I asked was there was a promise in the contract and was that done in this case. Did they gather the information that they needed and he was giving an opinion about that

THE COURT All right

MR WILLOUGHBY: I think Mr Kristinik was just looking for an opportunity to ask those questions

But in the context of his investigation, he's obviously studied the Pre-Paid Variable It is a central part of the case, and so he will be, and is prepared, to offer opinions about whether or not the duty of loyalty and all of those things were violated in terms of --

THE COURT Okay Well, how much more experience do you need to become an expert in Pre-Paid Variable Forward?

MR KRISTINIK Well --

THE COURT I'm going to -- I mean, I think we are

splitting hairs here Of course, we have split hairs throughout this whole case

I think he's qualified to assist the trier of fact I think he's got the requisite background, knowledge, and expertise Experience with this specific financial tool may not be what it is with respect to all his other wealth of knowledge and experience, but I do think that he's qualified to testify as an expert.

I don't suspect that Mr Willoughby is going to get into asking him to analyze Pre-Paid Variable, whatever they are

MR KRISTINIK Forward contracts

THE COURT Yeah

MR WILLOUGHBY Dr McCann will do --

THE COURT Okay

MR. WILLOUGHBY -- more of the technical stuff

THE COURT So I think that he has obtained the requisite knowledge to be able to -- because he -- I don't think -- what my understanding --

My impression is that Mr Willoughby is going after the underlying conduct of your client in forming the basis for recommending this -- if I'm not mistaken --

Professor Freeman, are you going to tell us -- express opinions about the Variable Pre-Paid Forward Contract?

THE WITNESS. I may have some opinions that are based upon the facts that are in the record about the Pre-Paid Forward Contract.

Specifically -- for example, Your Honor --

THE COURT: Yeah.

THE WITNESS: -- this thing -- it's in the record that when it was sold in '06, the charge was $2 2 million It was re-sold again 29 months later for 1.3 million. I will point that out to the jury, point out that that money was spent That money is gone, and that that amounts to $3 5 million taken out of Mr Maybank's wealth for the Pre-Paid Variable in 29 months That amounts to about $120,000 a month going into this pre-paid Those are just the facts The jury can drawn its own conclusion as to whether that's a good thing or a bad thing, but those are facts that I would -- common sense math facts that I would bring to the table, based on my investigation.

THE COURT I would beg to differ that they are common sense, but they are facts that a mathematician would figure out, so he's not -- he's not going to -- he's just going to tell the jury that that's what it cost.

MR KRISTINIK: Your Honor?

THE COURT Yeah.

MR KRISTINIK In his deposition he was very critical of a pre-paid transaction He called it a roach

motel It's very colorful language and --

THE COURT That's why he got voted best professor

MR. KRISTINIK And I would probably cast a vote for him, because he was my corporations professor, and a good one, but my point is is he really is going to be attacking the pre-paid and --

THE COURT Well --

MR KRISTINIK -- at various levels and they have been pointing out how Mr Maybank has all this experience with stocks and bonds and how that does not make him qualified to be an expert in pre-paids and --

THE COURT It's a jury argument

I'm going to qualify him I'm going to let him testify

MR KRISTINIK All right

THE COURT Subject to --

Is there anything else you need to put on the record, because I presume somebody else is going to read the transcript in this case

MR. KRISTINIK Um --

THE COURT Depending on what happens, since I can't get you to settle it

MR KRISTINIK Your Honor, I'll just put on the record that we object to Professor Freeman being allowed to

give any opinions regarding the Variable Pre-Paid Forward Contracts and we would ask for a ruling from you on the record to preserve it.

THE COURT. Okay. I'm going to find that he is qualified as an expert. He's got the requisite education, skill, training with respect to -- and he's developed the knowledge to allow him to testify as an expert.

We are splitting hairs here. He's not going to testify about -- I mean --

I mean, is there anything else you are going to talk with Professor Freeman? Maybe we should get it out there, so we can --

THE WITNESS I'm going to talk about the costs that are involved, which I think are huge.

And then just, essentially, you know, kind of where he is at various points, vis-a-vis this -- time points vis-a-vis this product. But it's -- it's not deep, you know, Ph.D economics finance kind of stuff. It's -- this is -- this is what he was sold and this is how it worked and ask yourself did he understand -- did anybody bother to explain that? And if they didn't explain that, is that good or bad? It's that common sense kind of stuff, judge.

THE COURT. Okay There we go.

All right, let's bring them back.

THE BAILIFF Yes, sir.

(The following takes place in the presence of the jury panel)

THE COURT. All right, Mr. Willoughby.

MR. WILLOUGHBY Thank you, Your Honor

BY MR WILLOUGHBY.

Q Professor Freeman, we were talking about -- let's take -- let's take a look at the second promise That's where the bank promised to gather information for Mr Maybank regarding his risk tolerance Was this, in your opinion, an important promise?

A. Certainly it was.

Q And tell me why

A Because the ability of an investor to bear risks is a crucial consideration if you are going to be recommending products to them. Some people, if you are young and wealthy and you can afford -- you have a long-time horizon, you have got a good job and you can afford to make the money back, you are better able to take risks than say somebody who is at an advanced age and going into retirement It's just -- it's a factor that you have to take into account and weigh in deciding what works or would work for the client.

Q Did the bank fulfill that promise?

A I didn't see any sign of that

Q. And why not? Why do you think it did not fulfill that promise?

A. Well, for one thing, the bank is making these promises to do these things, but evidently the people who work at the bank and Wealth Management advisors are not people who conduct suitability investigations. They said that they didn't do any suitability investigations. They said that they didn't make any detailed analysis and that they shouldn't do it and wouldn't do it, and they didn't make any recommendations. Even though they were called Wealth Management Advisors, they weren't really allowed to advise on Wealth Management.

Q Did you see any evidence where they indicated that they were not experts in the product?

A Yes I mean, their testimony was that they didn't really have -- for instance, Mr. Mahfood, a lot of expertise on the Variable Pre-Paid

That there was one man out there, Shawn Gibson, who wasn't in Wealth Management Advisors, who was sort-of the main man when it came to the variable pre-paids, but I don't believe there is any evidence that he ever met face to face or gave any personal investment counsel to Mr Maybank, which is what Mr Maybank needed and didn't get.

Q. Let's take a look at the third promise The third promise is regarding gathering information about Mr Maybank's investment horizon.

A. Investment horizon, do you want me to talk about that?

Investment horizon pertains to how long you expect to be holding these things, your investments, how long you may be using them.

And then Mr. Maybank's testimony, I believe he came to the bank saying that he was going to dispose of his BB&T and needed to wind down, pay off his debt and diversify. So that was what he was looking at doing, and he had his mind changed by the bank when it offered him this program.

Q Was that an important promise, in your opinion?

A Yes

Q And --

A. It's a factor you take into account.

Q. Let's take a look at the fourth promise, for the bank promised to gather information from Mr. Maybank regarding tax status, financial situation and needs Was that, in your opinion, an important promise?

A It was. For instance, really from the very first minutes of this trial there has been talk about the tax status and about the fact that he had this tax that was tied up in the BB&T stock because it was a low basis stock. He had a lot of it and he would have to pay a capital gains tax At that time the capital gains rate was actually quite low, but the tax, even with the low rate, because there is so much of the stock, would be high and that would be something that would be reasonable to take into account

His financial situation and needs should have been taken into account The bank says that it shall, shall meaning must or will, gather this information, and I didn't see any sign that the bank worked to analyze Mr. Maybank's financial situation and needs until after the lawsuit was brought.

At the time that he was a customer and had questions in his mind, I didn't see any sign that anybody was really analyzing his suitability from a personal and financial standpoint for this product, or for any product

Q Were all of these promises together important, in your opinion?

A Yes, sir

Q. Why?

A. Because they go to the suitability obligation and the know your customer obligation and the duty to really understand where Mr Maybank is coming from, what he's faced with, what will work for him, and to try to design something for Mr Maybank that will be the best outcome for him In other words, treating him the way that you would like to be treated, if you were in the same position

Q. Did you come to a conclusion concerning the bank's decision to make the promises that we see here?

A Yes

Q. And what is those -- what are those conclusions?

A I don't understand why the bank was doing this, because the bank was promising to do these things. We now hear from the bank that, well, we weren't going to do it, other people were going to do it.

My first question would be well, then why were you promising to do it if you didn't mean other people? Why didn't you just say that right out front?

Secondly, you have to ask yourself where is the evidence that the other people - Mr. Kapoor, Mr Gibson, Mr. Fisher, anybody - actually did do this stuff, and I just don't see it. So there is a double-level failing there.

The bank is promising to do something that its own people can't do, won't do, and didn't do, and nobody else did it either, as far as I can tell, so that's -- that's not good.

Q Is it normal or customary, in your experience, for a service provider in the investment business to promise to do such things for a customer and then not do them?

A Not in my experience. Normally what I have seen more often is somebody who promises to do something and then kind of botches it, as opposed to somebody promising to do something that they really can't do, that their people can't do, and never gets done anyhow. That's -- that's kind of off the charts.

Q Is there a standard of care involved that was not

performed?

A In my estimation you have a standard of care if you make promises -- a standard of care means kind of a duty, an obligation, to do things correctly And if you are promising to do something at the time you are working with somebody and signing them up and here is what we have to offer, then it seems to me, A, it should be legitimate promises that you actually intend to perform, and, B, go do your work and get it done Neither happened here

Q In your years of experience have you ever seen any service provider who promised to do something that they knew they could not and would not do?

A It's rare. The only cases I have seen have been egregious cases where the public has been grossly taken advantage of

Q How would you characterize conduct where a service provider promises to do something that it knows it will not do and cannot do?

A The same way I characterized such a promise I know I'm not -- I'm going to promise you, I know I'm not going to do it, I cannot do it, and I don't do it, and that's just wrongful

Q Is there any duties here that come into play?

A I see both the duty of care being involved and the duty to give information

One of the things -- if you are going to work for somebody, sometimes you are the eyes and ears. Sometimes you are learning things on the ground floor and it's your obligation. If you are learning things that you know the boss would need to know, the manager would need to know, and it comes to you first, it's your obligation to pass that on. That's one thing that's expected of you.

So if you are going to work for Mr. Maybank and you have information that he needs to know, it's your job to pass it on. Well, pass on honest truthful and correct information, not half-truths or something that is other than truthful

Q Did you see any information that led you to conclude whether or not there were any misleading statements?

A Yes

Q How would you characterize such conduct if it occurs on a repetitive basis?

A It's contrary to public policy, unfair deceptive acts

Q In evaluating BB&T's behavior, do you attach any importance to the fact that the stock in question held by Mr. Maybank was BB&T Corporation's own stock?

A That's a factor that I take into account

Q How does that reality factor into your opinion?

A. Because I think there is a conflict of interest when the bank is giving an opinion about its own stock or the

bank's people are doing that.

Q Why is the bank providing advice about its own stock a conflict of interest?

A. Because if you are an investment advisor and the topic is the stock for the company I work for a good stock, there is a -- there may be some inhibitions and there may be some risks of being self-serving here

If you say yes, it's good, well, that's nice for the company and they may keep your boss happy, but if it's not true, you are very subject to criticism

At the same time, if you say it's a dog, man, you don't want to own that or we are -- things around here are not good, we are headed for problems, and word of that gets out, then you may be looking for a job and there may be rumors starting about the company. So you are kind of damned if you do and damned if you don't if you are going to talk about the company, and for that reason there is a tendency on the part of people who make investment recommendations not to make recommendations about their own company.

Q Were you sitting in the courtroom when we played the clip of Mr Fisher's deposition?

A. Yes

Q. And did you hear Mr. Fisher say that they typically would not provide advice about their one stock?

A. I wrote it down and he said "we would not make -- "if

you make a recommendation, it's a conflict, we would not do that "

Q And --

A. That's what he said.

Q. In connection with recommending a Pre-Paid Variable Forward Contract that's supported by BB&T's own stock, is there a recommendation?

A Yes, I believe there is a recommendation and I will explain it this way. What you are really saying is that's a good stock to hold.

There is three things you can do, buy, sell, hold

If you are saying enter into this Pre-Paid Variable Forward for three years, what you are saying is hold that stock for three years You are endorsing a recommendation

Q Are you familiar with the term conflict of interest?

A Yes

Q What does it mean?

A It goes back to the Bible, Matthew 6:34, serving two masters If you are -- you may be in a conflict with somebody else, that's one form of conflict, or, you may have two people that you are serving where they have competing interests That's another form of conflict

So it's a factual situation that leads to issues concerning divided loyalty or the potential for divided loyalty.

Q. Are you experienced in dealing with conflicts of interest?

A. Yes, sir.

Q. Please describe your experience to the ladies and gentlemen of the jury.

A. I have been -- as I mentioned earlier, you know, when you are dealing with lawyers and dealing with legal ethics, you are dealing with conflicts of interests a lot, so I have had a lot of involvement in that way, but that's not the only way, because in business you have got conflicts of interests, such as issues concerning corporate opportunities, where an employee or manager sees a way for the business to make a lot of money and then grabs it for himself, takes it off and tries to exploit it and cut the business out and that leads to all kinds of issues, and I have been involved in those things constantly over the more than 40 years that I have been a lawyer

Q. How are conflicts the interests handled in the business world?

A. The best thing to do is to avoid them, such as the man said on the screen, "we would not make a recommendation We wouldn't do that because it's a conflict of interest " So one way is to avoid it.

Another way is to get a waiver of a conflict, but you can only get a waiver of a conflict if you make full

disclosure to whoever it is that might be hurt by the conflict and get their permission And even for lawyers, we have a written rule that says that you can't even do that, unless you get it in writing and have a writing that memorializes that It's that serious

Q Did you see in a BB&T compliance manual a policy that talks about avoiding the conflict of interest?

A Yes, sir, that's in there

Q And did the --

A Avoiding conflict of interest concerning making recommendations concerning BB&T stock, yes, sir

Q Was their only internal policy violated in this setting, recommendation?

A Certainly -- certainly the theme of that and the theme that came from Mr. Fisher's own mouth has been violated in this case

Q In this matter do you believe the bank was in a conflict of interest position?

A Yes

Q Why do you say that?

A Because you have bank people making recommendations to hold bank stock, which is making a recommendation about bank stock, which is what we have been talking about as a conflict issue

Q Did your investigation reveal to you that BB&T

recognized that a conflict of interest existed in advising Mr Maybank about his BB&T stock?

A. Recognized a interest what?

Q. Did your investigation reveal that BB&T recognized that a conflict of interest existed as they advised Mr. Maybank about his BB&T stock?

A Yeah, I didn't hear the word existed, and the answer is yes

MR. WILLOUGHBY And Exhibit 7

BY MR. WILLOUGHBY.

Q Have you reviewed the disclosure letter in this case?

A. Yes, sir

Q I'm going to pull it up. It's Exhibit 7

Have you reviewed any other versions of the disclosure letter used by BB&T?

A. Yes, over the weekend I obtained a copy of a document, similar form letter, that was delivered to your office, I believe, late on Friday of last week So just before the close of business last week, just before the trial started, another document, similar to this.

Q You are talking about the form letter Did you see -- was tne form letter very similar in terms of a language?

A Yes

Could you hand it to me? I don't have it with me.

Q Hold on one second I don't believe that this is it.

I'm sorry, I do have it, Professor Freeman. I'm going to --

MR. WILLLOUGHBY: We can turn back up the lights, please.

THE BAILIFF: Yes, sir.

BY MR. WILLOUGHBY:

Q. Is this the form letter to which you refer, Professor Freeman?

A. Yes.

Q. I would -- and is it similar in language to the form letter -- or the letter that was actually used in Mr. Maybank's case?

A. Yeah, the general counsel letter, yes, sir, it was. It is very similar.

Q. Let me get it marked and introduced into the record.

MR. WILLOUGHBY: We would move the introduction of this form letter as the next trial exhibit.

THE COURT: Any objection?

MR. KRISTINIK: We have no objection, Your Honor.

THE COURT: Okay.

(Form Letter marked and entered into the record as evidence as Plaintiffs' Exhibit No. 91)

BY MR. WILLOUGHBY:

Q. Professor Freeman, I'm handing you what is introduced into the record as Exhibit 91, and would you explain to the

ladies and gentlemen of the jury the significance of that form letter?

A Yes, this form letter is similar to the general counsel letter that is in evidence Exhibit 7 -- is it Exhibit 7?

Q Yes, Exhibit 7, Professor Freeman

A Okay, fine

And that's one that you have on the screen, right?

Q Well, we have the form letter on the screen, but we could put Exhibit 7 on the screen

A No, that's fine That's fine. The form letter is on the screen

This is a letter concerning Mr. Maybank that -- there are two versions of this. One is signed by Mr Mahfood and the other one is signed by, I believe, Mr Walters And these are both letters from people in the Wealth Management Division to the general counsel of the bank holding company, way at the very top level of the bank with these different entities, but this would be Pam Oliver, Executive Vice President, Secretary, and General Counsel, and it concerns his transaction and it concerns different things that supposedly have happened about the transaction, and they talk about how Mr Maybank is going to be doing this Pre-Paid Variable and that this -- that it's going to create a diversified portfolio, that he will be able to continue to collect dividends, his BB&T dividends, that implementing

this Pre-Paid Variable Forward Contract will protect him from an extraordinary reduction in the overall value of his investment portfolio and net worth, it's going to be protection for him. It will help him achieve diversification

"We -- "neither we, nor Mr Maybank, consider this transaction to be speculative." So it shows their involvement And it talks up the Pre-Paid Variable Forward Contract.

And this is significant for this reason This is coming from people in the Wealth Management Advisor area. Mr Mahfood signs off on this, as does Mr Walters, to the highest level of the bank, as having worked with Mr. Maybank They present this as having we worked with him and we have counseled him and we have got this program and it's going to do these good things for him. The issue being there is testimony in the record that neither Mr Mahfood nor Mr Walters understand how -- have expertise concerning how pre-paid variables work They are not making any recommendations They are not allowed to make any recommendations And if you are not allowed to do any of these things, why is this going on? So that's one question

Q Professor Freeman, could I --

A. Yes.

Q One quick question there

Do you see the information included in the letter as investment advice?

A. Oh, sure, it is Sure. I mean, you can't be writing a letter like this talking about all the things that you have been supposedly over with Mr Maybank without saying that we have been advising this man

And then -- then this surfaced last Friday and I looked at it I believe on Saturday I got it for the first time This -- his letter is dated, the first one, the '06 letter, August 11th, 2006, when he did his transaction, or about the time he did his transaction

This one is dated February 1, '06 It's a letter very much along the same lines with a lot of the same verbiage. And what this reflects is people at BB&T basically writing a form letter for the use in Pre-Paid Variable Forward Contract transactions involving BB&T employees with concentrated BB&T stock positions, to put them in Pre-Paid Variable Forwards And then you have got the little bullet points here and you have got the "we don't think this is speculative," and it's all -- it's all a form letter that was done months before Mr Maybank's transaction was consummated So clearly there was a movement afoot in the bank to have a program to sell things like this to people like Mr Maybank, and he ended up buying it, but the skids have been greased back in February

Q Professor Freeman, do you have an opinion about whether it is appropriate to express judgments about whether a transaction is speculative without reference to the particular circumstances and needs of a particular individual?

A Yes, I have an opinion

Q And what is that opinion?

A Yeah, you don't -- you don't announce whether something is speculative, or proper, or anything in the abstract

This form letter, for example, says -- instead of Mr. Maybank, it's Mr Client, okay? "Neither we, nor Mr Client," because this is a form letter and getting to use it that way, "consider this transaction to be speculative as outlined in the Code of Ethics "

Well, there is no client How can you say that we don't consider it to be speculative, exactly the same language that you used with Mr Maybank, when you don't even have a client that you have talked to make that kind of analysis at all?

What's going on here is a question that you end up with in your mind

Q Is there any propriety in the form letter and the practice that you have seen to involve?

A I just see it as being very weird And the reason I see it as being weird is because, you know, one story here

is that Mr Maybank brought this on himself, he wanted to do the pre-paid, he kind of sold the idea, and yet that doesn't really jive with this.

It looks more like Mr. Walters, or somebody at BB&T, had a program to extend into derivatives and this is part of the program

Q. Whose approval does the form letter or the disclosure letter seek?

A. It seeks the approval of Patricia Oliver, Executive Vice President, Secretary, and General Counsel, and I believe she is the top legal executive at the bank holding company level, but way up -- way up on top

Q. And that's BB&T Corporation, is that correct?

A Yes

Q What significance did you place on the fact that the letter is receiving approval from the very -- among the highest corporate officers in the company?

A That the highest corporate officers in the company have signed onto this program and signed onto this product and consider it to be appropriate and an appropriate way to sell it

Q Do you have experience relating to opinion letters issued by corporate orders?

A Yes, I do

Q And tell us what that experience is

A. I started writing about it the 1970's I did an article in the Duke Law Journal called Opinion Letters and Professionalism. There is a book out on legal opinions and I have written much of that

I also did an article in the Columbia Law School Journal of Business Law on opinion letters, so I'm well versed on opinion letters

Q Would clients of a firm be entitled to rely upon the opinion letter of the corporate general counsel?

A If corporate general counsel writes an opinion letter, yeah, the firm would rely upon it and then it would be appropriate

Q And if the letter is sent to a client, such as Mr Maybank, would he be entitled to rely upon it?

A Certainly.

Q We talked just a little bit, though, but let me address this. Have you reviewed the BB&T Asset Management compliance manual?

A. Yes

Q. And did you review Section 5 4 4 and find it to be applicable to your opinions here?

A. Yeah, I think that certainly the principle that's in there about avoiding conflicts of interests I subscribe to

MR KRISTINIK Your Honor, objection on the same grounds asserted in our motion in limine with respect to the

inapplicability of Section 5 4.4.

THE COURT Okay

MR KRISTINIK They need to lay some foundation as to why it would be applicable to this situation

THE COURT Yeah, please do that

BY MR WILLOUGHBY:

Q Professor Freeman, does that particular section state a standard of general application?

A I believe it does And I believe that, you know, the standard general application is you either avoid conflicts of interests entirely, or you get appropriate waivers And I believe that the principle of avoiding the conflict of interest in recommending your own stock applies here

I mentioned earlier that I subscribe to the theme I think that that's valid I think it is applicable here and I also agree with what Mr Fisher said, "that making a recommendation concerning BB&T stock creates a conflict and we wouldn't do that," and I tip my hat to him and I think he made a good call there, and I think that that's what the Code of Ethics says, and I think that that should have been applied in this case, and I so testified in my -- I testified that it was a conflict of interest, and I consider it an unwaiverable conflict of interest in my deposition and I still hold that view

Q Professor Freeman, that 5 4.4 standard is a compliance

manual that was issued by BB&T Asset Management, Inc., and the standard is not a compliance manual they say that involves BB&T Bank

In your experience, in your professional opinion, is the standard that is enunciated in 5 4.4 a general standard that would apply both to the bank as well as BB&T Asset Management?

A. Yes Yes The answer is yes and let me explain This isn't a Code of Ethics, okay I have taught Code of Ethics for lawyers and for some other professions plenty of times There is a basic ethical principle that we have, for example, in the legal code that it's illegal to do something directly or indirectly And if you are not allowed to do something for a client who has got an account with you, if the account is with one of your affiliates, I think the same principle would apply I think it's good practice and I agree again with Mr Fisher that it's a conflict of interest that you shouldn't do

Q Are you familiar with the general term of putting form over substance?

A Yes

Q Do you see any of that in this particular situation?

A Yes The substance I believe calls for refraining from making recommendations And as soon as you start -- as soon as you start making arguments why you should be allowed to

be in a conflict of interest position, I think you are not taking the high ground

Q. Was the conflict that you see in this case properly handled, in your opinion?

A No.

Q Please explain.

A Well, first of all I don't think there was ever any effort to address it. There was never any effort to really discuss it with Mr Maybank And my estimation, as I testified in my deposition, I believe the better call would have been for the bank to refrain from making any recommendation, buy, sell, or hold, or hold in a three year Pre-Paid Variable Forward Contract to BB&T stock, "say, Mr Maybank, we would love to help you, but this concerns our own stock. It's $9 million worth of our own stock We are not comfortable giving advice about that Here are the names of some good advisors to help you manage that particular part of your portfolio. We would be happy to help you on other things, once you have made that decision, fine," but I would think, as I testified in my deposition, that the appropriate thing would be to refer it out

Q And you mentioned earlier in your testimony about an unwaiverable conflict of interest.

A. That's why --

Q Please explain to the ladies and gentlemen of the jury

what you mean by that.

A Yeah, I said that I believed that this conflict of interest is such that you shouldn't do it

And Mr Fisher on the screen, we all watched him, said that "making that recommendation would be a conflict and we wouldn't do that " Okay Well, hats off to Mr. Fisher. I agree with him

Q Did the bank, in making the recommendation to Mr Maybank, violate what Mr Fisher said?

A Yes

Q How would you characterize -- or correction.

Are you familiar with the financial product called the Variable Pre-Paid Forward Contract?

A Yes, I become familiar with it in this case.

Q How would you characterize the investment?

A Complex, risky, dangerous, very expensive Not a long-term investment program or product Should not be purchased for long-term holdings A niche product that may be suitable in limited cases for people with special circumstances, not present here.

Q Did you hear Mr. Kristinik's opening in which he attempted to explain the pre-paid?

A I did hear that. I -- in fact, that's why I came to Greenville --

Q Did you --

A -- to hear that
Q Did you hear him ever mention --
MR KRISTINIK. Objection, Your Honor Is he going to --
THE COURT Wait As I told y'all earlier, what lawyers tell you as lawyers is not evidence in the case Okay
All right, let's talk about the evidence
MR WILLOUGHBY Your Honor, I'll rephrase it this way
BY MR WILLOUGHBY
Q Did you hear any mention of costs? Did you hear Mr Maybank talk about that no costs was ever mentioned to him?
A Yes
Q Did you attach any significance to the fact that there was no mentioning of costs related to this product?
A Yeah, I think to me that's very disturbing, very major, and it's a huge -- it's a huge factor for me as an expert in this area
Q And is costs one of the issues related to this product?
A Costs to me is the most dangerous worrisome thing about this product, once you understand what you have gotten yourself into -- or actually you better understand what you are getting yourself into before you get in there, because otherwise you are in real trouble

Q. Was Mr. Maybank able to invest 100 percent of the proceeds from his pre-paid?

A. No.

Q. And, again, would you please demonstrate on the white board there what the numbers are?

MR WILLOUGHBY Would you -- we can come back up with the lights

(Witness off the witness stand)

A. My penmanship may not be the best, okay, but bear with me I'm just going to try to cut through this and make it as simple as I can

Here is what I see He's got 9 3 million in BB&T stock 246,000 shares He's got a lot of money there. And under the pre-paid, that's put into the pre-paid. Fine

He gets back 7 1 million. That's what he gets back in return

Now, what he testified to, if I understand correctly, is that he thought like this was like a margin account where you get to borrow against your equity, but you still own your equity In truth that's not the way it works

If you just take the value of what he turned over and what he got back, you see there is a difference of 2 2, and this is million Here is an important point That money is gone. Good-bye, adios, gone forever That is part of the pre-paid and you are going to be missing that money.

Now, he had the 7.1 left after this money disappears. It's gone He had 7 1 left, but we know that he had margin debt And he has testified that when he got into this, he wanted to pay down his debt He realized that that was a problem You heard it was running at $19,000 a month in interest You would want to get rid of the debt that's doing that, so he's going to pay it down That was 2 5 million And this is 7.1. And that's what left him when all is said and done, 4 6 And that's what -- that's what he had

Now, here is something else that I see about costs that's important. What do we know happened later? What we know happened later is that in January of '09, which if you count the months is 29 months later, just do the math, he gets in another one of these things, after checking with BB&T and being told that this is an okay, all right, this is maybe a good move He gets in another one and then roughly in round numbers $1 3 million is taken as a cost for that one.

So where are we at this point? At this point cost-wise, purely cost-wise, we are 29 -- January -- as of January of '09, we are 29 months down the road and we have shelled out for this Pre-Paid Variable Forward Contract $3 5 million that is gone from his net worth It is good-bye, adios, never see it again

Now, if you want to talk about $19,000 a month being a lot of money, try this If you just take this cost for the Pre-Paid Variable, which he had sunk into the Pre-Paid Variable investment program within 29 months and divided it by 29, that gives you something like $120,000 a month that is disappearing from his wealth to fund this Pre-Paid Variable Contract

And, you know, talk about costs If $19,000 a month of interest is a bad thing, and I certainly wouldn't want to pay it, I'll just tell you that's my opinion, it would be tax deductible, but, you know, it's still a lot of money, if that's a lot of money, $120,000 a month is a whole lot of money

And here is what I heard in this courtroom from him He said that when he realized after the fact that he had gotten hit here with a million three in costs, then he tried to break the contract, to undo the contract, that he -- then the light went on and he realized what was happening, okay? That's late in the game, okay? But you can understand this tremendous cost And for this not to be front and center for an investor to realize that there is an anchor that you are going to go pulling here, that money is going away, to me that's an issue

There is another issue here and that is with this 4 6, that's what he had left over at the end of the first

pre-paid -- really in August of '06. He had 4.6

You have heard that you have certain options with the pre-paid At the end of three years you can give them the 9 3 million, get your stock back and that's the end of it You are gone from pre-paid world You are free Done Of course, where you are at that point is you are holding a portfolio jammed with BB&T stock, undiversified, concentrated, and you still got the government to deal with, because you are still going to have to pay tax when you sell that on a low basis stock, so you are back where you started, or you can roll The problem with rolling is that these costs make it very, very difficult for you to make any headway

Where he was -- think about this After he was in the Pre-Paid Variable he had 4 6 million In three years if he wanted to kind of, if you will indulge me, pay a ransom and get back his stock, pay off the deal, pay the 9 3, it had to come from this Well, how do you turn 4 6 million into 9 3 million in three years? Well, you better make a whole lot of money in the stock market to do that

Q What sort of return would it require to achieve that sort of --

A. Well, here is the thing You have got to -- you have got to more than double 4 6 to get to 9 3, but when you double, you have got capital gains, so you are going to have

to pay tax. And if you want to have 9 3, you better be up around 10 2, 10 3, 10.4, pay the tax and then you get this. So you are going to have to get around 130 percent return on your 4 6. And that intrigued me about this investment and I went and looked to see how common it is for stocks to go up 130 percent in a three year time span starting in 1920, and I will tell you, it's happened once. It happened during the 1930's, from I think '35, '36, and '37, as we were lifting out of the depression and the crash, there was one year where this happened. But what you are talking about is getting hit by lightening, a once in a lifetime event, in order to generate the cash that you need if you want to get out of this system, if you want to get out, to buy your way out of it. If you can't buy your way out of it, you either give up your stock and take whatever you have got, or you roll the thing to forestall tax issues and so forth. But when you roll, you know, you have got somebody there to collect a toll from you.

So it's -- there are issues here that really I think a reasonable person would want to know about that Mr. Maybank contends were not disclosed to him when he invested, and I just haven't seen any evidence that issues like this were really front and center here is how it works. And my research that I did showed that essentially this is not a long-term investment. Pre-Paid Variables over years, the

longer you hold it, the more expensive it is and the less you -- the less it does for you.

(Witness back on the witness stand).

A In the short period for a niche person who may be has a court order and can't sell the stock, you might want to be have them do something to borrow against it and protect yourself, but in the long run the information that I have is that over the longer you hold it, say nine years, you would have been better off to sell the stock and pay the tax and just be done with it and invest the proceeds and don't have anything to do with the thing That's -- that's -- that's what -- that's what I found

Q Okay Professor Freeman, are the costs of this product and strategy so severe that they must be disclosed?

A Oh, yeah, I think that's a -- the costs -- and, frankly, to me also the fact that this is not a long-term investment, but he understood it to be And in my research, one of the things that I found was a POWERPoint by Shawn Gibson talking about what your options are when -- at the end of this strategy three years down the road What your options are, and you can, you know, buy your way out, if you got the money

What he said was the ideal solution, the best answer is to roll it, which is to say keep buying That's the ideal solution I think that's very bad advice, because what he's

really saying this is a great long-term investment And I just don't see it as being a valid long-term investment I testified at my deposition that I don't see it as a valid long-term investment. There is support for that position

And Mr Maybank, in August of '06, had an 11 year life expectancy. If he just lived a normal life after that, he would be paying for this thing for 11 years, if he was keeping this rol-up with these tremendous costs And I just --

I have serious problems with this venicle I do not believe it was a proper suitable investment for him, and I do not believe he was properly advised when he got into it and I fault BB&T and its people for those failings.

Q Did you see any evidence, Professor Freeman, that the costs were appropriately disclosed?

A No

Q Did you see --

A He testified after the fact That's the bad time for an investor to learn what the costs of something are How do you make a decision if you are not told?

He believed, I think inaccurately, that he owned -- that the stock was somehow his It's like a margin account and he still owned the equity. That wasn't the case at all

Q. Did you see any evidence, from your review, that the bank provided Mr Maybank with any advice about the 130

percent return that would be necessary in order to generate the cash to redeem the shares of stock?

A. Well, there was none of that

And there was also no -- there was no advice about the tax consequences If you remember, he testified the tax consequences of the second one after the fact. The bank people came and told him "oh, by the way, it looks to us like you are going to have pay a million dollars of ordinary income." Now that -- of tax That's over and above the cost of the product; so that's another cost that nobody -- nobody had disclosed to him, or risks that nobody had disclosed to him with that second rollover, and I think that that's wrongful

Q Okay Are you aware, Professor Freeman -- strike that

One other In the POWERPoint that you saw from Mr. Gibson, did you see any indication in that POWERPoint that a part of this strategy on behalf of the bank was fee driven?

A Yeah, I don't know if it was that POWERPoint, or another, but he has a little section in there about how much money the bank can make by selling these things.

And, look, I don't blame anybody for wanting to sell something to make money doing it The question -- and I don't fault him for focusing on that when he's trying to chat up people and get people interested in selling that, but you got to sell it accurately and honestly to make the

money, and I didn't see the focus being on that.

Q. Professor Freeman, I'm handing to you a document that's entitled Value Added Applications of Equity Derivatives that has Mr Gibson's name on the front and ask if you have reviewed that document and developed in your opinions?

A Sure

Q And that document has a bates number from the bank, is that correct?

A Yes, sir

Q Okay.

MR. WILLOUGHBY Your Honor, we would tender this document as the next trial exhibit

MR KRISTINIK Is it authenticated? No witness has authenticated the document, once that's done, but we don't think he can just hand it to Professor Freeman

THE COURT Yeah I'm sorry, I --

MR. WILLOUGHBY Your Honor, it's produced by the bank in discovery It comes from their files. I think it is essentially authenticated I don't believe there has been any --

MR KRISTINIK It's says Scott & Stringfellow on it

MR WILLOUGHBY Well, he was --

MR KRISTINIK It's not a BB&T document

MR WILLOUGHBY. Well, they produced it to us and

produced they it to us based upon information that Mr Gibson was distributing to people at the time that he was working

THE COURT. Okay. Well, just mark it for identification.

(Value-Added Applications of Equity Derivatives marked as Plaintiffs' Exhibit No. 92 for identification)

BY MR. WILLOUGHBY.

Q. So this document has been marked for identification as Exhibit 92. If you would look at the very last page of that, Professor Freeman, and --

MR KRISTINIK Your Honor, obviously the witness can't be reading from this Scott & Stringfellow's document It's not been authenticated

MR WILLOUGHBY Your Honor, I'm not going to ask him to read, but --

THE COURT: Okay

BY MR. WILLOUGHBY.

Q Professor Freeman, in looking at all of the materials that you looked at, did you see information that indicated what the bank's strategy was related to these products?

A What do you mean by what the bank strategy was?

Q In terms of the bank strategy from a revenue generation

A Yes, I think the bank had a program to sell derivatives

and that this is part of it, and the same as this earlier February 1 document, the form letter. They wanted to make money selling this stuff

Q. Are you aware of any evidence in the record that BB&T allowed its employees with no formal training or expertise on Variable Pre-Paid Derivative Contract to advise, recommend, and sell variable derivative contracts to Mr Maybank?

A Yes

Q. Was such conduct proper?

A. It wouldn't be, because people in the Wealth Management Advisors weren't allowed to advise on Wealth Management, yet Mr Maybank testified that they did sell this.

They testified they hadn't done any suitability checking and weren't expert in the product And I don't think if you have got untrained people without a skill-set, that they should be selling $9 million worth of investments.

Q Did you, in your review, find any evidence that anyone who participated in the sale of the Pre-Paid Derivative Contract to Mr Maybank fully under the product?

A No, the closest you could come is Mr. Gibson, but I question that, because of the POWERPoint that I saw where he talks about the ideal way to handle the pre-paid at the end of the term is to do another one and just -- and so do another one and another one and another one, and the costs

will kill you. That's just not -- I haven't seen anybody say that a pre-paid is a good long-term estate planning, or whatever, strategy.

Q Did you see any evidence that anyone fully explained the product?

A: Zero

Q Are you aware whether or not anyone at BB&T ever made a competent suitability investigation of Mr Maybank's needs and circumstances as an investor?

A It never happened Everybody just says, "you know, I didn't do it." I thought -- no, not -- not -- not in '06

I understand that Mr Deal has testified I haven't seen his deposition, testified that it was a suitable investment in '09 I would quibble with that. Blowing 3 5 million of a person's wealth and keeping on this merry-go-round to me is not a good idea.

Q How do you characterize actions such as these?

A Wrongful, improper, failed to adhere to a proper standard of care for investment advisors or people who owe fiduciary duties

Q Describe what you would believe in your opinion to be a proper suitability analysis for a client like Mr Maybank

A You start by understanding the client and the client's wealth, the client's spending, the client's ownership of assets and the type of assets and how liquid those assets

are Liquidity of assets is a key factor for something like this when you are going to have to come up with cash down the road What is the ability of somebody to come up with cash down the road? And a close inspection of Mr Maybank and where he was at that time, particularly with the $2 5 million of debt would have told anybody no

So in analyzing suitability, you take all that into account You take into account the age You take into account where they are on the job kind of spectrum. Are they just starting? Are they making big money? Are they being -- you know, moving into retirement? Their health has to be taken into account Family needs have to be taken into account A great many things, so that you actually know the customer and can look at things from the customer's standpoint That never happened here Should have Never happened

Q Is it important the bank in its role as a fiduciary for the Trust understand the needs of the Trust and the source of income to fund the Trust?

A Yes, and let me explain May I explain?

Q Yes, you may

A The bank is wearing two hats It's got the wealth management advisors and it's got the investment advisors, and it's got the portfolio, and it's got all that going on, but it also is wearing the hat as the trustee for his life

insurance trust Life insurance trust is something that you unselfishly set up to provide for your family with life insurance, and he had done that, and he had costs involved And, in fact, while he's invested in this thing, the bank is still selling him -- or involved in selling him, as I understand it, $2 million more, so he ends up with $5 million in his life insurance trust The bank -- the bank, because of they are the trustee of the trust, would be charged with knowledge that he's got this trust that has these financial needs and at the same time the bank is running his finances I think it's a conflict and improper for the bank to manage his personal finances in a way that destroys the value of the Trust and basically kills the Trust, which the bank is the trustee of and should be protecting and not harming.

Q So there's a conflict of interest for the bank in that dual role taking action in one of its fiduciary responsibilities that jeopardized the liability of the other?

A I would say yes

Q Now, did you hear Mr Fisher talk about the Securities & Exchange Commission's criticism of the transaction-based fees as being broker-esque?

A I did I sat in here with the jury, and I also read his deposition

Q Do you have --
A Both of them
Q. Do you have any experience or background in dealing with the consequences of investment advisory personally receiving transaction-based compensation in connection with selling investments?
A Yes
Q Have you testified in any such cases?
A Yeah, I testified in a case against somebody who I then turned into the Securities Division and they were punished for taking transaction-based compensation without being a licensed broker-dealer
Q And what was the name of that case?
A. That was Loreal Langemeier
Q Based on your knowledge, background, training and experience, do you have an opinion concerning the nature of the compensation received by BB&T in this case in selling the Pre-Paid Contract to Mr Maybank?
A Yes
Q What was it?
A Transaction based, the same as I testified at my deposition I think it was sales commission for selling a product, and I have that opinion bolstered now by Mr Fisher, who says that one-time fees, which this was a supposed one-time advisory fee, are not appropriate

investment charges when you are doing asset-based -- receiving asset-based compensation

He also said that this is, quote, "sort of outside the bounds a little bit "

He also said, quote, "it's contrary to what our registered investment advisor should be doing " I agree with that, and he wanted to get on the right side of the SEC, and so they paid the money back

And I take all that into account as supporting my position that, yeah, you shouldn't have taken that money. And, you know, banks normally in my experience don't sit down and for no reason, no good reason, send a million dollars to 130 people just because of no reason

Q Have you determined whether or not BB&T Bank or BB&T Asset Management have brokerage license to operate in the State of South Carolina?

A. Yeah, my understanding is they do not have broker-dealer licenses

Q. Is there a purpose, a public purpose, behind requiring people who provide brokerage-type services to be registered?

A. Yes, there is

Q And would you explain what the policy is behind that?

A. Yeah You can do a lot of harm if you are allowed to sell investments and nobody is watching you and you don't have to meet any standards and there is no way to check on

you and no way to punish you, because you are getting your hands on other people's money.

MR KRISTINIK: Objection, Your Honor This is a previously undisclosed opinion

THE COURT Okay

MR. KRISTINIK It was not provided, and we have the letter from Mr Freeman --

THE COURT: Okay.

MR WILLOUGHBY: This is basically background information, Your Honor, on policy considerations underlying --

THE COURT: Ask the question again

BY MR WILLOUGHBY

Q Professor Freeman, are there policy considerations underlying the obligation to be registered?

A Yes.

Q Are those policy considerations designed for investor protection?

A Yes, they are

Q Do you know what those considerations, policy considerations, are?

A It's public protection, the same way you protect the public by not letting people practice medicine without a license, practice law without a license

MR KRISTINIK: Your Honor --

THE COURT: Okay

MR KRISTINIK. I mean, none of this is captured in any of the opinions that they were required to disclose back in --

THE COURT: Well, I don't think he's expressing an opinion, so I will overrule it

MR KRISTINIK Okay Thank you, Your Honor

MR WILLOUGHBY. And I think it's admitted, judge, that they are not --

THE COURT. I have overruled the objection Go ahead Keep going

BY MR WILLOUGHBY

Q Why is it important for only licensed companies to be able to effect securities transactions?

A Because securities transactions are terribly important to the well-being of our country, because they pertain to investment and we need to protect investors to have more investment and grow our economy.

Q And did you place any significance on the refund letter that was mentioned by Mr Fisher that you have seen in the record?

A Yeah, I have seen it

Q And what significance did you place on it?

A Just at the tag end I noted that he said thank you for -- to Mr Maybank for putting your trust and confidence

in BB&T, which he did, and that's -- that's -- in other words, he looked to them to be his fiduciary and to protect him, and you heard him talk about the bank. And the man acknowledged that. And he also said that "it's been a pleasure to serve you and the family," which I noted.

Q. In your investigation, did you find signs of irregular and -- irregular behavior on the part of BB&T?

A Yes

Q Please explain

A From day one the contract that you have seen and it's been talked about where they promise they are going to do these things and then they say well, we weren't really going to do them, somebody else was going to do them, and I faulted that I said, first of all, don't promise to do something you are not going to do and can't do

And secondly, if these jobs are to be done, do them right and get them done right, and I didn't see that that happened

So right from the get-go it was bad.

I think that the product -- there was no suitability investigation There was no explanation of the terrible costs of these things It was sold as a long-term investment. It wasn't a long-term investment And all the way through, taking broker-dealer type compensation and then having to give it back I think was wrongful.

I think -- I think Mr Maybank, in my opinion, got played He trusted and he ended up with a very bad product, and he ends up being criticized here in this courtroom for his spending, when, in fact, one reason that he ran out of money is because 3 5 million was diverted based on bank advice basically gone, just to play the Pre-Paid Variable game, which got him nowhere He called it a trap and I believe it was

Q Professor, I have pulled up onto the screen an exhibit that's in evidence This is Exhibit 50

MR WILLOUGHBY Lindsay, cull out this section right here

BY MR WILLOUGHBY

Q You have seen this letter before, Professor Freeman?

A Yes, I have seen it

Q Do you have any opinion as to whether or not the driver behind the issuance of these refunds are corporate value?

A That's what the man says I think the jury has heard enough to make its own determination

Q Are you aware as an expert in the field of conduct and misconduct on the part of professionals, how would you characterize BB&T's behavior in dealing --

A You have to start that over again I didn't hear you

Q As an expert in the field of conduct and misconduct on the part of professionals, how would you characterize BB&T's

behavior in advising Mr Maybank in this case?
A I believe it was grossly wrongful
Q Are you aware that the defendants failed to prepare, although they said they would prepare, a comprehensive financial plan for Mr Maybank?
A I'm aware of that
Q And do you have an issue with that?
A I fought that tremendously He was at a time of his life with certain -- he's at a crossroads He had too much debt He needed to get rid of that He needed diversification. There were things that he needed And the issue is how do we get things under control in the most efficient way? And that starts with making a serious deep analysis and maybe making some hard decisions and it never came to that. Instead this kind of one size fits all product was sold that very much ill served his needs and destroyed his wealth
Q Do you have an opinion as to whether or not the bank's failure to properly advise Mr. Maybank of the Trust against liquidity crunch caused harm to plaintiff?
A Yes, I have an opinion
Q And what is your opinion?
A My opinion is that his downward spiral that started with the Pre-Paid Variable and continued on with money being hemorrnaged, as we see on that white board, destroyed the

Trust and led to the destruction of the Trust and the loss of the value in the Trust

Q And, Professor Freeman, do you hold the factual opinions that you have expressed and -- the factual and professional opinions that you have expressed here today to a reasonable degree of professional certainty?

A. Yes.

Q Please answer any questions that Mr Kristinik may have

THE COURT. Well, Mr. Willoughby, you said this would be 45 minutes. That was inaccurate

Ladies and gentlemen, I think we will break for the evening, okay?

Y'all don't discuss this. Don't do independent research. Y'all have a pleasant evening

I do want to inform you of this now so you can make some plans I am going to be required to go to a meeting in Columbia on Friday, so we will not be able to hold court on Friday, so y'all can make plans apart from court Of course, I'll tell you on Thursday I need to have you back on Monday, okay? So y'all have a pleasant evening and I'll see you at 9 30 in the morning

(The following takes place outside the presence of the jury panel)

THE COURT. Okay, Mr. Freeman, of course, as you

know, you are -- I'm not going to make you spend the night here, but don't discuss your testimony, okay?

THE WITNESS Yes, sir.

THE COURT All right Thank you very much All right.

Anything before we break?

Now, you did indicate you wanted a break, didn't you, Mr Willoughby -- I mean Mr Kristinik?

MR KRISTINIK Absolutely, Your Honor

THE COURT Okay

MR KRISTINIK It's been a long day

THE COURT Okay See you'll in the morning

MR KRISTINIK Thank you, Your Honor

MR WILLOUGHBY 9 30, Your Honor?

THE COURT Yes, sir

(Whereupon, proceedings were adjourned to June 19, 2014)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

FRANCIS P. MAYBANK AND JANE H.P. MAYBANK, AS TRUSTEE FOR THE FRANCIS P. MAYBANK FAMILY INSURANCE TRUST,

PLAINTIFFS,

-vs-

BB&T CORPORATION, BRANCH BANKING AND TRUST COMPANY, SUCCESSOR IN MERGER TO BRANCH BANKING AND TRUST COMPANY OF SC, AND STERLING CAPITAL MANAGEMENT, LLC, SUCCESSOR IN MERGER TO BB&T ASSET MANAGEMENT, LLC,

DEFENDANTS

TRANSCRIPT OF RECORD
2011-CP-23-08578

JUNE 19, 2014
GREENVILLE, SOUTH CAROLINA

(VOLUME IV)

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE:, and a jury

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66.23	MAYBANK FAMILY INSURANCE TRUST BB&T STATEMENT, DATED Q1 2010, BATES NO. MAYBANK 257-62		171
66.24	MAYBANK FAMILY INSURANCE TRUST BB&T STATEMENT, DATED Q2 2010, BATES NO. MAYBANK 263-67		171
66.25	MAYBANK FAMILY INSURANCE TRUST BB&T STATEMENT, DATED Q3 2010, BATES NO MAYBANK 268-72		171

AGREED UPON EXHIBITS

NO	DESCRIPTION	ID.	EV
66.26	MAYBANK FAMILY INSURANCE TRUST BB&T STATEMENT, DATED Q1 2011, BATES NO MAYBANK 274-78		171
69	E-MAIL FROM ROSS WALTERS TO WEALTH MANAGEMENT DIVISION, DATED 1/9/2007, BATES NO BB&T 04466		171
70	2006 WEALTH MANAGEMENT AGREEMENT AND ATTACHMENTS, INCLUDING FORM ADV PART II, DATED 8/23/2006, BATES NO BB&T 0003-0038		171
71	2009 WEALTH MANAGEMENT AGREEMENT AND ATTACHMENT, INCLUDING FORM ADV PART II, DATED 11/2/2009, BATES NO BB&T 0039-59		172
72	SPREADSHEETS AND CV OF DR. CRAIG MCCANN, DATED 12/3/2014, BATES NO MAYBANK 8870-8972		172
73	CV OF PROFESSOR JOHN FREEMAN, DATED 12/3/2014, BATES NO MAYBANK 8980-85		172
74	CHART AND CV OF SCOTT BRAWLEY, DATED 12/3/2014, BATES NO MAYBANK 8989-91		172
75	SUPPLEMENTAL CHART OF SCOTT BRAWLEY, DATED 12/13/13, BATES NO MAYBANK 9014-16		172

PLAINTIFFS' EXHIBITS

NO.	DESCRIPTION	ID	EV
76	2005 ANNUAL REVIEW		303
77	2006 ANNUAL REVIEW		303
78	2007 ANNUAL REVIEW		303
79	2008 ANNUAL REVIEW		303
80	2009 ANNUAL REVIEW		303
81	2010 ANNUAL REVIEW		303
82	2010 10-K		305
83	2011 10-K		305
84	2012 10-K		305
85	2013 10-K		305
86	OPTIONS INFORMATION FORM AND AGREEMENT		320
87	RISK DISCLOSURE FOR THE TRADING OF OVER-THE-COUNTER DERIVATIVE CONTRACTS		320
88	THE LAST WILL AND TESTAMENT OF FRANCIS MAYBANK		347
89	BB&T PERSONAL DEVELOPMENT PLAN		646
90	FEE CHART		646
91	FORM LETTER		689
92	VALUE-ADDED APPLICATIONS OF EQUITY DERIVATIVES	710	
93	CHART		940
94	DEMONSTRATIVE CHART		1011
95	DEMONSTRATIVE CHART		1011

PLAINTIFFS' EXHIBITS

NO.	DESCRIPTION	ID	EV
96	DEMONSTRATIVE CHART		1011
97	DEMONSTRATIVE CHART		1011
98	DAMAGES DOCUMENT	1016	
99	DAMAGES DOCUMENT	1016	
100	E-MAIL, DATED 9/3/2004		1077
101	BB&T WEALTH MANAGEMENT AGREEMENT FOR EFFIE BOWERS		1152
102	BB&T WEALTH MANAGEMENT AGREEMENT FOR EFFIE BOWERS		1153
103	WEALTH MANAGEMENT AGREEMENT SALES REPORT		1349
104	SALES TRACKING AND INCENTIVES REPORT		1358
105	LETTER FROM ROSS WALTERS TO PAT OLIVER, DATED 8/11/06		1438
106	PERSONAL DEVELOPMENT PLAN FOR ROSS WALTERS FOR 2006		1440
107	E-MAIL, DATED 1/5/06		1449
108	PERSONAL DEVELOPMENT PLAN FOR ROSS WALTERS, DATED 7/9/13		1456
109	E-MAIL CHAIN		1459
110	E-MAIL		1462
111	BB&T PESRONAL DEVELOPMENT PLAN FOR P. NATHAN DEAL, DATED 4/8/08		1628

PLAINTIFFS' EXHIBITS

NO	DESCRIPTION	ID.	EV
112	BB&T PERSONAL DEVELOPMENT PLAN FOR P. NATHAN DEAL FOR PLAN YEAR 2008		1630
113	E-MAIL CHAIN, DATED 1/20/09		1640
114	BB&T ASSET MANAGEMENT COMPLIANCE POLICIES AND PROCEDURES MANUAL		1646
115	E-MAIL CHAIN, DATED 4/21/10		1651

DEFENDANTS' EXHIBITS

NO	DESCRIPTION	ID	EV.
2	SCOTT & STRINGFELLOW OVERVIEW OF PRE-PAID CONTRACTS, BATES NO MAYBANK 1859 TO 1866		460
4	E-MAIL FROM CLARK ANDERSON TO FRANK MAYBANK, DATED 7/24/06, BATES NO BB&T 01132	128	
10	E-MAIL FROM ANTHONY MAHFOOD TO SHAWN GIBSON, DATED 4/27/07, BATES NO BB&T 36956		1303
12	MEMORANDUM FROM MAHFOOD TO OLIVER, DATED 8/11/06, BATES NO. MAYBANK 1746-1747		469
15	SETTLEMENT OVERVIEW PROPOSAL FOR 2006 PRE-PAID, BATES NO BB&T 04256-04257		1312
16	SETTLEMENT OVERVIEW 2006 PRE-PAID, BATES NO. BB&T 09650		475
20	CONCENTRATED STOCK RISK MANAGEMENT ADDENDUM, DATED 7/10/06, BATES NO. BB&T 00105-107		462
23	INSTRUCTIONS TO DELIVER SHARES, DATED 8/11/06, BATES NO BB&T 00132		579

DEFENDANTS' EXHIBITS

NO.	DESCRIPTION	ID	EV
25	WIRE INSTRUCTIONS, DATED 8/15/06, BATES NO. BB&T 00127		472
27	WEALTH MANAGEMENT AGREEMENT AND ATTACHMENTS, INCLUDING FORM ADV PART II, BATES NO BB&T 00003-00038	129	
32	CLIENT INVESTMENT OBJECTIVE FORM, DATED 12/22/08, BATES NO MAYBANK 000120		497
36	HANDWRITTEN NOTES OF MIKE LACKEY, DATED 1/9/09, BATES NO BB&T 01137		1357
43	SETTLEMENT OVERVIEW, BATES NO. ARGO(BB&T) 02081		1552
57	SETTLEMENT OVERVIEW 2009 PRE-PAID, DATED 1/21/09, BATES NO. BB&T 01929		1608
58	WRITTEN INSTRUCTIONS FROM FRANK MAYBANK TO SELL POSITIONS, DATED 6/17/09, BATES NO BB&T 44989		514
59	WEALTH MANAGEMENT AGREEMENT, DATED 11/2/09, BATES NO. MAYBANK 000085-0089	130	
63-17	BB&T MANAGED PORTFOLIO ACCOUNT STATEMENT, DATED 12/31/2007, BATES NO. BB&T 02231 - 02242		490

DEFENDANTS' EXHIBITS

NO	DESCRIPTION	ID.	EV
63-25	BB&T MANAGED PORTFOLIO ACCOUNT STATEMENT, DATED 8/31/2008, BATES NO. BB&T 02416 - 024020		494
64	SCOTT & STRINGFELLOW ACCOUNT STATEMENT, DATED 1/31/2003, BATES NO BB&T 03358 - 03360		421
64-11	SCOTT & STRINGFELLOW ACCOUNT STATEMENT, DATED 12/31/2003, BATES NO BB&T 03404 - 03407		424
64-23	SCOTT & STRINGFELLOW ACCOUNT STATEMENT, DATED 12/31/2004, BATES NO BB&T 03454 - 03458		426
64-35	SCOTT & STRINGFELLOW ACCOUNT STATEMENT, DATED 12/31/2005, BATES NO. BB&T 03492 - 03494		428
64-42	SCOTT & STRINGFELLOW ACCOUNT STATEMENT, DATED 7/31/2006, BATES NO BB&T 03514 - 03519		430
64-43	SCOTT & STRINGFELLOW ACCOUNT STATEMENT, DATED 8/31/2006, BATES NO BB&T 035-16 - 03519		501

DEFENDANTS' EXHIBITS

NO	DESCRIPTION	ID.	EV.
64-44	SCOTT & STRINGFELLOW ACCOUNT STATEMENT, DATED 9/30/2006, BATES NO BB&T 03520 - 03522		503
64-65	SCOTT & STRINGFELLOW ACCOUNT STATEMENT, DATED 6/30/2008, BATES NO BB&T 03582 - 03585		505
64-72	SCOTT & STRINGFELLOW ACCOUNT STATEMENT, DATED 1/31/2009, BATES NO BB&T 42033 - 42038		529
64-77	SCOTT & STRINGFELLOW ACCOUNT STATEMENT, DATED 6/30/2009, BATES NO BB&T 03625 - 03627		519
64-120	COMPILATION OF SCOTT & STRINGFELLOW STATEMENTS FROM 2003 - 2012		1376
65	CHARLES SCHWAB ACCOUNT STATEMENTS	132	
65-2	CHARLES SCHWAB ACCOUNT STATEMENT 2681, DATED 12/31/2012, BATES NO SCHWAB SUB RESP 00015 - 00024		524

DEFENDANTS' EXHIBITS

NO	DESCRIPTION	ID.	EV
65-7	CHARLES SCHWAB ACCOUNT STATEMENT 2681, DATED 5/31/2013, BATES NO. SCHWAB SUB RESP 00067 - 00076		525
66	BB&T CREDIT LINE AGREEMENT AND SECURITY AGREEMENT, BATES NO. BB&T 45030 - 45031, BB&T 01356 - 01363		1408
67	BB&T CREDIT LINE TRANSACTION SUMMARY, BATES NO. BB&T 41513 TO 41515		1410
68	CHECKING ACCOUNT STATEMENTS, CHECKS, AND DEPOSIT SLIPS (ACCT NO [redacted], 10/2006 THRU 12/2010, BATES NO 44643 - 44825, 46238 - 46256, CHECKS BB&T 45867 - 46237		1127
71	CORRESPONDENCE FROM BB&T TO BENEFICIARIES OF MAYBANK FAMILY, BATES NO. MAYBANK 009061, MAYBANK 00967, BB&T 20177 - 20178, BB&T 20151 - 20152, BB&T 20141 - 20142, BB&T 20132 - 20133, BB&T 20128 - 20131		838
72	ITEMIZED CATEGORIES REPORT, 2002, BATES NO. ARGO (BB&T) 04321 - 04341		435
73	ITEMIZED CATEGORIES REPORT, 2004, BATES NO. ARGO (BB&T) 00166 - 00183		439

DEFENDANTS' EXHIBITS

NO.	DESCRIPTION	ID	EV
74	ITEMIZED CATEGORIES REPORT, 2005, BATES NO. ARGO (BB&T) 00283 - 00305		441
75	ITEMIZED CATEGORIES REPORT, 2006, BATES NO ARGO (BB&T) 00429 - 00445		443
76	ITEMIZED CATEGORIES REPORT, 2008, BATES NO. ARGO (BB&T) 01004 - 01019		506
77	ITEMIZED CATEGORIES REPORT, 2009, BATES NO ARGO (BB&T) 02265 - 02280		516
79	HANDWRITTEN NOTES OF KEITH GRAY, DATED 08/09/06, BATES NO ARGO (BB&T) 004357		1547
80	HANDWRITTEN NOTES OF KEITH GRAY, DATED 01/12/09, BATES NO ARGO (BB&T) 002440		1553
81	REALIZED GAIN/LOSS REPORT, DATED 6/25/09, BATES NO ARGO 001714 TO 001722		1551
85	E-MAIL FROM DEBORAH MAYBANK (FRANK) TO CHILDREN (JANE EX 5), DATED 10/19/10, BATES NO. MAYBANK 09032		526
86	SCHEDULE OF LIFE INSURANCE POLICIES, (JANE EX 6), BATES NO. MAYBANK 009036		805
87	INSURANCE OPTIONS MEMORANDUM (JANE EX 9), BATES NO 009038 TO 009040		811

DEENDANTS'S EXHIBITS

NO	DESCRIPTION	ID.	EV.
94	LISTING OF EMPLOYEES & JOB DESCRIPTION FOR BB&T'S GREENVILLE WEALTH DIVISION, BATES NO BB&T 48080 TO 48082	1390	
96	E-MAIL FROM MAHFOOD TO DEAL, DATED 1/13/09, BATES NO. BB&T 05273 - 5274	1322	
102	FRANCIS MAYBANK INSURANCE OPTIONS RELATIVE TO CASH VALUE (JANE EX 7), BATES NO. MAYBANK 009041	805	
107	MAYBANK CLOSING DOCUMENTS (JANE EX 13), DATED 12/14/2010, BATES NO. CHESSON SUB RESP 97-138	822	
109	SHIVAR E-MAIL TO JANE MAYBANK) (JANE EX 15), DATED 12/2/2010, BATES NO 06021 - 06049	816	
113	BB&T LETTER TO AMERICAN GENERAL, DATED 1/24/2011, BATES NO MAYBANK 009062 - 009064	819	
114	JANE MAYBANK LETTER TO JUDY SCHOEMER (JANE EX. 20), DATED 1/7/2011, BATES NO. MAYBANK 090072	818	
115	CLIENT CENTRAL NEW ACCOUNT OPENING ACCT [redacted] (JANE EX 21), DATED 2/1/2011, BATES NO MAYBANK 007985	820	

DEFENDATNS' EXHIBITS

NO	DESCRIPTION	ID	EV
116	BB&T STATEMENT AND WIRE TRANSFER (JANE EX 22), DATED 3/22/2011, BATES NO MAYBANK 007982, 7989		823
118	BB&T STATEMENT AND DEPOSIT SLIP AND CHECKS (JANE EX 24), DATED 4/21/2011, BATES NO MAYBANK 007987, BB&T 45032 - 45034		824
119	BB&T STATEMENT AND DEPOSIT SLIP AND CHECK (JANE EX. 25), DTAED 8/23/2011, BATES NO MAYBANK 007999, BB&T 45035 - 45036		825
120	BB&T STATEMENT AND CHECK (JANE EX. 26), DATED 7/21/2011, BATES NO MAYBANK 007996, BB&T 45054		826
121	BB&T STATEMENT AND CHECK (JANE EX 27), DATED 7/21/2011, BATES NO. MAYBANK 007996, BB&T 45053		828
122	BB&T STATEMENT AND DEBIT (JANE EX. 28), DATED 8/23/2011, BATES NO MAYBANK 007999, BB&T 45052		829
123	BB&T STATEMENT AND CHECK (JANE EX. 29), DATED 9/22/2011, BATES NO MAYBANK 008001, BB&T 45051		830

DEFENDANTS' EXHIBITS

NO	DESCRIPTION	ID	EV
125	BB&T STATEMENT AND WIRE TRANSFER (JANE EX. 31), DATED 11/21/2011, BATES NO MAYBANK 008007, 008009		835
128	BB&T STATEMENT AND CHECK (JANE EX 34), DATED 1/23/2012, BATES NO MAYBANK 008012, BB&T 045048		831
129	BB&T STATEMENT AND CHECK (JANE EX 35), DATED 3/21/2012, BATES NO MAYBANK 08016, BB&T 45047		831
133	BB&T STATEMENT AND CHECK (JANE EX 39), DATED 7/23/2012, MAYBANK 008025, BB&T 45044		833
134	BB&T STATEMENT AND CHECK (JANE EX 40), DATED 7/23/2012, BATES NO MAYBANK 008025, BB&T 45043		833
135	BB&T STATEMENT AND CHECK (JANE EX. 41), DATED 5/22/2013, BATES NO. MAYBANK 008049, BB&T 45041		834
137	BB&T STATEMENT AND CHECK (JANE EX 43), DATED 7/23/2013, BATES NO BB&T 45068, 45040		835
146	MILLER LETTER TO MAYBANK, (SCHOEMER EX. 23), DATED 12/1/2010, BATES NO 19655		1128

DEFENDANTS' EXHIBITS

NO	DESCRIPTION	ID	EV
148	MAYBANK LETTER TO SCHOEMER, DATED 2/23/2010, BATES NO BB&T 01346		1133
149	MAYBANK NOTE, DATED 6/17/2009, BATES NO. BB&T 01460		1132
152	GIBSON E-MAIL TO MAHFOOD, DATED 8/11/06, BATES NO BB&T 04255		1309
167	LACKEY AND DEAL E-MAILS, DATED 8/7/09, BATES NO BB&T 01155		1612
170	VPFC PRESENTATION, UNDATED, BATES NO BB&T 02723 - 02755		1593
172	SCOTT & STRINGFELLOW RECORD OF TRANSACTION, DATED 9/27/2006, BATES NO MAYBANK 001272		1379
173	COMPARISON OF VFPC TO OUTRIGHT STOCK SALE HYPOTHETICAL		1195
174	HUGH PENNY EXHIBIT 1, DATED 4/28/2014, BATES NO BB&T 48090		1724
175	HUGH PENNY EXHIBIT III, DATED 4/28/2014, BATES NO BB&T 48092		1728
177	E-MAIL FROM MAHFOOD TO GIBSON, DATED 7/14/06, BATES NO BB&T 10472		1301

DEFENDANTS' EXHIBITS

NO	DESCRIPTION	ID	EV
178	E-MAIL FROM GIBSON TO MAHFOOD WITH WITH ATTACHMENT, DATED 8/14/06, BATES NO BB&T 9648 - 9650		1315
180	E-MAIL FROM LACKEY TO MAHFOOD, DATED 12/23/08, BATES NO BB&T 5238		1562
182	E-MAIL FROM LACKEY TO DEAL, DATED 12/29/08, BATES NO BB&T 5239		1563
188	E-MAIL FROM MAHFOOD TO DEAL, DATED 4/21/09, BATES NO BB&T 5454 - 5455		1330
192	E-MAIL FROM MAHFOOD TO DEAL, DATED 4/23/2010, BATES NO 5723		1332
194	E-MAIL FROM DEAL TO MAHFOOD, LACKEY, WITH ATTACHMENTS (ATTACHMENTS PRODUCED NATIVELY), DATED 01/14/09, BATES NO. BB&T 35325		1323
197	EDGAR NORRIS & CO STATEMENT, MARCH 1997, DATED 03/1997, BATES NO BB&T 39671 - 39672		419
198	SCHEDULE C HORSE RACING (MAYBANK DEPOSITION EXHIBIT 24), BATES NO. ARGO (BB&T) 4579-4581, 4676-4678, 4872-4874, 4979-4981, 5063-5064, 5168-5169, 5327-5328, 5552-5553		445

DEFENDANTS' EXHIBITS

NO.	DESCRIPTION	ID	EV
199	BEAR STEARNS RISK DISCLOSURE, DATED 07/10/06, BATES NO MAYBANK 1750-1751		465
200	PRE-PAID ILLUSTRATION, BATES NO MAYBANK 1745		467
201	2006 PRE-PAID CONFIRMATION, BATES NO MAYBANK 1847 - 1848		470
202	SETTLEMENT OVERVIEW (MAYBANK DEP EX. 114), BATES NO MAYBANK 2115		512
203	SETTLEMENT OVERVIEW (MAYBANK DEP EX 115), BATES NO. MAYBANK 2142		512
204	SETTLEMENT OVERVIEW (MAYBANK DEP EX. 116), BATES NO. MAYBANK 5470		512
205	SETTLEMENT OVERVIEW (MAYBANK DEP EX. 117), BATES NO MAYBANK 5555		512
207	DEUTSCHE BANK LETTER, DATED 12/13/2010, BATES NO ARGO (BB&T) 04428 - 4431		522
208	DEUTSCHE BANK LETTER, DATED 12/13/2010, BATES NO ARGO (BB&T) 04432 - 4439		522
209	DEUTSCHE BANK LETTER, DATED 08/16/2011, BATES NO MAYBANK 005649 - 5653		522
210	DEUTSCHE BANK LETTER, DATED 08/15/2011, BATES NO MAYBANK 005713 - 5720		522

DEFENDANTS' EXHIBITS

NO	DESCRIPTION	ID.	EV.
211	DEUTSCHE BANK LETTER, DATED 01/04/2012, BATES NO. ARGO (BB&T) 04093 - 4096		523
212	DEUTSCHE BANK LETTER, DATED 01/03/2012, BATES NO. ARGO (BB&T) 04097 - 4104		523
214	KAPOOR E-MAIL TO CLARK ANDERSON, DATED 7/2/8/2006, BATES NO BB&T 04041		1039
216	SETTLEMENT OVERVIEW, BATES NO. BB&T 19023, BB&T 19025		1575
220	PENNY CHART EXHIBIT II, BATES NO BB&T 48091		1726
221	TEACHEY SPREADSHEET PROJECTION, BATES NO BB&T 48071		1523
222	TEACHEY SPREADSHEET BB&T, BATES NO BB&T 48071		1526
223	TEACHEY SPREADSHEET INTEREST RATES, BATES NO BB&T 48071		1525
224	TEACHEY SPREADHSEET MARGIN CALLS, BATES NO BB&T 48071		1529

COURTS EXHIBITS

NO.	DESCRIPTION	ID	EV.
1	JURY NOTE 944		
2	VIDEOTAPED DEPOSITION OF RALPH BORELLO & VIDEOTAPE DESIGNATIONS	1249	
3	DEPOSITION OF RALPH BORELLO	1249	
4	VIDEOTAPED DEPOSITION OF DAVID FISHER AND VIDEOTAPE DESIGNATIONS	1249	
5	DEPOSITION OF DAVID FISHER	1249	
6	VIDEOTAPED DEPOSITION OF ROSS WALTERS AND VIDEOTAPE DESIGNATIONS	1249	
7	DEPOSITION OF ROSS WALTERS	1249	
8	JURY NOTE	1249	
9	JURY NOTE	1374	
10	DEPOSITION OF TRACY MEYERS	1616	
11	DEPOSITION OF CRAIG MCCANN	1616	
12	JURY NOTE	1616	
13	VIDEOTAPED DEPOSITION OF SHAWN GIBSON AND VIDEOTAPE DESIGNATIONS	2029	
14	DEPOSITION OF SHAWN GIBSON	2029	
15	JURY NOTE	2029	
16	JURY INSTRUCTIONS	2096	
17	JURY NOTE	2029	
18	JURY NOTE	2096	
19	DEPOSITION OF KEITH GRAY	2096	

(PROCEEDINGS, JUNE 19, 2014)

THE WITNESS: Should I get back on the stand?

THE COURT Come one.

(Witness back on the witness stand)

MR WILLOUGHBY Your Honor, one quick matter The depositions that we played yesterday of Mr Borrello and Mr Fisher, the 30(b)(6) and the personal one, I have the original transcripts. I would ask the court's guidance as to what you want me to do with the originals? Do you want me to hold onto them? Do you want me to tender them to the clerk?

THE COURT Well, you want them in the record, right? You got the designations? What have you got?

MR. WILLOUGHBY: Well, we have the -- we do have designations. I don't know that those designations have been put in the record.

Do we have a sheet where the designations that we played that -- we can get that, can't we?

We don't have it with us right this moment, judge, but we can certainly tender that, so maybe I do put them into the record and then we will give you the designations of what was played

THE COURT: Well --

MR. BROWN: Just for simplicity, we would say let's get the designations together and submit them with the

designations so that it is all together

THE COURT All one

MR. BROWN All one collective thing so there is no confusion and the entire deposition as part of the record

MR. WILLOUGHBY I'm fine with that, judge, and we can certainly do that too --

THE COURT Okay

MR WILLOUGHBY -- at the next trial session

THE COURT All right Well, you are in charge of those depositions

MR WILLOUGHBY Absolutely

THE COURT. Bring the jury in

(The following takes place in the presence of the jury panel)

THE COURT All right, ladies and gentlemen, welcome back. We are ready to resume

All right, cross

MR. KRISTINIK May it please the court?

THE COURT: Yes

CROSS EXAMINATION BY MR KRISTINIK

Q Good morning, Professor Freeman

A Good morning, Mr Kristinik.

Q I first want to start with a few questions about your work history

A Yes
Q. All right. It's correct you have never been an employee of a bank?
A. True.
Q You have never been an employee of a trust company?
A True
Q You have never been an employee of a broker-dealer?
A True.
Q You have never been an employee of a registered investment advisor?
A That will be correct
Q Okay. You have never been an employee of an investment bank?
A. That would be true
Q You have never worked for a wealth management business as an employee?
A Not as an employee
Q. You have never worked as a broker for compensation, right?
A. I have never been a broker for compensation.
Q And you have never been an investment advisor for compensation, right?
A Only to the extent that I was a director of a mutual fund
Q Have you been a portfolio manager for compensation?

A I was not a portfolio manager I was a director
Q Let's talk about some professional designations You have never had the designation of certified financial analyst, correct?
A That's correct
Q You have never had the designation of certified financial planner, have you?
A No, sir
Q You have not taken your Series VII exam? You have never taken that exam, have you?
A. I have not.
Q If fact, you have never had any license to the NASD, or through FENRO, or through any other securities organization, correct?
A Only insofar as I was appointed as AAA securities arbitrator That's the only designation in the securities -- the formal securities --
Q And that's not -- there is not -- that's not a license, right?
A No, it's an appointment that you earn
Q All right And so after going through this work history, is it fair to conclude that you have never sat down with a client to reach an agreement as to what their investment objectives should be for a portfolio account?
A Only insofar as I was the director of a mutual fund.

Q. You have heard Mr Maybank's testimony You would agree that he has significant investment experience when it comes to stocks and bonds?

A. He does, of a certain generation and a certain type, yes, sir.

Q. You would agree that Mr. Maybank has significantly more experience than you when it comes to advising individual investors as to how to manage their money?

A. He has more face-to-face experience than John Freeman, yes, sir, in his lifetime, yes, sir

Q Okay. And this is, in fact, the first case in which you have served as an expert witness dealing with Variable Pre-Paid Forward Contracts, right?

A. This is the first one, yes, sir.

Q And you are not working for free? You are receiving compensation, right?

A That's true

Q. And that's at an hourly rate of $500?

A Yes, sir.

Q My next question is about Mr Maybank's managed portfolio account.

In your opinion, an appropriate portfolio mix for his account would have been 70 period bonds and 30 percent equities, is that what --

A That's what I testified to That's what I believe

Q. And you would agree that a portfolio of a 100 percent bonds for Mr Maybank would have exposed him to what's called inflation risk, right?

A. Any portfolio bonds carries with it inflation risk

Q Now, in your opinion, the most prudent course of action for Mr. Maybank back in August of 2006 would have been to just sell his stock and then create a diversified portfolio, correct?

A Yes, sir

Q. And if he did that, the proceeds would have to necessarily be reduced by capital gains taxes, right?

A Yes, sir

Q And then if he wants to stop that interest running on the margin account, he would need to pay off the approximately 2.4 million in margin debt, right?

A. Yes, sir

Q Now, it's your testimony that the cost of the first Pre-Paid Contract was around $2 2 million, right?

A. I believe that's true, yes, sir. I testified to that.

Q Well, BB&T never received $2 2 million related to the first pre-paid, right?

A They did not receive the 2 2 That was the cost that went to Bear Stearns They received thirty some thousand dollars, which they later refunded

Q. Okay So outside of the advisory fee, if there was any

profits that are earned on the pre-paid transaction, that first one, that was earned by Bear Stearns, correct?

A. Yes, sir, or whoever the Bear Stearns is dealing with.

Q. Okay. And then on the second pre-paid you have calculated the cost of being $1.3 million, right?

A. Yes, sir.

Q. Okay. Well, that amount, that didn't go to BB&T, correct?

A. It went through BB&T to Deutsche Bank, and BB&T took a fee of I think the testimony is somewhere in the forties, 40,000, as its sales commission.

Q. So BB&T didn't keep $1.3 million?

A. They didn't keep all that money, no, sir.

Q. They kept the $43,000 fee, correct?

A. Yes, sir, that's what they put in their pocket.

Q. And so the profits that would have been earned from that pre-paid, other than the fee, other profits that would have gone to Deutsche Bank and whoever Deutsche Bank is working with, right?

A. On the first one, yeah. Well, on the second one it was Deutsche Bank, yes, sir.

Q. Let's take a look at your chart here --

A. Yes, sir.

Q. -- because I find this chart interesting, your calculations here.

Now, you have estimated that the total cost of both transactions to Mr. Maybank was about $3 5 million, right?

A. That's the cash out-of-pocket disappeared money that he did not know about. That's what I'm focusing on.

Q. Okay Well, let's talk about what's not in your chart.

Now, you haven't taken into account the fact that he received over $1 5 million in dividends. That's nowhere in here, correct?

A That's not, and I'm going to explain why I didn't take it into account. Because if he had taken -- if he had sold the stock, paid the taxes, he would have had --

(Witness off the witness stand).

A. -- a total tax bill of around 1 8 million, and at that point now he owns everything

He can pay off his debt and he can still receive income. You can get income from investments from --

(Witness back on the witness stand)

A -- from other places than BB&T dividends. There are municipal bond funds and municipal bonds that will pay you tax free income There are government bonds There are corporate bonds There are preferred stocks There are lots of options that can give you a source of funds, and he would have a source of funds from this other area, just as he was having a source of funds from his dividends So I don't find anything magical about BB&T dividends.

Q You are right, Professor Freeman He would be earning income from other sources, and that's something else you haven't accounted for. You haven't accounted for the over $370,000 of interest and dividend income that was generated from the managed portfolio account created with the $4 6 million of net proceeds. It's not in here, is it?

A It's not in there, because I am looking at the absolute money missing costs, but if you add the dividends that he's received over time and compared to the 3.5 million he's paying, he's still -- he's still way out of pocket money

Q. Let's talk about something else that's not in there. You know, we all heard when Mr Maybank testified on the stand, he said he received over $800,000 back from Deutsche Bank after the last pre-paid terminated and we haven't accounted for that. You have accounted for costs, but you haven't accounted for the $800,000 he got back at the end Not in here, is it?

A I haven't accounted for that or the other costs that he was paying along the way

Q. You are not a CPA, right?

A No, I was an accounting major, and I'm a member of that National Accounting Honorary Attorney, but I took the law path and didn't go into accounting

Q You are not qualified as an expert in tax here, correct?

A No, sir, I've never sought to be qualified as an expert in tax in this proceeding.
Q You haven't been offered as an expert in tax here, correct?
A That would be correct
Q And you haven't taken into account any tax consequences in your calculations, have you?
A Well, that's not exactly true, because, for example, the capital gains tax that he would have to pay when he gets rid of his BB&T stock, however that happens, is a factor, and it's a factor that I took into account in my analysis
Q Nowhere in here have you calculated the difference in taxes between the taxes that would have been paid if he sold the stock and the taxes he actually paid by using pre-paids? You haven't done those calculations?
A. No, all -- all that I have done is point out to the jury that --
Q Professor Freeman, yes or no, did you perform that tax calculation?
A I have performed the tax calculation to a limited extent and I want to explain my answer
THE WITNESS May I?
THE COURT. Yes.
A Okay What I have explained is that in 29 months he was out of pocket 3 5 million that he didn't even know that

he was spending or he was losing It was gone. That if he had sold the stock from day one, he would have had to pay tax on it That's where I was talking about tax, and I rounded it up and said 20 percent. That would be about a million eight, or so You can pay that tax, a million eight, and still have a whole lot of money left over if you are compared to a $3.5 million cost. That's what I have been talking about.

MR KRISTINIK All right. I have no further questions

THE COURT. Any redirect?

MR WILLOUGHBY Yes, sir, Your Honor, just a couple.

REDIRECT EXAMINATION BY MR WILLOUGHBY:

Q. Professor Freeman, should -- you saw Mr. Fisher's deposition, is that correct?

A Yes

Q. The excerpts.

Should they have been registered?

MR KRISTINIK Objection, Your Honor, beyond the scope

THE COURT Limited to what was raised on cross.

MR WILLOUGHBY Your Honor, we have no additional questions of Professor Freeman and ask that he be excused

THE COURT. Any objection?

MR KRISTINIK No objection, Your Honor

THE COURT All right. Thank you, sir You are released from the subpoena.

THE WITNESS Thank you, Your Honor.

THE COURT Yes, sir

MR. WILLOUGHBY We would call next to the stand Ms. Jane Maybank.

THE COURT All right

JANE MAYBANK, having been first duly sworn, testified as follows

THE CLERK Please state your name for the record.

THE WITNESS. Jane Maybank

THE CLERK Thank you You may be seated.

DIRECT EXAMINATION BY MR WILLOUGHBY

Q Good morning, Ms Maybank

Would you please introduce yourself to the jury?

A My name is Jane Maybank and I am Frank Maybank's daughter.

Q Okay And, Ms Maybank, where did you grow up?

A I grew up in New York.

Q And please describe to the jury your educational background

A I went to grammar school, high school, and college at the Sarah Lawrence College, which is a small college outside of New York And then I went to graduate school at the