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S.C. Supreme Court

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

THE COURT· Okay.

MR WILLOUGHBY: Does that -- is that okay, because I need to schedule with Dr. Wood? Would that be acceptable to the court, which may mean you finished up today, you know, at 3 30, four o'clock, something of that nature

THE COURT: How long did you say that you were direct is going to be?

MR WILLOUGHBY Judge, I'm --

THE COURT: I'm not going to make you --

MR WILLOUGHBY· Thank you for saving me on the record, Your Honor

THE COURT Well, are you ready?

MR WILLOUGHBY Yes, sir

THE COURT: Let's go

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

THE COURT All right, ladies and gentlemen, welcome back We are ready to get going.

MR WILLOUGHBY May it please the court?

THE COURT Yes, ma'am.

MR WILLOUGHBY We would call Dr. Craig McCann to the stand

THE COURT: All right. Come around.

MR WILLOUGHBY· Come around and be sworn, Dr

McCann

DR CRAIG MCCANN, having been first duly sworn, testified as follows.

THE CLERK Please state your name for the record.

THE WITNESS It's Craig, C-R-A-I-G, McCann, M-C-C-A-N-N

THE CLERK Thank you You may be seated.

THE WITNESS thank you

DIRECT EXAMINATION BY MR WILLOUGHBY

Q Good afternoon, Dr McCann.

Would you please introduce yourself to the jury?

A Yes, my name is Craig McCann. I'm a consultant in investments-related disputes and I'm here to explain to you today some of the material that's been discussed so far in the case.

Q. Where are you currently employed?

A. I'm employed at a firm called Securities Litigation & Consulting Group, Inc It's a Virginia incorporated company based in the suburbs outside of Washington D.C .

Q Dr McCann, I'm going to hand you what has been introduced into the record as Exhibit 72, and among the materials in that exhibit is a CV of yours, and I'm going to be asking you if you would look at that file and -- or that exhibit and see if that is, in fact, your CV?

A Yes, it is

Q. Please tell us about your education

A. I have an undergraduate degree and a Masters Degree from the University of Western Ontario in London, Ontario, and a Masters Degree and a Ph.D from the University of California, at Los Angeles.

In addition, I have had some professional education over the years. I have held a Series 7 and a Series 63 registration You have heard Mr Brawley this morning refer to those as stockbrokers licenses or stockbrokers registrations.

And I hold a CFA, or a Charter Financial Analyst designation, which requires four years of practical experience and the completion of three day-long exams

So my formal education is the UCLA Ph.D , and my professional education is the CFA

Q And the subject matter of your Ph D.?

A. Well, it was on the impact of Golden Parachutes, which was a type of executive compensation program in the early 1980's on investors on stock prices was the theme of my dissertation It was granted by the Economics Department at UCLA

Q What is a Chartered Financial Analyst designation?

A Well, it's the preeminent designation for portfolio managers and Wall Street analysts. So if you look at a mutual fund prospectus and see who the portfolio managers

are, they will typically have CFA at the end of their name That's their designation, or a Wall Street analyst.

If you read an analyst report from Merrill Lynch, or from Citi Group, or J.P. Morgan, or a Value Line report, the author will typically have at the end of their name a CFA set of initials and that stands for Chartered Financial Analyst.

Q How long ago did you become a CFA?

A Almost 20 years ago I think in 1996.

Q Does the CFA body of knowledge include the ability to assess and value derivative contracts like the Variable Pre-Paid Forward Contract recommended and sold to Mr Maybank by BB&T in this case?

A. Yes, it does.

Q. Please tell us about your past employment

A. After I left UCLA in 1987, I started teaching at the University of South Carolina, in Columbia, South Carolina. I taught there in the business school for five years.

And then I came to Washington D C., where I have spent most of the rest of my career in 1992

I started in 1992 working at the Securities and Exchange Commission in the office of the chief economist. I was there around a year the first time and went back to Los Angeles to manage a litigation consulting firm owned by one of my dissertation advisors

After about a year in Los Angeles, I returned to the SEC in a more senior position in 1994 I was at the SEC the second time for about a year and a half, and then left and started working at a series of large consulting firms The best known one probably is KPMG, the accounting firm, which they have a big consulting group at KPMG, but I started at a firm called NERA, National Economic Research Associates, which is operating unit of a big insurance multi-national. After a couple of years in NERA's financial services practice I went to KPMG and started a securities litigation business. I was there a couple of years and then in 1992 I went back to -- I'm sorry, 1999, I went back to a publicly traded company called Navigant Consulting.

And in 2000 I started my own firm, Securities Litigation Consulting Group, Inc.. We grew over time, it varied, but typically between 15 and 20 employees Most of us have Ph D's, and we spend roughly half our time doing original research, half our time doing case work, like material we would have done in preparation for my testimony here today.

Q In addition to the University of South Carolina, have you performed other teaching?

A. Yes, I have been an adjunct professor of economics at Virginia Tech and I'm an adjunct professor of finance at the University of Maryland, College Park, and at Georgetown

University.

Q. Are you currently working for the Securities & Exchange Commission?

A Yes, we have -- my firm has five or six cases on the go where we are the expert witnesses or expert consultants for the SEC, either in filed cases or ongoing investigations.

Q. Does your work with the Securities & Exchange Commission requiring you to assess and value complex derivative contracts like the Variable Derivative Contract in this case?

A. Yes, virtually all of our work for the SEC requires us to value complex derivative contracts

Q. In addition to the Securities & Exchange Commission, have you been hired by other government agencies or by self-regulatory organizations to evaluate investments?

A. Yes, we do a lot of work for state regulatory agencies and attorneys general around the country. Probably eight or ten individual states around the country, from California to Maine, and from Washington to Florida.

We've also worked for a group of these states Securities Commissions It's called the North American Securities Administrators Association. It's made up of each state Securities Commission, and up in Canada each Provincial Securities Commission, and we have done three main projects for -- it's called NASAA, but North American

Securities Administrators Association

Q. Has your with the state regulators and Attorney Generals required you to model, analyze and evaluate complex investment strategies, such as the Pre-Paid Derivative Contracts sold to Mr Maybank?

A Yes

Q Do the SEC and state regulators from time to time ask you to speak at their conferences about alternative investments?

A Yes, routinely I have spoken at 60 or 70 conferences over the years Probably a dozen of those put on by the regulators, either the state or the federal regulators

Q When did you last speak at a state regulators conference?

A About six months ago to the NASAA Organization at a conference in Pittsburgh

Q. And what did you speak about at that national securities conference?

A A catch-all phrase I think you saw in some of the documents here, alternative investments. At one time we talked about alternative investments, it meant real estate or commodities Nowadays it means anything that you can package and put a high commission into And so I was speaking about what is in the marketplace now referred to as alternative investments, but really traditional investments

with high embedded costs

Q. When did you last speak in a Securities & Exchange Commission sponsored conference?

A. The week before last I spoke at SEC/FINRA conference FINRA is the self-regulatory organization that regulates the brokerage industry The SEC put on a conference in Chicago June 4th, I believe it was, so 10 days ago, 15 days ago

Q What did you speak about at the Securities & Exchange Commission conference?

A My talk was on structured notes, which I think you have also seen that term twice -- twice -- the term twice or more times here, but structured notes are derivative contract that investors buy where the payoffs are linked to some underlying stock It could be like BB&T, or linked to the value of some stock index, like the S&P 500 It could be that something more esoteric, like a commodity, or an exchange rate, or a volatility index, but most of them are linked to the value of a stock or stock index and that was the -- that was the theme of my talk ten days ago

Q. Have you published papers in peer review journals?

A I have In the last five years I have published 20 or 21 papers in peer review journals I think of them as academic journals that professors publish in. I have published 20 in the last five years

Q. Do your peer reviewed published include papers on

alternative investments?

A. Yes

Q. Do your peer review published papers include papers on derivative contracts sold to retail investors?

A. Yes

Q. Have you published specific on Variable Pre-Paid Forward Contracts, like the derivative contracts sold to Mr. Maybank?

A Yes.

Q Is your research cited and you personally quoted from time to time in major newspapers, like the Wall Street Journal and the New York Times?

A Yes

Q. When was your research last cited in such national papers?

A. On Monday of this week our research on alternative investments called Non-traded REITS was quoted, was cited and quoted, and I was personally quoted at length in the Wall Street Journal on Monday

Q Have you been quoted in national publications, business publications, specifically on Variable Pre-Paid Forward Contracts as far back as 2006?

A Yes.

Q Have you testified in court specifically on Variable Pre-Paid Forward Contracts, like the derivative contract

sold to Mr. Maybank?

A. Yes.

Q. I think, Dr McCann, that may be enough of your background

MR. WILLOUGHBY: Your Honor, I would like to offer Dr. McCann to the court as an expert witness in this case on the evaluation of prudence and appropriateness of alternative investment strategies, including Variable Pre-Paid Forward Derivative Contracts and on damage calculations.

MR KRISTINIK: Your Honor, we have no objections to his calculation. We are ready to move forward and hear his testimony.

THE COURT. Okay He's so qualified.

BY MR. WILLOUGHBY:

Q. Please tell the ladies and gentlemen of the jury what a Variable Pre-Paid Forward Contract is.

A. Sure. An over-the-counter derivative contract, breaking that down a little bit, it's a combination of two over-the-counter derivatives We call them puts and calls. And a deferred interest loan, a loan where you don't pay any interest or principal until the end of the loan, all of it backed by a concentrated stock position and wrapped up in a single document. So it's actually three or four pieces, a little bit complicated, but in sum that's what it is It's

a set of derivatives with a deferred interest loan backed by a concentrated stock position described on a single document.

Q. What is over-the-counter derivative contracts?

A Maybe it would help if I first started it by explaining what the derivative contract is and then the significance is of it being over the counter.

We are going to talk a little bit about what are called puts and calls, put options and call options.

An easy way to think about an option is imagine that I give you the right to buy my house in three years for a $100,000 Now, at the end of three years you don't have to buy my house, but if you want to you can, and we have agreed today what the price will be, a $100,000 That's an option you have So you are not required to buy my house, but it's an option.

When will you exercise that option? Well, if three years from now my house is worth $150,000, you will buy it, because you have the right to buy it for only a $100,000. That option we would say is in the money or is profitable at the time it's maturing in three years You will make $50,000 if my house is worth 150

If it turns out my house is only worth $75,000, you will just forget about this option you have, because you won't buy a house for a $100,000 that's only worth 75

That's exactly the same as a call option.

So bringing it closer to the facts in this case, if you have the option to buy a stock or a hundred shares of stock for $50 three years from now, that's not requiring that you buy those shares. But if in the future in three years the stock is worth more than $50, you will exercise that right and make a profit equal to the difference If it turns out that the stock is worth less than $50, you just walk away from that option So we call that a call option

If you are the owner of a call option, then it's the good thing for you if the stock price is high.

The other type of option we may discuss briefly is called a put option A put option gives you the right to sell an asset in the future at a specified price.

So let's say instead of me giving you the right to buy the house from me in three years for a $100,000, you give me the right to sell it to you for a $100,000 in three years.

Now, I don't have to sell it to you under this contract in three years When will I sell it to you? Well, if it's worth $200,000, I'm not going to sell it to you for a $100,000. But if it's worth 50,000 or 75,000 and I have this contract that allows me to demand a $100,000 from you, I'll exercise that right That's called a put option, and it's valuable to the holder of the option if the asset has gone down in value

Now, what I have described so far is we might call over-the-counter options They are contracts that we have agreed to between ourselves They are negotiated privately.

An over-the-counter option is that type of an option which is distinguished from the options that you would see listed in the Wall Street Journal or the New York Times If you open the Wall Street Journal you will see a list of option prices Those are for put and call options that have standardized terms They mature every third month, and they have other attributes, features, like the strike price and other features of the contracts that are standardized

So if you want to buy a call option on Microsoft, or on Facebook, you don't have to find someone like Mr Willoughby or myself, who would want to sell you that option You would buy the standardized option through a broker and they are what we call liquid You can buy and sell them

So going back to your question, I'm sorry for such a long answer, over-the-counter option is just an option like what I have described to you. It's not standardized where it's not traded on an exchange and where the parties negotiate all of the terms amongst themselves

Q Is the Variable Pre-Paid Forward Contract that BB&T recommended and sold to Mr Maybank an over-the-counter derivative contract?

A. Yes, it is

Q. What is a deferred interest loan?
A. Well, it's a loan where you don't pay any interest or principal. Some mortgages were this way for a time where you would take out a mortgage and you wouldn't pay any principal or interest for a year, or even longer Think of that as a deferred interest loan You are not making any of the monthly payments of principal or interest. And then when you start paying, you have to pay the accumulated interest that hasn't been paid to date on the loan.

The same thing here with the deferred interest loan that's in a Variable Pre-Paid Forward is the amount of proceeds that are advanced in this case to Mr Maybank Think of that as the loan that's been advanced to him It gets a little bit more complicated, but simplifying it a bit, the amount that's paid back in three years is repayment of that loan mostly with the interest that wasn't paid monthly, or quarterly, or semi-annually along the way, so that's why I referred to that as a deferred interest loan.

Q What do you mean by backed by a concentrated stock position?

A. Well, if all you had was the put and call option and the loan, then there would be situations in the future where the borrower wouldn't be able to repay, in this case, the $9.3 million that was due. So with the Variable Pre-Paid Forward it's backed by collateral The collateral is the

stock, the 220,000 shares of stock that Mr Maybank pledged. And combined with the put and call options that are attached to the stock, that collateral, the stock and those options, assure BB&T, or whoever the counter-party is, that Mr. Maybank will be able to pay back the $9 3 million. They have got those assets locked down, and so there is no risks that this loan will not be paid back. So backed by the stock is just the collateral, which when combined with the puts and calls guarantee that the loan is going to be paid back in full

Q And that is guaranteed to the counter-party that's going to be paid back in full?

A. Right, it's for the benefit of Bear Stearns, not for the benefit of Mr. Maybank

Q Have you been critical of Variable Pre-Paid Forward Contracts before learning about the facts of this case?

A Yes, I have been aware of and worked on Variable Pre-Paid Forwards for 12 or 15 years.

Q Are the views that you have expressed where you have been quoted as having for 10 years, are those views still your views today?

A That's correct My views are that Variable Pre-Paid Forwards are an expensive way to do something halfway. It could be done fully cheaply and that they are never suitable, except in extremely rare circumstances, but really

only appropriate for an investor who has a concentrated stock position that can't be sold Maybe the stock is what we call restricted stock, or there is some other reason why you have got all of your wealth tied up in stock that can't be sold If that's not an option, then maybe a Variable Pre-Paid Forward, if it's structured right and doesn't have too high embedded costs in it, but that's actually a rare situation.

Most of the time that I have seen Variable Pre-Paid Forwards, and I have seen 50 of them, maybe, they are sold to people like Mr Maybank that have shares that could be sold that day for the market price you can see in the Wall Street Journal or on Yahoo Com..

Q Is your general view of Pre-Paid Derivative Contracts apply to the derivative contracts BB&T recommended and sold to Mr. Maybank in 2006 and 2009?

A Yes.

Q Do you have a view as to whether or not Mr. Maybank would have been better off selling the stock?

A Yes, with certainty Not with the benefit of hindsight, but in 2006, if you are an unconflicted competent advisor recommending a strategy to Mr Maybank to reduce his investment and retirement risks and protect the income or cash flows that he needed to support his family obligations and fund his insurance purchases, you would not have

recommended this strategy This strategy is not appropriate for reasons I'll explain in a few minutes Not only not the best, it's not a reasonable strategy, and that there were, in my view, a simple traditional recommendations that would have saved Mr Maybank in 2006 So my views on Variable Pre-Paid Forwards apply fully to Mr Maybank's situation in 2006.

Q Let's talk about the Pre-Paid Derivative Contract BB&T recommended and sold to Mr. Maybank in 2006.

Were you here to listen to Mr. Maybank's direct testimony on Tuesday?

A Yes.

Q Did you understand from that testimony, or otherwise, that BB&T recommended the Pre-Paid Derivative Contract to Mr. Maybank because he wanted to continue to receive the high quarterly dividend?

A. Yes, although I think I would say it a little differently. I think Mr Maybank had some income or cash flow distribution needs to support his family and to buy -- continue to pay the insurance premiums, so I think he had a fairly high load, what we might call income need, and at the time the dividend from BB&T was funding a great deal of that I think on Mr Maybank's BB&T stock he was receiving around $400,000 in dividends

So in my view, and I think listening to Mr Maybank's

testimony, it wasn't that he needed income in exactly that form, but he needed $400,000 of BB&T dividends. What he needed was $400,000 of distributions which he could use to pay his family commitments and to continue to purchase the insurance.

So I understand that it's been framed in terms of keeping or protecting the dividend, but most other investments that he would have made in the alternative would have also paid dividends, or would have paid interest, or would have had capital appreciation that would have as equally well provided the cash to fund his family obligations and to purchase the insurance.

Q Did the Pre-Paid Derivative Contract BB&T recommended and sold to Mr. Maybank meet the objective to maintain Mr Maybank's needs for income?

A It did not and that's one of the remarkable things about this Variable Pre-Paid Forward.

Let me first analogize it to borrowing at eight percent to invest it at six percent. So imagine that you are borrowing at eight percent and investing in a bond that paid six percent. Now, if you ignore how much you are paying, that looks like a good investment. You are getting a six percent return on the bond, but if you had to borrow at eight percent to get that six percent, then you are losing two percent on every dollar that you have got invested in

this strategy every year. And even though that eight percent is -- let me make in it invisible, let me put it behind a drapery, it's still a cost to you and you can't evaluate the strategy by only looking at the six percent you are receiving

The Variable Pre-Paid Forward is exactly the same thing Do you remember I called it at a deferred interest loan That's not the same thing as a no interest loan. The interest that's embedded in the Variable Pre-Paid Forward is not visible It's not an explicit interest, like the eight percent in my example, but it's just as real in interest charge, and Mr. Maybank paid not quite, but something close to two million two hundred thousand dollars in interest on the $7 1 million proceeds that were advanced to him, when he had to pay back $9 3 million

So he's paying -- just do the division. For three years he's paying almost, by my calculation, almost $2 million in interest That's over $600,000 a year. For what? To continue to receive $400,000 in dividends from BB&T It's exactly the same as borrowing it at eight percent to receive six percent. Only in this case, while the dividends are visible, you see those, and he's explained the importance of those, but the eight percent or ten percent interest that he's paying is invisible That's not being explained to him. Eight percent may be a little bit

high Seven percent, but way, way above the four and a half percent dividend rate that he's receiving

Q. Did the Variable Pre-Paid Forward Contract protect the dividend?

A. In my view it destroyed the dividend I have sort of described it from starting from a position of having a BB&T stock in the dividend and then borrowing money rather than selling the stock to buy a diversified portfolio Well, if you are borrowing the money to continue to receive the dividend, then, as I said, you are paying -- you are paying $600,000 a year in interest to get $400,000 a year in dividends That doesn't make any sense It's not protected It's true you are continuing to receive it, but you have destroyed the economic value of those dividends.

You could make one adjustment to what I said. Some of the proceeds from the Variable Pre-Paid Forward are used to pay down the margin loan, or this $2 6 million in margin loan So if you reduce the amount of interest that's being paid so that you are not counting interest in the Variable Pre-Paid Forward associated with the first $2 6 million, by my calculation he's still paying over $430,000 of interest to receive $370,000 in dividends on the 220,000 shares of BB&T stock

So however you look at it, rather than protect the dividends, this strategy destroyed the economic value of the

dividends The dividends are still visible, but the interest that's fully offsetting it and more is the invisible part, the stuff that's behind the drapery.

Q. Did you see anything in the disclosure documents that you reviewed in this case that explains what you have just stated to the jury?

A. No, nowhere.

Q. Let's talk a little bit about what other investments were available to meet Mr. Maybank's income needs.

First, why didn't the Pre-Paid Derivative Contract meet Mr. Maybank's income needs?

A. Well, as I said, if you properly reckoned the Variable Pre-Paid Forward, he's paying a lot more in interest than he's receiving in dividends And if that interest was explicitly stated, if in this over-the-counter derivative contract had said we are going to be charging you $600,000 a year in interest, so we are going to be charging you seven percent interest, it would be easier to see that that's offsetting any four and a half percent dividends that you are receiving and it wouldn't make sense to borrow money to maintain the BB&T stock paying four and a half percent.

But setting that aside, there were investments in the marketplace that were low risk I'm going to talk about the riskiness of what BB&T recommended to Mr. Maybank in a minute, but if you just step back and think about what was

available in August of 2006, the Federal Reserve Board website has historical interest rates going back to the 1920's, I think, but in August of 2006, AAA rated corporate bonds had a yield of a little less than six percent, 5 8 or 5 9 percent. And BBB rated bonds had still what they called investment grade rated had a yield of 6.8 or 6 9 percent. So if you put together a portfolio, those two types of bonds would be very low risk portfolio. It would have about a six and a half percent expected return.

So if Mr Maybank needed four and a half percent, even after paying off the margin balance, you could invest in a portfolio of bonds that would almost fully replace all of the dividends that were being paid on the BB&T stock after you take out the portion of that BB&T dividend that was being used to pay the very high margin interest. That was Scott & Stringfellow. So we would be able to easily find investments in August of 2007 that would be very low risk.

Another very quick way of thinking about that, I apologize for the length of my answer, but if you go back to August of 2006 and look at a big well diversified bond portfolio, I always use Vanguards Total Bond Market Portfolio, if you look at that portfolio over the prior 10 years, it had a cumulative average return of six percent. That would mean from that portfolio you could take out one and a half percent more than the four and a half percent

dividend. Take out six percent every year and at the end of 10 years you would still have all of the money that you put into it

So there were lots of ways, low risk ways, of replacing the dividend and meeting all of Mr Maybank's needs for income or cash flow distributions

Q. And those investment options were available in August of 2006? All of them?

A Absolutely.

Q What was Mr. Maybank's allocations to stocks and bonds after the Pre-Paid Variable Forward Contract was executed?

A He was leveraged up in stock 2 3 to 1, almost two and a half to one, which is extraordinary.

For any of you who have sort of thought about what we call asset allocation, how much money do you put in stock and how much money to put in bonds, we normally think about putting your age in bonds. So for some of you it would be a lot less. For me it would be about 55 percent in bonds and 45 percent in stock

The reason we allocate some to stock and some to bonds is that it reduces your overall risks

Now, what Mr. Maybank had in his seventies was not 70 percent in bonds and 30 percent in stock. He had 230 or 240 percent in stock and borrowed essentially short bonds 130 or 140 percent. His asset allocation was off the charts risky

He was leveraged up 230 percent in stock

The way to see that is the BB&T stock and the individual securities that were bought in the managed account, plus the value of the put and call that was in the Variable Pre-Paid Forward adds up to about fourteen and a half million dollars. And his loan that was embedded in the Variable Pre-Paid Forward was about $8 million. So his equity, his real money in that strategy, is six and a half million dollars, but the overall portfolio size is fourteen and a half or $15 million.

It's like if I had $100,000, borrowing another $130,000, and buying $230,000 worth of stock, that's really risky. That's highly leveraged and that's what this strategy did to Mr Maybank.

Q. Was the portfolio a risky portfolio for retirement or investment assets?

A. Extraordinarily risky for anybody, for anybody's assets This is we think at the high end of the risk spectrum speculative This is off the charts beyond speculative, being leveraged 2 3 to 1.

Q Okay Were Mr. Maybank's investment and retirement assets unnecessarily risky in 2006, prior to the Pre-Paid Forward Contract, that BB&T recommended?

A. Yes As I explained a few minutes ago, if the objectives were to meet the cash flow or income distribution

needs of Mr. Maybank to replace in part or in whole the BB&T dividends and to reduce his retirement and investment assets, I have already given you two simple ways that that could have been accomplished; a portfolio of almost all bonds, a 100 percent investment grade bonds; or a portfolio that has a little bit of stock in it. Maybe 70 percent bonds Mr Maybank was about 70 years old 70 percent bonds and 30 percent stock Those two portfolios would have had expected returns and distributions that would have met Mr. Maybank's needs for a fraction of the risks that he was exposed to

Q Did a Variable Pre-Paid Derivative Contract that BB&T recommended to Mr. Maybank reduce Mr. Maybank's investment and retirement asset risks?

A. No, it substantially increased his risks. His retirement assets were already risky, because he had a concentrated position in BB&T stock and he had a margin loan, so it was already risky He was leveraged He had $9 3 million of stock, $2 7 million of debt He had about a six and a half million dollars of equity, so he was leveraged up about 1 3 or 1 4 to 1, but he ended up being leveraged up 2 3 or 2.4 to 1 by entering into the Variable Pre-Paid Forward and using the proceeds to buy additional stock

Now, there is a little bit of an offset there for the

collar that's put on the stock, but the net effect of those different factors was to significantly increase the risks that Mr. Maybank had in his retirement and investment assets.

Q. Are there four primary impacts on the risks of Mr. Maybank's portfolio?

A Yes.

Q Please explain those.

A. Well, the first one I mentioned was the collar, the put and call options So he had $9.3 million, 220,000 shares of BB&T stock committed to this strategy By putting up floor on the value of that stock in three years in exchange for putting a ceiling on the value of the stock, he's reducing how much that value could fluctuate It could still fluctuate within the band of the put and the call strike prices, but it couldn't fluctuate out beyond that

So the first factor is you have reduced the riskiness of the BB&T stock a little bit by putting the collar on.

The second factor is that you have borrowed a bunch money. You, I mean BB&T recommended that Mr. Maybank borrow a bunch of money and buy additional stocks

Now, the amount that he borrowed, around $8 million, really, exceeded the amount of borrowing that he had before. He had 2 6 or $2 7 million before, so he about tripled the amount of debt that he had, with that additional debt being

used to pay for some of the costs of the Variable Pre-Paid Forward, but mostly used to buy another 4 6 or $4.7 million of additional securities

So he increased the size of his portfolio from 9 3 million to 14 and a half or 15 million by increasing the amount of debt he had That increased his leverage Those are the second and third factors.

The fourth factor would be he had a BB&T stock that was liquid. If he wanted to and he had received advice and followed it to sell BB&T stock, he could have sold 100,000 shares, or 30,000 shares, or all 220,000 shares That's what we call a liquid stock. He could sell that without affecting the price of BB&T stock.

Afterwards with the BB&T stock pledged as part of this Variable Pre-Paid Forward Contract, he can't do anything with that stock without unwinding the Variable Pre-Paid Forward Contract So it's no longer liquid

Now, illiquid assets are more risky than liquid assets and I have only taken into account those first three factors, not the fourth factor.

What I conclude that as a result of this Variable Pre-Paid Forward strategy his investment and retirement asset risks went up significantly from the already high level it was at

Q. Let me pause for just one moment, Dr McCann.

What was the size of Mr Maybank's portfolio that he had for his retirement assets immediately prior to being sold the Pre-Paid Derivative Contract?

A. Well, we have all been focused on $9.3 million, because that's the BB&T stock that went into that Variable Pre-Paid Forward. There was another 25,000 shares of BB&T stock back at Scott & Stringfellow and a few hundred thousand dollars worth of stocks and bonds. But setting those aside, in terms of my thinking about it, I think about it his retirement asset portfolio as being the $9 3 million. We really could include the other assets.

Q. After you subtract out the margin balance, how much equity did he really have in the BB&T stock that was part of this retirement portfolio?

A. About $6.7 million. The margin balance was about 2 6 million. So 9 3 minus 2 6 leaves you his equity in the BB&T position about 6 7 million.

Q. Please tell the ladies and gentlemen of the jury what the leverage is in Mr. Maybank's portfolio was before the Pre-Paid Derivative Contract and what this means to the riskiness of the assets.

A. Sure. I mentioned that number earlier, 1.4 to 1. If you take that $9 3 million, which is the size of the portfolio, and divide it by the amount of equity he's got, $6.7 million. I did the calculation. Roughly it's the 1 4

So the way we would think about that in terms of asset allocation is he's 140 percent in stock minus 40 percent in bonds. So the way we think about that in terms of leverage is he's leveraged 1 4 to 1.

Q. Please explain to the jury the significance of leverage on the risk of Mr Maybank's investment and retirement assets

A. Well, you probably heard that notion that leverage or borrowing magnifies your gains and losses, and that's exactly right. Think about leverage as increasing your gains or losses

So to give you a quick example, if I have a $100,000 invested in Microsoft stock, but I only have $10,000 of equity, that means I borrowed $90,000 to make that investment. If Microsoft stock price falls 10 percent, I lose all of my money My $10,000 is lost if Microsoft drops 10 percent

If I wasn't leveraged, I would only lose a thousand of my $10,000. I would lose 10 percent, but I still have $9,000 left Because I leveraged up 10 to 1, that 10 percent loss in the overall portfolio ends up being a 100 percent loss on my equity

So in Mr. Maybank's case, one way to think about it is when he's leveraged up 1 4 to 1, a 10 percent loss in his investment portfolio would be a 14 percent loss in his

equity So that's sort of how it's magnifying his loss

It works in the other direction as well If there is a gain of 10 percent, he would have had a 14 percent gain.

In my example of the Microsoft stock, if it went up 10 percent when I was leveraged 10 to 1, my $10,000 would double I would have leveraged up my gain. So it's magnifying both the gains and the losses

Q Going back to your third of four impacts, how much did Mr. Maybank's leverage increase as a result of the Pre-Paid Derivative Contract?

A Well, it went from this ratio 9 3 to 6.7. About 1.4 to 1 to about 2 3 or 2 4 to 1 Again, you just take that roughly fourteen and a half million dollar portfolio value, divide it by his now six and a half million dollar equity value, it's gone up, not double, but it's increased a lot, from 1 3 or 1 4 to 2.3 or 2 4

Q And if you translate those 2.3 to 2 4 in percentage, you are looking at 230 percent?

A Right, he's leveraged 230 percent He's 230 percent invested in stock minus $130,000 percent invested in bonds.

Again, going back to the age and bonds rule of thumb, Mr Maybank, as a rule of thumb, might have invested 70 percent in bonds and 30 percent in stock Instead he's two 230 percent in stock and minus 130 percent in bonds He's got -- he's got roughly $13 million more stock than he

should have and that's why it was so risky.

Q Did you see any disclosure that explained that increase in risks?

A No

Q What was the fourth impact of the Pre-Paid Derivative Contract on Mr Maybank's investment in retirement assets?

A Well, it's the liquidity issue that I mentioned We assessed an investment in terms of whether it's liquid or not, because an illiquid investment is more risky.

If I wanted to sell my house, I might be able to sell it six months from now I can't sell it today, unless I sell it for a third less than I might get for it in six months That's an illiquid asset

Microsoft stock, on the other hand, I can sell today at a price everybody can observe on a Bloomburg terminal or on line, so that's a liquid asset.

What happened here with the Variable Pre-Paid Forward is that it changed that BB&T stock from an extremely liquid asset to be sold easily at any time to an asset that Mr Maybank then couldn't sell without doing a lot of work to unwind the Variable Pre-Paid Forward, perhaps coming up with a lot of additional assets

Q Please explain to the jury the net effect on Mr. Maybank's investment and retirement asset risks of the four impacts related to the Variable Pre-Paid Derivative

Contract

A. The Variable Pre-Paid Forward strategy significantly increased the risk of his investment and retirement assets, even from the high level of risk they were already at when he was consulting BB&T.

Q Dr McCann, you have seen me use my hands and talk about more likely than not, because that's one of the standards that the jury will look at Is it more likely than not that his retirement asset risks increased by the strategy sold to him by BB&T?

A. Yes, it was more likely than not

Q. Beyond that are you certain to a reasonable degree of professional and economic certainty?

A. I am.

Q. And beyond that are you certain?

A. I am, I'm certain that as a result of this strategy, it increased the risks of Mr. Maybank's investment and retirement assets, with certainty

Q Have you reviewed what ultimately and actually happened to the Pre-Paid Derivative Contract and managed portfolio recommended by BB&T to Mr Maybank?

A. Yes.

Q. Was the 2006 variable -- or Pre-Paid Derivative Contract BB&T recommended to Mr Maybank a success as of January of 2009?

A No, it was not

Q Why not?

A Well, deciding whether something is a success or not may depend on what you think the alternative is, but even earn if you think the alternative was holding most of the BB&T stock, this was not a success Mr Maybank had had losses in the managed portfolio, the 4 6 or $4 7 million that I have mentioned a couple of times now bought with part of the proceeds from the Variable Pre-Paid Forward, had losses in that portion of his portfolio of around 1 1 or $1 2 million by January or February 2009 So early in 2009 he had lost roughly a quarter of the value of those investments, and BB&T stock had fallen from I think $42 down to in the high teens, 16 or $18 I'm not sure exactly where it was at the end of January or February, but it lost more than half of its value

Now, it's true that the Variable Pre-Paid Forwards put option feature added some value to the stock, so he didn't suffer the full decline in the value of the stock, but that's where we get into how you assess whether something is a success or not

It's true that he didn't suffer all of the losses of a concentrated stock position, and then you add to that he suffered the losses in his diversified portfolio of stocks

On net I think even relative to a do nothing, which was

not what he went to BB&T for was to do nothing, he ended up worse off as a result. But compared to a diversified portfolio bonds or stocks and bonds, which is what would have been appropriate for Mr. Maybank, even by early 2009 this Variable Pre-Paid Forward is a complete disaster for him

Q How much would Mr. Maybank have lost between August of 2006 and January or February of 2009, if he had sold the BB&T stock, paid the margin balance and invested his retirement assets in a diversified portfolio?

A. He wouldn't have had any losses

Q Have you created a demonstrative exhibit summarizing Mr. Maybank's losses?

A. Yes

Q. Have you calculated how much Mr. Maybank lost on the combined Pre-Paid Variable Derivative Contract, the BB&T stock and the individual stock portfolio while BB&T was advising Mr. Maybank?

A Yes.

Q. I'm going to put a --

MR. WILLOUGHBY: Put this demonstrative exhibit on the board here, Lindsay.

BY MR. WILLOUGHBY:

Q Is this the exhibit that you prepared?

A Yes.

Q Now, if you would explain to the ladies and gentlemen of the jury this -- is this directly related to the work and analysis that you did?

A. Yes, these numbers are taken off our -- off of the expert report I filed in this case with just one minor difference. The expert report was filed on December 3rd, so the interest was brought forward at that point to November 30th I brought it forward here to June 19th, to today, at the per diem rate that is listed in my expert report. So it's just an extension of the calculation that's on the expert report

Q I'm going to move out of the jury's way

And this is a question I have of you, Dr McCann You have heard some discussion about Mr Maybank -- the bank has criticized Mr Maybank's spending In your calculation did you remove all expenditures or withdrawals that Mr. Maybank made?

A Yes

Q Does your calculations charge the bank with any of the expenditures that Mr Maybank made?

A No, they don't These calculations are the losses after taking into account any withdrawals that Mr. Maybank made

Q I think one of the things that you did that's not on this chart, that you did an out-of-pocket calculation, is

that correct?

A. That's correct.

Q. Would you explain to the ladies and gentlemen of the jury that calculation, the out-of-pocket, and then we will talk about your market damage calculation as well?

A. Sure. What I referred to, and I think what generally is referred to in securities disputes, is out-of-pocket loss is a cash accounting measure of loss What I mean by that is you look at how much cash and securities value you start with, how much is added to or taken out of the portfolio, and you see where the portfolio ended up at the end

I'll give you a very quick example If I start out with a $100,000 in an account and I over the life of the account put some money in and take some money out, those net additions and withdrawals add up to a net $25,000 taken out of the account. So I started out with a 100,000 and I took out $25,000 net over the life of the account. At the end if my account is worth more been $75,000, I have got what we call a net out-of-pocket gain I have got $75,000 invested in this account If it's worth more than $75,000, I have a gain. If it's worth less than $75,000, I have a net out-of-pocket loss

So I do that type of calculation for Mr. Maybank's accounts with BB&T stock, the Variable Pre-Paid Forward and the individual securities, and I calculate cash in cash out

type of gain or loss

Q. How much in total was Mr Maybank's out-of-pocket losses?

A $1,872,196. So not quite $1.9 million.

Q Does that out-of-pocket loss include interest to today?

A No, it doesn't

Q. Does that out-of-pocket number include anything for what Mr. Maybank would have earned if BB&T had provided him with recommendations that were prudent, appropriate, or even reasonable?

A No, they don't

Q If instead of following BB&T's recommendations, Mr Maybank had invested in a diversified portfolio of stocks and bonds, how much would he have gained or lost?

A Well, I have illustrated that up here on the demonstrative Mr Maybank lost a total, as I said, of $1,872,000, $1 9 million almost on an out-of-pocket loss basis

Against a well managed portfolio of 70 percent bonds and 30 percent stock, Mr Maybank lost $2,861,302 It's the number on the top far right.

Q. Is it this number right here?

A That number

So the way to interpret that number is he had an out-of-pocket loss of almost $1.9 million

If he had just been invested in a portfolio at 70 percent bonds and 30 percent stock, he would have had a gain of almost a million dollars.

So he lost 1.8 million, when a prudent well diversified portfolio would have made a million dollars So against that common well diversified stock and bond portfolio he has a loss of $2,861,302 as of the date in 2010, when we end this calculation.

Q And the date in 2010, when you end the calculation, is the date Mr. Maybank said that the bank kicked him out as a customer?

A That's correct. For the managed account I think the BB&T and Variable Pre-Paid Forward we ended earlier whenever the second Variable Pre-Paid Forward ended. I have to look at the file to be a hundred percent sure certain, but there are two slightly different dates in 2010, that's correct

Q And what is the line that says with interest to June 19, 2014, and this number? What does that represent?

A Well, the difference is four years of interest So the calculation is done as of 2010 And if simple interest -- simple interest means not compound interest You are just taking the number of years multiplying that by the amount of interest It works out -- the interest works out this $686 a day. So one way to do it is just take the number of days, multiply it by that $686 and add it to that 2.86 million.

That's how you get to $3,794,029.

Q And Dr McCann, what interest rate did you use to apply interest here? Did I inform you that the pre-judgement interest rate in South Carolina was eight and three-quarters percent?

A. That sounds right I was going to look it up, but it was a rate that we were instructed Yes, 8 75 percent

Q And is this number here of $2,861,302 a number that is calculated with a reasonable degree of economic certainty?

A It is

Q. And then this number represents -- tell the ladies and gentlemen what the number here represents

A Well, the $3.8 million is just bringing forward to today interest for four years, the $2.86 million number, so it's damages with simple interest

Q And please explained to the jury what the bottom calculation represents

A Well, it's really the same type of calculation, except instead of comparing where Mr. Maybank is with a portfolio that's 70 percent in bonds and 30 percent in stock, I'm comparing where he is to where he would have been if he had been a 100 percent invested in bonds starting back in August of 2006, and you see the number is a little bit higher His benchmark damages are $3,362,185. That's because an all bond portfolio would have had a little bit higher returns,

around almost $1 5 million

The portfolio of stocks and bonds would have had a gain of about a million dollars

A portfolio that had 70 percent bonds, 30 percent -- I'm sorry, a 100 percent in bonds would have had a gain of about 1-5 million.

And so if you add that almost $1 9 million he had in net out-of-pocket losses to the almost $1 5 million in gains in all bond portfolio would have had, his shortfall or the benchmark or well managed damages are $3,362,185.

Q. And then did you add calculating that interest to that sum?

A That's correct, in exactly the same way We would bring forward that calculation from 2010 to today, June 19th, 2014, at simple interest and it comes to $4,485,692

Q And what is the representation -- what is the 806?

A It's what we call the per diem or per day interest charge for each additional day If you were bringing forward that $3,362,000 for additional days, each additional day would add $806 to the accumulating total

Q Were you available to hear -- have you received information from Mr Brawley regarding his calculations?

A. Yes, I have.

Q. And were you in the courtroom today when he testified?

A. Yes, I was.

Q Mr. Brawley testified that the insurance lost by the Maybank Family Trust would cost on a single premium to reinstate those, that insurance, to restore it, it would be $4,033,000, roughly Have you prepared a demonstrative exhibit including that as well?

A Yes, I have

MR WILLOUGHBY Lindsay, if you would put up the next page

BY MR. WILLOUGHBY

Q And explain to the jury this page.

A I have just taken the benchmark damages, or what I have labeled as the well managed damages, with interest as of today, June 19th, 2014, and I have added to them Mr Brawley's costs of replacing the insurance, $4,033,707

So if you use the 70 percent bond benchmark, the total is $7,827,736

If you use the all bond benchmark, his total is $8,519,399

Q Dr McCann, are the losses that you have calculated and reported to the jury in this case the direct result of BB&T's imprudent advice and recommendations to Mr Maybank?

A Yes

Q Thank you very, Dr McCann Please answer any questions that the defense may have

A Thank you

CROSS EXAMINATION BY MR KRISTINIK

Q Good afternoon, Dr McCann.

A Good afternoon, Mr. Kristinik

Q Dr McCann, I want to ask you a few things about your background

Have you ever worked as an investment advisor?

A No

Q Have you ever worked as a broker-dealer for a broker-dealer?

A No.

Q Have you ever worked as a financial advisor in the securities industry?

A No, I have had registrations for all of those jobs, but I have never practiced as a stockbroker or an investment advisor.

Q You have never had a customer as a stockbroker or investment advisor either, have you?

A That's correct

Q You have never worked as a portfolio manager?

A Correct

Q Now, there is a subsidiary of your consulting firm that is a registered investment advisor, right?

A It was for three or four years It's no longer active.

Q And while it was active for three or four years, it had no customers, no paying customers?

A Correct
Q Right?
A Yes.
Q You would agree that you have never been hired by an individual investor for the purpose of you giving them investment advice for what they should buy or sell in the portfolio?
A. That's correct. We have declined, just as we didn't take any customers in our investment advisory firm, I have personally and through the firm declined to take any advisory clients.
Q. In fact, you have never sat down with an individual investor who had a concentrated position and as their investment advisor to help them decide what to do? You have never had to do that in your career, right?
A. I don't know if I had to, but I have not done that, that's correct.
Q. Now, in August of 2006, Mr. Maybank, he would have qualified as an accredited investor at that time, right?
A That's correct, yes
Q. He certainly nad significant experience with stocks and bonds, right?
A. Yes
Q. In fact, you would agree that Mr Maybank has significantly more experience advising individual clients

with how to manage their money, significantly more experience than you do, right?

A Yes

Q In fact, you would say that -- assuming that Mr Maybank was given full and complete information about Pre-Paid Forward Contract, you would agree that he would be capable of understanding a Variable Pre-Paid Forward Contract?

A. I think that Mr. Maybank is -- meets the definition that I have for a sophisticated investor, which is if you give them all of the information they need to know in order to make an informed decision, they could make an informed decision So they have enough experience, enough education to be able to do that.

And so, yes, I would agree that if Mr. Maybank had been given all of the information that he needed, much as I have tried to lay it out, only more so, that he would have been able to make an informed decision.

Q So he could have understood it under those conditions? He could have understood a Variable Pre-Paid Forward Contracts?

A With enough explanation of the type that I have described, yes.

Q Thank you, Dr McCann.

You know who Kris Kapoor is, correct?

A I do
Q. And he was the first portfolio manager for Mr. Maybank's account, is that right, with BB&T?
A That's my understanding
Q And you are aware that he is currently the chief investment officer at Furman University here in Greenville?
A Yes.
Q And you read his deposition and you would have seen that back in 2006 he had the designation of Chartered Financial Analyst, correct?
A. Yes
Q And to get a CFA designation, a person has to pass three very difficult exams, correct?
A Yes
Q And to get a CFA, you also have to satisfactory a practical experience requirement in the investment management decision making process?
A. Yes
Q. In fact, you said on your direct testimony that the CFA designation is the preeminent designation for a portfolio manager, right?
A Correct.
Q And that's what Kris Kapoor was, portfolio manager, back in 2006?
A That's correct

Q. Okay. And you don't question the fact that back in 2006, Mr Kapoor would certainly have been qualified to serve as a portfolio manager?

A I have no reason to doubt I haven't investigated it, but I wouldn't doubt it

Q Okay. Now, we have heard that you are critical of what you would describe as high embedded costs in the pre-paid contract And embedded costs that you take into account are options costs and fundings costs, is that right?

A Correct.

Q. Is that right?

A. Yes

Q But in this case you have never calculated what the actual option costs would be for Mr Maybank's first pre-paid You didn't do that, correct?

A. I haven't done it precisely I have estimated what it is, and I believe my office may have done it precisely, but at the deposition you and I talked about this I have not done it precisely at that point.

Q Okay And would you agree that you also have not precisely calculated the option costs for the second pre-paid?

A Really the same answer. I have got a very good estimate of what the costs are, but I haven't -- I haven't calculated it precisely the way that we would if we were --

if we were trying to specify to the, let's say, thousand dollars what the value of the two options were and separate that out from the interests costs and the loan.

Q. Dr McCann, you also haven't precisely calculated the funding costs for either pre-paid?

A No Again, we know what the total costs is The funding costs and the option costs, it's really simple. It's the difference between $9.3 million that Mr. Maybank agreed to pay back and the $7 1 million that he was advanced.

The difference between those two numbers is the sum of the funding costs and the options costs that Mr. Kristinik is asking me about. I haven't tried to separate out the components of that $2 2 million, other than in a fairly simple calculation that satisfies me about the relative significance of those two

Q. That's right.

So you think the proper analysis, the proper way to do it, is to look at those costs collectively So that if someone wanted to look at Variable Pre-Paid Contract, they don't have to know the specific option costs. They don't have to know the specific funding costs. They just can look at the costs in the aggregate, correct?

A Well, in isolation looking at one Variable Pre-Paid Forward that would be true.

If you were trying to evaluate alternative structures or compare a Variable Pre-Paid Forward to alternative investments that would have been appropriate for Mr. Maybank, I think you might -- you might do a little bit more than just look at the difference between those two numbers.

Q. Your strong recommendation in Mr. Maybank's situation would be to sell the stock, right?

A. That's correct.

Q Sell it?

A That's correct.

Q Okay. When Mr Maybank acquired his BB&T stock in 2001, he was under a restriction that prevented him from selling the stock for two years, correct?

A That's my understanding

Q In 2004, Mr. Maybank still owned 246,640 shares of BB&T stock, right?

A Correct.

Q He had not sold a single share by 2004, right?

A That's my understanding

Q In 2005, Mr Maybank owned 246,640 shares of BB&T stock, correct?

A. Correct.

Q The restriction was already gone, right?

A Correct.

Q He had not sold a single share of that stock?

A Correct.
Q If he does sell the stock -- he did have that recommendation. If he decided to follow that recommendation, he's going to incur a large capital gains tax liability, right?
A He's going to have a significant tax liability, maybe 18, 19, 20 percent on essentially the full proceeds, because the costs basis was quite low
Q Right
The low tax basis, right?
A Correct
Q The government is going to want their piece --
A Yes
Q -- right?
A Yes.
Q. You would estimate that that capital gains tax, that liability, would be about $1 7 million?
A Correct
Q If Mr Maybank wants the margin interest to stop accruing after he sells the stock, he's also going to need to pay off the what you would estimate at $2 6 million of margin debt?
A Correct
Q So if Mr Maybank sells $9.3 million of BB&T stock in August of 2006, and you take out the 1 7 million in taxes,

you take out the $2.6 million in margin debt, that's going to leave you with about $5 million, right?

A. Correct.

Q. Mr Maybank, the net proceeds that went to his margin -- that went to his managed portfolio account after he entered into the first pre-paid contract was $4.6 million, right?

A. Correct. He still had the tax liability on the BB&T stock.

You are not comparing apples to apples. In the calculation you just went through for the jury you extinguished the tax liability, but he has still got that highly appreciated BB&T stock, and the only way he's ever going to realize something from that is -- and the way the Variable Pre-Paid Forwards work, if he does the Variable Pre-Paid Forward two or three times, he's likely going to have to sell the BB&T stock. So he's still got that 1.7 or 1.8 million dollar tax liability that will be paid. So the calculation you have just walked through is not an apples to apples calculation.

Q. Right, there is going to be taxes with a pre-paid transaction and it would be helpful if we had someone who is an expert in taxes to come in here to explain, to compare the tax difference between a pre-paid and a sales solution, but you are not a tax expert and you can't do that for us,

right?

A. Well, I don't agree with the color in your question, but I agree that I'm not a tax attorney or a tax accountant; but I do know that you can compare after taxes for the alternative investment in a diversification strategy with the Variable Pre-Paid Forward strategy that still that has that tax liability in it that will be approximately the same It may, in fact, be worse. In the Variable Pre-Paid Forward that interest that's accumulating is not tax deductible, is my understanding.

So to the extent that tax attorney or accountant would help us here, they would make the case stronger for not doing a Variable Pre-Paid Forward

Q Let's talk about your sale of the stock solution

You would agree that some investors -- for some investors there are psychological barriers that may prevent them from deciding to sell the stock, right? You have written literature on that?

A Without decent information and education, that's correct I think that the initial impulse would be to hold any stock that you bought.

Q So any psychological barriers would include concepts like anchoring, regret avoidance, and sometimes the desire to avoid having to pay capital gains tax Those would be some of the psychological barriers, among others?

A That could be overcome with some explanation and education, but, yes, those are the types of psychological barriers that are listed, typically

Q. And you have not looked into that in this case, and you have no opinions on whether there would have been psychological barriers to Mr Maybank selling his stock, correct?

A Well, I do have opinions that they're non-relevant to what a prudent or appropriate, or even reasonable recommendation would have been to Mr Maybank There may have been hurdles to implementing that recommendation, but it's clear that the appropriate, the prudent, the reasonable recommendation has nothing to do with what psychological hurdles you may face in trying to implement that.

Q Dr. McCann, is it your testimony that Mr. Maybank would have been better off just doing nothing, just leaving the stock in the Scott & Stringfellow account?

A No As you know, my strong opinion is that the best thing to do is that sell and diversify a concentrated position to reduce the margin to zero and have a portion of your portfolio in the diversified collection of bonds. That would be my very strong recommendation. In fact, it's my published view in all circumstances, except the first couple of years in this case where the stock is restricted

Q Dr McCann, I'm not sure if you answered my question

Let me word it a different way for you.

Was Mr. Maybank better off getting a pre-paid compared to doing nothing?

A. If you evaluate it in 2006, in August of 2006 he was much worse off getting a Variable Pre-Paid Forward than doing nothing.

If you evaluate it with the benefit of hindsight three years later, he's a little bit better off, maybe, than literally doing nothing

If he had done literally nothing, kept the $9.3 million in stock, the $2.7 million in margin loans, he might have been a little bit worse off by the time you get to 2009, but that's, in my view anyway, not the right way to assess it.

Q All right So, Dr McCann, your testimony is that by 2009, if he did nothing, he would have been just a little bit, -- a little bit worse off than having entered into a pre-paid? That's your testimony?

A Well, it depends when in 2009 you look at

As I said in my direct, the BB&T stock had been -- had fallen to in the teens somewhere from 40 or $42 By the time you get to January, February of 2009, and then it's rebounding back up through the rest of 2009 So it depends when exactly in 2009 you look at it, but you can find periods of time there where he would be a little bit worse off, if you take into account the losses on the individual

securities that were bought with the Variable Pre-Paid Forward.

It gets a little bit complicated, because the Variable Pre-Paid Forward is an over-the-counter derivative and you would have to value it each time you value the portfolio to determine whether he was better off or worse off. It's a non-trivial calculation to do. More than that. That's the way I see it. It's a difficult calculation to do.

But to know for sure whether he was better or worse off with the benefit of hindsight on any particular day in 2009, you would have to do a lot of calculations.

My view is he's a little bit worse off in early 2009.

Q Okay. So I just want to make sure we had this clear. That is a long answer. A little bit worse off in 2009, if he did nothing. That's your testimony?

A It is.

Q I got that right?

A Yes.

Q Okay. You testified to some damages calculations and I wanted to touch on that a little bit.

What I'm going to show you is part of Exhibit No. 72. It's an agreed exhibit. It's already in evidence, and so I have pulled out a few pages.

A. Okay.

Q. The first page I'm going to show you is Exhibit 1 to

your expert report

Now, what Exhibit 1 shows is the net out-of-pocket loss from August of 2006 to December of 2010 on the BB&T stock and both pre-paid transactions Did I get that right? Is that what this is intended to show?

A Yes

Q Okay And you conclude that the net out-of-pocket losses are around $1,299,000?

A Correct

Q Now, as part of your calculation, you determined whether there was a gain or loss on the first pre-paid transaction And you have, in fact, determined that the first pre-paid actually had a positive cash benefit to Mr Maybank of over $2 8 million That's what this shows, correct?

A That's correct

Q Your net out-of-pocket calculation uses an end date of December of 2010, right? Is that the end date?

A Correct

Q We all know from Mr Maybank's testimony here in this trial that he continued rolling the pre-paid all the way until December of 2012, that we finally terminated his last contract, he received back from Deutsche Bank over $800,000 in stock, but you don't take that into account You don't believe that that is relevant to your analysis, right?

A Oh, it's not I do take it into account

What's lying behind this page is a bunch of other pages There is 60 or 70 pages here, and what I'm doing -- when you see that $2.8 million number, that is calculated based on the value of BB&T's stock at the end of 2000 and -- I would have to look at the backup, but we are giving credit to BB&T for the value of BB&T's stock. Not the value on the date in 2012, but the value of the stock at the time this calculation is done.

So, again, it's not as you say -- I'm sorry, it's not that we are not giving BB&T credit for the value of the stock that Mr. Maybank had We certainly do It's in a backup to this particular page I can find it for you

Q What you are not giving him is you are not giving him credit for the $800,000 of appreciation that he obtained through those last three rolls In fact, if you look at Exhibit 1, it doesn't have a single reference to a single statement or a single pre-paid occurring in 2011, or 2012, right?

A I think those are two different questions

I'm fully giving BB&T credit for the value of Mr Maybank's stock at the end of that period when I understand the relationship existed I'm not charging BB&T for any further decline in the value of that stock after the relationship ended or giving them credit for any rebound in

the value of the stock, but the value of the BB&T stock and all of the other assets and liabilities in this relationship are included in our calculation at the time the relationship ended

Q So using your words, you have not given them any credit for the rebound in the stock, right?

A That's not my -- those weren't my words, not the entirety of them

What I said is after the relationship ended, we don't -- we don't -- we don't charge them with further losses on any of the securities or give them credit for any rebounds in any of the securities That's the standard way to do this calculation It's really the only way to do the calculation.

Q Well, Mr. Maybank received the benefit of the $800,000 in December of 2012, right? I mean, he received that money in his Charles Schwab account

A But we are giving him credit -- giving you credit for whatever the value of that BB&T stock was when you no longer had a relationship with Mr Maybank, where you were no longer serving as his trusted advisor Why would we be giving you credit or charging you for changes in the value of the stock, or any other stock, while he's not getting any advice from you, or you are not his trusted advisor is something I don't understand. We, in any case, don't do it

Q. That's right, he's making his rolls without our advice He's making these rolls all by himself, right?
A. After 2010, that's why we are not including them in the calculations.
Q Let's look at Exhibit No 3 to your report
Now, on Exhibit 3 you are calculating market adjusted losses related to Pre-Paid Contracts, right?
A Yes.
Q Okay
MR KRISTINIK Mandy, let's bring this up.
Mandy, let's go ahead and cull out the first five portfolios and the footnotes
Okay, thank you
BY MR. KRISTINIK
Q This is what we are going to focus on. I'll ask you some quick questions about this, Dr McCann
All right. Column one, you have labeled that as diversified portfolio We can see that, right? I'm sorry, column four?
A Yes.
Q And in your footnote one you are indicating that for this hypothetical diversified portfolio it would be invested 30 percent equities and 70 percent fixed income, is that right?
A Yes.

Q Okay So in your hypothetical portfolio you are assuming that there is going to be $9.4 million of stocks and bonds in it, right?

A No, that's not correct

Q Isn't that what you told me during your deposition?

A. No, there was some portion of the deposition that was confused and we later cleared that up with subsequent questions and answers

What I told you was that it was the -- the -- the difference between the -- the -- I'm -- I'm forgetting the precise language, but it's the difference between the seven point something million that came into that account, less the proceeds for paying off the portfolio -- I'm sorry, the -- paying off the margin balance.

I'm sorry, we are on the BB&T stock on the Variable Pre-Paid Forward

Q Dr. McCann, can I help you?

A Yeah, I'm sorry. I was confused I was thinking about the individual securities account

What's included here is the value of the BB&T stock net of the value of the Variable Pre-Paid Forward, which isn't priced in the first few statements. If you look at the statements, it will say non-priced, but if you look about six months into the series of statements you will see that that Variable Pre-Paid Forward is priced as a liability of

about $8 million, seven and a half or $8 million.

The net value of that BB&T stock and the Variable Pre-Paid Forward is about two and a half million dollars, and that is what's in the benchmark calculation for the BB&T/Variable Pre-Paid Forward portfolio.

Q. Dr. McCann, why don't we look at your deposition. Do you remember when I came up to Fairfax, Virginia, to your office? Do you remember that?

A. I do, yes.

Q. February 7th, 2014?

A. Correct.

Q. We sat in your conference room with a court reporter and with Mr. Willoughby?

A. Yes.

Q. And we took our time that day. We were there several hours taking our time, walking through your opinions, right?

A. Correct.

Q. And you took an oath to tell the truth and be accurate, and you tried to do that, right?

A. Correct.

Q. Okay. Let me hand you your deposition. It's page 133, and I asked you the question at line 15. "How much money is invested in this diversified portfolio? I don't see a chart that explains that."

And your answer. "There may be other exhibits. It

looks like it is five pages I think there was around a hundred pages of schedules behind that letter and report, but roughly speaking what you would have is -- I have to look at the other schedules of the back to be a 100 percent certain, but you have $9 4 million invested in a diversified portfolio of stocks and bonds "

Did I read that correctly?

A. You did, but, again, you are not telling everything 20 or 30 pages further on in this deposition we revisit this issue and I say that the $9 3 million is the initial investment It's the BB&T stock, but there is a liability there of seven something million dollars. And so the net investment, after you take into account both of those factors in the benchmark portfolio, is two point something million.

I don't remember the page cites You have got them, but we cleared this up -- or you and I discussed this some more 20 or 30 pages later

Q Dr McCann, your analysis doesn't take into account the capital gains taxes, right?

A. That's correct.

Q So for this diversified portfolio, it doesn't take that into account? You did not feel that that was necessary, right?

A That's correct

Q Also for this diversified portfolio account, the one that you are using for the calculation of pre-paid damages, you don't take into account withdrawals that Mr. Maybank would have had to make during this time period for living expenses, for school, for his children, for private school, for his grand kids?

A. Well, that's not true We take into account every withdrawal that is made by Mr Maybank.

In either one or the other of these two benchmark calculations, there are two separate pots that are going on If you remember in my summary, I had a BB&T and Variable Pre-Paid Forward number and I had the managed securities portfolio and I summed them up to get a total

So every dollar that's withdrawn by Mr Maybank comes out of the benchmark portfolio and the same amount on the same date We are accounting for every withdrawal and we are not including in any of the damage calculations money that's been withdrawn by Mr Maybank

Q Well, that would be true for your calculations, your market adjusted loss calculations for the managed portfolio, but it wouldn't be true for your calculations related to the Variable Pre-Paid Forward Contract, would it? There is a distinction there?

A Well, there is, and -- but I think they are You might correct me, but I think I accounted for all of it

I don't think that there are any withdrawals, except perhaps from the BB&T pledged with the Variable Pre-Paid Forward, other than the $42,000, or $34,000 fee that you charged Mr Maybank I'm not recalling, as I sit here anyway, that Mr. Maybank was withdrawing any money from the account that's covered by this analysis.

MR. KRISTINIK Mandy, let's go to Exhibit 8 Let's go to page two

BY MR. KRISTINIK

Q All right, Dr. McCann, this is showing your market adjusted loss calculations for your -- or for Mr Maybank's managed portfolio account, correct?

A Yes

Q. And over here on the right-hand side you concluded it's $877,000, correct?

A Yes.

Q And that's with assuming that in the hypothetical portfolio it would have been invested 30 percent equities and 70 percent bonds, right?

A Correct.

MR KRISTINIK Okay, Mandy, let's go to Exhibit 9

Mandy, let's cull out the footnotes.

BY MR KRISTINIK:

Q Here you go, Dr. McCann.

A Thank you

Q Now, here in Exhibit 9 you have -- on page two you have calculated the market adjusted losses a second time for the managed portfolio account, correct?

A Correct

Q And here you have calculated that the total market adjusted losses would be a little over $1 4 million, is that right?

A Yes

Q And this assumes, according to your footnote one, that there are no stocks, no equities, it's 100 percent bonds, right?

A Correct.

Q And when you do that, it increases the damages by about $500,000, right?

A Correct

Q But for this damages calculation to have any validity, it must be assumed that Mr. Maybank would ignore inflation risks and would invest his entire portfolio in bonds, right? That's a necessary assumption?

A No, it's not At least the color in your question is not necessary.

It assumes only that he would have accepted a recommendation, or might have accepted a recommendation, to invest 100 percent in bonds

Q. Thank you, Dr McCann

MR KRISTINIK: I have no further questions.

MR. WILLOUGHBY Your Honor, I have just one question to ask

REDIRECT EXAMINATION BY MR. WILLOUGHBY:

Q Dr McCann, did you do some supplemental calculations, Dr McCann, following the deposition that you gave?

A Yes

Q And I want to show you these calculations It's a lot of numbers Does that -- are those calculations including in all the analysis that you did?

A Yes The first two lines explain exactly what I was trying to say when Mr. Kristinik was asking me about how much was invested in the Variable Pre-Paid Forward account

The backup to the calculation, which is what Mr. Willoughby is holding, it's not calculations really It's the backup It's the underlying data, and it shows the $9 3 million BB&T stock and the $7 1 million proceeds coming out And so the net investment in -- there is two separate analyses here, the individual securities and the BB&T Variable Pre-Paid Forward You can see if you just subtract one number from another there, that there is $2 2 million invested in the BB&T/variable pre-paid benchmark, not 9 3 million, as Mr Kristinik said

And if you look at the exhibits that we were just

looking at, 8 and 9, you will see that there was $4 6 million invested in the managed securities benchmark. Add those two numbers together, the 2.2 and the 4.6, you get $6.8 million It's really the $9 3 million BB&T position less the margin balance.

So what we have really done is we have assumed you sell BB&T and you put the proceeds after paying off the margin balance into a benchmark portfolio. We have separated it into these two buckets, but that's all we are doing

Mr Kristinik thought, and thinks still today, that we are putting something like $15 million into the benchmark, or $12 million into the benchmark We are putting exactly the $9 3 million minus the margin balance, roughly 6.7 or $6 8 million and that's all.

Q. Thank you, Dr McCann.

MR. WILLOUGHBY: Your Honor, I would like to move these documents in as the next trial exhibit

(Chart marked as Plaintiffs' Exhibit No- 93 for identification)

MR. KRISTINIK No objection

THE COURT All right

(Whereupon, Plaintiffs' Exhibit No. 93 was entered into the record as evidence)

MR WILLOUGHBY Exhibit 93 is into evidence, Your Honor, and we have no further questions

MR KRISTINIK No further questions, Your Honor

THE COURT All right

MR WILLOUGHBY We would ask that Dr McCann be excused.

THE COURT Any objection to releasing him?

MR KRISTINIK No objection, Your Honor

THE COURT All right Thank you

Let's take a short afternoon break Don't talk about it We will get right back with you

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

THE COURT Anything before we break?

MR WILLOUGHBY Nothing from the plaintiff, Your Honor

MR KRISTINIK Nothing from the defendants.

THE COURT All right

MR WILLOUGHBY What we have got are video excerpts from Mr Walters' deposition It lasts about forty minutes I understand and that's it --

THE COURT Okay

MR WILLOUGHBY -- today

THE COURT Okay All right. You put that up, take a break, and I'll call y'all later. See y'all in a few minutes

(Whereupon, proceedings were recessed)

related to BB&T Corporation We wanted to continue to preserve our position that there is no personal jurisdiction over BB&T Corporation, or any questioning we make to him regarding his testimony should not be deemed as a waiver of that personal jurisdiction argument.

THE COURT All right. I think you are covered on the record

Ready?

MR WILLOUGHBY We are ready, Your Honor

MR. BROWN: Yes, sir.

THE COURT. Okay

We are clear on the limit of his testimony, right?

MR WILLOUGHBY Yes, Your Honor, we are only going to focus on net worth and how he derived net worth.

THE COURT. Okay

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

THE COURT. All right. Every weekend should be a three day weekend, right?

Ready to start? All right

Yes, sir.

MR. BANNISTER. Thank you, Your Honor.

We call Dr. Wood

THE COURT. All right

DR OLIVER WOOD, JR., having been first duly sworn, testified as follows

THE CLERK Please state your name for the record.

THE WITNESS Oliver G. Wood, Jr

THE CLERK Thank you. You may be seated

DIRECT EXAMINATION BY MR. BANNISTER:

Q Good morning, Dr Wood

A Good morning

Q State your name for the record and where you live.

A Oliver G Wood, Jr , Columbia, South Carolina

Q. Where are you originally from?

A I grew up in Greer, South Carolina.

Q How long did you live in Greer?

A 18 years

Q 18 years

Describe to the jury your current educational background

A I have a Bachelor's Degree in Business from the University of South Carolina, a Masters Degree in Economics from the University of South Carolina, and a Doctorate in Economics from the University of Florida

Q And how about your professional background?

A I was hired by the University of South Carolina in 1965 to teach economics and banking and finance courses I taught there for 29 years I'm now a distinguished

professor emeritus. Translated that means I'm retired from teaching.

Q. What courses did you teach to develop the financial condition and financial aspects of corporations?

A I taught money and banking for my whole career I taught bank management

I taught a South Carolina Bankers School for 25 years

I taught MBA field studies or led MBA field studies for 20 years in the summer

And then the other times I have taught advanced money and banking, monetary theory, business finance, and maybe some other courses

Q. Okay. And did you serve in the military?

A. Yes, I served on active duty in the United States Navy from 1959 to 1961.

Q. And were you in the Reserves?

A Yes, I served in the Naval Reserves from 1961 to 1987, when I retired

Q And what was your rank when you retired?

A. Captain.

Q. Captain.

What practical experience have you had in the business world?

A. I have helped start eleven banks and two savings and loan associations. I served on the board of directors of

two different banks I have served on the advisory board for two other banks.

I served on the board of directors at Edisto Farm Credit in Orangeburg. We made farm loans in the lower part of the state.

I served on the investment policy committee at the Ag First Bank in Columbia That's the old Federal Land Bank. We set investment policy for active and retired employees

And I also owned several farms in Tennessee.

Q. And do you have any special experience in the area of investments?

A. At the banks that I have been involved in, I was on the investment policy committee, and I also taught money and capital markets for most of my career.

Q Have you written any books?

A I have authored or co-authored seven books

Q All right. What is your experience in evaluating economic loss in civil litigation, like personal injury, wrongful death, business-loss cases, employment cases?

A For the last 45 years I have made studies in cases where someone has been injured, killed, terminated from their employment, either due to age, race or sexual discrimination reasons, Family Court matters, and sometimes workers comp matters

Q And what about your experience in evaluating

corporations when punitive damages might be an issue?
A For the last 30 years I have made studies of corporate balance sheets and income statements with the aim of determining whether or not they had the ability to pay punitive damages
Q And have you had any experience in instructing lawyers in the area of economic loss, financial aspects, personal injury cases, wrongful death cases, business-loss cases?
A I have been invited by the various Bar Associations about 25 times to participate in seminars on some aspect of economics.

From 1970 to 2004 I was a guest lecturer in the damages course at the University of South Carolina Law School

In 2004 the professor retired in Columbia and moved to Charleston to help set up the new Charleston School of Law, so I have been involved with them since 2004. And then about five years ago they named me their economist in residence
Q Thank you.

MR. BANNISTER: Your Honor, I would offer Dr. Wood as an economic expert

MR BROWN: No objection.

THE COURT: Okay.

BY MR BANNISTER:
Q Dr Wood, what financial information have you examined

regarding BB&T Corporation to get ready for this case?
A Well, with respect to BB&T Corp , we had their 10-K's, which is a document that they filed with the Securities & Exchange Commission And we would also used a 10-Q, which is a quarterly document that is filed with the Securities & Exchange Commission.

With specific to BB&T, the bank, we had the call reports, which are filed with the FDIC annually and quarterly.

Q. So have you looked at the public filing for both BB&T, the bank, and BB&T, the corporation?
A Yes
Q Okay Please show the court and the jury what you consider relevant information from these reports.
A. They are on file right down there.

MR. BROWN Your Honor, can we approach one minute real quick?

THE COURT Yeah.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

(Witness off witness stand)

BY MR. BANNISTER.
Q Thank you, Dr Wood .

What information did you think was relevant for the court and the jury?

A Can everyone see this chart?

This first chart looks at the assets, liabilities and stockholders equity for BB&T Corporation That's the holding company. The holding company owns the bank and other subsidiaries.

Assets are defined as things owned, things of value In this case for the corporation it would be loans, cash in vault, securities, buildings, and other assets.

Liabilities are defined as claims on things owned What do you owe? In the case of its own company this would include deposits, it would include borrowings from Federal Reserve or other entities.

You take assets, which are things owned, and you subtract liabilities, which are claims on things owned, and you force out stockholders equity.

The word equity means the stockholders ownership claim on assets

So in this case for March 31st, 2013, the corporation had $180 billion in assets There were 159 billion in claims on those So that means that the stockholders equity or net worth was $21 billion. That was the residual claim on those assets They could pay off all the liabilities and receivables and still have $21 billion left.

On March 31st, here is an expanded view of that balance sheet Assets, they had cash and due from other banks of

1 3 billion That could be cash in vault, or it could be
2 deposits with other banks.
3 They had interest bearing deposits with other banks of
4 a billion five nine
5 They had fed funds sold Federal funds sold are
6 defined as excess reserves that banks sell to each other
7 usually on an overnight basis It's a way banks try to
8 maximize their daily interest receipts and that is sell
9 their excess over time
10 The next line is securities owned of 24 billion. That
11 could be securities in the United States Treasury It could
12 be securities of government agencies, and there may be some
13 others thrown in there, but primarily they are treasury and
14 government agencies securities.
15 Largest asset is loans. These are loans to
16 individuals, loans to business, loans to government, and any
17 other entities. It's 112 billion. Other assets at 41, so
18 the total is 180.
19 Now, the liabilities, the largest one is deposits
20 These are individuals, governments, and businesses claims on
21 BB&T, 131 billion. Other liabilities 28. A total 159. So
22 when you subtract 159 from the 180, you get 21 billion as
23 stockholders equity
24 The largest asset owned by BB&T Corp Is the bank,
25 Branch Banking and Trust Company I think Branch was a

person. It was not just another office It truly was a person way back in the last century.

So Branch Banking and Trust Company, which is the largest asset held by BB&T Corp , their assets 176 billion, their claims 154 The net is 21 6.

When you look at the expanded balance sheet, they have got cash assets of 2 8, securities of 37, loans of 109, premises and fixed assets 1 9, other assets 24 The total 176.

Largest liability, of course, is the deposits All liabilities of 154, forcing out 21 6 billion as net worth or shareholders equity for the bank itself.

So I presented the corp and the bank.

(Witness back on the witness stand)

BY MR BANNISTER:

Q. Thank you, Dr. Wood.

So after a review of the public filings and the other information you looked at, in your opinion, does BB&T Corp. And BB&T Trust Company, the bank, have the financial ability to pay a potential punitive damages award?

A. Yes

Q. Can you explain that?

A. Well, BB&T is one of the largest financial institutions in America It's also been one of the most successful as measured by their growth and assets and their growth in

shareholder equity So the residual claim on those assets is $21 billion, which is -- you know, it's a big number. A billion is a thousand million. So there are number of millions in 21 billion

Q Thank you, Dr. Wood

MR BANNISTER Your Honor, I would move the four charts that he just described, and we've handed up copies, and ask those be introduced as evidence

MR BROWN: No objection.

THE COURT All right

MR BANNISTER Thank you.

(Demonstrative Chart marked and entered into the record as evidence as Plaintiffs' Exhibit No 94).

(Demonstrative Chart marked and entered into the record as evidence as Plaintiffs' Exhibit No 95).

(Demonstrative Chart marked and entered into the record as evidence as Plaintiffs' Exhibit No 96)

(Demonstrative Chart marked and entered into the record as evidence as Plaintiffs' Exhibit No 97)

THE COURT Cross?

CROSS EXAMINATION BY MR. BROWN

Q. Dr Wood, just so I'm clear, you did analysis on BB&T Bank, is that correct?

A Yes

Q And BB&T Corporation, is that correct?

A Yes

Q. You did not do any analysis on Sterling Capital Management, did you?

A. Correct.

Q. You did not do any analysis on BB&T Asset Management?

A. Correct.

Q. And the information that you relied upon in preparing your analysis was information in public filings by BB&T Corporation or BB&T Bank?

A. Correct

Q The time period you presented in your charts was the time period from I think it was 2010 to 2013?

A Correct

Q You did not evaluate the time period at issue in this case, from 2006 to 2009, did you?

A No

Q And your opinion is limited to ability to pay a judgment? That's your area, correct?

A Correct

Q. You did not evaluate the liability of the parties of the illegal issue? That's not your area?

A. Correct.

MR BROWN: I have nothing further, Your Honor.

THE COURT: Any redirect?

MR BANNISTER No, Your Honor

We would ask Dr. Wood be excused

MR BROWN. No objection.

THE COURT. All right. Thank you, sir.

THE WITNESS. Thank you.

THE COURT. You may call your next witness.

MR. WILLOUGHBY. Your Honor, that concludes all of our witnesses, and we would move the introduction of the two documents at the conclusion of Dr. Craig McCann's testimony where he summarized his damage calculation. We would move those into evidence as the next trial exhibit, and with that we would rest our case.

MR. KRISTINIK: Your Honor, I would ask that Mr. Willoughby just show me what those documents were.

THE COURT. Yeah.

MR. KRISTINIK. Since that was last week, I just want to take a look at them.

THE COURT. I tell you what, ladies and gentlemen, while they are looking at this, we have reached a point in the case where I need to discuss some legal issues with the lawyers. So while this was very brief this morning, we are going to take a short break. All right.

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

THE COURT. Are you good with the --

MR KRISTINIK. I am not, Your Honor, and this is

the reason, is because Dr. McCann includes interest calculations, and it's our position that prejudgment interest is a function for the court, an equitable function for the court. If there is a jury award, then the court is to consider prejudgment interest at that point. And so these are going to be misleading to the jury when they see this. You know, the jury is going to come back putting in interest and then you are going to have to figure out did they do it right. You know, it's really a function for you.

THE COURT: Can it be redacted?

MR. WILLOUGHBY: Well, Your Honor, we wouldn't -- we wouldn't put it in if it's going to be redacted. We will use it as a demonstrative exhibit in that fashion.

His testimony is clear. It's in the record. He's given the numbers, but he testified from this. I think the jury can consider all of that information, Your Honor.

THE COURT: Well, do you agree with Mr. Kristinik that the prejudgment interest is a function of the court?

MR. WILLOUGHBY: I don't, Your Honor. I believe -- I believe the jury can consider the prejudgment interest as well.

THE COURT: Do you have any authority to back that up?

MR. WILLOUGHBY: I don't have the statute right in front me, but we will certainly look at it, Your Honor.

THE COURT Well -- all right We will just take the introduction under advisement and -- you know, show me some authority Otherwise I'm going to --

MR WILLOUGHBY I understand We will mark these for identification as the next two trial exhibits

Your Honor, the only own thing we would have is Mr Kristinik and I are talking about the stipulation, and so we don't have that language, but subject to us working out the language of the stipulation, that is, that they were not registered, which is on the record, but I have got the language that I proposed to him and he's going to look at it and let me know later today, I believe, on that

MR KRISTINIK Your Honor, on that point he had at least one of his experts, I think it was Professor Freeman, testify that we're not a registered broker-dealer, that he looked it up. They got it -- they got it in the record now

THE COURT He did say that

MR WILLOUGHBY. Yeah, we clearly have it into the record, but I would be interested in having a stipulation as well We stipulated on the record that that was true and so I would like that stipulation complete.

THE COURT: Well, y'all work on the language. I mean, you did agree.

MR KRISTINIK: We will work on the language, Your

Honor

THE COURT: All right. Anything else?

MR. WILLOUGHBY: No, Your Honor, and we will tender these for identification and then we rest our case.

(Damages Document marked as Plaintiffs' Exhibit No. 98 for identification).

(Damages Document marked as Plaintiffs' Exhibit No. 99 for identification)

MR BROWN: Your Honor, we would have a directed verdict motion and we will present to the court a copy of that and we are prepared to address it now. We want to make sure that we have included all the grounds, but we believe that the evidence does not establish the cause of actions that are pled, particularly as to certain of the defendants

On breach of contract we don't believe that they have presented evidence supporting the breach of contract In particular, the only breach that they have alleged is that the wrong employees did the job Mr. Maybank has testified that he knew who was doing those tasks, but that he did not object to that

They have also failed to present any evidence of a contract between Mr Maybank and BB&T Corporation

They have failed to present any evidence of a contract between the Trust and BB&T Corporation -- and BB&T -- or any of defendants which was allegedly breached

In terms of the breach of fiduciary duty, they have not presented any evidence that BB&T Corporation owed any fiduciary duty, and they have not presented any evidence that any of the duties that were owed were breached.

The duties owed to the Trust, they have not presented any evidence that obligation owed under the trust agreement was breached

The only evidence they have presented as to the management agreement is they believe the advice was bad. Bad advice is not a breach of a fiduciary duty.

We also contend, Your Honor, that they have failed to present the sufficient evidence of negligence They have not presented any conduct by BB&T Corporation which they perceived to be negligent.

We believe they have also failed to allege any duty owed to the Trust which would support a claim for negligence.

We believe that the evidence also shows the sole negligence of Mr Maybank, or at least more than 50 percent of the negligence by Mr Maybank, was the cause of any damage

We would contend that any damage under the negligence claim would be too speculative to support a claim as a matter of law

Under the breach of contract accompanied by

fraudulent act, we would again assert the same grounds for the breach of contract, that there is no contract alleged as to the corp There is no contract breach that is sufficiently proved as to the other remaining defendants, and there is no alleged breach relating to the Trust

There is also no evidence of an untrue statement or a fraudulent act accompanying the breach It cannot be an act that accompanies the formation of the contract It has to be an act accompanying the breach, and they have not presented any evidence of a fraudulent act or fraudulent intent, and you have to have both. Omissions cannot serve as fraudulent act under that claim

Under the securities act, we would contend they have failed to establish the necessary elements

We would also assert that for all causes or claims under the securities act, they must establish an offer or sale of securities They have not presented any evidence that BB&T Corporation offered or sold any securities

They have also not presented any evidence that any securities were offered or sold to the Trust by any defendants

We would also contend that the five-year statute of repose bars the claims for any transaction, other than potentially the 2009 roll, and that they have not presented any evidence sufficient to support a claim as to the 2009

roll, because all of their evidence is collective damages and not specific to that 2009 roll, and, therefore, cannot support the claim just as to that

They have also failed to present the fraud and deceit necessary to support that claim

And in terms of damages regarding their claim that we were not a broker-dealer, they have not presented any fact they have been damaged, because any fee that they were charged by BB&T has been refunded to them with interest, so there was no injury from that claim.

We would also contend, Your Honor, that they have not presented a cognizable claim under the UTPA, because the Ward v Dick Dyar case specifically says that securities-related transactions are not subject to the UTPA They have presented two witnesses and attempted to bring a third witness all to say that this whole deal involved securities and, therefore, the regulated industry exception would prevent any of the claims.

They have also failed to present any unfair deceptive act or practice as it relates to conduct towards the Trust.

They have also failed to present any unfair or deceptive act or practice allegedly done by BB&T Corporation.

We would also contend that the aiding and abetting

of fiduciary duty fails as a matter of law, particularly as to BB&T Corporation. They have failed to establish any act which led to a breach of a fiduciary duty We would reassert our basis on the fiduciary duty, that they haven't asserted a proper breach of fiduciary duty claim, and, therefore, all of those fall.

As to the fraudulent misrepresentation claim, there is a series of them All must be established by clear and convincing evidence. We don't believe that that has occurred, Your Honor, but, in particular, as to the fraudulent misrepresentation, they have not either alleged or proven a representation by BB&T Corporation, or reliance upon such a representation by Mr. Maybank They have not presented anything from BB&T Corporation which would be untrue.

We would also contend that they have not established sufficient fraudulent misrepresentations from any of the other defendants or any reliance there upon by Mr Maybank.

We would contend the same arguments would preclude the constructive fraud claim and fraudulent inducement, which is the tenth cause of action We would contend all those same arguments would apply But, in addition, they would have to show that the parties were fraudulently induced to enter into a contract. They have not alleged nor

proven that they were fraudulently induced to enter into the corporation -- excuse me, into a contract with BB&T Corporation They have not alleged or proved that they were fraudulently induced to enter into a contract with the Trust with any party And to the extent that any contract was entered into, it was affirmed by the conduct of Mr Maybank

In terms of negligent misrepresentation, we believe the same arguments would apply.

We believe that the Statute of Limitations would bar the plaintiffs' claims in this case as the only testimony is that he knew what was happening back in 2006. To the extent that he now claims that he did not have a full understanding of the theories of recovery back at that time, that that does not allow for the continuation of the case

We would also contend that BB&T Corporation must be dismissed because there is a lack of personal jurisdiction over BB&T Corporation, that the plaintiff at the pretrial stage must present a prima facia case at trial They must carry the full burden to establish that BB&T Corporation availed itself of the laws of the State of South Carolina and they have failed to do so We would contend that, therefore, BB&T Corporation should be dismissed for lack of personal jurisdiction

As to the Trust's claims, I have addressed many of them I won't repeat that, but the Trust was owed no duties

and there was no claim of a breach of a duty. The pleadings do not allege a duty. We have not tried any new duties by consent, by implication, or by direct consent. We don't believe that there can be a basis for a finding of the duties

We also believe that the Trust claims would be barred by the Statute of Limitations They are not a party to any contract which is alleged to have been breached

Now, none of the duties, fiduciary duties that were owed under the Trust agreement to the Trust, have been alleged to have been breached or proven to have been breached

The Securities Act claims, there have been no evidence, allegation, or information whatsoever that there was any offer or sale of securities to the Trust by any defendants

We would content that the punitive damages and consequential damages must be dismissed pursuant to the provisions of the contract between Mr. Maybank and the defendants

We would also contend that there has been no evidence which would support punitive damages or consequential damages in the claims by the Trust There has been no willful conduct, either alleged or proved, as it directs to the Trust, and consequential damages would not be

appropriate as to the Trust either.

We believe that punitive damages, they must prove willful conduct by clear and convincing evidence. That has not been established as to any defendant by any plaintiff.

We would also contend that the speculative nature of the damages as presented by their experts are improper and, therefore, should be barred.

To the extent I have missed anything, I will rely upon the motion that we have presented and filed, Your Honor.

THE COURT: Okay. I can't remember another trial where I got a written motion for a directed verdict. It's impressive. It's 29 pages. Okay.

Okay. Well, I see Mr. Johnson rising to respond. He's going to tell me that they have shed a bunch of causes of action over the weekend.

MR. JOHNSON: Your Honor, I would submit that we have met all of our causes of action and all of the elements at this stage.

THE COURT: Okay. Which ones are you shedding?

MR. JOHNSON: Your Honor, at this stage, respectfully, we would contend to you with what we have put forward in our --

THE COURT: Okay.

MR. JOHNSON: -- in our original complaint

THE COURT: All right. Well, you know, I would read this whole directed verdict right now, but y'all don't want to watch my lips move that much, do you?

All right. I'm going to take it under advisement And, of course, we will revisit all this later in the case, okay?

All right, do y'all need a break? Do you want to take a short break?

MR KRISTINIK Yes, Your Honor

THE COURT: Okay.

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

THE COURT: Are y'all ready to roll?

MR KRISTINIK: Yes, sir, Your Honor

THE COURT: Okay.

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

THE COURT: All right, Mr Kristinik.

MR. KRISTINIK: Your Honor, we call as our first witness Kris Kapoor.

THE COURT: All right

KRISTOPHER KAPOOR, having been first duly sworn, testified as follows

THE CLERK: Please state your name for the record.

THE WITNESS Kristopher Nate Kapoor

THE CLERK: Thank you. You may be seated.

DIRECT EXAMINATION BY MR KRISTINIK

Q. Good morning, Mr. Kapoor.

A. Good morning.

Q. Mr. Kapoor, why don't you tell us who you work for?

A. Furman University.

Q. And what's your position with Furman?

A. Chief investment officer.

Q. What are your responsibilities as the chief investment officer at Furman University?

A. Primarily the investment management of the university's endowment assets and working capital, and secondarily the management of the university's debt.

Q. Where did you go to college?

A. Undergrad at Furman University.

Q. Did you graduate?

A. I did, in 1994.

Q. What did you do following graduation?

A. I worked part-time for a few months to save enough money to get myself to Japan, where I wanted to continue my study of the Japanese language to prepare for graduate school.

Q. Did you return home to the states?

A. I did.

Q. Now, approximately when was that?

portfolio manager for BB&T Asset Management?
A. In the beginning process during the hiring and discussions I was informed that because I had the CFA designation, that I was exempt from having to take the various series exams.
Q. Were you working in the Greenville office of BB&T?
A. Physically I was located in the Greenville office
Q. Who were some of the other people that were in the Greenville office when you started working there in 2003?
A. When I first started, Gary Kramer, Mr Maybank, Mr. Richard King, Ms. Schoemer, Clark Anderson were just a few
Q. Now, later on, in 2004, did any other people join the team there in Greenville?
A Yes, subsequent to that point Ross Walters came to that department, as did Anthony Mahfood, and as time went on there were a few changes
Q. Were there any other regional portfolio managers for BB&T Asset Management physically located in the Greenville office where you worked?
A. I was the only one that was physically located Some of the other portfolio managers would come into town from other cities, but I was the only one that was permanently residing in that office.
Q Tell us what your duties were as the regional portfolio manager

A To work with the clients that the bank determined at the highest net worth classification or bucket that needed a higher level of service, more specialized and more customized portfolios, and it was my job to manage the investment portfolios for those clients

Q. Would you meet with clients to determine investment objectives? Was that part of your duties?

A Yes.

Q. Tell us about the supervision of your accounts, the actual accounts that you worked on Did those receive supervision or reviews?

A. Yes, those accounts, if they were new, in other words they were prospective clients that became clients, there was a paperwork process and that would go through the various departments of sign off and checks and ultimately would go through my direct supervisor's desk or office, if you will, on the way to the headquarters of BB&T Asset Management

Q And were there any periodic account reviews after an account had been opened?

A. Yes, there was very formal reviews once a year by a group I'm guessing they were called the Compliance Department, but I remember specifically a gentleman by the name of Mr Jerry Lane, and we would spend several days going through all the accounts, based upon the type of account, but there were also informal reviews with my direct

supervisor

Q Was Ms Schoemer ever involved in any of these reviews?

A Yes.

Q And can you tell us about what her involvement would have been?

A She was referred to as a personal trust specialist. And so whereas you would have a wealth management advisor, a team quarterback, if you will, relationship manager, you would have someone like myself that was specifically the investment person.

Judy and her colleagues all handled the nuts and bolts, the specific knowledge on different trusts, different account structures, so she would really play the role of the detail, making sure everything was in compliance, was working properly.

Q And when you were employed by BB&T Asset Management, did you have occasion to interact in the office with Frank Maybank?

A Yes, sir.

Q Tell us a little bit about your business interactions with him in the office.

A. Early on the business interactions would be just asking him about the specific people that he was serving as their relationship manager or wealth management advisor to, so that I could understand the nature of those accounts, those

clients, those special situations.

Over time I just got to know Frank more by perhaps an occasional lunch at the lunch club, or occasionally attending prospective or existing client meetings with him, and then just general discussion in the office

Q Would he ever sit in on any of the meetings that you would have with clients when you were talking about their portfolios or their investment objectives?

A Yes, sometimes, but usually only with the clients that Frank was the wealth management advisor or with a key relationship That would be the only time that we would sit together

Q Did you assist a client named Effie Bowers?

A. I did, yes, sir.

Q Tell us what kind of work you would have done for Ms. Bowers.

A This was later in my time at BB&T Asset Management, but the Bowers -- the extended Bowers family had quite a bit of Aflac stock, and eventually it was decided that it was in the best interests of the clients as to reduce that single stock concentration or the risk they had from holding so much Aflac So Mrs Bowers ultimately -- we worked to reduce that risk in her portfolio and get her a more diversified portfolio

Q Did you assist Ms Bowers as portfolio manager managing

an account?
A Yes, sir.
Q And where did the proceeds come from for that account?
A The proceeds for that account came from the resulting cash delivered from the Pre-Paid Variable Forward Contract.
Q. Okay Did you observe whether Mr. Maybank was part of the team that was helping to service Ms Bowers and her family?
A Yes, sir
Q. And what did you observe Mr. Maybank do?
A. Both in telephone conversations and then in person meetings I know at least once I can remember specifically we went to Columbus, Georgia to meet with Mrs. Bowers and Frank was there I was there Anthony Mahfood was there.
Q What was the role of each BB&T person at that meeting?
A At the in-person meeting?
Q Yes
A I was there to discuss how the proceeds -- if Mrs Bowers chose to go through and do the Pre-Paid Variable Forward and the cash was delivered, I was there primarily to explain how that portfolio would be managed, working with her to understand her risks, concerns, return, expectations, and so on and so forth.

Mr. Mahfood in that role was there as assisting with the paperwork, getting it ready, really more of just kind of

a facilitator

Mr Maybank in that case, because he had known the Bowers family for so long, he was there I think to answer as many questions as he could and to really, I think, be leaned on as a trusted confidante

Q Let's take a look at an exhibit. Let me show you what's been marked as Defendants' Exhibit 214 Can you please tell us what this is?

A This appears to be an e-mail from me to Clark Anderson, Anthony Mahfood and Judy Schoemer, with a copy to Shawn Gibson.

Q And what is the date on this e-mail?

A Friday, July 28th, 2006.

Q Did you prepare this e-mail?

A I did.

Q And what's the subject of this e-mail -- or let me ask you, who is the subject of this e-mail?

A A member of the Bowers family, one of the daughters of Effie Bowers, Sarah Bowers Bowen

Q Why were you sending an e-mail about Ms. Bowen? What was the transaction involving?

A It's involving the possible or a proposal on a Pre-Paid Variable Forward Contract on Aflac shares.

Q And you referenced in this e-mail information obtained from Mr Maybank?

for Sara Now that Frank has changed his opinion and wants to attempt to aggregate more of the family's Aflac shares for better pricing, the figures could change significantly."

Q. Mr Kapoor, does this e-mail accurately reflect the opinion that Mr. Maybank expressed to you back in July of 2006?

A. Yes

MR KRISTINIK Thank you, Mandy

BY MR KRISTINIK:

Q I want to talk now for a moment about your work for Mr. Maybank when he was a client of BB&T and BB&T Asset Management

It's your understanding that Mr Maybank executed a pre-paid transaction?

A Yes, sir

Q And when was that?

A In the summer of 2006

Q And did you observe who would have been assisting Mr. Maybank for this pre-paid transaction?

A I observed at the time his discussions with Anthony Mahfood and some with Clark Anderson

Q Would Shawn Gibson have had any role in this, that you observed?

A Yes, later on as the discussions would have gotten more detailed, I learned that Shawn went through the details in

more finite detail with Frank

Q What was Mr Anderson's role in assisting with the pre-paid?

A It was my understanding at the time, because Clark had long since been working along with Frank, that Frank trusted and worked with Clark to analyze things, and so he leaned on Clark during that process to understand the options and what might work best for him.

Q What was your personal role with respect to providing services to Mr Maybank when he was in the capacity as a client?

A My role with Frank, or with Mr Maybank, excuse me, was after the proceeds of the pre-paid were delivered, I was going to manage the actual portfolio for him, and the prep for that started in individual conversations with Frank and with other members of the wealth team

Q Mr. Kapoor, I'm going to show you what has already been admitted as Agreed Exhibit No -14 Can you tell us what this is?

A This is a BB&T Wealth Management Agreement

Q And what would be the purpose of this agreement?

A We called this the tri-party agreement between the client and BB&T Wealth Management, representing the bank, and BB&T Asset Management as the investment advisor

Q If you would please turn to page two and look at the

top paragraph on that page. Does that paragraph -- in that paragraph does Mr. Maybank confer discretionary authority?

A. Yes.

Q. Can you briefly tell us what discretionary authority means?

A. That means the investment advisor, BB&T Asset Management in this case, has the ability to buy and sell securities within the framework of the investment objectives and guidelines that we established together with the client.

Q. To what entity did Mr. Maybank confer discretionary authority?

A. BB&T Asset Management, Inc.

Q And in that paragraph is BB&T Asset Management, Inc. Referred to as investment advisor?

A In this paragraph it's referred to as the investment advisor, but somewhere else in this document the definition of investment advisor could be tied to BB&T Asset Management, I believe.

Q Okay. If you will please to turn to page eight?

MR. KRISTINIK: And, Mandy, if you would please pull page eight up on the big screen?

BY MR. KRISTINIK.

Q Mr. Kapoor, does your signature appear on page eight, the signature page for the Wealth Management Agreement?

A Yes, it does.

MR. KRISTINIK And Mandy, can you cull out his signature and the sentence above it?

Yes, that's good. Thank you

BY MR. KRISTINIK.

Q Does this page indicate on whose behalf you were signing the agreement?

A Yes, it does.

Q. And who is that, which entity?

A. BB&T Asset Management, Inc.

Q. Could you please read the sentence that's above your signature?

A "BB&T Asset Management, Inc. Accepts its designation as investment advisor in accordance with the terms and provision of this agreement, this 23rd day of August, 2006 "

Q And you signed under that statement, correct?

A. That is my signature

Q Okay Please turn to the next page, Exhibit A.

MR. KRISTINIK: And, Mandy, if you would pull up Exhibit A on the screen, please.

BY MR. KRISTINIK

Q Mr Kapoor, can you tell us what this form does?

A. This is the client investment objectives and investment guidelines form It is another document that is signed and filled out during the process when we were bringing new clients into the office.

And what you do here, after working with the customer, with the client, you determine after all the circumstances, facts and figures, how the account should be invested And then this is selected by checking one of the boxes. All parties sign and then you get ready to manage the fund

Q. Is this the client objective form for Mr. Maybank?

A Yes, it appears to be

Q And what is the client objective indicated on this form?

A 100 percent equity aggressive growth

Q. And did you sign this form?

A I did at the very bottom

Q Tell us about how the determination was made that aggressive growth would be the investment objective

MR KRISTINIK And, Mandy, you can take it off the screen now.

A So when we had the meetings with -- when I had the meetings with Frank, and I remember specifically in his situation we were meeting in the conference room next to his office, we discussed how best we should be able to achieve his objectives and his goals with this specific account within his overall financial situation. So with a lot of time and some rounds of give and take with Frank, this was determined that this would be the way it would be managed

BY MR. KRISTINIK

Q Did he indicate any favoritism towards any particular asset class or type of security?
A Yes, the entire time that I knew Frank, working with him, he was a stock guy He was a 100 percent equity guy.
Q And what kind of stocks?
A Primarily he was predisposed to financial stocks and some media stocks, from my experience with him
Q Did you and Mr Maybank discuss how much of the account should be invested in stocks with financial institutions, like banks?
A Yeah, I spent some time and we had some collaborative discussions on reducing the amount of the portfolio that would be invested in financial stocks and getting exposure to all ten of the financial sectors, all ten of what we call the gigs.
Q. And what would be the purpose of spreading the investments across ten sectors?
A So that the different sectors and the fact that those sectors react differently in different economic situations, would, in effect, although we were going to be a 100 percent stocks, it would provide him some diversification in addition to the yield component that he was interested in
Q Did Mr. Maybank ever express a desire to have any bonds in the account?
A No, sir, not long term bonds

We did discuss, however, with the specific implementation that from the immediate time when the proceeds came into the account there would be a transition period where we would source the short-term facilities, which in this case were floating rate, daily and weekly, South Carolina Municipal Floaters, which were, in effect, cash equivalence. We would source the funds to buy the stock.

So over time the short-term floating rate facilities were high component and every time we bought stocks, we would sell those floaters down to provide the cash, divide the equity, and that would take a series of time.

Q And why would you start out the account that way instead of just putting it all into stocks, equities on day one?

A Because with any client, in my opinion, rushing into and trying to time the buying of equities en mass for a large percentage of an account would not be prudent In some cases we would do that where a client absolutely demanded it, but in our case in those aforementioned conversations with Frank it made sense to do this over a series of time.

Q Back in 2006, when you and Mr Maybank had reached the determination to have the aggressive growth 100 percent equity objective for his account, back at that time did you

believe that that was a good selection for his investment objective?

A. I honestly didn't think it was the best selection

In my opinion, a more diversified portfolio, those with other asset classes would have made the most sense, and I believe we discussed that many times, not just at that meeting, but at many points throughout my three plus years working with Frank

With that said, what we ended up with made sense, given Frank's circumstances and his experience, his collaboration and working with building this very customized higher yielding equity income type mandate.

Q Were you comfortable with the ultimate objective that was selected?

A Yes, I was

Q How did you feel about the risk exposure for that objective with respect to Mr Maybank and his situation?

A. The 100 percent equities matched Frank It matched Frank's situation I did my best in the conversations that I mentioned earlier to, given that framework, what can we do to create a portfolio that's blue chip in nature that would hold up a little bit better in times of equity stress, economic market stress, but at the same time achieve his income desires along with the potential for capital appreciation

Q Based on your time working with Mr. Maybank on this managed portfolio account, do you believe that you could have convinced him to set his long-term objective as 70 percent bonds and just 30 percent equities?

A 70 percent bonds, no

Q And what makes you say that?

A My experience and knowledge of working with Frank and talking with him over the years and in conversations at this point, I don't think Frank would have chosen 70 percent long-term bonds

Q How is the managed account funded? Where did the money come to get it started?

A This account, the account was funded from the proceeds, from the net proceeds from the Pre-Paid Variable Forward.

Q. About how much money came into the account in the beginning?

A. Somewhere around four and a half, or a little bit more, million dollars, 4.6 million

Q After your initial meetings with Mr Maybank to determine client objective, did you have other meetings with him while you were actually managing positions in his account?

A. Well, we worked in the same physical office, so we saw each other at least weekly And as we mutually discussed during those conference rooms meetings as we built on and

added on new equity positions, new stocks, as well as adding on significant amounts of the ones we had already discussed, I would touch base with him and let him know.

Q. And what kind of stocks were you selecting for his portfolio account?

A Well, we had all ten sectors covered, all ten economic S&P gigs, but they would be considered mostly blue chip, higher quality, higher yielding, blue chip names.

Q During the time that you were managing the account, how did you view its performance?

A I think the early implementation and transition was exactly as we described and it was going well. I was pleased with the methodical pace of building in the equities and the subsequent knockdown of the short-term floaters. It appeared to be going well.

Q What kind of income yield were you generating from the portfolio while you were managing it?

A Well, the floaters at the time were yielding probably somewhere around 3 -- somewhere between 3.5 and 4 percent tax exempt. And then all of the equities together were probably yielding a little over 3, 3 2, 3 3 percent.

Q And what kind of income would you expect those yields to generate with the amount of money that he had in his portfolio?

A With what he started with?

Q. Yes
A Three and a half percent on four and a half million is around $130, $150,000 per year
Q Did Mr Maybank ever indicate to you how he viewed the performance of his account while you were managing it?
A From the time that we started in the late summer of 2006, until I left in the spring, I think he was pleased with it Based on dropping in his office, asking him if he's looking at his statements, I think he was fine
Q Mr Kapoor, when did you stop working for BB&T Asset Management?
A In the spring of 2007.
Q And why did you leave BB&T Asset Management?
A To go work at Furman University, my alma mater.
Q Thank you, Mr. Kapoor. Those are all my questions
If you will please answer any questions that plaintiffs' counsel may have.
MR WILLOUGHBY May it please the court?
THE COURT: Yes, sir
CROSS EXAMINATION BY MR. WILLOUGHBY.
Q Good morning, Mr Kapoor
A. Good morning
Q. I think you and I have met before We took a deposition back in October of 2013, did we not?
A Yes, sir

Q. Mr. Kapoor, I want to make sure the record is clear on some of the keys facts here

First, it would be true, would it not, that you had never heard of Pre-Paid Variable Forward Contract until you came to work at BB&T?

A That's true.

Q. And pre-paids were not part of the training for the CFA courses that you completed in 2002, were they?

A That is correct.

Q And when you were at Michelin, you never saw a Pre-Paid Derivative Contract used there either, did you?

A. No, sir.

Q And, in fact, I think when you were at Michelin you were not actually managing money. You were selecting outside managers to manage the funds, is that correct?

A We were setting the strategy in the asset allocation and then selecting the managers to fulfill those roles, yes.

Q And would it be fair to say that your primary source of information on pre-paids at BB&T came from presentations that Mr. Shawn Gibson or his team provided to you?

A That's correct

Q And if there were technical questions about Pre-Paid Derivative Contracts, you would refer those technical questions to Mr. Gibson and his team to be answered, right?

A Yes, sir.

Q. And it would be true that you didn't consider yourself an expert on Pre-Paid Variable Forward Contracts?

A I did not

Q Okay. And, in fact, I think you have indicated that without your CFA level of study, it was your testimony that you would not have understood how pre-paids worked, other than to regurgitate information that someone like Mr. Gibson may have provided to you, correct?

A Could you ask that -- re-ask that, please?

Q. Sure

In fact, I think you have testified about this. Without your CFA level of training and study, it was your testimony that you would not have understood how pre-paids worked, other than perhaps to just regurgitate what someone may have told you in one of the presentations Mr Gibson gave?

A. I think the training within the CFA process, in addition to some of the course work through the MBA, would have allowed me to understand the mechanics.

Q. And -- true enough, but the reality is you were relying upon Mr Gibson's expertise, to the extent he had expertise, for the technical information about pre-paids?

A. Yes, I would agree.

Q. And you weren't trying to become independently knowledgeable about them, other than basically taking the

Q. So you don't have any reason as you sit here today to disagree that it may have been you that placed the X there, correct?

A Yeah, it could have been me. I have no reason to think it may not, or it may It very well looks like one of my X's there

Q. And if you turn -- so it very well looks like one of your X's?

A. It could be, Mr. Willoughby I'm not sure. One X looks the same.

MR. WILLOUGHBY If you will pull up the next exhibit, the next one after this one, Lindsay

BY MR. WILLOUGHBY

Q. And then this is the same document that has got the date of 8-23-06 filled in. Is the 8-23-06, is that your handwriting there?

A. I can't tell, Mr. Willoughby

Q So you are not sure whether it's yours or someone else's?

A I am not certain

Q And would that be true for the date next to Mr Maybank's name and the date next to Ms Schoemer's name as well? You are not sure if that's your handwriting or not?

A. I'm not certain, Mr Willoughby

Q. It would be true, and I want this record to be clear on

this, that as a portfolio manager, it would be your responsibility to make sure that the client, whether Mr Maybank or any other client, understood the investment strategy that was being recommended for retirement assets, correct?

A Can you ask that again, please?

Q Sure.

Would it -- it would be true that as the portfolio manager, it would be your responsibility to ensure the client understands investment strategy that is being recommended to them?

A With respect to the account that I would ultimately be managing, yes, it would be my responsibility to make sure the client, prospective or existing, understood.

Q And it would be your responsibility to ensure that the risks to which the account was being subjected was suitable for the customer, is that correct?

A. Yes.

Q And when you signed the form and put the X in the block, would you agree with me that it would be fair for the customer, the client, given the fiduciary relationship that exists, to believe that if you are X'g that block, that you have a basis to believe that that strategy is appropriate?

A I think the X'g of the box and the selection of the strategy for all of the clients that I work with was decided

attended these.

Q. Well, is it your testimony to the ladies and gentlemen of the jury that Mr. Gibson moved from Scott & Stringfellow in early 2006 and started working with BB&T Asset Management and that is the first time that you ever heard of the Pre-Paid Variable is after he came to work at BB&T Asset Management in 2006?

A. That is not true.

Q. So you heard of it before 2006?

A. I had heard of a Pre-Paid Variable Forward prior to 2006.

Q And you heard of it from Mr. Shawn Gibson, correct?

A. I don't think that's correct.

I think I first heard it around the Greenville office of Wealth Management in general discussion with several individuals that had high levels of BB&T Those were the first times that I actually heard of it It wasn't a presentation. It was just in general discussion.

Q. But you had no training -- BB&T provided you with normal formal training at all about pre-paids, correct?

A. To that point that's correct

Q. And so that's essentially just office discussions, correct?

A That's correct.

Q. But would it be true, Mr. Kapoor, that the document

a party to their conversations with their employer

Q Thank you very much, Mr. Kapoor.

MR. KRISTINIK: Just a few questions on redirect, Your Honor.

THE COURT: All right

REDIRECT EXAMINATION BY MR KRISTINIK:

Q Mr Kapoor, you were asked about a Scott & Stringfellow presentation, is that right?

A Yes, sir.

Q Okay. And did you have anything to do with the preparation of this?

A. No, sir.

Q. Okay. I'm going to ask -- Mr Willoughby asked you questions about it anyway, so I'm going to just ask you one question about it.

On page 24 it talks about use of the word revenue opportunity on a pre-paid Would you interpret page 24 as talking about revenue opportunities for Scott & Stringfellow?

A Yes, sir.

Q You were asked about what involvement you may have had with Mr. Maybank's pre-paid contract and you said that you didn't have any, is that right? Was that your testimony?

A Yes.

Q Who within -- who at BB&T Asset Management would have

had primary responsibility for assisting with a pre-paid transaction for Mr Maybank, or other customers?
A. Specific to Mr. Maybank?
Q. Yes
A I think Mr Mahfood played a role in facilitating some of the paperwork, and Shawn Gibson would have been the primary person working through the details of the pre-paid and the confirmed transaction with the third-party broker-dealer
Q With Mr. Gibson's involvement, was it necessary for you to have any involvement with the pre-paid transaction, other than managing the account?
A No, sir
Q Do you still have Exhibit 14 in front of you?
A Yes
Q That's the Wealth Management Agreement.
MR KRISTINIK And, Mandy, can we bring it back up, Agreed Exhibit 14, just for a moment?
And, Mandy, can you cull out the third paragraph? Yes, that's it
BY MR. KRISTINIK
Q Now, Mr Kapoor, my question for you is when you were working with Mr Maybank, was part of what you were doing, was it gathering information from client regarding investment objectives, risk tolerance, investment horizon?

Did you do those sorts of things with Mr. Maybank?

A. Yes, when we got together in the meetings I mentioned earlier to create a strategy for his -- for the proceeds, we discussed objectives, growth, capital income, equity income, and additional information so that I in working with him could create the best outcome that we possibly could create.

Q. And let's look at the second one.

With respect to Mr Maybank, did you make recommendations regarding an investment program and investment guidelines for the account? Is that something that you would have done with Mr Maybank?

A. Yes.

Q. Okay.

MR. KRISTINIK All right. Thank you, Mandy.

BY MR. KRISTINIK:

Q And my last question to you, Mr Kapoor

On the client investment objective form, Appendix A, of the Wealth Management Agreement that you testified as the form indicated, it had an objective of aggressive growth 100 percent equities. During your conversations with Mr Maybank, who was indicating a desire to have a 100 percent equities in the account?

A Frank

Q Those are all my questions Thank you

MR WILLOUGHBY Your Honor, I have one on

recross

THE COURT: All right

RECROSS EXAMINATION BY MR. WILLOUGHBY

Q Mr. Mahfood -- I mean Mr. Kapoor, isn't it true that you indicated to me -- or actually to Mr Kristinik, that you wish you could have done a better job of educating Mr Maybank on the benefit classes?

MR. KRISTINIK: Beyond the scope, Your Honor.

MR. WILLOUGHBY. He just asked --

THE COURT Go ahead, I'll let it in Go ahead

BY MR. WILLOUGHBY.

Q And that you -- that you could have done a better job to convince Mr Maybank of the merits of other asset classes so that he would have been predisposed to strategies other than all equities, and that you blamed yourself for not doing a better job of educating him?

A I did During the deposition I certainly -- it's my nature and it's my style, I wish I could have done more in hindsight to educate Frank and to get through to him; but I'm convinced that through all the conversations I did have with him, that no matter how much educating I had done, and Frank is a very much Frank and he is pretty stubborn and he wouldn't change his mind.

Q You did place blame on yourself for not taking more steps to make sure that he was not predisposed to --

THE CLERK: Please state your name for the record.
THE WITNESS: Judy Ann Schoemer
THE CLERK: Thank you You may be seated.
DIRECT EXAMINATION BY MR. BROWN:
Q Judy, can you state your name for the jury, please?
A. I'm Judy Schoemer
Q And where do you live?
A I live in Seneca, South Carolina.
Q. And where do you work?
A I work at BB&T.
Q What is your job at BB&T?
A I am a personal trust specialist
Q. What does a personal trust specialist do?
A We handle agency accounts, IRA's, trust accounts, estate settlement
Q Can you give the jury just a brief rundown of your work history?
A Sure I worked -- I'm originally from Pittsburgh, Pennsylvania I moved here in 1978. My husband took a job with Daniel Construction
After that I came to work to some banks, all in the Trust Department I have been in Trust Department for 36 years I have been in corporate trust, employee benefits, personal trust, and also trust operations
Q At some point did you come to work at Southeastern

Trust?
A In 1998 I took a job at Southeastern Trust Company
Q And what was your job at Southeastern Trust?
A I was -- I did operations for the Trust Department.
Q And who was the head person at Southeastern Trust?
A Frank Maybank was the president of Southeastern Trust Company
Q And while you were at Southeastern Trust, how frequently did you work with Mr Maybank?
A I worked with him every day. We were in a conference room at the old SCN Building, which is now Wells Fargo, and we had two desks facing each other, and so I listened to all his calls every day
We placed trades If he wanted to buy some stock, what he would do is, you know, tell me to buy it And then what we would do is he was allocated to all the accounts that, you know, he was putting that stock into.
Q. Okay So were you involved, in fact, in the trade process and the purchasing of assets at Southeastern Trust?
A. Frank did all the purchasing of the assets I just put them in the accounts that he told me to put them in
Q So who was making the decision of what to buy?
A Frank was
Q. And did you have an administrative role in that process?

A Yes, what I would do is if he told me to buy some shares of say, you know, Aflac, then I would call the broker, usually Brown Brothers, and place that trade and then it settles in three days. And so what would happen is the stock would, you know, come in electronically and then Frank would allocate it to different clients in our place.

Q So on a regular basis and on a daily basis were you involved in the actual trades that Mr. Maybank was making on behalf of clients at Southeastern Trust?

A Yes

Q And through that activity did you come to see what his philosophy on investment was?

A His philosophy was all equities. We did not have -- I don't think any clients that had bonds in it All of them were equity purchases

Q And did Frank Maybank ever tell you about what he believed about bonds?

A He didn't think bonds were really appropriate We even had clients that we did not hold their assets, they are called Bank B Accounts, and we had people that were 70, 80 years old had all equities in them And then he would look at -- the statements would come in to us and he would look at the statements and, you know, looked at the stocks that were in there and advised that client

Q And in those situations was he advising the clients for

a fee?
A. Yes, uh-huh
Q In 2001, what happened at Southeastern Trust?
A BB&T merged with Southeastern Trust Company, and so BB&T was, I guess, the -- they bought Southeastern, so we all moved over to BB&T on College Street
Q And did anyone who had Southeastern Trust shares -- the shares at Southeastern Trust, what happened to those shares at Southeastern Trust?
A They got BB&T shares. There was maybe ten shareholders. Frank was the major shareholder, and then other people that worked there had some shares, and then I think maybe one or two were outside investors in Southeastern.
Q Did you have any shares?
A I had only ten shares
Q After the merger did you take a job at BB&T?
A. Yes, I did
Q. And what department did you work in at that point?
A. I worked in the Trust Department
Q And what were your job duties?
A What I did is handled mostly Frank's clients, because he was there, but then I did all the administrative work. If they needed checks, then I would usually do that
Q And where was Mr Maybank working at that time?

Q. Can you tell me what a Certified Trust Financial Advisor is?
A. It's three years of schooling and then you take a test and you have to pass that test and you become a Certified Trust Financial Advisor. And it's a requirement to be a personal trust specialist at BB&T.
Q. So have you gotten the designation of a Certified Trust Financial Advisor?
A. Yes.
Q. Once you all moved over from Southeastern Trust to BB&T, from 2001 and the merger until Mr. Maybank's retirement, did you have regular and ongoing communications and dealings with him?
A. Yes, every day, because I handled a lot of the clients that Frank managed before, and he was just like probably six offices down the hall around the bend. He was in the front of the office and I was in the back.
Q And even after Mr. Maybank stopped being an employee of BB&T, did you continue to have regular dealings with Mr Maybank?
A. Yes, we would do -- if he had to transfer his checking account, he might call me or one of the girls in the front office to transfer money to, you know, pay off a credit card, or something like that.
Q And even after he stopped being an employee, did some

of Mr. Maybank's mail come to BB&T?
A. Yes, because he had all the mail before come to BB&T. Scott & Stringfellow, there was some accounts there and he had that come to BB&T too
Q. I'm going to hand you a document that's already in evidence as Agreed Upon Exhibit 14.
If you would look back at page 8 on Exhibit 14, is that your signature?
A Yes.
Q. And above that there is a signature for the individual Do you recognize that signature?
A Yes, that's Frank's signature
Q And through your dealings with him, you recognize his signature?
A Yes
Q With regard to the performance of the Wealth Management Agreement, did Mr Maybank ever tell you that he believed any action needed to be taken under the Wealth Management Agreement was not being done?
A No.
Q Did Mr. Maybank ever tell you that he believed any action under the Wealth Management Agreement was being done by the wrong person?
A No
Q. Did Mr. Maybank ever tell you that he believed that any

action needed to be done under the Wealth Management Agreement was not being done properly?

A. No

Q. If you look back at Exhibit A. It's got Maybank 16 at the bottom. Do you see that?

A. Yes.

Q. What is that document?

A. That's a Client Investment Objective and Investment Guidelines.

Q. And at the bottom there are three signatures. Whose signatures are those?

A. Frank's signature, my signature, and Kris Kapoor.

Q. So did you sign on behalf of BB&T Bank?

A. Yes.

Q. On that form there is a place to indicate what the client's directives or guidelines to the bank in terms of investments are. What was selected on that form by Mr. Maybank?

A. Aggressive growth, 100 percent equity.

Q. Was that consistent with the investment philosophy you had seen in the years that you had been working with Mr. Maybank?

A. Yes, Frank always had stocks in the portfolios, no bonds.

Q. And is there anything on that form that would authorize

or allow BB&T to invest in bonds?
A No.
Q Were you also involved in annual reviews for accounts?
A Yes, we had annual reviews every year
Also when we open up an account, we had initial review, and so we would have had an initial review on Frank's account and then annually reviewed it.
Q. All right And during these annual reviews, does one of the things that is analyzed is whether or not the actual investments are consistent with the directives given by the client?
A Yes, always
Q And what would happen if, in fact, the investments are inconsistent with the objectives stated by the client?
A Then we would have to change it And if it said -- you know, if there was bonds in there, then what we have to do is, you know, take the bonds out and go back and purchase equities
Q Does the client objective form have a place on it where if the client wanted to choose a 75 percent income or bond and 25 percent equity, is that a choice available on the form?
A Yes, and that's the client's discretion I mean, they can pick whatever they want
Q And is there also a box that could be checked for a 100

percent income or a 100 percent bonds?
A Yes.
Q And were either of those checked?
A. No.
Q At any time could Mr Maybank have come into the bank and said "I want to change the objectives of my investment?"
A Any time he wanted to
Q. And if he did, a new one of these forms would be filled out and would the actions or the investments chosen in the portfolio change consistent with whatever he directed?
A Yes
Q In fact, at times after the opening of the managed portfolio, did Mr Maybank sign additional client objective forms?
A. Yes.
Q. I'm going to hand you a document which we have marked as -- it's already in evidence as Agreed Upon Exhibit 24
MR BROWN: Cull out the date there
BY MR BROWN:
Q What's the date on this document?
A June 5th, 2008
Q And, again, is your signature on it?
A Yes.
Q And is Mr. Maybank's signature on it?
A Yes.

Q So this was executed approximately two years, or almost two years after the first one we just looked at?
A Yes.
MR BROWN: Go ahead and cull out what the choice was
BY MR BROWN
Q And in terms of the guidelines or the objective that Mr Maybank chose for his account, what was chosen in 2008?
A Aggressive growth, 100 percent equity.
Q I'm going to hand you what is already in evidence as Agreed Upon Exhibit 28 And, again, when was this document executed?
A 12-22-08
Q So about six months after the last one?
A Yes
Q And who signed it?
A Frank, and I signed it, and G Alston Gore
Q And, again, the particular asset allocation objective that was executed, what was that?
A Aggressive growth, 100 percent equity
Q Was there a specific note or caveat as to the equity?
A Yes, it says "equity only for total return Cash That's money market balances will vary pending market fundamentals "
Frank needed a lot cash because he was paying premiums

and other expenses, and so sometimes we had more than 10 percent cash in there and so I think it's why Alston put that on there.

Q And so for 100 percent equities as your objective, was there a limit on how much cash you could hold at one time?

A 10 percent in cash

Q So if there were times where you needed than that, you would want to document that the client agreed to that?

A Yes

Q And is that what that meant?

A Yes

Q And did you have -- did y'all have Mr Maybank sign acknowledging that?

A Yes.

Q But at that time if he had wanted bonds, he could have told you to put bonds in there?

A Yes

Q And I hand you a document that's already in evidence as Agreed Upon 42

In 2009, did Mr Maybank execute a new Wealth Management Agreement?

A Yes

Q And if you look back at the back page, there is a signature on behalf of Branch Banking and Trust Company Is that your signature?

A Yes, it is
Q When Mr. Maybank executed the revised or new Wealth Management Agreement, did he tell you that he thought that there was any problems with the performance under the first one?
A No
Q Did he tell you that he thought the wrong people were performing duties under the first Wealth Management Agreement?
A No
Q Did he tell you that he thought there was any improper conduct with regard to the first one?
A No.
Q Turning to your duties as a personal trust specialist, what type of trusts do you handle at BB&T?
A I handled irrevocable trusts, revocable trusts, credit shelter trusts, marital trusts, also estates, and irrevocable life insurance trusts.
Q I if use the time ILIT, does that mean anything to you?
A. That's irrevocable life insurance trust
Q And there has been talk about the Maybank Family Trust Was that an ILIT?
A Yes, it was
Q Or is it an ILIT
I'm going to hand you a document that's already in

evidence as Agreed Upon Exhibit 2 Do you recognize that document?

A. Yes, I do

Q. What is it?

A It is the trust document for the irrevocable trust agreement between Frank Maybank, as grantor, and Southeastern Trust Company, as trustee

Q And who are the beneficiaries of that trust?

A The beneficiaries are Frank's children.

Q And when you are administering a trust, where do you find the powers that you have as trustee?

A The powers are all in the document

Q So, with the Frank Maybank Family Trust, the powers that the trustee would have would be all stated within Exhibit 2?

A. Yes

Q. And, in fact, likewise, the limitations on your ability to act, where would find that?

A. In the trust document

Q Could you take any action that's not spelled out in Exhibit 2 as trustee?

A. No

Q. When did BB&T take over as trustee for the Maybank Trust?

A. In 2001, at the merger

Q. And what did you understand that to be?
A Since I guess Woody -- Chesson and Woody, they really -- you know, I guess they didn't want to wait that long, and finally we wanted to sell that policy, and so we knew that Jane was co-trustee with Southeastern -- or, well, not Southeastern, BB&T, so what we decided to do is we said to Jane "if you want to be trustee just by yourself, then you don't have to go through all the steps that we have to go to through to sell the policy, if you want it sold " So we -- I mean Meredith and the ILIT group talked to her about that and so that's what happened. We resigned as trustee
Q. Did Frank Maybank ever complain to you that BB&T did something wrong in resigning?
A No
Q Did Jane Maybank ever complain to you that BB&T did something wrong in resigning?
A No.
Q Did you do everything that you could to provide information to Jane as part of the transition?
A Yes
Q. And at the time that BB&T resigned, were all six of the policies that we have shown on that December 2 letter still in full force and effect?
A Yes
Q At times while you were working with BB&T, did Mr

Maybank give you and the bank explicit instructions on what he wanted done with his accounts?

A. Yes, uh-huh.

Q. Do you recall such an example related to Alston Gore?

A. Yes I check all the transactions every day on the accounts and I saw that there some bonds purchased in Frank's account, so I called Alston, "why are you buying bonds?" And so then I told Frank about it and he said "I don't ever want bonds in an account," and so we called Alston and he sold the bonds.

Q. Did Mr Maybank also give express directions on holding cash in the account?

A Yes

Q I have handed you a document we have marked as Defendants' Exhibit 149 Are you familiar with that document?

A Yes.

Q. What is that?

A It's a letter from Frank saying "please sell all assets that have losses in my account, except for BRK A "

Q. Let me stop you there Is it a letter from Frank Maybank?

A. Yes.

Q. Does it provide direction to the bank and what to do with his assets?

A Yes

MR BROWN Your Honor, we would move 149 into evidence.

MR. WILLOUGHBY No objection

THE COURT Okay

(Whereupon, Defendants' Exhibit No 149 was entered into the record as evidence)

BY MR. BROWN

Q What was the specific instruction that Mr Maybank gave to the bank?

A He said "please sell all assets that have losses in my account except for BRK A My account number is [redacted] Please keep cash in my account in a money market account until I return from New York. Sale for tax reasons "

Q And when was that executed?

A 6-17 of '09.

Q There has been some testimony about how Mr Maybank's wealth managed portfolio account came to be closed. Are you familiar with that process?

A Yes.

Q I hand you a document which was marked as Defendants' Exhibit 148 Are you familiar with that letter?

A Yes

Q Is that a letter from Mr Maybank?

A Yes.

A. "Customer was informed about other BB&T services."
Q And so was, in fact, Mr. Maybank's -- were there efforts to retain Mr. Maybank's business?
A Yes.
Q In fact, does Mr Maybank still maintain a checking account with BB&T?
A. Yes
Q. Thank you If you will answer any questions that plaintiffs' counsel has
THE COURT. All right
MR WILLOUGHBY. May it please the court?
CROSS EXAMINATION BY MR WILLOUGHBY
Q Good afternoon, Ms Schoemer
A. Good afternoon.
Q. Now, I want to make sure the record is clear on a number of key points, Ms Schoemer
It is true, is it not, that you had no involvement whatsoever in the sale of the Pre-Paid Derivative Contract to Mr Maybank in 2006, correct?
A Correct.
Q. And it would also be true that you had no involvement in the sale of the pre-paid when it was rolled over in 2009?
A Correct
Q Let's take a look at the Wealth Management Agreement.
MR WILLOUGHBY: Lindsay, please pull up 14.

BY MR WILLOUGHBY

Q Now, the Wealth Management Agreement that you signed, attached to the Wealth Management Agreement is this Appendix A that Mr Brown just went over with you, correct?

A Correct

Q And would it be true, Ms Schoemer, that in executing the Wealth Management Agreement you were performing administrative functions on behalf of the bank and you didn't provide any investment advice, is that correct?

A That's correct

Q And would it be -- and you had no involvement in any discussions between the bank and Asset Management about how the funds from the Pre-Paid Variable should be invested, correct?

A. Correct

Q And you had no involvement in the selection and no knowledge about the discussion leading up to the selection of 100 percent equities, correct?

A. We would all meet together, the portfolio manager and the client, and then the Wealth Advisor and I would too, so I always knew that Frank always wanted 100 percent equities, so -- I mean, I was there. I didn't mark the X on there, but --

Q. Do you know who did mark the X?

A. No.

Q If Mr Kapoor said he most likely marked it, you have no reason to object to that, do you?
A. No
MR. WILLOUGHBY And Lindsay, pull this out right here, if you would
BY MR WILLOUGHBY
Q So there is a section here as well that says with alternative investments, and you understand that the Pre-Paid Derivative Contract is an alternative investment, correct?
A Correct
Q It's different than stocks and bonds, correct?
A. Correct
Q And stocks and bonds are typically viewed as fairly old school plain vanilla, correct?
A Correct
Q. And so you have got a section on the form that talks about if you have alternative investments, and in this case Mr Maybank was advised to invest in a Pre-Paid Derivative Contract strategy, which essentially consumed $9 3 million of his investment assets, and there is not even a block to check He gets -- after paying off the margin position, he has 4 6 million to go in the portfolio Do those numbers sound correct to you?
A I don't have a clue

business, isn't it?
A It's in the trust business I would say, money managing They do a lot of things.
Q So it's in the trust business
So you saw -- you saw the responsibility of the bank being that fiduciary responsibility as a trust officer, because this is identified as a trust account, is it not?
A It doesn't have the account number on it
Q I'm not -- well, true, I'm not talking about Ms Bowers right now
A. Okay
Q. I'm talking about Mr Maybank's account
Mr. Maybank's account was a fiduciary relationship between BB&T Bank, BB&T Asset Management and Mr. Maybank, correct?
A Correct
Q And do you have every reason to believe that Ms Bowers had the same relationship and the same expectations with BB&T, that her relationship was a fiduciary relationship as well?
A I would say yes
MR WILLOUGHBY Lindsay, go to the next --
BY MR WILLOUGHBY:
Q So -- strike that one second
But Mr Kapoor made the recommendation to Ms Bowers on

I think BB&T did everything right. So, you know -- I mean, that's my opinion My opinion is that, you know, the money was all spent.

Q So it's your view that you come in, the bank has asked you to come in and try to place testimony in this record in front of the ladies and gentlemen of the jury where you are giving opinions about what you think was right or not right?

MR. BROWN: Your Honor --

A. I am just telling --

THE COURT: Hang on. Hang on Hang on

MR. BROWN: We object to that characterization The bank didn't elicit any opinions from her.

THE WITNESS: No

MR BROWN: He asked a question that was answered, but to characterize it the bank is eliciting things from her I think is incorrect.

THE COURT: Well, you can clear it up on redirect.

BY MR WILLOUGHBY.

Q. Now, so the record is clear, you provided no advice to Mr Maybank about the wisdom or prudence of purchasing a Pre-Paid Variable Contract, correct?

A Correct.

Q And would it be fair to say that you had no training or no knowledge or no expertise in pre-paids?

A Correct

Q And it would be fair to say that you have no expertise in any of investment strategy? Those responsibilities are someone else?

A Correct

Q Thank you very much, Ms Schoemer

A You are welcome

THE COURT Any redirect?

MR. BROWN No, Your Honor.

THE COURT Okay Thank you. You can step down

MR. BROWN We would ask that Ms Schoemer be allowed to be excused

THE COURT Any objection?

MR. WILLOUGHBY No objection

THE COURT All right Ladies and gentlemen, let's takes a short afternoon break. All right Don't talk about it.

MR WILLOUGHBY Your Honor, did I move in --

THE COURT Wait until the jury leaves

Y'all go ahead

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

THE COURT Okay.

MR WILLOUGHBY It is in evidence, Your Honor Thank you

THE COURT All right What's next?

Q What testimony have you reviewed in this case? What deposition testimony?
A. A number of depositions Of course, Mr. Maybank's deposition, Anthony Mahfood, Ross Walters, Shawn Gibson, Kris Kapoor And it seems like I'm missing -- I'm forgetting one or two.
Q How about Mike Lackey's?
A Yes, Mike Lackey's.
Q. Did you interview any witnesses in this case?
A. I did.
Q Okay Who would those people have been?
A I interviewed Mr. Ross Walters Again, I conducted a phone interview with Anthony Mahfood, and the third person was Mr Nate Deal.
Q. And have you reviewed any other documents of importance that were exchanged by the parties in this case? Does anything else come to mind?
A There were some other documents For example, copies of handwritten notes that were exchanged I believe during the discovery process, as well as e-mails.
Q. Based on the materials that you have reviewed in this case, have you formed any opinions?
A Yes.
Q. Based on your review of information and testimony that you just described, please tell us about the position that

Mr Maybank was in as of July of 2006

A Well, July of 2006, Mr. Maybank was in a very precarious situation. To begin with, as you now know, we all know, Mr. Maybank had sold his company and in exchange for that received a very substantial position in BB&T common stock And in July the value of that stock, of course, comprised the majority of his liquid net worth So that means that he was exposed to all of the inherent risks that are associated with a concentrated stock position, that being if that stock should collapse in value, his whole net worth is going to collapse as well.

He was also faced with a mountain of margin debt at Scott & Stringfellow He owed them in July I think as much as $2.7 million, which he had borrowed to buy stock at Scott & Stringfellow.

So that was the predicament that he was in, essentially, as of July.

Q. As of July of 2006, was selling the BB&T shares an option for Mr Maybank to address his risks?

A Sure, he could have sold it

Q Would there have been any ramifications by doing that?

A. Yes, basically three.

The cost basis in the cost was extremely low. And by that I mean even though the stock was say trading at 40, he had a cost basis equal to I believe I have seen a number of

around three dollars. That essentially meant that if he were to sell, he would have had to pay taxes on practically the entire market value of that stock. So if he sold it at nine million, he would have to pay taxes on almost all of that nine million. Not all of it, but almost, so that was the first problem.

The second problem is if he sold that stock, he would lose the dividend, obviously. The reason that was problematic is because that stock at the time was providing Mr. Maybank with an annualized dividend income of over $400,000 a year, which he needed

And then the final problem would be by selling the stock, if Mr Maybank believed that the BB&T stock had a positive future, meaning potential -- more potential gains in that stock could be had over the next three, four, five years, he would lose that opportunity as well

So that's what he would have been faced with had he chose to sell the stock

Q. Mr Thorne, is a Pre-Paid Variable Forward Contract a solution to address the risks of a concentrated position?

A. It is.

Q And can you tell us what a Variable Pre-Paid Forward Contract is?

A Actually, and simply put, it's an agreement that an investor, like Mr. Maybank, can enter into with another

party, in this case it was Bear Stearns, that would afford Mr Maybank the opportunity or the option to sell that stock at some future date in exchange for an up-front cash payment in his pocket today, and that up-front cash payment would not create a taxable event currently

So you are able to receive liquidity from that concentrated position, then use that money to invest in a more diversified portfolio

Two other important things that such an agreement does for the holder of the stock It will also provide protection against a collapse in the stock It's a hedge So when you enter into one of these agreements, in addition to being able to obtain liquidity, getting up-front cash, you are also provided with protection So if the stock is at 40 when you enter into it, you are protected against loss below 40.

And thirdly, you also have the opportunity to participate in future gains, because the agreement will allow you to partially participate up to a ceiling in any future gains the stock may have over the life of the contract, should that occur.

And I guess lastly, if the stock involved happens to be one, if it's paying a dividend, which was the case here, you can negotiate the right to the receive dividends, if, in fact, the company actually pays them Now, there is no

guarantee that a company is going to pay dividends, so you may or may not receive any, but to the extent that they do, you can negotiate the right to receive those dividends up to a negotiated cap

Q So let me follow up on your last point. If you have a pre-paid contract that allows for you to receive dividends, does that guarantee the holder still gets the dividends, even if the company decides to stop paying one? How does that work?

A Oh, well, no. I mean, you can't receive something that doesn't exists. You only receive the dividends that are actually declared and paid by the company If they don't pay a dividend, then obviously you are not going to receive a dividend. Dividends are never guaranteed. Companies can change them at any time and as most anyone knows who has ever invested.

Q. Okay Mr Thorne, are you aware that Mr Maybank entered into a pre-paid contract in August of 2006?

A I am, yes

Q. Let me show you what's been previously entered into the record as Defendants' Exhibit No. 16, and can you tell us what this is?

A Yes, this is what is referred to as a settlement overview. This essentially shows the investor basically what can happen It's self-explanatory It covers all of

the possible outcomes essentially from having entered into one of these agreements

Q Now, Mr. Thorne, as we continue on with your testimony, I would like to give the jury an opportunity to see this We could either project it on the big screen, or we could even put up a poster board, whatever your preference is

A Why don't we go ahead and put it on the screen, if you wouldn't mind.

MR. KRISTINIK Mandy?

BY MR. KRISTINIK

Q All right. Mr. Thorne, using this settlement overview, can you please talk us through the terms of Mr. Maybank's pre-paid contract?

MR. KRISTINIK. And, Mandy, why don't you take the top four or five lines, yeah, and cull that out for us. Yes, thank you

A. Okay. What's being highlighted are the essential terms of the agreement And as you will see, going left to right, first it identifies the stock that's the subject of the agreement In this case underlying stock BB&T

Next the stock price that this agreement was based upon when Mr Maybank entered into it, and that was a share price of 42 35, approximately

It then notes the number of shares involved And the total number of shares that Mr. Maybank pledged to enter

into this agreement, 220,000, which had a market value at the time of 9,318,000, which is a final number.

And then the column to the right gives the breakdown on the floor and cap levels that I mentioned. In the case of Mr Maybank's pre-paid, the floor was 42.35 And what that means is while he had his stock pledged to this contract, should that stock have been trading at anywhere below that number, once the contract matured in three years, he was protected against losses on that number.

And then there was a cap level of 56.12 That's the ceiling That's -- should at the end of three years his stock be trading higher than 42, but up to 56, he would be entitled to participate in all of those gains.

So it was kind of the best of both worlds in that regard Above that level he would not participate.

And finally the proceeds up front, that's the up-front payment that was paid to Mr Maybank, which was approximately $7 1 million, and the term was for three years The contract would have ended on August the 11th, 2009

BY MR KRISTINIK:

Q. Mr. Thorne, can you tell us about how this contract would perform in a rising market and how it would perform in a declining market?

A. Sure, just to --

MR KRISTINIK Mandy, eliminate the cull-out

A Yeah And just to give you an example, you may want to bring up the ceiling level first

MR KRISTINIK Mandy, go to the bottom, starting with the highlighted line there, yes, and let's cull that out Thank you

A Now, what I want to show you is this would be -- let's assume that at the end of three years the stock rose. And let's assume that it rose all the way to the ceiling level that was defined by the contract

So now we are at the end of three years The holder of this contract can do one of two things They can either go ahead and consummate the sale of the shares, and that's done by delivering shares in this case to Bear Stearns and then walking away, or, you have got the option to buy them back, if you want

So if the stock went up to 56 at the end of three years, going across that means it had, as you can see, it had risen by 32 and a half percent That would represent a gain in the value of Mr Maybank's shares of a little over $3 million

And so if Mr. Maybank simply wanted to sell the stock, meaning deliver the shares to Bear Stearns and walk away, he wouldn't have to give them all 220,000 shares under this scenario, because the stock increased in value He would be

allowed to retain, as you can see in the next column, 53,962 of his shares, because that number times the $56 share price equals the $3 million gain he had in the stock. So you can retain the number of shares equal to the profit, or the gain in the stock, if, in fact, that's what occurred.

BY MR. KRISTINIK

Q. Mr. Thorne, would he also be retaining the 7 1 million in up-front proceeds that he had originally received?

A. That's correct

Bear in mind that the 7 1 million that anyone receives, the up-front proceeds of one of these contracts, is theirs to keep, no matter what You just -- you can walk away with it and it's without restriction.

So under this scenario, if BB&T stock performed this strongly, he could have retained $3 million worth of his stock, which represented the gain and, of course, keep the 7 1 million That is always yours to keep. You never have to forfeit it.

Q Why don't you talk us through the scenario where there is a declining market How is the pre-paid performed then?

A. Okay. Again, let's just assume a worst case scenario, at least for purposes of this form.

MR. KRISTINIK Mandy, let's go to the top part now starting with the highlighted -- yeah. Yes, there, and down to the other highlighted line. Thank you

A Let's say the stock didn't go up over that three-year period, and, in fact, collapsed, and -- you know, which is the fear of any holder of a concentrated position. That's why you enter into one of these. So let's assume that at the end of three years the stock was only trading at 31, which is the very top line, if you can read that That represents a 25 percent decrease in the value of the stock from the day he entered into the agreement.

So since the stock declined in value, obviously there is not any shares to retain, because the -- that you would want to retain, necessarily, because the stock didn't go up It fell And, in fact, it would have been worth, going further to the right, 6,988,773.

Now, when he entered into this agreement under this scenario, he was paid 7 1 million. That, again, his to keep. So if the stock fell this low to 6.9 million, obviously this performed exactly the way it would have been designed to perform So Mr Maybank would have the option then to just walk away He keeps the 7 1 million, even though the stock is now worth less than seven million It would have afforded full protection.

BY MR KRISTINIK:

Q. All right. Thank you, Mr Thorne.

MR KRISTINIK And, Mandy, you can take that down.

BY MR. KRISTINIK:

Q. Mr Thorne, we have talked about pre-paids We also talked about the option of selling shares.

Are there other options available for addressing concentrated stock positions?

A There are a couple that are generally looked at One is called a stock collar That wouldn't have worked as well, because even though he could have retained his shares, it wouldn't have provided him with nearly as much up up-front money as the Pre-Paid Variable did.

Another one is referred to as an exchange fund And, again, without get into the details, that wouldn't have worked well for Mr. Maybank either, because Mr Maybank would have been required to give up his BB&T to contribute to what is known as an exchange fund

And neither would have worked, obviously, as well as the pre-paid.

Q. Do you have any opinions regarding the disclosures provided to Mr. Maybank related to his pre-paid transactions?

A Yes.

Q And why don't you tell us what those are?

A In my opinion, Mr Maybank was provided with enough information to make an informed decision with respect to his managed account, as well as the pre-paid.

Was your question just regarding the pre-paid, or --

Q Just the pre-paid

A Okay To begin with, this illustration that we were just going through, my opinion is based on the assumption -- I'm making the assumption that Mr Maybank was provided with this information before entering into the pre-paid I based that upon my phone interview with Mr Mahfood, who was adamant with me that he made sure these were provided to Mr Maybank, so it would have explained all of the nuances essentially of the pre-paid to Mr Maybank

There were also some e-mails indicating that these were being generated for Mr Maybank And, in fact, these would be of no value to anyone else, really, but Mr. Maybank So this would have provided disclosure

There was an educational piece on pre-paid variables that we know Mr Maybank actually did have in his possession That was provided by Mr Shawn Gibson, and we learned that in connection with Mr. Maybank's deposition And that piece explained Pre-Paid Variable Forward Contracts, how they worked It also gave examples just like this within it

Mr Maybank also signed and reviewed a Concentrated Stock Risk Addendum Form, which among other things pointed out to Mr Maybank what the costs would be from BB&T Asset Management in order to set one of these up. So he clearly

knew that.

Mr. Maybank had to participate before consummating this deal, had to participate in what I will refer to as a compliance phone review call with Bear Stearns And the purpose of that call was to make sure that Mr Maybank understood all of the key terms of this agreement, and Mr Maybank did participate in that call and indicated his understanding of the agreement.

Final documents I would point out that's important is the confirmation of this transaction. Once Mr Maybank completed this transaction and entered into this agreement, he was sent a confirmation, what we referred to as the confirmation form, from Bear Stearns outlining what happened with this trade, essentially, and he had to sign it The form instructed Mr. Maybank, as it does any holder who receives one of these, to carefully review the information, make sure that you agree with it, that it's correct. If you didn't, they had a phone number that you could call and ask questions If you did agree with it, you signed it -- had to sign it and return it, which he did

So taken together, more than enough information for Mr Maybank to have made an informed decision regarding this pre-paid agreement

Q. Do you have an opinion as to whether or not BB&T and BB&T Asset Management would have satisfied their fiduciary

obligations towards Mr Maybank with respect to his pre-paid transactions?

A. Yes.

Q And what is your opinion?

A Clearly they did and I'll explain why I say that

They -- if -- as a fiduciary, they were expected to look at this. They would have had an obligation to determine that this, in fact, would be beneficial for Mr. Maybank to enter into And it's just so obvious that it is. Almost anyone can recognize the benefits from this and how it would have benefitted Mr Maybank

Again, let's remember, he had a concentrated stock position, meaning his entire -- most of his net worth was exposed to the whims of the stock market in that one stock. He was receiving a lot of dividend income from that stock. He needed to continue to receive it If he sold it, he was going to have to pay taxes.

This agreement attempted to solve all of those issues It provided with an up-front cash payment that he wasn't required to pay taxes on initially, tnat he could use to reinvest and diversify away in a new portfolio from the risks of a concentrated. It enabled him to continue to receive any dividends that BB&T happened to pay up to the negotiated cap. It provided a hedge against loss. It provided an opportunity for gain

Two years later, or a year or so after that, he bought a 1,000 more shares of BB&T in his Scott & Stringfellow account, while still holding his pre-paid agreement

And in the fall of 2008 Mr. Maybank borrowed $400,000 on his credit line at BB&T to put into his managed portfolio account to buy more stocks

Now, I'm not judging that, because we are -- this is -- these are the types of things that a very sophisticated investor may do, but it proves to me that he certainly had no interest in ever selling his BB&T stock. That wouldn't have been an option, in my opinion, not based on his actions, and it also demonstrates a high well-above average level of risk tolerance.

Q. Based on your review of account records showing Mr Maybank's investing history, do you have an opinion towards his views about bonds or fixed income?

A. Well, like other testimony you have heard here today, I examined those accounts and Mr Maybank was a stock person He apparently was of the view that that was the way to grow your wealth versus try to accumulate wealth, was through the stock market. I saw no evidence to indicate any interests in bonds at all

Q All right Let's talk about the roll of the pre-paid in January of 2009 Do you have any opinions regarding the roll transaction?

A Yes, in my opinion, when he rolled it in January of '09, it was a reasonable thing to do, because it actually required less out-of-pocket cash for him to do it then than it did -- than it would have had he rolled it in August of '09, upon maturity of the contract That's because of, as it turns out, the value of BB&T stock went up and was priced higher in '09, August of '09, than it was in January

Q And how much -- how much did it actually cost him out of pocket to roll in January of '09?

A It was approximately 1 3 million

Q And how much do you estimate it would have cost him to roll it in August of '09?

A. Approximately 1.7 million.

Q. So about $400,000 more?

A. About 400 more.

Q Were there other benefits that Mr Maybank obtained from rolling the transaction in January of 2009?

A. Well, yes, he was -- that enabled him to continue again having a hedge against the stock, protecting against loss, allowing him to continue to participate in any future gains, should that occur It allowed him to continue to receive whatever dividends BB&T was choosing to pay on their stock And so all of those things were in place and still providing protection for Mr Maybank.

Q So the out of pocket to do the unwind and roll was $1 3

million In your review of documentation, did Mr Maybank get that money back in the form of benefits?

A. Yes.

Q. And can you explain that to us?

A. Well, as it turns out, Mr Maybank -- I actually entered into a total of five of these contracts. The very first one that entered into with BB&T. Then he rolled it into a second one with Deutsche Bank And he did three more after that.

So from the time he did the first roll through the last contract, over the course of those transactions Mr. Maybank received an additional four hundred and some thousand dollars in dividends on BB&T stock, which, of course, he couldn't have had received had he not rolled it and walked away.

He also received an increase in the value of the stock over that same time frame and was able to retain shares representing that gain, which was equal to about eight hundred and some thousand dollars.

So we had the four hundred and some thousand in dividends that he collected by continuing to roll He was able to realize eight hundred thousand and some dollars gain in the stock, and there was a positive cash event of a little over a hundred thousand as well. When you add it all up, as a result of continuing to roll, his net positive

benefit was approximately 1.4 million, and yet the cost of the first roll was 1.3 and change So he replaced that money and then some

Q. Mr. Thorne, do you have -- did you review Mr. Maybank's situation to determine whether there were any potential conflicts of interests?

A. I did.

Q And do you have any opinions to render related to that topic?

A. I do I wanted to look at those situations that involved fees For example, the managed account, there is a fee Obviously there are fees -- there was fees associated with setting up pre-paids And in looking at the amount of the fees charged and the types of the fees charged, I didn't see anything at all that represented a conflict.

BB&T, like any business, has the right to charge a fee for its services If they didn't, you know, they wouldn't be in business, so the fee -- just charging a fee certainly is no conflict of interest there

The level of the fees charged were in keeping with what you typically see throughout the industry as it relates to the managed account, or any activity where there was going to be a charge based on assets

And, finally, I wanted to look at the compensation issue and see if anyone within Wealth Management that may

have been assisting Mr Maybank with a pre-paid, for example, could have in any way been swayed by a difference in compensation to them personally to do the pre-paid, say as opposed to if Mr Maybank just sold his stock outright to begin with And after looking into that I didn't see any significant difference in what the compensation would have been, for example, to Mr Mahfood, had Mr Maybank just sold his stock or did what he actually did do, enter into a pre-paid. So there was no conflict of interest as it relates to that.

And, finally, I will say the fact that it involved BB&T stock didn't create a conflict of interest either, because the fees charged -- from a fee point of view, because the fees that were being charged are exactly going to be the same, whether it's BB&T stock, or General Motors, or some other company. So that really wasn't relevant either.

I didn't find any conflict of interest.

Q Mr Thorne, let me show you what's been marked as Defendants' Exhibit 173 Can you tell us what this is?

A. Yes I wanted take a look at what would have happened, what would the difference have been cash out of pocket to Mr. Maybank if he just simply sold his stock to begin with in August of '06, as opposed to what he actually did do, and that's what this exhibit illustrates, the difference between the two approaches

Q And did you prepare that document, that one-page document yourself?

A. I did, yes.

Q. Okay. And for this comparison did you take into account all the events between the first pre-paid in August of 2006, all the way to the last pre-paid, which terminated in December of 2012?

A. Yes, I did.

MR. KRISTINIK Your Honor, the defendants would move to admit Defendants' Exhibit 173 into evidence.

MR. WILLOUGHBY: Your Honor, we object.

THE COURT All right Well, on what basis?

MR WILLOUGHBY Well, the basis is he's included the pre-paids that were performed after Mr. Maybank was essentially kicked out of the bank and --

THE COURT: Well, why -- isn't that a matter for cross-examination?

MR WILLOUGHBY. Well, collateral source is the issue They would be in hearsay.

THE COURT Well, y'all come up here with that.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

MR. KRISTINIK Your Honor, we move to admit into evidence Defendants' Exhibit 173.

THE COURT: Subject to the objection.

(Whereupon, Defendants' Exhibit No. 173 was entered into the record as evidence)

THE WITNESS If you think it would be helpful, I think we have a blowup of this, if the jury would prefer me to maybe put it on an easel or something.

BY MR. KRISTINIK:

Q Let me grab the board for you.

(Witness off the witness stand).

BY MR. KRISTINIK:

Q Mr Thorne, can you please explain your comparison analysis that's reflected in this chart? And I'm going to step by you --

A. Sure

Q. -- over here

A. The purpose of this is to look at two options

One is what actually did happen, what Mr. Maybank chose to do, which was to proceed with the Variable Pre-Paid Agreement

The second one is then to compare that outcome with what the outcome would have been had Mr. Maybank just sold his stock in August, didn't enter into any of the pre-paids.

So those are the two calculations that are made

So let me begin with the outright stock sale.

If Mr. Maybank sold his stock in August of '06, instead of entered into a pre-paid, he would have received 9,328,000

for the sale.

He then would have had to have paid off the margin debt that was in his account at the time of 2,470,000, bringing this total amount down to 6,000,857.

He then would have had capital gains tax to pay on the sale, of course, that I mentioned earlier to you, that he had a very large capital gains liability. That was equal to 1 6 million.

So at the point of the day if he just sold his stock, he would have had about 5.2 million left in his hands in cash.

Now, comparing that to the rolls, I will just walk through this first line for you, because all the rest are the same.

The very first pre-paid he received, if you remember from that illustration that showed he had received 7 1 million in cash, but there was also a fee that he had to pay to BB&T. So for simplicity I just subtracted it out, bringing this down to the net amount in his pocket, which is 7,000,083.

When he settled his first one and went into the second pre-paid, the first roll, he had to pay a fee again. And so I added that to the amount of money he had to pay.

So essentially what is happening here, he received 7 million in his first prepaid. He had to pay 4 3 million to

close it out, to buy back his stock The difference between those two numbers was net cash flow positive to Mr Maybank of 2.7 million.

That's the same calculation I made for the second, third, fourth, coming down to the fifth, showing what the difference was for each one That was positive. That was negative, positive, negative.

We get to the last pre-paid contract that he enters into. He received an up-front payment of 5,074,420, but he closed it by consummating the sale. He delivered the stock, but the stock had gone up in value He made money on the movement of the stock from the beginning of the fifth pre-paid until it matured and he gained 828,457 That's how much stock he was able -- he was allowed to walk away with representing gains You add those two numbers together and you get 5 9 million

Q Mr Thorne, can I stop you right there?

A Yes

Q This figure, is that compared to the figure in showing the transfer of the stock into the Charles Schwab account?

A No, this is about $10,000 different There is a difference, and the reason is this number is based on the actual quoted confirmed closing prices of stock at the conclusion of the pre-paid By the time it's reflected in his Schwab account, the stock had moved a little bit, so

that's why there is a difference in that number.

Q Okay. Please continue.

A So the net amount of all of the plusses and minuses coming down to the fifth pre-paid is $6.7 million That is what all of this generates

Next you have to deduct taxes that he incurred through the rolling of these transactions. There were taxes that needed to be paid That was subtracted, bringing it down to six million

He had again to pay off the margin debt You notice, it's the same number, 2 4 million. That brings the number down to 3 5

He received dividends over the life of all of these pre-paids that equalled 1,564,000, so that gets added back, raising this back up to five million. And then, of course, he had to pay taxes on the dividends, so that has to get subtracted out of 344,000

The net amount to Mr Maybank having taken this approach was 4 7 million

So as you can see, there is just a slight difference between the two of equal to approximately five percent of the market value of the stock at issue in this case.

Had he sold the stock outright, this would have been his position Having had entered into the pre-paid, which is what he actually did do, this was his ending position,

about a five percent difference

Q. Okay Please retake the stand. I just have a couple more questions for you and we will be done for the day, Mr Thorne

A Okay.

(Witness back on the witness stand)

BY MR. KRISTINIK:

Q So in terms of dollars -- you gave us in terms of percentage You said five percent of the total transaction of 9 3 million --

A Yes.

Q -- was the difference in your comparison.

In terms of dollars, what's roughly the dollar amount?

A It was roughly four hundred and sixty some thousand dollars difference.

Q Mr Thorne, with respect to the opinions that you have presented to the jury today, are you giving those opinions to a reasonable degree of professional certainty?

A I was

MR. KRISTINIK. Those are all my questions, Your Honor.

THE COURT: Okay

MR. KRISTINIK: All right

THE COURT: Didn't quite make five o'clock, but we are pretty close, so we are going to break for the evening

Please remember where we are in the case We are going to commence tomorrow morning at 9:30 with cross-examination of this same witness, but you all remember not to do any investigation. Don't talk about it. Was I right that the people that you see want to know about it? You will have to -- and you just have to tell them why

You all have a good night and see you at 9 30

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

THE COURT: All right. Mr. Thorne, you may stand down, but do not discuss your testimony

THE WITNESS: Yes, Your Honor

THE COURT: Anything before we break?

MR WILLOUGHBY: No

MR BROWN: No, Your Honor.

THE COURT: All right. See y'all tomorrow

MR KRISTINIK: Thank you.

MR. WILLOUGHBY. Thank you, judge.

(Whereupon, proceedings were adjourned to June 24, 2014)

course.

Q. So the reason the transition to a fee-based service of assets under management is to align the interests of the firm with the interests of the customer? That's one of the primary reasons?

A. As well as performance Of course, it's important to bear in mind the interests of the customer always align, whether it's fee based or commissioned based

Q. Now, let's talk about the pre-paid in this case.

The pre-paid --

Well, let's talk a little bit about your experience.

I believe you, yourself, have never sold a Pre-Paid Variable product, correct?

A. I don't know that that's entirely accurate. As I mentioned in my deposition, I actually had to train my brokers on Pre-Paid Variables, how to present them, where it would be suitable, and also sat in with brokers in making presentations with customers

Now, whether you would consider that activity selling or not I guess is debatable, but selling directly to a customer, one on one, the answer is no, I have not.

Q. Okay. And is it true, though, based upon what you know of pre-paid is that at the time the transaction or the contract is entered, there is not a sale of the underlying security that's tendered to support the contract, correct?

A That's correct.
Q And the sale of the security does not take place until some later time when the transaction closes and you tender the securities when the transaction completely terminates, correct?
A. That's correct.
Q So, in this case on August the 11th of 2006, when the pre-paid was entered, there was not a sale of the underlying BB&T stock on that day, correct?
A Oh, that's correct, it was just hedged.
Q And I think you and I had this discussion at your deposition It was your view that the Pre-Paid Variable Derivative Contract was not a security itself, correct?
A I can't answer that question. The -- as your questioning developed during my deposition it became clear that you were asking about whether or not it was considered a security under South Carolina law, and I have no answer to that. I'm not an attorney I have no opinion
Q Well, just -- but you gave me the opinion there, under oath, that your first answer was it's not a security, correct?
A Incorrect. Let me clarify.
When asked that question in my deposition, I later clarified that that was based upon my assumption of -- or relating it to a tradable security In other words, a stock

and a bond is tradable and is a security And I took your question to mean that that's what you were asking is a tradable like security, or security is tradable, and my answer was no

However, to the question of whether or not a Pre-Paid Variable is considered a security, I don't have an answer to that. That would call for a legal conclusion and I'm not an attorney.

Q Well, when you were looking at it when you were selling -- or when you were working with Merrill Lynch, did you consider pre-paids at that point and did Merrill Lynch consider them a security?

A I have no idea.

Q You don't know?

A I see it as a contract. It's an agreement. That's my view.

Q And did Merrill see it as a contract as well?

A I would assume so. It was never actually discussed in that vein. That's not to say it would not be a security under legal definition, though. It may very well be I just don't know the answer.

Q And you -- you are not here to testify to these ladies and gentlemen of the jury that it is a security or that it's not a security, right?

A That's correct, I am not.

last question you were asked and then I sensed you may have explanation I want to ask you, do you have an explanation with respect to the testimony that you gave --

MR WILLOUGHBY Your Honor, that's --

BY MR. KRISTINIK:

Q. -- with respect to this consent order?

THE COURT. Whoa, whoa. He's got an objection. What is it?

MR. WILLOUGHBY: That's improper redirect. He doesn't have a question --

THE COURT I'm going to allow it. You -- this was raised on cross Go ahead

BY MR. KRISTINIK:

Q. My question is do you have an explanation in response to this comparison between your testimony given in 2009 and a consent order two years later?

A Well, of course What I was attempting to try to say is that not only do I not have any knowledge of these orders that he's walking in here with, these are events that occurred two years into the future

The testimony that he was pointing out that I gave, and I think it was back in what, 2009, I'm certainly comfortable with and was entirely accurate that based upon my analysis of what happened in that case, Morgan Keegan had not done anything wrong as it related to that customer, to that

complaint.

Now, whether or not something occurred two years later, I have no idea. And to this day I don't have any knowledge of consent orders, what someone may have agreed to, or didn't agree to, or negotiated to settle anything, I had no knowledge of any of that.

Q. Just a couple more questions.

Mr. Willoughby, he asked you to run through some numbers with an assumption. His assumption was an 11 percent return. Do you remember that?

A. Yes.

Q. What was the stock market doing between 2008 and early 2009?

A. It dropped almost 50 percent.

Q. If this had been invested in the stock market during the years 2008, and the beginning of 2009, what would have happened to that $5.2 million?

A. Cut in half.

Q Okay.

MR. KRISTINIK: No further questions

MR. WILLOUGHBY. No recross.

THE COURT: Thank you. You may step down

Release him from subpoena, or do you want to keep him around?

MR. KRISTINIK: We would ask to have Mr Thorne be

excused from the trial.

THE COURT Any objection?

MR. WILLOUGHBY No objection, Your Honor.

THE COURT. All right

MR. KRISTINIK: Thank you.

THE COURT. How are y'all doing? Do you want to take a short break?

(No response).

THE COURT Nobody is in dire straights.

Okay, call your next witness. Well, how long is the next witness going to be?

MR KRISTINIK: Probably looking at an hour on direct

THE COURT A long witness.

Okay, let's take a short break.

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

THE COURT Who is the next witness?

MR KRISTINIK Anthony Mahfood.

THE COURT. Okay Anything before we break?

MR WILLOUGHBY No nothing, Your Honor.

MR KRISTINIK. No

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

THE COURT All right. Are we ready?

different areas of the bank

Q. Did you hold a securities license when you worked for BB&T?

A Yes, sir, I held the Series 7 and Series 66

Q. What was the purpose of you having these FINRA licenses?

A That was part of the banking requirements that the wealth area made you have.

Q Okay. Was that related in compensation or anything else?

A. I think it was more related to compensation.

Q Were you -- and even though you had those licenses, were you allowed to give investment advice?

A. No, sir.

Q Did you receive any education or training about solutions for clients with concentrated positions?

A There were POWER points sent out and there were also conference calls done regarding those.

Q Who was the moderator of the conference calls?

A Most of those were from Shawn Gibson

Q. And who were the Power point presentations from?

A Usually Shawn Gibson.

Q What kind of solutions were covered?

A They would cover -- are you talking about the concentrated stock position?

Q. Yes, that's right
A. They were covered -- Pre-Paid Variable Forwards were covered Exchange funds were covered Fund to funds were covered Equity calls were covered, and outright sales were covered
Q. Was any particular emphasis placed on any of those solutions for concentrated positions during those presentations?
A. No, they just went through all the different ones.
Q Now, you said pre-paids were covered. Do you consider yourself to be an expert in pre-paid transactions?
A No, sir
Q. Did you ever give clients advice about pre-paid transactions?
A No, sir.
Q. Why did you receive an education about pre-paid transactions if you could not give investment advice?
A. Because that's one of the things that BB&T Wealth was trying to, you know, let everyone know in the field what BB&T had to offer So if you were talking to someone in the commercial team or you were talking to someone outside of, you know, the community that may have a concentrated position, they know that BB&T may have a solution for them, so they wanted you to at least be -- they wanted at least you be informed of what BB&T has to offer

Q Who in the BB&T organization did you consider to be the expert in pre-paid transactions?

A Shawn Gibson. I mean -- and the rest of his alternative investment team, but Shawn Gibson

Q. Did you have a production goal while you were with BB&T?

A Yes, sir.

Q Can you explain to us how that worked?

A You know, they changed from year to year, but they would have -- there would be a matrix they would have and there would be different criteria that made up this matrix regarding the different areas of Wealth Management.

And you also had to be a performer. And what I mean by a performer is had you to make sure -- that was something the supervisor would look at. You had to make sure that you were doing a good job for their clients, and for you to hit this production goals and to be compensated, you had to be a performer in those areas.

Q So what kind of things would you do to try to hit your production goals?

A. Get off my desk and basically go out in the community and try to develop relationships.

Also try to develop relationships at BB&T, you know, with the commercial team, with the people in the branches to, you know, help -- you know, if they want to send

referrals out also, you know, develop relationships with the center of influences, you know, CPA's, things of that nature.

Q. Did you ever make a specific recommendation for an investment product or specific recommendation for an investment strategy in an effort to make a sale?

A. No, sir.

Q Was there -- tell us a little bit about how the incentive pay was calculated

A. Well, I mean, that's -- that's a little bit difficult, because there is a lot of factors that go into it There is just not one certain thing I mean, you could have to -- like I said, you had to be a performer Then you also had -- there was a -- there was different calculations for, you know, different areas of the production goals

Q Was there a discretionary component?

A Yes, and that was -- that was -- you being a performer, that was basically where your supervisor had to evaluate you for how you did, you know, were taking care of your clients, were you doing a good job for them

Q If a client elected to use someone in the BB&T organization for a service, for example, insurance investments, or mortgage loans, something like that, would you know at the time what difference that might make in your year-end compensation?

A No, sir
Q Did you have the opportunity to work with Mr Maybank while you were in the Greenville office?
A Well, when I first came to Greenville, you know, they would allow me to go on meetings and kind of observe Mr Maybank, yes, sir.
Q And did you sit in on -- what kind of meetings would you sit in on with Mr Maybank?
A A lot of the meetings were -- you know, since Mr. Maybank sold his, you know, company to BB&T, they were -- you know, most of his relationships that he knew the people and I would sit in on those meetings regarding all the different areas of wealth.
Q Was there any benefit to you to sit in on a meeting with Frank Maybank?
A To gain knowledge. You know, someone that has years of experience, sophistication, yes.
Q. Were you ever in any meetings with Mr. Maybank and a client which Kris Kapoor was also there serving as portfolio manager?
A Yes, sir.
Q Did Mr Maybank attend other meetings that wealth advisors would typically attend?
A Yes.
Q Would those include department meetings?

A Yes, sir, supposedly.
Q Or education meetings?
A Yes, sir.
Q. Do you remember a customer named Effie Bowers?
A Yes, I do.
Q Tell us about her situation
A. Ms. Bowers was good friends with Mr Maybank She had a concentrated stock position and -- do you want me to elaborate on it?
Q. Where was she located?
A She was located in Columbus, Georgia. She was located in Columbus, Georgia
Q Now, did Ms. Bowers, or any of her family members, did they enter into pre-paids with the help of BB&T?
A Yes.
Q Was Mr. Maybank involved in any of the meetings about pre-paid for Ms. Bowers or her family members?
A. Yes.
Q. Tell us what you remember about that.
A. Just that, you know, Mr Maybank went down in Columbus, Georgia with Ms Bowers and some of the other family members regarding Pre-Paid Variable Forwards.
Like I say, it was -- he was very good friends with her family They had a good -- they had a good bond. She trusted -- their family basically trusted -- they trusted

A The Bowers Pre-Paid Variable Forward.
Q And you referenced Frank Maybank in this e-mail. Had you communicated with Mr Maybank in regard to the information in this e-mail?
A Yes, sir.
Q How soon after the communication with Mr. Maybank did you create this e-mail?
A Soon.
Q Was it part of your job responsibilities to help coordinate services of pre-paids?
A Yes, sir.
Q And would it have been your regular practice to send an e-mail like this?
A Yes, sir.
Q And would BB&T have maintained this e-mail after it was sent?
A Yes
MR KRISTINIK Your Honor, we would move to admit into evidence Defendants' Exhibit No 10
THE COURT. Same objection?
MR WILLOUGHBY Yes, Your Honor
THE COURT Same ruling. Okay
(Whereupon, Defendants' Exhibit No 10 was entered into the record as evidence)
MR KRISTINIK Mandy, let's pull this up on the

big screen, please

BY MR KRISTINIK:

Q All right, Mr Mahfood, if you would please read the body of this e-mail?

A "I spoke with Frank today and there will be no conference call. However, Frank did want these specific questions answered, does not have to be today. I let him know this may take a couple of days He is really worried that the stock will go through 55.

"1 What was the transaction cost for Effie C S. Bowers on the Pre-Paid Variable Forward.

"2. Break it down by transaction cost and pre-paid interest

"3 What is the cost of closing it out.

"4. What will be the cost of a new Pre-Paid Variable Forward."

It should be 5, but I typed 6, but "how much would this produce for her investment account

"If you have any questions please let me know I also have a question on vista when you have a chance

"Thanks, Anthony "

BY MR. KRISTINIK

Q And are these questions that Mr Maybank would have come to you with back in April of 2007, so that you could get the answers from Mr Gibson?

A Yes, sir

MR. KRISTINIK Thank you, Mandy.

BY MR. KRISTINIK

Q All right, let's talk about Mr Maybank's first pre-paid

Did you have any involvement with Mr Maybank's pre-paid transaction in August of 2006?

A Yes

Q How did your involvement begin?

A. Basically just the same as the other ones, just coordinating calls between Mr. Maybank -- you know, between that and the alternative investment team

Q. How did you first learn that Mr Maybank was interested in a pre-paid transaction?

A. From him He said he wanted to do that

Q Did you ever go to him and tell him he should get one?

A No, sir

Q Did Mr. Maybank ever indicate to you that he was looking for your advice about what he should do with his concentrated position?

A No, sir, Mr. Maybank has been in the business He was in the business a lot longer than I have been

Q At any time were you trying to influence Mr. Maybank to enter into a pre-paid transaction?

A. No, sir.

Q Who else on the wealth management team in Greenville would have been involved with Mr. Maybank's pre-paid transaction or the handling of the proceeds from it?

A Well, handling of the proceeds would be BB&T.

As I mentioned, Kris Kapoor was the portfolio manager for the Greenville office at that time that would handle that.

Q Okay.

A Also I know, you know, Mr Maybank was close with Clark Anderson, so I'm sure he had dealings with Mr Anderson

Q Let me show you what's been marked as Defendants' Exhibit No. 4. Can you please tell us what this is?

A This is an e-mail from Clark Anderson to Frank Maybank, Mr. Frank Maybank, to where I was blind carbon copied on

Q And what's the date on this e-mail?

A. The date on this e-mail was Monday, July 24th, 2006.

Q Now, you said blind --

MR WILLOUGHBY May we approach the bench?

THE COURT All right

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

BY MR KRISTINIK:

Q Let me take this back from you, Mr. Mahfood.

Mr. Mahfood, after Mr Maybank contacted you about entering into a pre-paid transaction, what would you have

done next?

A Informed Mr. Gibson, Mr. Shawn Gibson, regarding that.

Q What was your understanding that Mr Gibson would have done?

A. Mr Gibson would -- he would prepare hypotheticals for Mr Maybank.

Q Let me show you Agreed Exhibit No 7. This is just a copy.

Can you tell us what this is?

A. This is a letter which was prepared and disclosure for the Pre-Paid Variable Forward transaction regarding Mr. Maybank This was having to get approval by general counsel, because Mr. Maybank was an employee of BB&T entering into a position of BB&T stock

Q Did you prepare this letter?

A. I actually did not prepare this letter. This was prepared by Shawn Gibson. I read the letter after he prepared it and everything and everything is accurate in the letter.

Q If you thought something in this letter was inaccurate, based on your understanding of the pre-paid transactions, would you have said anything?

A. Yes, sir.

Q Did you feel comfortable that this letter accurately reflected Mr Maybank's situation?

A Yes.
Q Did the general counsel, Patricia Oliver, place any limitations on the transaction for Mr Maybank?
A She actually did She approved it with the notion that Mr Maybank was not allowed to purchase any more -- couldn't take the proceeds and purchase BB&T stock.
Q Did anyone let Mr Maybank know about that limitation?
A Yes
Q. And who would have done that?
A I would have done that
Q. Let me show you what's been marked as Exhibit No. 152. Can you tell us what this is?
A This is an e-mail from Shawn Gibson to myself
Q. And what's the date on this e-mail?
A. The date on the e-mail is Friday, August 11th, 2006
Q. Is he responding to an e-mail from you?
A Yes, sir
Q. And what's the date on your e-mail?
A The date on my e-mail is Friday, August 11th, 2006.
Q What was the purpose of your e-mail to Mr. Gibson?
A. Letting him know that general counsel had approved this, based on the fact that Mr Maybank could not take the proceeds and purchase any more BB&T stock with those proceeds
Q. Did you, in fact, receive this e-mail back from Mr.

Gibson?

A. Yes, sir.

Q Does this appear to be a true and accurate copy of your e-mail exchange with Mr Gibson?

A Yes, sir

MR KRISTINIK: Your Honor, we would move to admit into evidence Defendants' Exhibit No. 152.

MR WILLOUGHBY: No objection.

THE COURT Okay

(Whereupon, Defendants' Exhibit No. 152 was entered into the record as evidence)

MR. KRISTINIK Let's project this onto the big screen, Mandy, please.

And let's cull out the text of the lower e-mail, Anthony's e-mail

BY MR KRISTINIK

Q. Would you please read the text of your e-mail to Shawn?

A "Shawn, it was approved on the basis that he does not buy any more BB&T with the proceeds with the Pre-Paid Variable Forward Frank understands this and agreed Thanks "

MR KRISTINIK. Now, Mandy, please cull out the text of Mr Gibson's e-mail

BY MR. KRISTINIK

Q Please read the response from Mr Gibson to you

A "Also, his cash advance is working out to be 76.35 percent Relative to the AFL structures, it is lower, but it is because of the much higher BB&T dividend. Make sure he knows that before the call "

Q What is the call that is referenced there?

A There was a call between the third-party, the investment banking firm, Shawn Gibson, and Mr. Maybank

Q Okay. And who gets the call?

A The client

Q We will ask be asking you questions about that call later

A All right.

Q Did you inform Mr Maybank of the terms articulated in Mr Gibson's e-mail?

A. Yes, sir.

Q. Did you inform him before the call with Bear Stearns?

A. Yes

Q All right

MR KRISTINIK All right. Thank you, Mandy

BY MR KRISTINIK

Q Let me show you what's been marked as Defendants' Exhibit No 15. Can you please tell us what this is?

A This is an e-mail from Shawn Gibson to myself

Q And what's the date on this e-mail?

A The date on tne e-mail is Friday, August 11th, 2006.

Q Is it responding to an e-mail from you?
A Could I go through this?
Q No, don't read it yet, but --
A Yes. Yes, it is.
Q And is the e-mail that he's responding to, is that the one that you just read into the record?
A Yes, sir
Q So he's giving you a second response to the same e-mail?
A Yes, sir
Q And did you, in fact, receive this e-mail from Mr. Gibson?
A Yes, I did.
Q And did Mr. Gibson's e-mail have an attachment?
A It did
Q And what was the attachment?
A The settlement overview.
Q And do you believe -- do you believe this Exhibit No. 15 to be a true and accurate copy of the e-mail exchange between you and Mr. Gibson on August 11th, 2006?
A Yes, sir.
Q And do you believe it to be a true and accurate copy of the attachment to that e-mail?
A Yes
MR. KRISTINIK Your Honor, we move to admit into

evidence Defendants' Exhibit No. 15.

MR. WILLOUGHBY: No objection.

THE COURT: Okay.

(Whereupon, Defendants' Exhibit No. 15 was entered into the record as evidence)

BY MR KRISTINIK:

Q Was this e-mail sent before or after the pre-paid was executed for Mr Maybank?

A. Before.

Q Was the attachment the final settlement sheet?

A No, sir

Q What would you have done -- so what would this settlement or this settlement illustration, what would it be doing?

A Basically giving someone the hypothetical and overview of what is pretty close to it looked like at that date and time

Q Okay

MR. KRISTINIK Mandy, can you pull up the attachment to Exhibit 15?

BY MR KRISTINIK

Q Is this the attachment to Exhibit 15?

A Yes, sir.

Q Okay What would you have done with this attachment after you received it from Mr. Gibson?

A. Given it to Mr. Maybank.
Q. And when would you have given it to him?
A After I received the e-mail.
Q. Would you have given it to Mr. Maybank before or after his pre-paid transaction?
A. Before.
Q. Do you think you would have given this to Mr Maybank before the call?
A Yes, sir.
Q What was your protocol with respect to settlement illustrations that you would receive from Mr. Gibson?
A. To pass them along to the clients
Q. Okay.

MR. KRISTINIK: All right. Thank you, Mandy.

BY MR. KRISTINIK:

Q. Let's talk a little bit about the call
What entity required that call to occur?
A. The investment bank entity In this case it was Bear Stearns.
Q And so tell us about that call. What actually happens on that call? Who was involved?
A The client is involved, and in this case Mr. Frank Maybank was on the call Myself, I was on the call Shawn Gibson was on the call, and then some people from Bear Stearns were on the call They are going through kind of

what the transaction is going to look like and then asking for the consent of the client

Q Okay. So who is doing most of the talking on the call?

A. The third-party

Q. Was Mr Maybank required to answer many questions on this call?

A. I wouldn't say many, but he was required to answer a couple of questions.

Q. And did you give Mr Maybank anything in writing before the call to assist him with the call?

A No, sir.

Q. Okay.

A. I mean, he had these illustrations, but that's it.

Q All right. Was a pre-paid transaction actually executed for Mr. Maybank in August of 2006?

A Yes, sir

Q Let me show you what's been marked as Defendants' Exhibit No 178. Can you tell us what this is?

A. This is an e-mail from Shawn Gibson to myself and Clark Anderson

Q. And what's the date on this e-mail?

A. The date on this e-mail is Monday, August 14th, 2006.

Q. What's the purpose of this e-mail?

A. It's the Bear Trade Summary and the settlement overview

Q And are there attachments to this e-mail?
A Yes, sir.
Q Okay. And please tell us what -- go through what these two attachments actually are.
A The first one is the Bear Trade Summary. That's where they give you the summary, and they also the actual settlement overview, which discusses the -- it shows you the terms of the Pre-Paid Variable Forward
Q Would the terms reflected in the summary and in the settlement illustration that are attached to this e-mail, do they reflect the final terms of Mr Maybank's first pre-paid?
A. Yes
Q Do these -- does this e-mail and do these attachments, do they appear to be true and accurate copies of what was sent to you us by Mr Gibson on August 14th, 2006?
A. Yes, sir.

MR KRISTINIK: Your Honor, we move to admit into evidence Defendants' Exhibit 178

MR WILLOUGHBY: No objection

THE COURT: All right.

(Whereupon, Defendants' Exhibit No 178 was entered into the record as evidence).

MR. KRISTINIK: Mandy, would you please pull this up on the big screen and go to the third page of the

exhibit, Bates page 9650?
BY MR KRISTINIK:
Q And can you tell us what this is, Mr Mahfood?
A This is the settlement overview It shows you the floor level, the cap level, the up-front proceeds that you receive, and it shows you how long the term is, and then it also has in here in the middle of the body kind of the different -- it shows you what some of the outcomes could be regarding the stock And it also shows you the settlement choices
Q. Okay And the terms at the top part of this overview, those are the final terms of his first pre-paid transaction?
A. Yes, sir.
Q. Okay What would you have done with the attachments to Mr Gibson's e-mail to you dated August 14th, 2006?
A. Given those to Mr Maybank.
Q Would you have ever told Mr Maybank during any part of the process that the BB&T dividend was guaranteed to be paid to him?
A No
MR KRISTINIK All right, Mandy, you can pull it down Thank you
BY MR. KRISTINIK.
Q Did Mr Maybank have a credit line with BB&T?
A Yes, he did

Q Did you assist him with the opening of the credit line?
A Yes
Q. Why was the credit line opened?
A. Mr. Maybank wanted a credit line
Q Had you ever suggested to him that he open a credit line?
A No, sir
Q. And is there any kind of a fee charged just for opening a credit line?
A Not for opening one.
Q. Is there any kind of fee or revenue generated from a credit line at any point in time?
A I mean, only if you would use the credit line, you know, the interests that you have to pay back.
Q So interests on draws?
A. Yes, sir
Q What was the security -- or was there security for the credit line?
A His managed portfolio at BB&T.
Q Wasn't it standard for a managed portfolio account to be security for a client's credit line?
A Yes, sir
Q I want to talk about insurance for a moment.
A. Okay.
Q Did you ever sell any insurance policies to Mr.

Maybank?
A No, sir.
Q Are you aware of whether he bought any life insurance policies while you were working with him as a client?
A Yes
Q Tell us about that.
A I was -- just of the fact I was aware that he bought some from his friend Edgar Norris, who is a broker at Scott & Stringfellow
Q Did Mr. Maybank enter into any other pre-paid transactions while you were working with him?
A Yes, sir
Q And did he ever unwind his first pre-paid?
A Yes
Q Did he roll it into another one?
A Yes, he did
Q When did -- when do you remember the unwind and roll occurring?
A. Right around I think 2009.
Q Would it have been January?
A January of 2009.
Q Okay. And do you recall when the first pre-paid was supposed to naturally expire?
A Yes, because it was -- this was a three year term, so it was to expire in August of 2009

Q So did the roll occur prior to the natural expiration of the first pre-paid?
A Yes, it did
Q How were you involved in the unwind and roll process?
A Just the same as the first one, just kind of liaison between Mr. Maybank and the alternative investment team, and they were sending over -- they would answer his questions that he may have, or also send him over these hypotheticals he was looking at
Q. Whose idea was it to roll the first pre-paid early?
A Mr. Maybank.
Q Had you made any attempt to encourage Mr Maybank to roll his pre-paid early?
A No, sir
Q Who with BB&T or BB&T Asset Management would have assisted with the roll of the pre-paid in January of 2009?
A. Nate Deal.
Q And was there anyone else in the --
A Mike Lackey helped him also.
Q And who did Mike Lackey work with?
A Mike Lackey was a financial planning strategist at BB&T Wealth Management
Q And what office did he work out of?
A. In the same office as we did, in Greenville.
Q. What was -- so what were the things that you were

actually doing to assist with the roll, the unwind and roll process?

A Just gathering -- you know, if Nate would run hypotheticals, or Frank had questions, get Frank's questions answered

And also when Nate would do a hypothetical in a spreadsheet, passing those spreadsheets along to Mr. Maybank and Mike

Q So tell us who Nate is?

A. Nate Nate Deal. He works for the alternative investment team for BB&T

Q For which entity?

A BB&T Asset Management

Q. Mr Mahfood, let me hand you what's been marked as Defendants' Exhibit No. 96. Can you please tell us what this is?

A This is an e-mail from the myself to Nathan Deal

Q And what's the date on your e-mail?

A Tuesday, January 13th, 2009

Q Are you responding to an e-mail from Mr Deal?

A Yes.

Q. And what's the date on his e-mail?

A The date on his e-mail was Tuesday, January 13th, 2009.

Q And is Mr Deal responding to an e-mail from you?

A Could I look?

Q Yes, you can turn the page
A Yes.
Q Okay. And what's the date on your e-mail?
A The date on my e-mail was Tuesday, January 13th, 2009.
Q The e-mails in this exhibit that are indicated that are from you, did you actually prepare those e-mails?
A. Yes, I did.
Q. And did you receive the e-mail from Mr. Deal that's indicated in this exhibit?
A. Yes, I did.
Q. Was it your regular practice to communicate with Mr Deal regarding alternative investment products for clients?
A Yes.
Q Does this appear to be -- the document marked as Exhibit 96, does it appear to be a true and accurate copy of the e-mail exchange between you and Mr Deal?
A. Yes, sir.

MR. KRISTINIK Your Honor, we would move to admit into evidence Defendants' Exhibit No 96.

MR WILLOUGHBY We have no objection.

THE COURT Okay

(Whereupon, Defendants' Exhibit No 96 was entered into the record as evidence)

MR. KRISTINIK. Mandy, please put this up on the big screen

And go to the second page, which is Bates page 5274. And please cull out the short text of that e-mail

BY MR KRISTINIK:

Q Would you please read your e-mail to -- your first e-mail to Mr Deal?

A Yes. "Nate, Frank also wants to know how much would it cost to unwind the transaction."

Q Okay And what was the date of your e-mail to him?

A Tuesday, January 13th, 2009.

Q. Would that have been before the unwind and roll?

A. Yes.

Q. And what you reflect in your e-mail here, is this something that Mr. Maybank had asked of you?

A. Yes.

MR. KRISTINIK: Thank you, Mandy.

BY MR KRISTINIK

Q Mr Mahfood, let me hand you what's been marked as Defendants' Exhibit No 194 Can you please tell us what this is?

A Yes, this is an e-mail from Nathan Deal to myself and Mike Lackey

Q And what's the date on this e-mail?

A. The date on this e-mail is Wednesday, January 14th, 2009

Q. And is there -- are there any attachments to this

e-mail?

A Yes, sir

Q Did you, in fact, receive this e-mail from Mr. Deal?

A I did.

Q. Do you believe this to be a true and accurate copy of the e-mail and the attachments that Mr. Deal would have sent you on January 14th, 2009?

A Yes, sir

MR. KRISTINIK Your Honor, we move to admit Defendants' Exhibit 194 into evidence

MR. WILLOUGHBY: No objection

THE COURT: All right

(Whereupon, Defendants' Exhibit No. 194 was entered into the record as evidence)

MR KRISTINIK. Mandy, if you would please put this on the big screen and just pull up the text of the e-mail.

BY MR KRISTINIK.

Q I'm not going to ask you to read it, Mr. Mahfood, but let me ask you, what was the purpose of Mr Deal's e-mail to you and Mike Lackey on January 14th, 2009?

A Would you repeat that question? I'm sorry

Q What was the purpose of Mr. Deal's e-mail to you and Mike?

A He was showing us the unwind and roll hypotheticals

that Mr Maybank was asking about and he was showing two different scenarios

Q Okay. Would his scenarios have been based on quotes from Deutsche Bank?

A. Yes

Q Let's go to the first attachment

MR KRISTINIK. So Mandy --

BY MR. KRISTINIK:

Q. All right. Is this the first attachment to Mr Deal's e-mail?

A. Yes, it is.

Q And tell us what this is

A It's -- it shows the underlined stock, which is BB&T. It shows the initial stock price, the number of shares. It shows you the floor level It shows you the cap level. And it shows you the proceeds -- the term. And then it also shows you what your net cash flow would be, if you decided to roll

MR. KRISTINIK Let's cull out -- Mandy, please cull out the shaded box in the upper right-hand corner.

BY MR. KRISTINIK:

Q Mr Mahfood, what is this box indicating?

A It shows you the current proceeds. And then it shows you the previous liability from the old Pre-Paid Variable Forward And then it shows you what the net cash flow is

And obviously if it's in parenthesis, that's a negative number.

Q Okay. So let's look at the middle number first. Previous liability What pre-paid would that relate to?

A That would relate to the very first pre-paid.

Q Okay. In this illustration, is that reflecting the cost to unwind the first pre-paid?

A Yes

Q. Now, if you look at current proceeds, the $3 5 million figure, where are those funds coming from?

A From the roll

Q. Okay So what does net cash flow represent?

A. The out of pocket that you would have to come out of pocket to unwind this pre-paid to enter into the new transaction

Q All right So this illustration in this box is intended to show the client's cash out of pocket to unwind and roll?

A Yes, sir.

Q All right

MR KRISTINIK Let's go to the second attachment, Mandy

BY MR KRISTINIK

Q. Is this also -- was this also attached to Nate Deal's e-mail?

A Yes
Q Okay And what's the difference between this illustration and the prior one we just looked at?
A Well, the first one was for two years This one is for three years And this one, the net cash flow is greater than the first one
MR. KRISTINIK Mandy, please pull up the shaded box, yes
BY MR. KRISTINIK
Q So what's the net cash flow indicated on the second illustration?
A $1,714,713
Q So for a three year the out of pocket would have cost more than a two year?
A In this scenario, yes.
Q What would you have done after you received Mr Deal's e-mail with these attached settlement illustrations?
A Given those to Mr Maybank
Q. Okay.
MR. KRISTINIK All right Thank you, Mandy.
BY MR KRISTINIK
Q. Did Mr. Maybank decide to proceed with the unwind and roll?
A. Yes, sir.
Q Okay Based on your participation in this transaction

and your interaction with Maybank, would he have been aware prior to the transaction that there was going to be an out-of-pocket cost exceeding one million dollars?

A Yes

MR WILLOUGHBY Object to the question

THE COURT. Basis?

MR. WILLOUGHBY. He's trying to -- he's trying to inquire as to what he -- his question --

THE COURT. Trying to speculate into your client's state of mind --

MR. WILLOUGHBY: Yes.

THE COURT -- so he can say what he knows of his only personal knowledge I sustain that.

BY MR KRISTINIK:

Q Mr Mahfood, those illustrations that we just looked at that showed a net cash flow exceeding one million dollars --

A Yes.

Q -- what would you have done with those?

A Given those to the client

Q. And would you have given those to Mr. Maybank before or after the execution of the unwind and roll?

A Before

Q Thank you.

Was there a call with Deutsche Bank related to the second pre-paid transaction?

A Yes
Q And tell us about that call
A That call was with Mr Maybank, Mike Lackey was on that call. Nate Deal was on the call And the people from the -- obviously Deutsche Bank, the third party were on the call.
Q. And what would have happened during that call?
A. The same thing, where they would -- they would kind of go over the terms of the Pre-Paid Variable Forward Contract and asked Mr. Maybank's consent.
Q. Was Mr Maybank required to confirm the terms of the second pre-paid?
A Yes, sir.
Q. At any time during the process of the unwind and roll did you ever make the statement to Mr. Maybank that his dividends would be protected by the pre-paid or that their continued payment would be guaranteed?
A No, sir.
Q Did you overhear anyone else with BB&T or BB&T Asset Management that would have made that kind of statement?
A No, sir.
Q Did Mr Maybank ever ask you if the pre-paid would protect his dividends and guarantee that they would be paid into the future?
A. No, sir.

Q Now, after the second pre-paid transaction was completed, did Mr. Maybank ever express any dissatisfaction to you?

A. He did regarding the actual fee that was charged.

Q What was the issue?

A His issue was the very first time that he did his Pre-Paid Variable Forward, BB&T gave him a deep discount on that, along with the managed portfolio where it was -- both of those services were deep discounted for Mr. Maybank. This time on this transaction they did charge the full fee. They did not discount it.

Q And was --

A They tried to discount it, but it wasn't discounted.

Q. And what was the difference between the prior one and the --

A Well, the -- his managed portfolio and his Pre-Paid Variable Forward Contract the first time were 35 basis points. This time it was a full one percent.

Q Okay. Did you recall any time after the second pre-paid transaction Mr. Maybank complaining to you about not knowing the amount of the out-of-pocket costs of the roll of the transaction?

A. No, his complaint was the -- you know, the fee that he was charged by it not being reduced.

Q. After the unwind and roll, did Mr. Maybank ever contact

you about additional pre-paid transactions?
A. Yes
Q. I'm going to show you what's been marked as Defendants' Exhibit No. 188. Can you tell us what this is?
A. Yes, this is an e-mail from myself to Nate Deal
Q. And what's the date of this e-mail?
A Tuesday, April 21st, 2009
Q. Is this a true and accurate copy the e-mail exchange between you and Mr. Deal on that date?
A Yes, sir
MR KRISTINIK: Your Honor, we would move to admit into evidence Defense Exhibit No 188
MR WILLOUGHBY: No objection
THE COURT: Okay.
(Whereupon, Defendants' Exhibit No 188 was entered into the record as evidence)
MR KRISTINIK Mandy, if you could please pull this up on the big screen. And let's look at Bates page 5455
BY MR KRISTINIK
Q All right, Mr Mahfood --
MR. KRISTINIK And let's cull out the text of that e-mail
BY MR. KRISTINIK
Q Could you please read your e-mail to us?

A. "Nate, I am sure you are watching Frank Maybank's Pre-Paid Variable Forward, as BB&T charges a one percent fee for the service. Seeing that BB&T is getting close to the ceiling what would it look like to unwind and restructure for three years?"

Q. And why are you asking Mr Deal at this time about an unwind and restructure for three years?

A. Because that was -- that was a question that came from Mr. Maybank

Q Okay And what did you mean when he referenced the one percent fee in this e-mail?

A. Meaning that that is the fee that BB&T charged him to do this. So, you know, you have an obligation to basically, you know, service their client. So if they are asking for this, because many times they want to ask for it and look at it, and you need to basically show them what they want

Q Okay What --

A. Even if it doesn't make sense to do it or not, but --

Q And what was Mr Deal's recommendation and response to your e-mail?

A. Not to roll it.

Q. All right

MR KRINSTINIK: All right. Thank you, Mandy

BY MR KRISTINIK

Q. This is my last exhibit.

Let me show you what's been marked as Defendants' Exhibit No 192, and can you please tell us what this is?
A. Yes, this is an e-mail from myself to Nate Deal
Q And what's the date on this e-mail?
A Friday, April 23rd, 2010
Q Okay And is this a true and accurate copy of your e-mail to Mr. Deal on this date?
A Yes, sir
MR. KRISTINIK Your Honor, we would move to admit this into evidence.
MR. WILLOUGHBY. No objection.
THE COURT Okay
(Whereupon, Defendants' Exhibit No. 192 was entered into the record as evidence)
MR KRISTINIK. Mandy, if you could please pull it up, and let's cull out the text of the body of the e-mail
BY MR KRISTINIK.
Q. Mr. Mahfood, could you please read us the e-mail that you would have written to Nate?
A "Thanks Nate I spoke with Mike Lackey and he was wondering if you could run some rollover scenarios for Frank Frank called in and asked to see some hypotheticals."
Q And why are you asking Mr. Deal about rollover scenarios?

A Because Mr. Frank Maybank was talking to Mike Lackey and asking him about these different -- about rolling it again and wanted to see what it would look like.

Q At any time during 2009, or 2010, after the second pre-paid, did BB&T or BB&T Asset Management assist Mr. Maybank with the execution of a roll of his second pre-paid? Did BB&T actually help him with any of these rolls that he was inquiring about?

A Meaning the next time he rolled one, did BB&T execute that?

Q No, I'm talking about you have testified that he, Mr. Maybank, came to you to ask about rolls, correct?

A Yes, sir

Q. In a response to those requests, did you, Mr. Deal, or the rest of BB&T ever actually move forward with executing an additional pre-paid for Mr Maybank?

A. No, sir

MR. KRISTINIK Thank you, Mandy.

BY MR KRISTINIK:

Q Were you aware that Mr. Maybank had a managed portfolio account with BB&T?

A Yes, sir

Q Okay Did that managed portfolio account close at some point in time while you were still at BB&T?

A. Yes, it did.

Q Did you ever tell Mr. Maybank that he could no longer be a customer of the BB&T Wealth Division because his account value was too low?

A Absolutely not

Q Is that something that you have ever told customers while you were with BB&T?

A No

Q Did BB&T -- based on your knowledge, did BB&T force Mr. Maybank out as a customer?

A No, sir.

Q I have no further questions.

Please answer the questions of counsel for the plaintiffs.

A. Okay.

THE COURT: How long do you anticipate?

MR. WILLOUGHBY. It's hard to predict, Your Honor.

THE COURT. I recognize that

MR. WILLOUGHBY: It would probably be thirty minutes, or more

THE COURT. Anyone need a short break? Okay They indicated -- we will just take a very short recess.

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

THE COURT. All right, sir, you can stand down. Don't talk about your testimony with anybody.

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

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

THE COURT Okay, cross.

MR. WILLOUGHBY: May it please the court?

THE COURT Yes, sir.

CROSS EXAMINATION BY MR WILLOUGHBY:

Q Good afternoon, Mr Mahfood

A Good afternoon, sir

Q I want to make sure, Mr Mahfood, the record is absolutely clear, and I believe it is, but let me ask these questions.

As a Wealth Management Advisor working for BB&T, you were not allowed to give investment advice to any customer, correct?

A. Yes, sir

Q And you did not give investment advice to any customer, correct?

A. Yes, sir

Q. And you did not give investment advice to Mr. Maybank, correct?

A Correct.

Q. And that would be true both for the initial pre-paid in August of 2006, and the rollover in 2009? You provided no

advice on either one of those?
A Correct
Q You provided no recommendation that the rollover would be in Mr Maybank's best interests, correct?
A Yes, sir.
Q And neither did you provide any recommendation or advice that the initial pre-paid would be in his best interests, correct?
A Correct, I did not give any advice
Q And, likewise, you were not in a position and your job responsibilities did not require it that you perform any suitability analysis for Mr. Maybank to determine whether or not the product and the strategy was suitable for him, correct?
A That's done by the alternative team, but, I mean, people knew Mr Maybank's situation
Q. Let me ask you this question If you will answer my question
My question is did you provide any suitability analysis for Mr Maybank regarding the first pre-paid that was done?
A No, sir, but I did know Mr Maybank's situation If I thought something was out of whack, I would have mentioned something
Q But you didn't do a suitability analysis for the first pre-paid, correct?

A. Formally, no, but I knew Mr. Maybank's situation, because, I mean, I was an employee at BB&T and people around knew Mr. Maybank's situation.

Q. And would it also be true that you didn't do a suitability analysis for the second pre-paid?

A Formally, no, but, like I said, I did know his situation.

Q And would it be fair to say that at the time that BB&T, in the 2006 time frame, had an initiative where alternative investments were one of the type investment products that was being promoted by the firm?

A. I would not say they were being promoted.

Q Did you have sales goals in which you were encouraged to participate in the sale of pre-paids to your client?

A. In pre-paids? I don't think there was anything specific to pre-paids in my -- are you referring to the 2006 matrix?

Q Well, let's see I'm going to hand you Exhibit 56.

MR WILLOUGHBY. Lindsay, if you would please pull that up for me.

BY MR WILLOUGHBY.

Q Mr. Mahfood, I have handed you Exhibit 56, which is in evidence.

Tell the ladies and gentlemen of the jury --

That, I believe, is a personal development plan for

you, correct?
A. Yes.
Q And --
A It's a six month review.
Q And would you look at the -- on the very first page does it indicate a date of 2/26/07 on the top right-hand corner?
A No, sir, I don't see it. I'm missing something. I see someone signed it 8/6/09
You said the first page?
Q Yeah, you are exactly correct Let's see if -- this is the 2009 I need the 2006
55
Yeah, I had the wrong exhibit, Mr. Mahfood. It's Exhibit 55, it appears to be
A. All right
Q And 55 -- well, this is that exhibit there.
Now, if we look at the date, it's 2/26/07. Is that the first personal performance plan for you for 2006?
A Could I look through this?
Q Sure, absolutely Take your time.
A (Witness examining document)
Yes, sir
Q. So let's take a look, Mr Mahfood
This would actually be a year-end report, is that

correct?

A To my knowledge.

Q. So basically the way the process works is at the beginning of a year you have goals established, correct?

A Are you asking me if BB&T has goals? Your question is a little confusing.

Q Sure.

Would it be fair to say that when you start off at the beginning of a year, you have a personal development plan in place that establishes goals for you?

A Yes.

Q And so when you get to the end of the year, then you meet with your supervisor and he provides you with guidance as to whether or not you achieved those goals and how you might reorganize to do better in the future, correct?

A It's an evaluation.

Q It's an evaluation.

So the goal is you set goals and then at the end of a year you evaluate how you performed and then maybe set new goals for the coming year, correct?

A Correct.

Q. So let's look at this.

MR WILLOUGHBY Lindsay, turn to --

BY MR WILLOUGHBY

Q In fact, if you will turn to the last page of that

exhibit, Mr Mahfood I believe you signed it on February the 27th of '07, is that correct?

A Yes, sir.

Q So your signature here, correct?

A Yes, that's my signature.

Q Okay. Now, let's look --

MR WILLOUGHBY: Bates number, Lindsay, 21836.

BY MR WILLOUGHBY:

Q And so --

MR WILLOUGHBY Cull out this, Lindsay.

BY MR WILLOUGHBY:

Q So you start off, the objective for the year is "achieve 2006 goals for income sales, loans, deposits and mortgages loan referrals." That was the objective, wasn't it, Mr. Mahfood?

A Stated by BB&T

Q And that was an objective that they gave to you to direct your activities during the 2006 calendar year, correct?

A I wouldn't use the word direct I mean, it was just those were goals out there that they put out there, but I wouldn't say direct They are not telling you, "hey, do this, do that Hey, you have to do this You have to do that."

Q But you understood it to be the direction of the firm,

the company, that you should try to achieve these objectives, correct?

A I viewed it as just what it says, goals. That's how I viewed it.

Q So let's see how you achieved on your goals

"Anthony produced fee income of 413,000 for 2006, which was 206.7 percent the goal." So you more than twice the goal that was set for 2006, correct?

A According to that, yes, sir

Q This included being the top producer of alternative investment fee income for 2006, that's correct?

A Correct.

Q Now, do you know, Mr Mahfood, whether you were the top producer throughout the whole company for 2006? Do you remember?

A I don't remember in 2006.

Q And then it states "he needs to continue to increase retail loan production while looking for opportunities for deposits and mortgage loan referrals." That was an objective too, correct?

A Yes, sir

MR WILLOUGHBY And then let's turn to the next page, Lindsay, 21837, please

And if you will cull out this section right here, Lindsay.

BY MR WILLOUGHBY

Q And it states "although he had excellent sales numbers in 2006, these goals were met through just a few very large sales and we cannot count on similar sales in 2007 occurring "

And those two very large -- or those few very large sales, Mr. Mahfood were -- I'm sorry, Mr Mahfood

Mr Mahfood, those sales, those few large sales, were Mr Maybank's pre-paid in 2006, Ms Effie Bowers pre-paid, and Mr. Effie Bowers daughter were the big pre-paid alternative investments that you had in 2006, right?

A Yes, sir.

Q. And let's look --

MR. WILLOUGHBY: You can bring that down, Lindsay

BY MR. WILLOUGHBY:

Q. And it would be true, would it not, that even though you were unable to --

MR. WILLOUGHBY: Pull up Exhibit 10, Lindsay, please.

BY MR WILLOUGHBY:

Q. I'm handing you Exhibit 10

A. Thank you.

Q And Exhibit 10 is an e-mail that you generated in which you are basically claiming credit for the matrix incentive system for Mr. Maybank's sales of pre-paid, correct?

A Yes, sir

Q. And it's my understanding that the reason you generate this e-mail -- and I believe the date of this e-mail is August the 10th, is that correct?

A. Thursday, August the 10th

Q. And that is actually the day before the pre-paid is actually executed, which occurred on August the 11th of 2006, did it not?

A I don't know the exact date

Q Let me hand to you Exhibit 9

A. This isn't -- you said this is claiming credit This is proactive system where you put tne referral in the system That's how this was generated

Q And by putting it in the system, you are advising the system that the system should give you credit?

A No, what it is is because you have other sometimes sales efforts in the system, and it's not until you get credit until it is actually closed out

Q Agreed

In other words, if it had not closed, then this would not have provided any credit to you But once --

A It would still be in the system.

Q It would still be in the system

But once the transaction closed, then this document would ensure that you got credit for the sale?

A. For tracking purposes This is for tracking purposes, yes.

Q And just so we will have that, here is the pre-paid, the very first pre-paid that was executed for Mr. Maybank What is the date of that pre-paid?

A. August 14th, 2006

Q That's actually the date that it's transmitted to you, but if you will look on the next page and see if there is a trade date

A The trade date is August 11th, 2006.

Q And would that be when the actual execution of the documents would have taken place, on August the 11th of 2006?

A Could you -- I'm confused on what documents you are talking about, sir

Q On the pre-paid

A Okay

Q What -- Exhibit 9 that you just looked at, would that indicate that August the 11th of 2006 is when the transaction was actually completed?

A Yeah, three days after the trade settles, but --

Q It settles three days after, but the execution was on August the 11th?

A. Yes, sir.

Q So let's look very quickly to your matrix

Just as I just showed you, let me hand to you what we will tender as the next trial exhibit

Let me ask this Is this a document in which you were given credit for the Effie Bowers transaction?

A Yes, sir

Q And this is a Wealth Management internal division sales report, is it not?

A Yes, sir

MR WILLOUGHBY Your Honor, we would move as the next trial exhibit this document.

MR KRISTINIK I'm waiting for him to lay a foundation about whether the witness prepared this

THE COURT Lay your foundation.

MR WILLOUGHBY Can we mark it for identification?

(Wealth Management Division Sales Report marked as Plaintiffs' Exhibit No 103 for identification)

BY MR WILLOUGHBY

Q Mr Mahfood, let me hand to you what has been marked for identification as 103. Is this a document that you would have reviewed when you were working at BB&T?

A Yes

Q And it's a document that is used internally by BB&T Wealth Management Division to track sales reports?

A Yes, sir

Q And it would be a document that would be created as a result of you inputting into the system a particular sales transaction that you had been involved with?

A Yes, sir

MR WILLOUGHBY: We would move the introduction of the exhibit, Your Honor.

MR KRISTINIK: Your Honor, objection based on he didn't actually prepare the document, and relevance.

THE COURT I don't know what -- what's the document?

MR WILLOUGHBY. Your Honor, he's testified that he had knowledge that the document would have been created as a result of his input into the system.

THE COURT Okay And relevance?

MR. WILLOUGHBY It shows that that he claims the credit for the sale of the pre-paid to Ms Effie Bowers.

THE COURT: Okay, subject to objection.

(Whereupon, Plaintiffs' Exhibit No. 103 was entered into the record as evidence)

MR. KRISTINIK Thank you, Your Honor.

BY MR WILLOUGHBY

Q And, Mr Mahfood, were you provided with -- were you, in fact, provided with the sales credit for Ms. Effie Bowers?

A. Yes, sir

Q Let me hand to you Exhibit 52, Mr Mahfood, which is already in evidence

Mr Mahfood, if you would take a look at Exhibit 52. And this is BB&T's sales incentive program, is that correct?

A That's what it says at the top

Q And is it your understanding that this document is what BB&T used internally to track sales that were done that were credited to you so that at the end of the year you would be eligible for bonus income or incentive income?

A Are you asking me it's their tracking device?

Q. Is it their tracking device?

A I think there is one of their tracking devices.

MR WILLOUGHBY. And, Lindsay, if you would pull that document up and turn to Bates No. 45207?

And if you will cull this out, Lindsay, please.

BY MR WILLOUGHBY

Q. Mr. Mahfood, if you would look at that page

Does this reflect that for the Trust Wealth Management Department at BB&T Bank -- and that's the bank, isn't it? This is not Asset Management This is the bank, correct?

A As you are referring to Trust Department, yes.

Q. So the Trust Department, WM -- do you understand WM to be Wealth Management?

A. Yes, sir.

Q. So the Trust Department and Wealth Management

So we have got an investment management account and it reflects a credit of $62,000 related to -- $62,500 for Francis Pelzer Maybank, is that correct?

A. I don't understand what you are asking me, because that that's not what I received That's just what gets credited towards that matrix Is that what you are asking me?

Q That's right It gets -- I'm not suggesting that you receive all of that --

A. Okay

Q -- but that gets -- that amount of money gets credited to the matrix, correct?

A Yes, sir As long as you are a performer, yes, sir

Q As long as you are a performer

And that matrix then determines what your bonus will be at the end of the year, does it not?

A. Yes, sir

Q Now, wouldn't it be true, Mr. Mahfood, that this $62,500 here relates to fees that are going to be credited to you as a result of the managed portfolio that's created for Mr. Maybank as a result of the Pre-Paid Variable contract that was sold to him?

A Mr. Willoughby, do you mind restating that question?

Q Absolutely.

Well, let's do it a little simpler

A Thank you

Q The 32,614 that's on the bottom line --
A. Uh-huh.
Q. -- relates directly to the Pre-Paid Variable and the fee that was earned by the bank and BB&T Asset Management for executing the transaction, correct?
A. To be honest with you, I don't remember exactly what numbers coincide with each other in 2006. I just don't remember from 2006.

But if you are saying that -- I'm not sure which one coincided with the investment management account or what coincided with the Pre-Paid Variable Forward
Q. Well, if I -- there are documents in the record, Mr Mahfood --
A. Uh-huh.
Q. -- that would show that the fee is 32,614 for the execution of the Pre-Paid Variable Forward?
A. Yes.
Q So if that is the fee for the execution of the pre-paid, then the 62,500 that's on this next line would be credit given to you for the creation of the Wealth Management account, correct?
A. That 62,000 you are saying coincides with the managed portfolio?
Q Yes.
A. Is that what you are saying?

Q That's right
A That coincides, yes
You are asking me in 2006. I don't remember if those are the actual discounted rates that Mr Maybank got or not, sir.
Q. So you don't know if the numbers are correct?
A. I mean, I don't know if took into account the discounts that Mr Maybank received, but they do coincide with the Pre-Paid Variable Forward and the managed money account.
Q But you would have gotten credit for two sources of revenue?
Source one is the sale of the Pre-Paid Variable, correct?
A. Yes, sir.
Q And the second source would be for the creation of the wealth management account, correct?
A Yes, sir.
Q And, likewise, when the rollover was done in 2009 --
Let me hand to you what's been marked as Exhibit 53 That's in evidence
Do you have 53 in front of you, Mr. Mahfood?
A Yes, sir
Q. And this is a --
MR. WILLOUGHBY Lindsay, if you would cull that up as well

BY MR. WILLOUGHBY:

Q. It's a total compensation statement for Mr. Anthony Mahfood. Is that what it appears to be?

A. Yes, sir.

Q. And if you would turn to --

MR. WILLOUGHBY: Lindsay, if you would go to Bates No. 45123, and if you would cull out 45123. If you cull out right here, please.

BY MR. WILLOUGHBY.

Q. And this is the rollover single stock risk management and show that you are getting credit for a fee of $43,655, correct?

A. Yes, sir.

Q. So --

MR. WILLOUGHBY: And then if we go to the next page, please, Lindsay.

BY MR. WILLOUGHBY

Q. And later that year --

MR. WILLOUGHBY. Right in here, Lindsay, is Ms. Bowers' situation. If you would turn to that page as well.

BY MR. WILLOUGHBY

Q. We have Ms. Effie Bowers, and I believe that number is 59,701.

And then right below is Lucy Bowers of 11,293.

You received sales credit for those rollovers that

occurred in 2009 also, did you not?
A Yes, sir, I did.
Q Thank you
And let me hand you Exhibit 23, Mr. Mahfood.
You were asked some questions about the two insurance policies
Let me ask you this Do you have any recollection of referring or suggesting that Mr. Maybank talk with the Chesson & Company in Raleigh about insurance?
A No, sir, Mr Maybank met the Chessons at my wedding.
Q He met them at your wedding?
A Yes, sir
Q What is your relationship with the Chessons?
A Friends
Q. You have known them for a long time?
A. Yes, sir
Q. And they -- you knew them well enough to invite them to your wedding?
A Yes, sir.
Q. And the Chesson Company is an insurance brokerage firm in Raleigh, North Carolina?
A I don't know what their exact title is, but they are based in Raleigh, North Carolina
Q Now, exhibit --
MR. WILLOUGHBY: Lindsay, if you will pull that

exhibit up It's Exhibit 23 And if you will cull this out

BY MR. WILLOUGHBY

Q. Is this an internal e-mail, Mr Mahfood?

A This is just -- this is generated from the same proactive system that you referred to. I don't remember what exhibit, but your earlier exhibit

Q So it's an internal proactive system that is used by BB&T for you to input data so that sales credit is properly tracked, correct?

A Yes, sir

Q And this is you inputting data to ensure that the sales credit is given to you for the sale of two policies of insurance that actually was made at Scott & Stringfellow through Mr Edgar Norris, correct?

A I do not remember if it is two, but -- the two I'm not sure about, but --

Q So you don't remember whether it was one policy or two policies, but, in any event, this document is where you input into proactive system to get sales credit for those policies?

A Yes, sir

Q. Would it also be true, Mr Mahfood, since the bank was the trustee of the insurance trust, that a bank officer would have to consent to any assets being either removed

from the Trust or put into the Trust?
A. I'm not a trust expert Your would probably have to ask one of the trust experts.
Q So you don't know whether or not you had to get any approval for those policies to be placed in the Trust or not?
A. What I'm saying is I'm not a trust expert You would have to actually ask a trust expert.
MR. WILLOUGHBY: And you could pull that down.
BY MR. WILLOUGHBY:
Q Mr Mahfood, I'm going to hand to you what is not in evidence, but it's a document and ask if you can identify this document?
A Do you want me to --
Q. It says sales tracking and incentives. Is it a document that you are familiar with?
A. Yes, it says sales tracking and incentives for Wealth Management Advisors
Q And is that your name and your officer number?
A Yes, sir, it is.
Q And would this be the type of report that you would get from time to time and that it would be influenced by the data that you put in the proactive system for sales that you took credit for?
A To be honest with you, I don't know how often we did

receive these This was dated '07. I just can't remember that far back --

Q Sure.

A -- but this is the sales tracking and incentive and I'm sure I did receive it I don't know often I did receive it

Q Okay

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

(Sales Tracking and Incentives Report marked as Plaintiffs' Exhibit No. 104 for identification)

THE COURT: Any objection?

MR KRISTINIK: One moment, Your Honor.

(Off the record)

(Back on the record)

MR KRISTINIK: Your Honor, no objection.

THE COURT: Okay

(Whereupon, Plaintiffs' Exhibit No. 104 was entered into the record as evidence)

BY MR. WILLOUGHBY

Q Mr Mahfood, I'll hand the exhibit back to you

MR WILLOUGHBY. And, Lindsay, if you would pull that document up.

MR. BROWN Your Honor, the one on the screen is different than the one we were provided.

THE COURT: Well, get this organized

MR WILLOUGHBY Yeah, pull that down, Lindsay.
BY MR WILLOUGHBY
Q. We will not use the screen, Mr Mahfood.
If you will look at page -- the ladies and gentlemen of the jury will have this document available to you.
MR. KRISTINIK Your Honor, I guess my question is which one just got admitted into evidence, the one we were shown or the one that he's shown the witness?
MR. WILLOUGHBY. The one that you have a copy of is the one that is in evidence
THE COURT Well, would you like to come up and examine the one that's been marked?
MR KRISTINIK I'll take his word for it, if he says there is no handwritten notations or anything else on it.
MR. WILLOUGHBY There is no handwritten notations on it.
THE COURT Okay
MR KRISTINIK All right. We are good, Your Honor
BY MR. WILLOUGHBY:
Q. If you will look at the section that's highlighted there, Mr. Mahfood, which is a -- and if you would, read the line and the relationship?
A "Scott & Stringfellow, S&S Retail," is that where you

want me to --
Q. Yes.
A. Highlighted and noted?
Q. Right
A. "S&S Retail, 6/28/2007, Scott & Stringfellow Relation, 47,000, Francis Pelzer Maybank 1,600 "
Q And do you understand that that that credit of $47,000 was given to you related to the sale of insurance policies that were actually made at Scott & Stringfellow, but because it was a Wealth Management client you were able to claim credit for those things?
A. Yes, sir.
MR. WILLOUGHBY: You may turn the lights up.
BY MR WILLOUGHBY:
Q Now, Mr. Mahfood, just a couple of final questions and I think we will be through
MR. WILLOUGHBY: Exhibit 7, if you will pull that up, Lindsay
BY MR WILLOUGHBY:
Q. Do you have Exhibit 7 in front of you, Mr Mahfood?
A. Let me look
Q I have got it right here.
A I don't see it, Mr. -- thank you
Q. Now, this document bears your signature, does it not?
A Yes, sir.

Q. And I think you indicated that everything in that letter you believed to be true and accurate, correct?
A. To the best of my knowledge, yes, sir.
Q. And you were sending this memorandum, an internal memorandum, to the general counsel of BB&T Corporation, correct?
A Yes, the general counsel had to approve of Mr Maybank's transaction
Q. And you knew that they would be depending -- or she would be depending upon the truthfulness of the representations that are made in the letter for her to do her analysis and make her approval, correct?
A. Can you ask that just a different way? You are confusing me a little bit
Q. Well, was she going to count on the accuracy of the letter in order to make an approval?
A. I don't know how she -- I forget her name, but I don't know how she -- Pat -- I don't know how Pat made her decision.
Q Sure
I'm not asking you do you know how she made her decision, but you would have understood that she would have relied upon the accuracy of this letter in making her decision?
A Well, I think she's relying on the fact that she was

having to sign off if someone enters into a transaction with BB&T, that you cannot go purchase additional shares of BB&T That's what I understood Now, I can't speak for her, but --

Q. But everything in that letter you believed at the time that you signed it, you believed it to be truthful and accurate?

A. Yes, sir, to the best of my knowledge

Q. Thank you

And one final question, Mr. Mahfood is --

MR WILLOUGHBY: If we can turn the lights back up.

Lindsay, you can pull that down.

BY MR WILLOUGHBY

Q. When you went out into business with Parallel, I think one of the reasons that you chose the name Parallel is because the theory is that you operate your business so that your interests is parallel with your client's interests, correct?

A. Yes, sir

Q. And, in fact, one of the things that your firm is very proud of and that you all know is that "we don't earn money from transactions or commissions We feel that if you are incentivized in transactions or products, there can be a conflict of interest " That's one of the positions that you

all have had, correct?
A Yes, sir.
Q And say you only earn money today in your current business on the annual management fees which keeps the costs for your clients transparent and easy to understand and parallel with the interests of the firm, correct?
A. Yes, sir.
Q. And you believe that's a fair and proper way to manage your business in the best interests of your customers, correct?
A. We believe -- myself and my partner and their other employees we have in the firm, we believe that.
Q And is it true that in your relationship with your customers there, as in your relationship when you were at BB&T, that you owe your customers a fiduciary responsibility?
A. Yes, sir.
Q Thank you very much. Those are all of my questions.
MR. KRISTINIK: A few questions on redirect.
THE COURT: All right.
REDIRECT EXAMINATION BY MR. KRISTINIK
Q. Mr. Mahfood, you were asked about fiduciary responsibility Was there ever any point in time where you thought that you were not taking actions that would have been in the best interests of Mr. Maybank?

"No, I don't I was just informed to do it and I did "

THE COURT Okay Well, if they put him up, it sounds like pretty darn good cross-examination and-- you know, David versus Goliath

MR JOHNSON Your Honor, it has no probative value to the issues in this case

THE COURT Yeah Well, I will just have to think about it over lunch So you all have a good lunch.

MR WILLOUGHBY. Thank you, Your Honor

MR KRISTINIK. Thank you.

MR BROWN Thank you, Your Honor

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

THE COURT All right, we have got the same request as yesterday about five o'clock We will make it a Court's Exhibit We'll just see how it goes

(Jury Note marked as Court's Exhibit No 9 for identification)

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

THE COURT Okay, call your next witness

MR BROWN. Your Honor, we would call Edgar Norris

EDGAR NORRIS, having been first duly sworn, testified as follows:

THE CLERK Please state your name for the record.

THE WITNESS Edgar Norris.

THE CLERK Thank you. You may be seated

DIRECT EXAMINATION BY MR. BROWN

Q Mr Norris, can you tell us where you work?

A I work at BB&T Scott & Stringfellow.

Q. And what do you do there?

A I'm a financial advisor

Q And how long have you worked as a financial advisor?

A Beginning in 1972, and then my firm was acquired in 2000 by BB&T

Q Do you know Mr Maybank?

A Yes, I do.

Q. How long have you known Mr Maybank?

A Going back into the sixties, I think

Q And have you worked with Mr. Maybank?

A Yes, I have

Q Has he placed an investment account with you, with you as his financial advisor?

A I assumed the responsibility for the account in, I think, 2003

Q And for that account are periodic statements issued?

A. Yes, statements are issued monthly

Q And what is the purpose of those statements?
A Well, it's a record of the ownership of the assets and activity in the account
Q. I'll hand you a document which has been marked as Defendants' Exhibit 64-120 Do you recognize those documents?
A Yes, I do.
Q What are those documents?
A These are monthly statements of the summary of the assets and the activity in the account, the value of the securities, and they are sent monthly.
Q. And whose account are those for?
A For Mr. Maybank Francis Maybank
MR BROWN. Your Honor, we would move that into evidence
MR WILLOUGHBY No objections, Your Honor
THE COURT Okay
(Whereupon, Defendants' Exhibit No 64-120 was entered into the record as evidence)
BY MR BROWN
Q In your experience working with Mr. Maybank, does he have a practice of using margin debt for investment purposes?
A. Yes
Q. I'm going to hand you a document that's already in

A. It's what we call a confirmation or record of transaction.

Q And for whose account is that record of transaction?

A For Frank Maybank

Q. And what is the date of that transaction?

A. It's for September 22nd, 2006

MR BROWN. Your Honor, we would move Exhibit 172 into evidence

MR WILLOUGHBY No objections, Your Honor

THE COURT Okay

(Whereupon, Defendants' Exhibit No 172 was entered into the record as evidence)

BY MR. BROWN:

Q On this transaction there is a notation of what was bought What was purchased by Mr. Maybank in September of 2006?

A. It is a transaction of the purchase of 4,000 shares of BB&T

Q And underneath the listing what was purchased, there is a statement "preferred rate applied unsolicited " What does unsolicited mean there?

A Well, that means that I did not solicit the transaction from him or for the purchase of the security

Q Okay Does that mean he came to you asking to make that transaction?

A. That's correct.
Q. So it was his idea?
A. Uh-huh.
Q. In 2007, did Mr. Maybank also come to you about buying insurance?
A Yes, he did.
Q And, again, was that something that you sought to sell to him?
A No, I did not.
Q. It was his idea to come to you asking for more insurance?
A. That's correct
Q When he came to you, did you choose what type of policies would be sold?
A No, I didn't.
Q. Who made that decision?
A Well, he told me the kind of policies that he was interested in, and then I went out to a broker who our firm used to evaluate different structures and pricing and quality, and we looked at various underwriters to see which one would be preferable.
Q. And in that process -- let me back up.
Was selling insurance something that you did on a regulars basis?
A. Very seldom

Q. So when Mr. Maybank came to you for insurance, was that sort of out of the ordinary?
A Well, yes, uh-huh
Q. And when you sold him those policies, were you trying to sell him what he had asked for?
A Yes, that's what I did
Q In January of 2009, before Mr. Maybank entered into his roll of his pre-paid, did you know he was going to roll his pre-paid?
A No
Q And did he come to you for advice on pre-paid?
A No

MR. BROWN: Your Honor, that's all I have.

Please answer any questions that plaintiffs counsel may have for you.

CROSS EXAMINATION BY MR WILLOUGHBY:

Q Mr Norris, I just have one question

The exhibit that was tendered into the record, Exhibit 172, which reflects the trade that was done in September of 2006, is that correct?
A That's correct
Q Were the funds to do that trade taken out of the account at Scott & Stringfellow?
A I would have to see how the transaction was paid for, but my memory is that it was a margin purchase.

for them.

Q. Tell us what Private Financial Services meant back at that time.

A. At that time there was a separate Trust Division, and so what we did in Private Financial Services was we took care of the top clients and the bank and their banking needs, whether it be loans, deposits, mortgages, things of that nature.

Q. Was this the predecessor to what would later become the Wealth Management Division?

A. Yes, after about a year they combined the Trust Division and Private Financial Services Division together in creating Wealth Management.

Q. So what year did you start at BB&T in Greenville?

A. 2002

Q. So you have been here in the Greenville office for BB&T for about 12 years?

A. Correct.

Q. Okay And I didn't ask -- I don't know if I have asked about all your college education.

In addition to the degree from the seminary, do you have any other graduate degrees?

A. Yes, I have a Masters in Business, an MBA Masters in Business

Q. And wnat institution did you receive that from?

A. Anderson University.
Q And what year would you have received that?
A. I believe it was 2011
Q. Do you continue to have any other affiliation with Anderson University?
A Yes, I'm an adjunct professor for them and I teach at the College of Business I teach business ethics.
Q. What was your first position for BB&T, once you started in Greenville?
A My first position in Greenville?
Q Here in Greenville for BB&T
A I was the head of what they called Private Financial Services at that time, I took care of what we called their ultra high net worth clients

Then there was another division that took care of -- there was about five or six individuals that were in -- they took care of high net worth individuals, but weren't as high as the ones I took care of, and they reported to me as well
Q So you were a manager?
A. I was a manager as well as a producer.
Q. And what was the title that you had?
A. It was senior vice president I believe it was Private Financial Services Manager
Q. Let's move forward to 2006

What were your responsibilities at BB&T in 2006?

A. I was the wealth team director here
Q Did you continue to have supervisory responsibilities?
A Yes, I did
Q Did you hold any FINRA licenses?
A Yes, I did. In 2006, I held a Series 7 and a Series 63
Q And did you later obtain any other licenses?
A. Yes, later, I believe it was in 2007, or 2008, I obtained a Series 24 as well
Q. Do you have any other professional licenses or designations?
A Yes, I'm a Certified Financial Planner as well.
Q Are you licensed to sell insurance too?
A. Yes Yes, I am I have a -- for life and health license
Q. What is the purpose for you to have the Series 7 and Series 63 and Series 24 licenses?
A And the life and health, too. They are all for incentive purposes
Q Who was employed in the Wealth Management Division in Greenville back in the 2005, 2006 time frame?
A Well, we had -- Wealth Management advisors would have been Frank Maybank, Anthony Mahfood, Josh Foster, and Don Watson would have been the four Wealth Management advisors.
We had personal trust specialists Anna Mumbauer and

Judy Schoemer

We had financial planner Clark Anderson.

And then we had four associates as well that were assistants to help us with the banking needs primarily.

Q And was there a portfolio manager that worked in the Greenville office with you and your team?

A Yes, Kris Kapoor worked for BB&T Asset Management and he sat with our team.

Q Let me show you a document what's been marked Defendants' Exhibit No 94. Can you tell us what this is?

A Yes, this is a marketing piece that we gave to prospective clients.

Q And what kind of information is on this marketing piece?

A It talked about who were the team members of our team, and it gave -- as well as other affiliates, with the other team members that we considered an extended part of our team affiliates within BB&T. It includes bios on all those individuals I just mentioned, as well as some other people that we have heard mentioned about.

Shawn Gibson's bio is in here as well, as well as somebody from Scott & Stringfellow, not Edgar Norris, but one of his compatriots and some others.

Q Is this document, which has been marked as Exhibit No 94, is this something that you and others with the Wealth Management team would share with clients?

establish, you know, financial goals And then if those needs could be filled within somewhere within BB&T's footprint, we would seek to bring in a specialist to help address those needs

Q. What were the types of services offered within the larger BB&T organization?

A. They varied. We have a big umbrella.

BB&T Insurances, one of the top five or six brokers in the country, so we are the largest insurance provider in South Carolina. So, you know, often it would be either property and casualty insurance, or life insurance needs. We would introduce them to the specialists there.

If it was investment needs, we would work with the client. And if that client was -- depending upon their needs, we would use either BB&T Investment Services, Scott & Stringfellow, or BB&T Asset Management to help with their investment needs

If we were working with a business owner who had a business and maybe he wanted to retire and sell his business, we had BB&T Capital Markets. We could bring them in to help them to sell their business.

Mortgage, if they needed a mortgage, we would bring in mortgage loan originator and help them with that, so it varied I could go on

Q Okay

A Variety.
Q. Well, let me ask my next question. On your team what was the role of a wealth advisor?
A He was the primary, sort of the hub of a wheel, and we actually used a wheel as sort of a marketing piece, too, where he would be the relationship manager. He would be the one who would coordinate whatever specialists needed to come in to help address the needs of a client.
Q Would a wealth advisor ever be allowed to give investment advice to a client?
A No.
Q Who within the organization, the BB&T organization, would give investment advice?
A Either BB&T Asset Management, Scott & Stringfellow, or BB&T Investment Services.
Q. Was there anyone in your office in 2006 who could give investment advice?
A Kris Kapoor was with BB&T Asset Management and he physically resided in our office, although he didn't report to me. He was one of our -- one of our specialists that we would bring in
Q. Were you Frank Maybank's supervisor?
A Yes, I was.
Q And what was Mr Maybank's position on the Wealth Management team?

A He was a Wealth Advisor 4, which was our highest level of wealth advisers.
Q And did he carry any other titles? Was he a vice president?
A Yeah. He was a senior vice president, actually, yes.
Q. And what were Mr. Maybank's job responsibilities?
A The same as any other wealth advisor; to assist clients to meet their financial needs, to bring in specialists to help those clients, whatever their needs were.
Q. Okay. We have heard Shawn Gibson's name some during the trial. Did Shawn Gibson -- do you recall any presentations that he would have made to your Wealth Management team with respect to concentrated stock positions?
A Yes, he made several presentations to us about that.
Q And would he ever provide written materials related to those presentations?
A Yeah, almost -- almost all the time he would provide a POWER point. He would send out that ahead of the presentation. A POWER point deck of slides that he would follow through and -- while we were on the phone with him and we would follow -- he would follow through with that, so we could follow along with his illustrations.
Q What are some of the solutions for concentrated positions that he would include in his presentations?

A. Exchange traded funds Selling the stock Pre-Paid Variable Forward contracts would be one Using collars, puts and calls are other things.

Q Did Mr. Gibson place any particular emphasis on any of these strategies that were presented?

A. Not that I can recall.

Q During any of the time that you have worked in the Wealth Division at BB&T, has there ever been a preference for pre-paids over other solutions for concentrated positions?

A. No

Q What's the purpose of providing information to wealth advisors about solutions for concentrated positions?

A. Well, just like anything else, like we had presentations from BB&T Capital Markets. We didn't help clients sell their business, but we needed -- we had clients that wanted to sell their business, and so it was important for us as the relationship manager to know what products and services were available within the BB&T footprint that we could -- you know, if we had a specialist that specialized in a certain area and we had a client that had a need in that area, we could then direct them to that person.

Q. Was it ever the job of a wealth management advisor to make a recommendation to a client about what would be the appropriate solution for them or their concentrated

positions, if they had one?

A No.

Q. What were the wealth advisors supposed to do if they had identified a client that had a concentrated position?

A They would call Shawn Gibson, or somebody on his team, from the alternative investments area.

Early, early on, again when Shawn worked for Scott & Stringfellow, we would call maybe Edgar Norris, or somebody like that at Scott & Stringfellow to bring in Shawn Gibson.

Q. Did Mr Maybank at one point in time become a client of BB&T with respect to his investments?

A Yes

Q Okay. And do you remember approximately --

Well, did he open a portfolio account?

A After the pre-paid, he took the proceeds of that pre-paid, and after paying off his margin debt, the remaining balance, he opened up an investment and management account with us.

Q. What were the criteria -- going back to 2006, what were the criteria for an individual to be a Wealth Management Division client at that time?

A Either a $5 million net worth, or $1 million in liquid assets

Q. And what happens if a client falls below either or both of those criteria?

A We continue to work with them

Q If Mr. Maybank had fallen below either of those thresholds, would BB&T have continued to work with him?

A. Yes.

Q And do you have other clients where that situation has actually happened, where they fell below one of those or both of those criteria?

A. Yes.

Q. And what do you do? What did you do in those situations?

A. Well, for instance, in 2008, 2009, when the market took a deep dive, I mean, we had clients that their assets fell below a million dollars and we continued to work with them and they are now back, and we continue to work with them today.

Q You are aware that Mr Maybank entered into a Pre-Paid Contract in August of 2006 --

A Uh-huh

Q -- correct?

And is it your understanding that an advisory fee was charged?

A Yes.

Q Was that fee discounted?

A Yes, it was

Q. And please tell us about that.

A My voice is -- I'm losing it. Excuse me, I keep drinking water.

Could you repeat the question, please?

Q Did you have involvement in discounting of the advisory fee for Mr. Maybank's first pre-paid transaction?

A Yes, I did.

Mr Mahfood I believe came to me and said that they were doing this pre-paid and asked if we could -- I don't know whether Frank instituted it or Mr Mahfood, but I believe Frank asked him for a discount and asked if I could -- I think he had -- I think Mr Mahfood had already spoken to Shawn and said they weren't going to discount it and asked -- asked if I would talk to Shawn and see if we could get it discounted for Mr. Maybank.

Q And did you have that conversation?

A I did. I did. I reminded Shawn that Mr Maybank had been very influential in bringing in Ms. Bowers' relationship and that he had been influential in the sale of that pre-paid, or the -- you know, that -- the advising of Ms Bowers and then that pre-paid.

And I also reminded him that he was an employee And basically after some negotiating, Shawn agreed to discount it down to I believe 35 basis points

Q Could you explain to us what 35 basis points means?

A Yeah, it's 35 of one percent. Our standard rate, I

believe at that time for the size that his was, would have been point 75 of one percent and. We negotiated it down to .35 of one percent, so a little bit less than half of what the normal fee would have been.

Q. And Mr Maybank opened a portfolio account with the proceeds from the pre-paid?

A. Correct

Q. Was that fee, the fee related to the managed portfolio, was that also discounted?

A. Yes, that was even more deeply discounted.

Our standard fee then -- again, it's the graduated fee, so I don't know exactly what it would have been, but it probably would have been close to one percent, and we negotiated that down to .35 of one percent as well. And I had to go to two levels above me to get it to go down that much. I didn't have that authority to discount that high. I went to Melissa Fritz and Eric Counts to get that lowered

Q So the fees for both the first pre-paid transaction and for the managed portfolio account, both of those discounted and set at 35 basis point?

A. Correct.

Q Now, to open his portfolio account, was Mr Maybank required to execute a Wealth Management Agreement?

A Yes, in order to open any relationship with us, we would require that, yes

Q Let me show you what's been marked as Defendants' Exhibit No. 27 Can you tell us what that is?
A This is the BB&T Wealth Management Agreement, dated the 23rd of August, 2006, for Mr Maybank
Q Would this copy of the agreement and the attachments to it have come from BB&T's files?
A Yes, I believe so
Q Please describe for us what the attachments are to the agreement
A The agreement is essentially -- well, the first part of the agreement is an eight page agreement. And then there is Appendix B, which is sort of unusual, because Appendix B is prior to Appendix A, and then there is a second same copy of Appendix B. So there is two copies of Appendix B in here. And then there is a Form ADV, which is -- this is something we are required to give, because it was a tri-party agreement between BB&T and BB&T Asset Management, and the ADV is something that's required because BB&T Asset Management being a registered investment advisor
Q Are these attachments, are they the standard attachments that you would have had for Wealth Management Agreement back in 2006?
A. Yes
MR KRISTINIK: Your Honor, we would move to admit into evidence Defendant's Exhibit No 27

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

THE COURT Okay, Mr. Kristinik

MR KRISTINIK. May it please the court?

BY MR KRISTINIK

Q. Mr. Walters, during the break Mr. Willoughby and I have found a copy of the exhibit on the Agreed Exhibit list and we are going to use this one, so let me hand you Agreed Exhibit No. 70, and if you will just take a quick look at that.

Is that the same Wealth Management Agreement with Mr Maybank with him same attachments that you had previously discussed with us?

A. Yes, it appears to be, uh-huh

MR KRISTINIK. Let's project the first page, Mandy And, Mandy, please cull out the third paragraph

BY MR KRISTINIK.

Q. Mr Walters, in the third paragraph it the says "bank shall", and there are three obligations listed under that paragraph. Do you see that? Do you see what I'm referencing?

A Yes, I do

Q What entity had responsibility for making sure that these obligations were performed?

A. The bank

Q And were these obligations performed for Mr Maybank?
A Yes, they were
Q Okay With respect to Mr Maybank, who would have performed each one of these obligations? Please walk through them one, two, and three
A Well, small Roman Numeral (i), "gather information from the client regarding the client's investment objective, risk tolerance and investment horizon, tax status, financial situation and needs." That would have been a combination between BB&T Bank and BB&T Asset Management

Roman Numeral (ii), "make recommendations to the client regarding an investment program and investment guidelines for the account." That would have been BB&T Asset Management

And (iii), "coordinate and support -- or, I'm sorry, "coordinate and supervise the services of the investment advisor and the custodian for the account " That would have been the bank.

Q Which individual assisted -- which individual and what management team in your office would have assisted Mr Maybank with respect to item number (ii) in this paragraph?
A That would have been Kris Kapoor for BB&T Asset Management.
Q Does the Wealth Management Agreement, does it make a client aware that BB&T Asset Management is going to be

performing investment-related functions for the client?
A Yes, it does
Q Can you walk us through that and tell us how it does that?
A I believe there is three different locations within this document that specifically spell out that BB&T Asset Management is the investment advisor and will fulfill those obligations.
Q Okay. The where is the first place
A The first one is on page 2.
MR. KRISTINIK Mandy, just leave that up for now, okay?
A. Paragraph 2.
BY MR KRISTINIK
Q And tell us what in that paragraph is relevant for your answer?
A Well, it says the "investment advisor is hereby granted complete discretion to purchase or sell assets in the account."
It goes on to list some other things, and it clearly identified them back on page one that the investment advisor was BB&T Asset Management
Q Okay. Any other places in the agreement that would put the client on notice that BB&T Asset Management is assisting or handling investment functions?

A On page 8 in the signature area, it says "BB&T Asset Management, Inc. Accepts its designation as investment advisor in accordance with the terms and provisions of this agreement "

And it says BB&T Asset Management, and Kris Kapoor signed on behalf of BB&T Asset Management

Q. And who did Mr Maybank think that his portfolio manager was going to be after he opened the account?

A Kris Kapoor.

Q. Are there any other places in the Wealth Management Agreement to which you refer?

A The final place is Appendix B.

MR KRISTINIK Mandy, please pull up Appendix B, bates page 11

A 11.

MR KRISTINIK All right. And why don't you pull up the first paragraph, Mandy

A Here it says "investment advisory services are available through BB&T Asset Management, Inc., a subsidiary of BB&T Corporation. BB&T Asset Management, Inc. Advises customized investment portfolios, provides asset allocation analysis and offers other investment-related services to affluent individuals and businesses Wealth Management and Custody Services are available through Branch Banking and Trust Company, a subsidiary of BB&T Corporation "

is that the bank and BB&T Asset Management shall in that first line there

Q. Is that a change that is necessary to make it accurate?

A No

Q. And why not?

A. Because the bank -- it was -- the contract was fulfilled and the bank made sure it was fulfilled

MR KRISTINIK. Okay. That's good, Mandy

BY MR. KRISTINIK:

Q. Did Mr. Maybank open a credit line with BB&T?

A Yes, he did

Q. Will you please tell us --

I'm handing you what's been marked as Defendants' Exhibit No 66. Can you please tell us what that is?

A. This is a Wealth Management credit line agreement and initial disclosure statement

Q And what customer is this for?

A For Francis Pelzer Maybank.

Q Are you familiar with the credit line agreements used by BB&T back in the 2006 time frame?

A Yes, I am

Q. Does this appear to be a true and accurate copy of the agreement for Mr Maybank's credit line?

A Yes, it does

MR KRISTINIK Your Honor, we would move to admit

I guess the letter that Mr. Mahfood addressed earlier in the earlier testimony where we sought the general counsel's approval of the transaction because of Mr Maybank being the client -- I am an employee of BB&T. Apparently it wasn't expedited in the manner Mr Mahfood and the rest of the team wanted and they asked if I would sign a second letter to send to the general counsel to see if I could expedite it, which I did.

Q Would your letter have been worded the same as the letter signed by Mr Mahfood?

A. It was the exact same.

Q Did you read -- the letter that you signed, did you read that before you signed it?

A Yes, I did.

Q Did you -- based on your knowledge and understanding of pre-paid transactions, would you have -- did you see anything that you believed to be inaccurate or not correct in that letter?

A I did not.

Q Did you ever give any advice to Mr Maybank about any of its pre-paid transactions or with respect to his concentrated stock position?

A No, I did not

Q You have heard the testimony that Mr Maybank had an out-of-pocket expense of $1 3 million to unwind and roll the

pre-paid

After that transaction in January of 2009, did Mr. Maybank ever come to you to complain about that out-of-pocket cost and to request your assistance with reversal of the pre-paid?

A. He did not

Q. Since the time that Mr Maybank -- since the time of Mr. Maybank's pre-paid transactions, have you spoken with him about those transactions at any point later in time?

A. Mr Maybank called me in I believe it was August of 2010 and asked if he could come in and speak to me, which we met later that afternoon And at that point in time he requested a meeting with someone in senior management of the BB&T Wealth Division. We had a meeting and then he -- at that point he did express concerns over his financial situation, the fact that he felt at that point he thought he had lost approximately three and a half million and that he was -- he was feeling like he couldn't afford to make his insurance payments

Q. After that meeting and after his request, what did you do next?

A I called my boss, Melissa Fritz, and together or somehow we got David Fisher on the line, who was the head of the Wealth Management Division at that time, and I told him that Mr Maybank -- actually Mr Maybank asked if he could

go to Charlotte to meet with him, and Mr. Fisher said "no, I would prefer to come down to Greenville" and not make him have to travel, and so I arranged a meeting. I called Mr. Maybank back and arranged a date and time for the two of them to meet

Q And was that meeting held?

A. That meeting was held I believe it was about a week later. It could have been ten days later, and it was held in my office here in Greenville

Q And tell us -- tell us what happened during the meeting.

A Mr Maybank expressed to Mr Fisher I'm concerned over his loss I believe at that point in time he said it was four and a half million, and he said that he had been conversing with his CPA and his CPA had been advising him on this and felt that the loss was four and a half million and he wanted to -- he wanted remuneration He wanted BB&T to pay him for his losses And we offered to sit down with his CPA to discuss it and go over it in greater details at a later date.

Q Was that the end of the meeting?

A. Yeah, pretty much. I mean, the meeting went on for a good thirty, forty minutes, probably, but --

Q All right I just want to ask you about one more thing and then I will be done with my questions I want to ask

you just a couple questions about the Insurance Trust.

Did you have any involvement with Mr. Maybank's insurance Trust in the year 2010?

A. I did. Ms. Schoemer made we aware that she had been talking to Frank, and as I had already been aware he said he thought he might not be able to make some of the insurance premium payments, and she told me that Frank was considering selling one of the policies in order to raise cash to keep the remaining policies going, and that she had been talking back and forth with him, as well as our area in Wilson, North Carolina, which was responsible for irrevocable life insurance trusts And so after that process had been going on for some time I got involved with her

I was on a call with Jerry Lane, who is our senior trust specialist, along with I believe Meredith Shivar and another woman from her area in Wilson. And during that conversation we discussed the pros and cons on whether we -- what we -- what would be necessary for us to do in order to expedite the sale of that one insurance policy And at that time we felt like to get BB&T insurance involved and do an analysis and whether the sale was good or bad for the Trust, we felt like that would take too long in order to meet their needs, so we -- we went ahead and at that point in time we said we would resign in favor of Ms Maybank, Jane Maybank, who was the co-trustee with us, and then they could -- they

could do what they needed to do in order to sell that policy in order to keep the remaining policies enforce and we wouldn't have to go through our lengthy analysis

Q And let me show you what's been marked as Agreed Exhibit 48, and can you just tell us what this is?

A Yes, this is a letter dated December 23rd of 2010, that I signed. It was prepared by Jerry Lane and it was -- it was addressed to Frank Maybank, as well as his four children, and it's regarding our resignation to what we just discussed

Q Thank you Mr. Walters.

If you will please answer any questions by counsel for the plaintiffs

THE COURT Do you want to stretch?

(Off the record)

(Back on the record)

THE COURT: Okay

MR WILLOUGHBY May it please the court?

THE COURT: Yes, sir

CROSS EXAMINATION BY MR WILLOUGHBY:

Q Good afternoon, Mr Walters.

A Good afternoon

Q It's true, is it not, Mr. Walters, that you at no time performed any suitability analysis for Mr. Maybank's account and the sale to him of the Pre-Paid Variable Forward,

correct?
A Personally, I did not, yes.
Q And you would understand that performing a suitability analysis would be an important part of doing something before you would sell a product to a customer?
A Again, I'm not an expert in pre-paids, but -- I mean, I -- I don't know how to answer that.
Q So you don't give investment advice, correct?
A Correct.
Q So as a matter of policy within the bank, you are prevented from giving investment advice?
A That's correct.
Q And in this case you did not give any investment advice?
A That's correct.
Q So did you have an understanding that your job as a wealth advisor, when a client came to you, that it created a fiduciary relationship with that client?
A Depending upon what point in time the relationship and what we were doing.
Q Wouldn't it be true that as soon as you began to have a relationship with a client and began to advise a client, that that relationship or that fiduciary duty attaches?
A I don't -- I don't know the definition of fiduciary, but, I mean, I think when somebody comes and opens a

checking account with BB&T, I don't know that I'm serving as a fiduciary

Q True enough, but this is not a checking account, correct?

A Well, what are you referring to?

Q I'm talking about Mr. Maybank's situation He didn't open a checking account with BB&T. He was coming to you to entrust retirement assets to BB&T, correct?

A At what point in time? I don't --

Q Well --

A I mean, he opened a checking account with BB&T before he did anything else I mean, he was a client of Wealth Management long before he ever entered into a pre-paid.

Q Well, what I'm trying to --

So he was a client of the bank, but I'm talking about when he sought the advice of BB&T Wealth Management. At that point in time you become his fiduciary, correct?

A. Mr. Maybank, as far as I know, was a client of BB&T Wealth Management from day one when we acquired Southeastern Trust I mean, as soon as we created Wealth Management, he was a client of ours, as far as I'm aware of

Q Because of the Insurance Trust?

A Yes, that, and the banking relationship

Q Well, beyond the banking relationship. Forget about the banking relationship for a moment

document is in existence?

A. I believe this came from Shawn Gibson. I don't know, but I -- I don't know This is not --

Again, in my entire 12 years with BB&T we only had concentrated risk stock risk management type of transactions Well, we only sold Pre-Paid Variable Forwards I think three or four times, as we mentioned in this case

Q So basically the only Pre-Paid Variable Forwards that you are aware of that was transacted by your department was Mr Maybank's and the Bowers family?

A And one other one, I'm sorry There was one other one

Q One other one.

So would Mr Maybank's pre-paid be the very first one that your division did that you can recall?

A. No, Ms. Bowers was prior to Mr Maybank.

Q. Well, Mr Maybank's was executed on August the 11th of 2006, and Ms Bowers was executed on August the 16th of 2006, which one would have come first?

A. Well, I'm sorry, my mistake I thought Ms. Bowers was executed prior

Q. But the truth of the matter is they were executed --

A. Yeah

Q -- on or about the same time?

A. Mr. Bowers -- I mean Mr. Bowers -- I mean Mr. Maybank would have been the first one then

Q. And it's also true, isn't it, that Mr Maybank, being a loyal employee of BB&T, was the way that you got introduced to Ms Bowers' family situation, is that correct?

A. That is correct

Q And at that time Mr Mahfood and the Wealth Division benefited from those two transactions with fee-based income, did they not?

A That's correct

Q. And it's true that your revenue, your bonus, is determined by the amount of money that's generated by your whole department, correct?

A That's correct.

Q And it's also true, and I think Mr Kristinik asked this, that your -- that the Series 7 and Series 63 licenses that you hold, the only reason you hold those, that you have been advised, is so that you can participate in a bonus matrix, correct?

A That's correct.

Q You don't provide any advisory services, correct?

A Correct

Q. And, in fact, that license is not even licensed to BB&T Bank. That license is licensed to BB&T Investment Services, Inc , is it not?

A. Brokerage licenses have to be through a licensed brokerage division BB&T Bank is not a broker.

Q But you don't provide any broker services to BB&T Investment Services, correct?
A Correct.
Q You don't advise people at BB&T Investment Services about their money needs or managing their assets, correct?
A That's correct.
Q So the only reason that you hold that license -- do you still hold it today?
A Yes, I do
Q And is the only reason that you still hold it today is to participate in the bonus matrix?
A Yes, that's correct
Q And --
MR WILLOUGHBY: Go back to the front of this again, Lindsay, the very first page
BY MR. WILLOUGHBY
Q You have never talked with a customer about this document, Exhibit 3 You have never given one?
A No.
Q Do you know whether or not in your files -- have you looked at the files that we have been talking about and whether or not Ms Effie Bowers signed one of those same forms?
A. I don't know
Q Do you know whether or not that form is required by

A. Correct
Q. Which would give someone an indication that it's a corporation?
A. Correct.
Q. And then when you look at Asset Management, while it's a separate heading, there is no distinguishing Asset Management as a separate legal entity, is there?
A. That's correct. That's what I said, it's subject to interpretation I would think
Q. So anyone could read this and say Wealth Management team director, which is you, correct?
A. Correct
Q. And that all of the folks underneath, you have got Wealth Management advisors, a listing of those, correct?
A. Correct.
Q And then you have got personal fiduciary specialists?
A. Correct.
Q. Are those trust officers?
A Yes. Well, officers of BB&T, the bank, correct
Q. Financial planning specialists
In fact, all of the financial planning specialists or the personal fiduciary specialists reported directly to you, did they not?
A They did, correct.
Q But, now, Mr. Kapoor did not report directly to you,

correct?
A. Correct
Q You had no supervisory functions over Mr Kapoor, correct?
A Correct
Q. You didn't have the ability and did not exercise any oversight of any of his investment strategies or techniques, correct?
A. Well, that's not completely true The bank -- we had our annual review committees where I was a participant on the annual review committee Annual investment review committee and, therefore, we did review his investments and make sure he was following the objectives set between him and the client.
Q. So the bank --
A Yes.
Q. -- the Wealth Management Division you say do exercise or did exercise supervision?
A I wasn't his supervisor, but we exercised. We were sort of like an auditor to make sure he was following the agreement between BB&T Asset Management and the client.
Q Let's look at this real quick so I can get --
MR. WILLOUGHBY Lindsay, go to the second page So this is the Wealth Management team directives used Second page, highlight this, Lindsay, please

BY MR WILLOUGHBY

Q Just the point we were just making, there is nothing to distinguish this as being a separate legal entity, correct?

A That's correct.

MR WILLOUGHBY And if we go to the next page, Lindsay. Highlight this, please.

BY MR WILLOUGHBY

Q. But there is that distinction with Scott & Stringfellow, correct?

A. Yeah, but technically we should have said BB&T Investment Services, Inc., and BB&T Investments, Inc , too, but we didn't, so we weren't consistent.

This was an internal completed form of ours that we probably should have put the inc on there but we did not.

Q. Well, the truth of the matter is you view it as a team when it's advantageous to you to view it as a team, and you view them as separate legal entities when you think it's advantageous to you to view it as a separate legal entity, correct?

A At no time did we ever try to be deceitful and tell somebody that BB&T Asset Management was part of BB&T Bank

Q. Well, let's look at that.

MR WILLOUGHBY If you will pull up Exhibit 14. The first page.

BY MR WILLOUGHBY

Q There has been a lot of communications about -- a lot of discussion about this

MR WILLOUGHBY Highlight right through here, Lindsay, please

BY MR WILLOUGHBY:

Q I don't want to belabor this point, Mr. Walters --

A. Uh-huh

Q. -- but the language says bank; "as Wealth Manager bank shall "

A Uh-huh.

Q And the bank is agreeing by this document to do three very important functions, are they not?

A We are agreeing that those three functions will be done

Q And -- well, it says "the bank shall " I mean, it's not -- it says "the bank shall " Do you agree with me that's what the words read?

A. The word says "the bank shall."

Q. And with Mr Kristinik, you just said that, well, it would be more accurate if it says the bank and Asset Management shall That's what you think would make the document more accurate?

A. I said it would make it clearer

Q Make it clearer

And you also said that the bank could not and did not

make recommendations to the client regarding an investment program and investment guidelines for the account, correct?

A. That was done by the investment advisor, which was a part of this agreement. Yes, it was.

Q But it was not done by the bank?

A. No, it was not done by the bank

Q The bank couldn't do it?

A That's correct

Q And didn't do it?

A The bank did not do it We made sure it was done

Q But the bank did not do it, correct?

A The bank did not do it

MR. WILLOUGHBY Now, let's turn, Lindsay, to the very -- I think it's page 7 It's four or five pages

The page preceding this page.

Turn to Bates number 12, page 12, and pull this section out here.

BY MR. WILLOUGHBY

Q Assignment -- do you have page 12 in front of you?

A Page 12, this --

Q I'm sorry, it's Bates number 12 on the right

Well, turn back over. No, it's there. Just turn to page -- look at page 5 right there. There are so many numbers on these things, Mr. Walters

A Okay, page 5.

Q Page 5, that's right And you have page 5 in front of you. It will be there on your screen too

A Okay.

Q But the language says very clearly, doesn't it, "there is no assignment in this agreement shall be made by any party without the other party's written consent." Does it say that?

A Yes, it says that

Q And you don't have -- there is no written consent from Mr Maybank for any duties under this document to be assigned to anyone else, are there?

A We didn't assign this to anybody.

Q Well, you are saying that the bank didn't do certain --

A This is referring to assigning the entire contract to another bank, or something like that

Q Okay.

A This is not referring to what you are referring to

Q. So that's your interpretation, that it has a different --

A Assignment and delegation is two different words, it's two different duties

Q Okay But you have nothing and you have seen nothing that where there is a witness assignment of any duties or responsibilities to any --

A BB&T completely fulfilled this contract. We didn't

(Personal Development Plan for Ross Walters for 2006 marked and received into the record as evidence as Plaintiffs' Exhibit No 106).

MR WILLOUGHBY Your Honor, Plaintiffs' Exhibit 106 in evidence.

BY MR WILLOUGHBY:

Q. Mr. Walters, let me ask you to turn with me to the page bearing Bates number 22115.

Are you at that page, sir?

A. Yes, sir

MR WILLOUGHBY: Lindsay, if you would, please pull up that page, if you can.

BY MR WILLOUGHBY:

Q. And this form is -- basically the way the process works is, as I have discussed with Mr Mahfood, you start off the year with objectives in mind, correct?

A. Correct.

Q. And then you might get a mid-year review, but at the end of the year there is an assessment as to how your performance measures up against the objective?

A. Correct.

Q And if we turn to objective 3

Now, this document has some hole punching up here, so some of the words are off, but let's look --

MR WILLOUGHBY: Lindsay, if you can cull out

right in here Oh, you have culled it out I'm sorry.
BY MR WILLOUGHBY
Q. I'm a little slow this afternoon, Mr Walters, but there is a section right here, and it's not as clear as I would like, but it says --
MR. WILLOUGHBY Go back to the way you had it, Lindsay, would be fine, please.
BY MR WILLOUGHBY.
Q So "Ross took a leadership role in the introduction and delivery of alternative investments and closed some significant business in 2006 " Does it say that?
A Yes, it does
Q And the significant business that is referring to is those -- is Mr Maybank's pre-paid and the Bowers family pre-paids, correct?
A I believe there is a lot more to tnat as well
Q Well, I mean, you just testified to me a few minutes ago that --
A I said those are the only pre-paids we done, but there was a lot of other structured notes and some other stuff that was involved
Q So there were other alternative investments?
A Mr Kapoor, who was the head of, you know, BB&T Asset Management, with his strong background from working at Michelin, he felt very comfortable introducing other

alternative investments into our clients accounts and did so significantly.

Q So alternative investments, including pre-paids, not just limited to pre-paids, but included them, was a significant source of revenue for your division in 2006?

A. That's correct.

Q And it continued to be a significant source --

A When you say division, I would say -- what I was referring to is our team here in Greenville.

Q Your team.

Well, it continued to be a significant source of revenue, but at some point in time BB&T stopped selling alternative investments, didn't they?

A I don't believe so. We still continued to use alternative investments in our clients portfolios to this day.

Q. But you don't use Pre-Paid Variable Forward Contracts, do you?

A. We never used them in our clients accounts. We still --

If a client comes to us today and has a concentrated stock portfolio, if we feel like, you know, instead of referring them to BB&T Asset Management now, we just refer them to Scott & Stringfellow. They still do Pre-Paid Variable Forwards through Scott & Stringfellow and they do a

assets in the clients accounts?

A. The Pre-Paid Variable Forward Contract was a completely separate contract from the Asset Management agreement

When the client would enter into a Pre-Paid Variable Forward Contract, they would get the proceeds from, you know, the diversification from the risk reduction of their single stock position, they would get those proceeds and they could do whatever they wanted to

In the Bowers instance and in Mr Maybank's instance they chose to open an investment management account with BB&T Asset Management, but the pre-paid was handled by one division of BB&T Asset Management - Shawn Gibson - and the managed portfolio was handled by Kris Kapoor

The portfolio manager, Kris Kapoor, did not advise on the pre-paid I mean, I don't know that he did He was well qualified, if he wanted to, I think, but what his role was was to manage the proceeds from that investment management account

Q Well, let's go to the next section.

MR. WILLOUGHBY Lindsay, turn to page 22116, and if you would cull out, Lindsay, objective, right in here.

BY MR WILLOUGHBY.

Q "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."

So there was a division initiative, correct?

A Yeah, this uses the word initiative, but what happened was Shawn Gibson moved from Scott & Stringfellow to BB&T Asset Management and we began to have that capability to offer the products and services that his area offered to our clients, you know, and when appropriate we would introduce our clients to Mr Gibson.

Q. And Mr. Gibson, when he came over -- he was part of the division then? He was part of your division?

A. He was part of BB&T Asset Management.

Q Was that part of your division?

A. I was with BB&T Wealth Division.

Q. And when the language is being used here "Ross can be counted on to support the division initiative," is that referring to the Wealth Management Division?

A. I would think so, yes.

Q So the Wealth Management Division is the division that you head up?

A That's true. Well, I'm the head of a team I'm not the head of the division

Q Well, sure, but you are not -- Mr. Fisher is head of the whole division?

A Mr Fisher is the head of the division.

Q But you are head of the division in the Greenville

area, correct?
A. Correct. I was at that time.
Q Yeah. And you are not any longer?
A That's correct.
Q. When were you no longer the division leader for the Greenville area?
A The division had a reorganization last October.
Q. And you are no longer the division head now, correct?
A No, we merged Greenville and Columbia teams together.
Q Just a few more questions, Mr Walters.
Here is an e-mail from Mr Gibson announcing his leaving Scott & Stringfellow and going to BB&T Asset Management. Did you receive that at some point?
A Well, it's addressed to Wealth Management. Also it seemed like that I did receive it, but I don't recall it specifically
Q. And you became aware certainly at some point that Mr. Gibson left Scott & Stringfellow, the brokerage firm, and moved to BB&T Wealth Management?
A Yes.
MR WILLOUGHBY Your Honor, we would move the introduction of this as the next trial exhibit
MR. KRISTINIK No objection, Your Honor.
THE COURT All right

(E-mail, dated January 5, 2006 was marked and entered into the record as evidence as Plaintiffs' Exhibit No 107)

BY MR - WILLOUGHBY

Q. And I think you have already testified that Mr --

MR. WILLOUGHBY: Into evidence, Your Honor, as Plaintiff's Exhibit 107.

BY MR. WILLOUGHBY

Q. And I think you indicated that one of the ways that Mr Gibson would use to provide information to you and perhaps others was through POWER point presentations and the like?

A. Yes

Q. Let's look at Exhibit 100 That came in yesterday and I'm showing it to you and asking you to look at the POWER point presentation that's attached to that document and ask if that's the type of presentation you would receive from Mr Gibson?

A. Well, this is when he was at Scott & Stringfellow, so this was addressed to Scott & Stringfellow brokers, I believe

Q. But you received -- well look at --

A. We received similar packets from Mr. Gibson, but not this one particularly; I don't believe

Q. You received several packets And you received some -- you started receiving these packets before -- while he was

still working at Scott & Stringfellow, correct?
A. Sure Like I said earlier, we needed to be aware what Scott & Stringfellow could do as well when we referred clients to them
Q And were most of these presentations done by telephone? It would be a conference call He would be on the conference call and everybody would have a copy of the POWER point and he would kind of walk you through it?
A Yeah, either we would have a copy, or we would be on a computer and follow along on the computer, possibly.
Q But this is the type of presentation that you would receive?
A Something similar to this, yes.
Q Look at page 24 of that presentation.
MR. WILLOUGHBY Bates number 174, Lindsay.
BY MR. WILLOUGHBY
Q Well, it looks like we are not able to pull that up right now, but, Mr Walters, do you have that page in front of you?
A Yes, I do
Q And if Lindsay can find it, that's great, but here is what it says Pre-Paid Variable Forwards Revenue opportunity on 2.5 million position The 2.5 million was just an example, correct?
A Correct.

Q Up-front fee of one percent, $25,000, correct?
A. Correct
Q. Annual management fees up to one percent, or more, 25,000 or more, correct?
A That's what it says, yes.
Q. So there is an up-front fee for selling the pre-paid, correct?
A Again, this was addressed to Scott & Stringfellow brokers. This is what a broker would have received, not BB&T Asset Management. This has nothing to do with our wealth team.
Q Well, we are going to -- we will come back to that, but you would receive these kinds of presentations, correct?
A Never did I see one from BB&T Asset Management with the page like this
Q Well --
A. Because we weren't licensed brokers and this is addressed to brokers
Q Well, let's go back to Exhibit 3 very, very quickly Do you have Exhibit 3 there?
This document here indicates that you were going to charge a transaction-based fee, does it not?
A This is an advisory fee
Q. It was an advisory fee?
A. That's my understanding, was that Mr. Gibson was

A. Yes, it does
Q. But you had decided -- the bank had decided that y'all were going to resign from any further responsibilities for the Trust?
A I believe we had that conference call that morning, actually, or sometime earlier in the day. It was up to me to call him and try to let him know -- I wanted to call him and tell him before we just sent a letter in the mail, and so I called him to talk to him first And then after this -- after this e-mail I sent out the letter later that afternoon.
Q. Thank you very much, Mr Walters I appreciate your time this afternoon.
MR. WILLOUGHBY Those are all the questions that I have.
MR. KRISTINIK Three minutes of questioning, max.
THE COURT All right, we will see.
MR KRISTINIK May it please the court?
REDIRECT EXAMINATION BY MR. KRISTINIK
Q Please take a look at Exhibit 110. It's the last one that you looked at, the e-mail that you wrote to Jerry Lane and others Do you see that?
A Yes.
Q December 23rd, 2010?
A Yes

Q. And Mr. Willoughby, he only went down about half-way down the e-mail. He didn't go to the bottom half.

A Correct.

Q Will you please tell the jury what the reasons were for terminating BB&T's position as trustee, the reasons that you would have explained to Mr. Maybank, had he given you the opportunity to do so?

A Yes, I go into -- I told him that the two had nothing to do with one another, but that the reason why we were resigning was, one, we did not feel that we had the expertise to assure that this was the correct policy to sell and -- I have sale, but I meant sell, and if so, that we were getting top dollar for it

And two, that if his family felt that the sale of this policy was the right thing to do for their family, then by stepping aside it would help to expedite the process. He would not listen to me, however.

He called back at 4:30 to ask that if I wanted to speak to him again, that I should call his attorney and not call him. I told him I would be glad to follow his request

Q Okay. And did Mr Maybank ever give you the opportunity to explain those things to him?

A. No.

Q Take a look at the e-mails, Plaintiffs' Exhibit 109 This is the e-mail that you discussed earlier regarding the

credit line coming to its expiration in 2009

And my question for you is based on the exhibit you looked at earlier in your direct testimony, the transaction summary, when was his credit line paid off in full?

A. I believe it was June or July, sometime earlier that year I can find the exact document

It was paid off on June the 17th of 2009

Q. So paid off in full in June, right?

A Correct

Q And this e-mail is August of '09, right?

A Correct

Q So the credit line account had been paid off in full two months earlier --

A Correct

Q -- prior to this e-mail, right?

A Correct

Q Okay.

MR KRISTINIK: No further questions, Your Honor.

THE COURT All right. You may step down. Thank you very much

All right, I know somebody has got somewhere to be, so we will see you all tomorrow morning at 9:30.

Remember not to talk about it

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

And, lastly, there is an assumption that capital gains tax would have been incurred for shares sold, but margin withdrawals for those capital gains tax were not applied into my analysis

Q So is it correct that one of your assumptions is with respect to the 246,640 shares of BB&T stock, you assumed that in August of '06 they just stayed in the brokerage account?

A. Yes, sir

Q So they were not sold, they were not made part of the pre-paid under your analysis, right?

A. No, sir, they remained in the account as of August the 10th

Q. All right And what's the date that you started your analysis that's captured in Exhibit 221?

A. August the 10th, 2006.

Q. Did you use actual numbers from Mr. Maybank's account as they existed on August 10th, 2006?

A. Yes, sir.

Q And so applying your assumptions and using the actual data from August 10th, 2006, did you create this spreadsheet that has been marked as Exhibit 221

A. Yes, sir.

MR KRISTINIK Your Honor, we would move to admit into evidence Defendants' Exhibit No 221

MR. JOHNSON Note our previous objection

THE COURT: All right

(Whereupon, Defendants' Exhibit No 221 was entered into the record as evidence)

BY MR. KRISTINIK

Q Mr Teachey, what was Mr. Maybank's equity on August 10th, 2006 in his Scott and Stringfellow brokerage account?

A Mr. Maybank's equity was $8,048,233.22.

Q. Can you explain to us what the term equity means with respect to a brokerage account?

A. Yes, sir. Equity is basically what the account is worth You can't merely just look at the stock and bond value in an account to determine what an account is worth because of the margin debt, so equity is adding up all the value of the stock, in this case just the BB&T shares, and subtracting the actual margin debt of the amount of money to Mr Maybank.

Q. What was the margin debt on August 10th, 2006?

A. The margin debt was $2,470,962 78

Q In your hypothetical, what would happen to that debt during the remainder of the year 2006, and during the year 2007?

A. It would definitely increase. Two factors played into that, one being the margin witndrawals that we have on the analysis, as well as margin interest

Q. So does interest just go right into margin debt as it's accrued each month?

A. That's true. What happens is the margin interest actually accrues on a daily basis and actually doesn't hit the account until a monthly basis. And when it hits, it just increases the margin debt by the interest amount that's accrued.

Q. Let me show you what's been marked as Defendants' Exhibit No. 223. Can you please tell us what this is?

A. Yes, sir, this is the interest rate schedule that I prepared to show what the firm actually charged for this period of time, and these were the interest rates that applied for Mr. Maybank's account.

Q. Was there a point in time where the interest rate became fixed?

A. Yes, sir, I observed on Mr. Maybank's January 2009 statement that he received a discounted rate, a fixed rate of three percent.

Q. And did you prepare this chart marked as Defendants' Exhibit No. 223?

A. Yes, sir.

MR. KRISTINIK: Your Honor, we would move to admit into evidence Defendants' Exhibit No. 223.

THE COURT: Same objection, yeah.

(Whereupon, Defendants' Exhibit No 223 was entered into the record as evidence)

BY MR KRISTINIK:

Q If Mr Maybank makes a margin withdrawal for living expenses, what does that do to his margin debt?

A It would increase the margin debt

Q Based on your hypothetical, what would the margin debt be as of December 31st, 2007?

A Let me flip through

On December 31st, 2007, the margin debt would have been $3,230,453 75

Q Let me hand you what's been marked as Defendants' Exhibit No 222

Let me first ask you a question before we get to this document On your chart with your hypothetical analysis, did you include the price of BB&T stock at it changed over time?

A Yes, sir

Q And where did you get the historical prices from for the BB&T stock for the date ranges that were included in your analysis?

A I pulled the BB&T closing price from two different sources I used Bloomburg and then Yahoo's historical prices and I compared the two just to make sure they were the same

Q. And were they the same?
A. Yes, sir.
Q. And you considered both of those to be reliable sources?
A. Yes, sir
Q And based on that information, did you prepare this chart marked as Exhibit 222?
A Yes, sir.
Q And what does this chart explain?
A This chart just tracks the BB&T price starting in January of 2006, all the way through December 13th of 2013
MR KRISTINIK Your Honor, we move to admit into evidence Defendants' Exhibit No 222
THE COURT: Same objection
MR. JOHNSON: Yes
(Whereupon, Defendants' Exhibit No. 222 was entered into the record as evidence)
BY MR KRISTINIK
Q Mr Teachey, please tell us what a margin call is
A A margin account is required by industry standards and firm standards to maintain a certain amount of equity, and I have already explained what equity is is, basically the value of the account You take the value of all stocks and subtract the margin debt Well, the industry requires that the client keep a certain amount of equity in the account to

be in good standing, and that's -- you calculate the required equity by taking a certain percentage of the assets out of the account, in this case the stock.

Q. What was the equity requirement for Mr Maybank's margin account?

A. 40 percent

Q. In your hypothetical would Mr Maybank have experienced margin calls?

A. Yes, sir.

Q. When would the first one have occurred?

A. June of 2008.

Q How many margin calls would have occurred under your hypothetical during the years 2008, 2009, and 2010, in Mr. Maybank's brokerage account at Scott & Stringfellow?

A Mr Maybank would have had 53 margin calls

Q Did some of these margin calls, in your hypothetical, result in a forced sale of BB&T stock?

A Yes, sir

Q Explain how forced sale of securities works in a margin account

A Sure So when a margin call is issued to the client, your client has five days to cover the margin call. The client can cover the margin call by depositing cash or fully paid for marginal securities, marginal securities, or they can actually sell shares in the account On the fifth day

when the margin call is not met, the firm actually sells securities in the account to cover the margin call.

Q. Based on your hypothetical, if Mr. Maybank had just held onto his 246,640 shares of BB&T stock, what would have been his account equity on December 31st, 2010, after these margin calls?

A. The equity on December 31st, 2010, would have been $133,960.14.

Q. Based on the assumptions you have made, the application of the Scott & Stringfellow margin rules and policies and the information available to you, are you able to give your opinions in this case to a reasonable degree of certainty?

A Absolutely.

Q Did you review Mr Maybank's actual account activity for the years 2008 and 2009?

A Yes, sir

Q Did you observe whether he experienced any margin calls during that period of time?

A. Yes, sir, he did.

Q And how many margin calls did he actually experience?

A. He had 22 margins calls during that time frame

Q. Let me show you what's been marked as Defendants' Exhibit No 224. Can you please tell us what this is?

A. Yes, I prepared this document just as evidence of the margins calls experienced in Mr. Maybank's Scott &

Stringfellow account

MR KRISTINIK: Your Honor, we move to admit into evidence Defendants' Exhibit No. 224

THE COURT: Same rulings.

(Whereupon, Defendants' Exhibit No 224 was entered into the record as evidence)

BY MR KRISTINIK

Q Thank you, Mr Teachey.

Please answer the questions of counsel for the plaintiffs

MR. JOHNSON May it please the court?

THE COURT: Yes, sir.

CROSS EXAMINATION BY MR JOHNSON.

Q. Good morning, Mr Teachey

A Good morning

Q You and I have met once before when I took your deposition in Columbia on May 15th, correct?

A Yes, sir.

Q And you testified in your deposition that you were provided a task by counsel for the defendants to put together a hypothetical Excel spreadsheet, correct?

A Yes, sir

Q. And you also testified in your deposition that you were provided certain assumptions by counsel for the defendants to use as parameters in your hypothetical, correct?

A Yes, sir
Q And you also testified in your deposition that the only conclusion that you draw from your spreadsheet is that you start at the top of this spreadsheet, apply all of the assumptions that you were provided and then a number pops out at the bottom and that's your only conclusion, correct?
A. Those weren't my exact words, but I went through a hypothetical scenario starting on August the 10th, 2006, and followed the BB&T prices and to determine what Mr. Maybank's equity would have been in his account on December 31st, 2010
Q And you also testified in your deposition that you draw no opinions from your hypothetical spreadsheet, correct?
A That's correct, I'm just stating that that's what his equity would have been
Q And it would be true, would it not, that you have no personal knowledge about the facts of this case?
A I have very basic knowledge about the case.
Q And would it also be true that you haven't interviewed anyone with knowledge about this case?
A No, sir
Q And would it also be true that the only persons that you spoke to in the preparation of your hypothetical were counsel for the defendants and Mr. Ross Tulman?
A Yes, sir

Q Is that correct?
A Yes
Q You testified in your deposition that your hypothetical does not account for the dividends that Mr. Maybank received during this period, correct?
A You are correct.
Q And, in fact, in your hypothetical you don't account for any other income, dividends, farm income that Mr. Maybank would have received during this period?
A. Yeah, I can speak to the dividends Mr Maybank -- Mr Maybank's account was settled to actually pay out the dividends, so those dividends were not paying down the margin debit It was actually paying directly to him as soon as they hit the account. The next day they would go back out to him. I believe it was via electronic ACH

As far as other deposits, I actually incorporated deposits and withdrawals that were provided to me from Mr Kristinik and confirmed by Mr. Tulman.
Q. And your hypothetical does account for the actual withdrawals made from the Wealth Management account, correct?
A. My withdrawals were the same withdrawals provided to me from Mr. Kristinik and confirmed by Mr Tulman. I don't know where the withdrawals occurred
Q. Do you have any understanding that the Wealth

Management account for Mr. Maybank was created with funds generated from the Variable Pre-Paid Forward Contract in this case?

A I'm not sure of that, no, sir.

Q. So you don't understand that to be a fact that was provided by Mr. Kristinik?

A No, sir.

Q So, notwithstanding the fact that your hypothetical uses withdrawals from that account and that account would not exist under your hypothetical, because it was created with funds from the pre-paid, which under your hypothetical again did not exist, correct?

A I can't answer that. My role in this was just to prepare a hypothetical scenario.

Q. But, notwithstanding, you don't give Mr. Maybank credit for the income derived from the dividends from his BB&T stock, which in your hypothetical he does maintain for the entire period, correct?

A. Well, we did not give him credit for the dividends, because the dividends actually paid out to Mr Maybank and did not stay in the account to pay down margin debit.

Q. So for your hypothetical, you just assumed that Mr Maybank stuck his head in the sand and did nothing for that period of time and didn't pay -- incur margin call after margin call? 53 I think is what you have testified to,

correct?

A Yes, sir, it was 53 margin calls

And to answer the question, the assumption was Mr. Maybank did not have any funds outside of the Scott & Stringfellow account to pay for the margin calls

Q And you also testified in your deposition that you have no knowledge as to whether the hypothetical that you put together was actually recommended by the bank to Mr. Maybank, correct?

A. Can you restate that?

Q. You testified in your deposition that you have no knowledge whether or not the hypothetical that you were asked to put together was actually recommended to Mr. Maybank in this case by the bank?

A. Whether the hypothetical I put together was recommended to Mr Maybank?

Q Correct

I think you testified that you have no knowledge that this hypothetical that Mr. Maybank maintained his stock in in the Scott & Stringfellow account was actually recommended to him by the bank, correct?

A. My only knowledge is that Mr. Kristinik asked me to provide my analysis for that time period to determine what the equity would have been

Q And you also testified in your deposition that you have

no knowledge as to whether Mr. Maybank requested this option that's a part of your hypothetical, is that correct?

A. Yes, I'm not aware of the facts of the case to that level.

Q. And you also testified in your deposition that you have knowledge that your hypothetical did not, in fact, occur in this case, correct?

A. That's correct, I know this did not, in fact, occur.

Q. Do you have any idea why you were asked to prepare this hypothetical that did not occur, that Mr. Maybank did not request, and that the bank advisors did not recommend that he do with his BB&T stock?

A. No, sir Mr. Kristinik asked me to provide this because it was relevant to the case.

Q. And do you believe that it is relevant?

A. I feel that this was an educated analysis as to what the account would have been worth if the shares would have remained in the account.

Q. Under your hypothetical?

A Yes, sir, under my analysis.

Q And I think you testified you have no formal training or education in Pre-Paid Variable Forward Contracts, correct?

A Yes, sir, none at all

Q. And you testified you don't hold yourself out as an

expert in investment management, correct?
A. Correct, not at all
Q Do you have an opinion as to whether the hypothetical that you put together holding the BB&T stock in the Scott & Stringfellow account and not paying off the margin debt is a reasonable investment strategy?
A I can't speak to that I'm not an expert on that.
Q You hold no opinion?
A I hold no opinion on that.
Q And, finally, Mr Teachey, you testified in your deposition that you are not being provided additional compensation for putting together your hypothetical, correct?
A No, sir
Q And you also testified that the spreadsheet that you created and the testimony that you are here today to provide is simply a function of your employment for BB&T, correct?
A Yes, sir
MR JOHNSON That's all the questions that I have.
MR. KRISTINIK No redirect, Your Honor.
THE COURT All right. Thank you You may step down.
MR. KRISTINIK Your Honor, we would ask that Mr Teachey be excused from the remainder of the trial

THE COURT Y'all cut them loose and tell them 2.30

Okay, we are done until 2:30.

MR WILLOUGHBY Thank you, Your Honor.

MR BROWN. Thank you, Your Honor

MR KRISTINIK. Thank you, Your Honor.

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

THE COURT: Are we ready to go?

MR. WILLOUGHBY Ready, Your Honor

MR BROWN. We are ready, Your Honor

THE COURT: Let's get them

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

THE COURT: You all don't want to work here next week. The lawyers have informed me that they anticipate that all the evidence will be presented or that the defendants will finish their case today. Okay. All right.

MR BROWN: Your Honor, I will state we probably will have something early in the morning, if the case goes to the jury tomorrow.

THE COURT: We may be going late tonight Okay Let's go

MR BROWN: We call Mr Gray

THE COURT: All right.

KEITH GRAY, having been first duly sworn, testified as follows

THE CLERK Please state your name for the record.

THE WITNESS Keith Gray

THE CLERK Thank you, You may be seated

DIRECT EXAMINATION BY MR BROWN:

Q. Mr. Gray, what do you do for a living?

A I'm an accountant

Q And where do you work?

A I'm self-employed now

Q Where have you worked over the last ten years?

A I was employed with Argo & Associates

Q And where is Argo & Associates located?

A. Anderson, South Carolina.

Q. And while you were with Argo & Associates did you do accounting work for Mr. Frank Maybank?

A Yes, sir

Q And in that capacity were you doing accounting work for him at least since 2006, through 2009 or '10?

A Yes, sir

Q. I'm going to hand you a document that we have marked as Exhibit 79 Do you recognize that document?

A Yes, sir

Q. Are those notes that you took?

A. Yes, sir

Q. Those your handwriting?
A. Yes, sir
Q Do those notes relate to your work that you were doing on behalf of Mr Maybank?
A Yes, sir.
Q. And was your regular practice in your business to take notes to assist you in serving your client?
A. Yes, sir, from time to time.
Q And when you did that, would you take those notes and place them in the file of that client to maintain them?
A. Yes, sir
MR BROWN Your Honor, we would move Exhibit 79 into evidence.
MR WILLOUGHBY: No objection.
THE COURT: Okay
(Whereupon, Defendants' Exhibit No 79 was entered into the record as evidence)
BY MR. BROWN
Q. And would the notes entered as Exhibit 79 have been taken and prepared by you for the purpose of assisting Mr. Maybank and potential tax issues or tax consequences?
A. I would have taken the note to assist me in preparing the tax return, yes, sir
Q The notes at the top have a date on them The date is 8-9-06 That's August the 9th of 2006?

A Yes, sir
Q And it would have been your practice when you date notes, that would have been the date that you took the notes, correct?
A Yes, sir.
Q. And was Mr. Maybank seeking your input or advice about tax consequences related to a Variable Pre-Paid Forward Contract?
A. I can't recall the reason I took the note.
Q. Do you believe that he was seeking your advice related to the Variable Pre-Paid Forward Contract?
A. I cannot recall
MR. BROWN Your Honor, we have the original of his deposition. I would like to open it.
THE COURT: Okay.
MR BROWN: If I can
MR WILLOUGHBY Your Honor, we certainly have no problem with Mr Brown using his copy to do his examination. He can submit the original thereafter
BY MR BROWN.
Q Do you remember when you were deposed in this case, Mr Gray?
A Yes, sir.
Q And at that time you were under oath to tell the truth?
A Yes, sir.

Q And I'm going to ask you to read for us the question that begins at line 19

MR WILLOUGHBY: What page?

MR BROWN: Excuse me, 72, line 19.

A "Okay. Is it -- since Mr Maybank was the one that reached out to you first about his 2006 pre-paid transaction, since it was Mr Maybank that reached out to you first about his variable pre-paid transaction, is it fair to say that he was seeking your input about tax consequences related to that transaction?"

BY MR. BROWN:

Q And what was your answer?

A "Mr. Maybank would have sought my advice on the tax effect of the transaction."

Q And that would have been true and accurate testimony, correct?

A Yes, sir.

Q Okay. And then what's the next question?

A "And if he had asked in response to Mr. Maybank's request for tax advice related to the Variable Pre-Paid transaction he entered into in August of 2006, would you have responded to his inquiry and provided the tax advice you were capable of giving at that time?"

Q And what did you respond?

A "Yes, sir. If Mr Maybank had asked my advice, I would

have done the necessary research I felt necessary and would have talked to him "

Q So at the time that you were deposed, you said yes, that he did ask you for tax advice regarding the pre-paid and you would have given it to him?

A Yes, sir

In order for me to have written that memo, Mr Maybank would have reached out to me, yeah.

Q Now, I hand you a document which was marked as Exhibit 81. It's a fax. It's addressed to Green & Company. What's Green & Company?

A It is the former name of Argo & Associates

Q. So it's basically the same accounting company, just -- or firm? It just changed names because of change of some people at one point?

A Yes, sir

Q And you were at Green & Company at one point, correct?

A Yes, sir.

Q And you did services for Mr. Maybank while you were at Green & Company?

A Yes, sir

Q In fact, if you look through Exhibit 81, does it appear to be information of the type that you would have been provided to assist in preparation of Mr. Maybank's tax return?

A Yes, sir.

MR BROWN Your Honor, we would move Exhibit 81 into evidence.

MR WILLOUGHBY We have no objection.

THE COURT All right

(Whereupon, Defendants' Exhibit No. 81 was entered into the record as evidence)

BY MR. BROWN.

Q I'll hand you a document that we have marked as Exhibit 43 That document is entitled at the top settlement overview Frank Maybank Was that document provided to you at some point and existed in your files?

A Can you repeat the question?

Q. Was that document provided to you at some point, and it existed in your files at Argo?

A Yes, sir; I believe so

Q And do you understand that to be a document related to one of Mr Maybank's pre-paid transactions?

A It is related to the transaction, yes, sir

MR. BROWN: Your Honor, we would move Exhibit 43 into evidence

MR. WILLOUGHBY Your Honor, we object based upon timing of this document I don't think he's established with the witness the timing of the receipt of the document.

THE COURT. Lay a foundation for it. I'm not

sure

MR BROWN Your Honor, we are asking -- we are simply putting it in for notice that he was aware of these documents that's in his file

THE COURT: Who was aware?

MR BROWN: He was aware of these settlement proposals.

THE COURT That this witness was?

MR BROWN: Yes, because he was provided them

THE COURT Okay. All right, over the objection.

(Whereupon, Defendants' Exhibit No 43 was entered into the record as evidence)

BY MR. BROWN

Q. I hand you next a document we have marked as Exhibit 80 Do you recognize that document?

A. Yes, sir.

Q And is that also a set of your handwritten notes?

A. Yes, sir

Q. And do these relate to accounting or tax services you were providing to Mr Maybank?

A. Yes, sir

Q. And did you take these in the regular course of your service on behalf of Mr Maybank?

A. Yes, sir

Q And did you keep these in your files as part of your

service to Mr. Maybank's accounting?
A. Yes, sir.
MR. BROWN: Your Honor, we would move Exhibit 80 into evidence.
MR. WILLOUGHBY: No objections.
THE COURT: Okay.
(Whereupon, Defendants' Exhibit No. 80 was entered into the record as evidence.)
BY MR. BROWN:
Q. In assisting Mr. Maybank with tax issues related to his pre-paid transactions, did you at some point have a telephone conference with Mr. Maybank and representatives of BB&T?
A. Yes, sir.
Q. To discuss the tax consequences of the pre-paid transactions?
A. I cannot recall specifically what we spoke about during that phone call.
Q. But you do recall that you did have a conference with BB&T and Mr. Maybank?
A. Yes, sir.
Q. And, in fact, you have these notes here. In your notes you make reference to the name of Mike Lackey. Do you understand that to be a BB&T person?
A. Yes, sir.

Q And you make reference to a Nathan Deal Did you understand that to be a BB&T person?
A. Yes, sir.
Q You also have a telephone number, 864-282-3167 as part of the notes. Is that related to that telephone conference as well?
A. I cannot recall.
Q. And you make reference to the BB&T price on 1-12-09, is that correct?
A. Yes, sir
Q And 1-12-09 would be January 12th of 2009?
A. Yes, sir
MR. BROWN Your Honor, that's all we have of this witness
THE COURT Okay.
MR WILLOUGHBY If it please the court?
THE COURT Yes, sir.
CROSS EXAMINATION BY MR. WILLOUGHBY.
Q. Mr Gray, just a couple of questions
When you were first contacted about --
You got the notes there in front of you
Your first -- your first note, had you ever heard of a Pre-Paid Variable Forward Contract when this matter was first brought to you?
A. No, sir

Q. Did you have any experience in working with pre-paids regarding any of the tax consequences related to them?
A No, sir
Q. And I think as you did tax returns for Mr Maybank, the first time that there was any tax consequences related to the pre-paid was when the first rollover was done in 2009, correct?
A. Yes, sir.
Q And so the tax consequences would have really become evident when you did the tax return for 2009, you would have done that in early 2010?
A Yes, sir
Q. So the note that you have in front of you there -- and let me look at the exhibits.
Exhibit 80, do you have any recollection as to when that note was made?
A No, sir
Q And do you have any recollection of any of the discussions around the making of that note?
A Discussions being?
Q. Do you have any independent recollection if that note was made during a telephone call, not during a telephone call, or the circumstances leading up to you making the note?
A No, sir, no recollection.

A. No, it's a customized approach based on the client interests.

Q In providing a financial plan, do you provide investment advice?

A. Well, not per say. What I do is I -- if a client is interested in looking at investment planning, I may have them or ask them to fill out a risk tolerance questionnaire. And then based on that we will take a look at their current investments and compare those with an example portfolio based on what they told us, or, you know, how they told us they felt about investments risk-wise and we would compare those.

Q. Other than investment analysis for a financial plan, what other types of areas could a client ask you to look at?

A. Well, again, it depends on what the clients are looking for, but we might address doing retirement calculations for clients, you know, if they want to retire on a certain income at a certain date.

It might involve estate planning to determine if, you know, they might be subject to estate tax potentially.

So there are a number of areas that could be covered

Q And once you have a financial plan completed, what is the directive that is given to the client?

A. Well, if you really look at what we do in planning is we are identifying and flagging issues that are important to

the client. So typically what we will do is we will ask them to follow up with specialists who can really go into the details and address those issues and, you know, implement things

Q Do all Wealth Management clients ask to have a financial plan done?

A No, many of our clients do not have financial planning done. They are not -- they are not interested

Q. And when you do a financial plan, do you charge a fee for that service?

A. Yes, we do charge a fee, typically based on the complexity of the plan.

Q Did Mr Maybank ever ask you to do a financial plan for him?

A. I don't recall Mr Maybank ever asking for a plan

Q. Separate and apart of your duties as a financial planning strategist, did you have any involvement in Mr Maybank's first Pre-Paid Contract?

A No, I was not with the bank at that point in time

Q Did you have any involvement in assisting Mr Maybank with his roll of his pre-paid?

A Yes, I helped obtain information.

Q. And when you said helped obtain information, from whom were you obtaining information and to whom were you communicating?

A. Well, I was really relaying information between Mr Maybank and Mr. Deal

Q In that role did you make any recommendations to anyone in that transaction?

A I did not make any recommendations.

Q Did you make any advice as to what anyone should do?

A I didn't give any advice.

Q Did you sit down and actually have a meeting with Mr Maybank regarding his pre-paid at some point?

A I did have a talk with him about his pre-paid, yes.

Q In fact, at some point did Mr Maybank come to you and ask you questions about how he should proceed?

A. Yes, he did have questions

Q. I'm going to hand you a document we have marked as Exhibit 180

Do you recognize that document?

A Yes, I do

Q What is it?

A. It is an e-mail from me to Nathan Deal

Q And did you prepare that e-mail in the ordinary course of business with your work at BB&T?

A Yes, I did

Q And is that document the document that's saved in the regular course of business at BB&T?

A Yes

Q. And was that prepared for the purpose of assisting Mr Maybank in communications with Mr. Deal?
A. Yes, it was
MR. BROWN Your Honor, we would move Exhibit 180 into evidence
MR. WILLOUGHBY We have no objections, Your Honor.
THE COURT: Okay
(Whereupon, Defendants' Exhibit No. 180 was entered into the record as evidence)
BY MR. BROWN
Q. All right. In that e-mail what are you asking Mr. Deal?
A. I'm asking him to have someone put together a proposal for Mr Maybank
Q And why are you asking that?
A I'm following up on the phone message.
Q Phone message from whom?
A From me in regard to Mr Maybank
Q Had Mr Maybank contacted you?
A. Yes, I had talked with Mr. Maybank.
Q And had he requested the proposal that you are now requesting?
A Yes
Q. And when was this e-mail sent?

A. This was December 23rd of 2008
Q I'm going to hand you a document that was marked as Exhibit 182. Do you recognize that document?
A Yes
Q And what is that?
A. It appears to be another e-mail.
Q From whom?
A It's from me to Nathan Deal
Q And was this document also prepared in the order course of your business?
A Yes, it was.
Q And was it stored in the regular practices of BB&T?
A Yes
Q And does it relate, at least in part, to the assistance you were providing to Mr. Maybank regarding his pre-paid?
A. Yes, it does.

MR. BROWN: Your Honor, we would move Exhibit 182 into evidence

MR WILLOUGHBY: We have no objections, Your Honor.

THE COURT All right

(Whereupon, Defendants' Exhibit No. 182 was entered into the record as evidence)

BY MR BROWN.
Q All right Why were you writing this e-mail?

A Because Mr Maybank had called and he was urgently wanting to get a proposal for the pre-paid

Q And this was wanting to see a proposal on the rollover of his pre-paid, is that right?

A That's right.

Q. When was this e-mail, Exhibit 182?

A. This was December 29th of 2008.

Q So approximately a week after the last one we just showed you?

A Yes, sir

Q I'm going to hand you a document that's already in evidence as Exhibit 29, Agreed Upon Exhibit 29

Were you copied on this e-mail exchange, which is Exhibit 29?

A Yes, I was one of the parties on this e-mail.

Q And was this e-mail exchange efforts within BB&T and BB&T Asset Management to try to get the proposal that Mr Maybank was seeking in the last e-mail?

A Yes.

Q And what is the date of this?

A. This is December 30th of 2008.

Q I'll hand you a document that's already in evidence as Exhibit 30.

What's the date of this e-mail?

A This is dated January 7th of 2009.

Q. And was this further communications related to Mr Maybank's roll?
A. Yes
Q. And did you, in fact, have a conversation with him about information he was seeking from Nathan Deal?
A. Yes
Q. And the first -- or the e-mail at the bottom, is that your e-mail?
A Yes.
Q. What were you communicating to Mr. Deal?
A. I was communicating to Mr. Deal that Mr. Maybank wanted to know the effect of a dividend cut between the date of the e-mail and the end of his contract.
Q That was a question Mr Maybank had asked to you?
A Yes
Q. And if you go down further, the second sentence, what does the second sentence of that e-mail say?
A. It says "he knows that a dividend cut will reduce the dividend payout that is passed along to him during the course of the contract "
Q And did he tell you that?
A Yes, he knew that
Q. In fact, in early 2009 were you aware that many banks had already cut their dividends?
A. Yes, a lot of banks had already started cutting their

dividends at that point

Q Okay. Did you provide at this time, or at any time, any representation or advice to Mr Maybank about what the future dividends of BB&T would be?

A. I did not

Q. And I think you mentioned a few minutes ago that you recall actually sitting down and having a meeting with Mr. Maybank

I'm going to hand you a document that we have marked as Exhibit 36.

Do you recall when that meeting was?

A Well, my recollection is that the meeting was on January 9th of 2009.

Q. In client meetings is it a regular practice of yours to take notes regarding the meeting?

A Yes. Not always, but sometimes I do.

Q. And when you do that, do you put them in a file for that client to preserve them for the future?

A Yes

Q Is that a regular practice that you do as part of your business to serve that client?

A Uh-huh, yes

Q Exhibit 36, are those notes that you took?

A Yes, they are

Q Is that your handwriting?

A This is in my handwriting, yes

MR BROWN. Your Honor, we would move Exhibit 36 into evidence.

MR WILLOUGHBY: We object to the handwritten notes there. They are hearsay

THE COURT They are his handwritten notes?

MR BROWN. They are his handwritten notes taken for service and Mr. Maybank as his client --

THE COURT. Okay

MR. BROWN. -- in the regular course of business.

THE COURT: Overruled

(Whereupon, Defendants' Exhibit No. 36 was entered into the record as evidence)

BY MR BROWN:

Q Again, at the top there is a date. Would that be the date that you had your meeting with Mr. Maybank, to your knowledge?

A. To the best of my knowledge, yes.

Q. And in your meeting did you -- in your meeting did you talk with Frank about the reasons he was looking to do a roll transaction?

A Yes.

MR BROWN Cull out that top piece there

BY MR BROWN.

Q Was Mr Maybank's belief regarding the stock price

something he told you was a factor in his decision whether to roll or not?

A Yes, it was

MR BROWN: If you would go to the next little piece.

BY MR. BROWN:

Q Did he have questions about tax consequences of the roll?

A Yes, he wanted to know what the tax consequences of the roll were.

Q Did you ultimately talk to Mr. Deal about his questions on the tax consequences?

A. I did.

Q And after that conversation, did you tell Mr. Maybank whether BB&T could provide tax advice to him or not?

A. Yes, I told Mr. Maybank that BB&T did not provide tax advice

MR BROWN Go to the next paragraph.

BY MR. BROWN

Q Was there a discussion of Mr. Maybank and his desire to maintain the dividend income from the BB&T stock?

A Yes

Q And what did he tell you?

A Well, he told me that he wanted to keep the dividend income going as long as he possibly could He didn't want

to sell other assets to generate income.

Q Did he ask you a series of questions in that meeting?

A Yes, he asked some questions

Q And did you note those in your notes?

A I did

Q There appear to be four items Can you read those off for us?

A Yes, he -- the first, number one, is tax con, which, you know, question mark, what are the tax consequences

Question 2, is net cash flow required, rqd, lower if he thinks stock is near bottom

3, how much to roll at percent, which I think at the end of two years, because he would be between -- I think that's four and ceiling.

And then the final one is how soon can we do a transaction.

Q. And those were the questions Mr. Maybank had of you?

A. As I recall, yes

Q Did you forward on those questions to Mr. Deal?

A I did.

I particularly remember the one about the tax consequences

Q You have already mentioned what the response was on that?

A Yes.

Q I'm going to hand you a document that's already in evidence as Exhibit 32 Do you recognize that document?
A. Yes, I do.
Q Is that an e-mail exchange that you participated in?
A. It is.
MR BROWN: And pull that one up too. You can cull out the bottom e-mail
BY MR. BROWN
Q Did you get a call from Mr. Maybank on the issue of the tax consequences?
A Well, I recall, you know, talking with Mr. Maybank and attempting to set up a conference call.
Q. All right. And this e-mail from you is to whom again?
A. It's to Mr. Deal.
Q And what did you ask Mr Deal?
A. I asked him if he could set up a conference call to talk with Mr Deal and Mr Maybank and the tax advisor today.
Q And today -- what's the date of that e-mail?
A. The date of the e-mail was January 12th of 2009.
Q So had Mr. Maybank asked for a call with his tax advisor on that date?
A To the best I can recall, yes
Q And, in fact, did a call occur between you and Mr. Maybank and his tax advisor?

A. Yes
Q. And can you recall one way or the other whether Mr Deal was on that call?
A I don't recall whether or not Mr. Deal was on that call
MR. BROWN: Pull up Exhibit 80 again real quick Cull out the top. There you go.
BY MR BROWN
Q. These are notes that came out of Mr Gray's file. And when you said that you set up a call with Mr Maybank's tax advisor, who was his tax advisor that you set up that call with?
A. It was Keith Gray.
Q. And, in fact, is your name at the top of those notes?
A It appears that it is, yes
Q And there is a telephone number there, 864-282-3167 Whose telephone number is that?
A. That's my direct phone number at the bank
Q. Where were you physically during this call with Mr Maybank and his tax advisor?
A. Well, my recollection is that I was in the office adjacent to mine, which would be one that Mr Maybank used when he would come in.
Q And where was Mr Maybank?
A He was with me

Q And when you are on this call --

And, again, the e-mail Exhibit 32 we showed said that it was requested to be on January 12th, 2009 Do you believe it was on or about that date that the call occurred?

A. Yes, I do.

Q In fact, were potential tax consequences of the roll discussed with Mr. Maybank and his accountant?

A Yes, they were

Q And did you sit and listen as Mr Maybank heard information from his accountant regarding those consequences?

A. Yes, I did

Q And after Mr. Maybank heard that advice from his accountant, did Mr Maybank say anything about the result of that advice?

A Yes, he did

Q What did he say?

A. Well, he said that he wasn't worried about the gain on the rollover because he had losses in his investments to offset the gain

Q. And the call with Mr Gray and Mr Maybank, did that occur before the rollover of the pre-paid?

A Yes, it did

Q I'm going to hand you a document that's already in evidence as Exhibit 31

MR. BROWN Mandy, can you pull that up?

BY MR BROWN

Q. Do you recognize that e-mail?

A. Yes, I do.

Q. And is that an e-mail to you?

A. Yes, it is.

Q. And who is it from?

A It's from Mr Deal

Q. What is Mr Deal sending you?

A. He is sending me an illustration.

Q. And in terms of an illustration, we saw some previous statements or e-mails talking about proposal What's the difference, if any, between an illustration and a proposal?

A. I'm not aware that there is any difference.

Q. So when you got proposals from Mr. Deal for the roll, what form did they take?

A. Well, when they came to me from Mr Deal, they were e-mails. They were attachments.

MR BROWN Open the second page

Can you rotate the view?

Just pull it back up sideways. We aren't going to look at the numbers right yet.

BY MR BROWN

Q All right Is that spreadsheet the type of proposal that you would get in response to Mr Maybank's request for

a proposal?

A Yes, it is

MR. BROWN: And could you go back to the body of the e-mail?

BY MR BROWN.

Q Mr Deal calls it a hypothetical pre-paid roll.

When you got the spreadsheet, which was the proposal or hypothetical pre-paid roll, what did you do with it?

A Once I got these, I printed them out and gave them to Mr Maybank

Q Whenever Mr. Deal gave you a proposal or a settlement spreadsheet, what did you do with them?

A I printed it out and gave them to Mr Maybank

Q I'm going to hand you another document which has been marked as Exhibit 216.

Do you recognize that document?

A It appears to be one of the settlement statements

Q. There is some handwritten notations on the side of it. Whose handwriting is that?

A. That appears to be my handwriting

Q Okay So would these settlements have been kept and maintained in your file, these spreadsheets?

A Yes.

MR. BROWN: Your Honor, we would move Exhibit 216 into evidence.

MR WILLOUGHBY Your Honor, the foundation would be timing If he knows when he made the handwritten notes on the document.

MR. BROWN I don't know if he knows when he made the handwritten note, but I can ask him.

THE COURT Okay

BY MR. BROWN

Q Would you have received these from Mr. Deal prior to the roll?

A. Yes, I would have received those prior to the roll.

Q. And would you have provided them to Mr Maybank?

A. Yes, I would have

MR BROWN Your Honor, we would move them into evidence.

MR WILLOUGHBY I still object, Your Honor The timing is --

THE COURT Well, I'm -- over your objection

(Whereupon, Defendants' Exhibit No. 216 was entered into the record as evidence)

MR BROWN And cull out the little box on the right there

BY MR. BROWN

Q These documents that you had provided to Mr Maybank, do they show on them what the net cash flow of the transaction would be under this proposal?

A Yes. I believe so, yeah. It appears on the top there
Q. And for this particular one, what was the net cash flow?
A Well, it's in brackets It appears to be a negative number, which is $1,141,175 20
Q And when it's in brackets, you say negative number, but that would have to be a payment by Mr Maybank?
A. I believe so.
Q. And if you look at the next page --
Well, let me back up.
MR BROWN Can you go above that and cull out the area above that?
BY MR. BROWN
Q And this proposal would have been based on the terms as stated on this document is what your understanding is?
A That's my understanding, yes
MR BROWN And if you go to the next page Go ahead and cull out basically that whole corner.
BY MR BROWN.
Q. The figures on this proposal are slightly different, aren't they?
A. Yes
Q. And you would have provided both of these proposals to Mr Maybank?
A Yes, that was my best recollection.

Q All right. Let me to ask you to hold onto that one and look with me at Exhibit 202 202 is in evidence already Mr. Maybank has testified that those were in his file. Compare for me the first page of Exhibit 216 and the first page of Exhibit 202 Are they the same numbers?

A Yes, they are.

MR WILLOUGHBY Your Honor, I have been very kind about not objecting to leading, but I think this really goes --

THE COURT All right, don't lead

BY MR BROWN

Q With regard to the first page, do you see any differences between those two pages?

A. Are you talking about these two right here?

Q. Yes.

A. Yes, I do.

Q What are the differences?

A Well, one thing I see here is it appears that my business card is attached to it, a copy of it

Q. Okay. We will get to that in just a minute. Any other differences?

A Well, one has my notes The other doesn't have my handwritten notes.

Q. In terms of the numbers within the chart, do you see any differences?

A. I accepted a position with BB&T Asset Management
Q What year did you start with BB&T Asset Management?
A 2007.
Q Where was your office located?
A In Richmond, Virginia.
Q What position were you hired for with BB&T Asset Management?
A. Alternative Investments Analyst, title.
Q Did you receive any training, once you arrived at BB&T Asset Management?
A It was sort of an extensive mentorship program with Shawn Gibson, who hired me at BB&T Asset Management
Q Explain to us the process that Shawn took you through to educate you on the various alternative investments products
A Well, I had some, you know, understanding of these types of things through my studies and just personal interests outside of work, but generally speaking Shawn sort of formally introduced many of the concepts to me that the solutions that we provide for our clients, how we would go about analyzing the client's situation, determining which solutions were appropriate, and working with alongside the BB&T Wealth Management and Institutional Services teams to implement those plans as advice, as recommendations
Q During 2007 and 2008, would you have had any specific

training from Mr. Gibson with respect to pre-paid contracts?
A. Sure, that was -- I mean, that was the main -- one of the main, you know, aspects of Alternative Investments Group.

Really, again, in coming back to the fundamentals of the strategies, I knew some of the options information through prior study, but on a more detailed basis. We would go over existing -- start out with just going over existing contracts and things that we had in place, how those worked, and then sort of started just helping him on the back end, or sort of working through some of the details of those things, and gradually working into more -- more active role in the process, participating in the conference calls, putting together the materials, and ultimately participating in the execution.

Q Were there times when you would essentially shadow Mr. Gibson with respect to pre-paid transactions?

A Sure, virtually every one From the time that I got there, I was, you know, sort of eager to learn about these things, so that absolutely was the case.

Q Did you participate with Mr Gibson with respect to any presentations given concerning solutions for concentrated stock positions?

A Absolutely. That's where the Pre-Paid Variable Forward comes in

Q Let me hand to you what's been marked and Defendant's Exhibit No. 170 Can you tell us what this is?
A It's a presentation for outlining the managing concentrated stock positions
Q Is this one of the presentations that would accompany the -- I'm sorry, was this one of the sets of written materials that would accompany the presentations that you and Shawn Gibson would give to others?
A Typically.
Q And how would these written materials be circulated?
A. By e-mail
Q Would you have seen this presentation that's been marked as Defendants' Exhibit 170, would have seen this while you had worked at BB&T Asset Management?
A I would have
Q And does this appear to be a true and accurate copy of the presentation relating to managing risk in concentrated positions that would have been prepared by Shawn Gibson?
A Yes, sir
MR. KRISTINIK Your Honor, we move to admit into evidence Defendants' Exhibit No 170
MR WILLOUGHBY Your Honor, we have no objection
THE COURT All right
(Whereupon, Defendants' Exhibit No 170 was entered into the record as evidence)

BY MR KRISTINIK
Q Mr Gibson, how were you compensated --
I'm sorry, Mr Deal, how were you compensated at BB&T Asset Management?
A Salary and in discretionary bonus, you know, based on my supervisor's discretion
Q. Did you have any bonus that was based strictly on formula?
A. No, sir
Q Did fees generated by BB&T, did that play into your bonus at all?
A No, sir, not that I'm aware of
Q What office locations -- at which office locations did you work while you were with BB&T Asset Management?
A I was both in Richmond, and then subsequently transferred to Raleigh, North Carolina, where BB&T Asset Management was headquartered
Q Now, in late 2008, were you asked to assist with the unwind and roll of the pre-paid transaction for Frank Maybank?
A Yes, sir.
Q. Tell us about the transaction that Mr. Maybank was seeking back at that time
A Well, in late 2008 he had a Pre-Paid Variable Forward Contract in place, and so there was some interests in

unwinding the initial contract and then rolling into a new contract.

Q When you were first contacted about the transaction, was Mr. Maybank's situation explained to you?

A. I think the basics of the situation were explained, yes.

Q What would those basics have been?

A. What his needs were in terms of desiring to maintain the dividend. Those needs were in terms of preventing -- you know, preventing having to sell the stock, preventing -- and hedge the stock, since it was such a large position of his net worth.

Q. Now, at that time did you consider whether rolling early would have been a good move for Mr. Maybank?

A. Yes, specifically in terms of, you know, his view of the stock, which is where I lean on a client typically for their opinion in terms of the stock.

Q You said his view of the stock What do you mean by that?

A. Well, what ultimately -- most basically I was talking about whether it was going to go up or down.

Q. And what was his view?

A I think that the basic gist of it was he -- you know, in late 2008, or early 2009, was, you know, it's kind of come a long way down and thought that we were getting to a

low point
Q And then how does that play into your analysis as to whether or not an early roll would be a prudent financial move for a client?
A Well, when you unwind a Pre-Paid Variable Forward, the way that you go about determining what your obligation is to fulfill the end of the deal at the end of that contract, if the stock price is lower, then your, you know, your obligation to unwind that contract is lower
Q. Does that mean there would be a lower out-of-pocket costs to unwind and roll?
A I'm not sure if I follow you
Q As compared to if the stock price were higher.
A There are a lot of -- there are a lot of dynamics in play in the market and the contract, in particular, but, again, generally speaking, it would be -- it would be less expensive, you know, from dollars terms to unwind a contract when its price is lower, versus if it were higher
Q In addition to the potential of having a lower unwind price or lower out-of-pocket, were there any other benefits to rolling in January of 2009, which played into your decision as to whether or not this was a prudent financial move for Mr Maybank?
A. Well, sure, there are a -- similar evaluation that you make in terms of Pre-Paid Forwards in general, especially

the one, I mean, in particular is maintaining dividends, exposure to dividends, maintaining ownership of the stock and upside opportunity in holding that stock for the length of the term going forward

Q. Is the word appreciation a substitute for upside opportunity?

A. Yeah, sorry.

Q. And what about -- what about -- I know you are not here as a tax expert, but what about tax implications?

A. So tax -- you know, part of a Pre-Paid Variable Forward enables you to defer a taxable -- the taxable event of selling the underlying shares.

There can be taxable event many -- when you get paid dividends, you get taxed on those. When you have a Pre-Paid Variable Forward in place and you roll it into a new Pre-Paid Variable Forward, there could be a taxable event in that transaction, so there are -- there are a variety of taxable things.

Q. Is the disposition of the stock, the tax on the disposition of stock, being deferred with a roll?

A. Yes, sir.

Q. Let me show you what's been marked as Defendants' Exhibit No. 182, and this was already admitted into evidence from the testimony of Mr. Lackey. Please tell us what this is.

A. This is an e-mail from Mike Lackey to myself and Anthony Mahfood, sent on December 29th, 2008

Q. And please read to us what Mike is communicating to you about Mr. Maybank.

A. He's indicating that he urgently wants to see a proposal from J P Morgan to unwind the -- unwind the existing contract

Q. Who wants to urgently see a proposal?

A. Frank Maybank says that he called

Q. Would you have had any conversations with anyone about the anticipated transaction prior to this e-mail?

A. I expect so, given the brevity of it and the lack of details, but --

Q. And who would that -- who -- if you had had a phone conversation, who would it have been with?

A. Most likely Mike Lackey It could have been Anthony Mahfood

Q And Mike Lackey and Anthony Mahfood, are they -- was it your understanding they were both in the Wealth Management Division in the Greenville office?

A. Yes, sir.

Q. Let me show you what's been marked as Agreed Exhibit No. 31. Can you please tell us what this is?

A. Yes, sir, this is an e-mail from myself to Mike Lackey and Brian Boughner, dated January 8th, 2009

Q. And what's the date on this e-mail?
A. January 8th, 2009.
MR. KRISTINIK. Mandy, can you please project this for us?
BY MR KRISTINIK
Q What are you communicating with this e-mail?
A I'm sharing two hypothetical situations where -- you know, for an unwind and a roll
Q. Okay And does one of these belong to -- is one of these for an unwind and roll for Mr. Maybank?
A. Yes, sir
Q Is this -- would you consider this to be a proposal?
A. Sure, you could call it a proposal.
Q. And where would you have gotten the terms for which you put together this proposal?
A. Well, I would have had to get the unwind terms from J.P. Morgan. And the roll, the terms for the new contract, from an investment bank on the street
MR. KRISTINIK. Please go to the next page, Mandy
BY MR BROWN.
Q. Can you tell us what this is?
A. This is a settlement hypothetical, as I referred to it, proposal as you referred to it, the settlement for an unwind and roll into a new Pre-Paid Variable Forward for Frank Maybank

Q Okay. And is the date of this e-mail, January 8th, 2009, was this before the unwind and roll transaction that later occurred?

A Yes, sir

MR. KRISTINIK Mandy, if you would please cull out the box in the upper right-hand corner?

BY MR. KRISTINIK:

Q Mr Deal, can you explain to us the numbers in the lightly shaded box?

A Sure Basically it's a little addition problem or subtraction problem showing the proceeds The current proceeds reflect that the up-front cash that's received from the new Pre-Paid Variable Forward. The previous liability is representative of the unwind The price that has to be fulfilled, the unwind of the original transaction And then the net cash flow, which reflects the cash that Mr Maybank would have to come up with to roll.

Q Okay Does this box inform the reader about how much out-of-pocket cash would be needed to complete the unwind and the roll?

A The hypothetical -- at the time of this -- at the time of this hypothetical or proposal it does show the net cash flow is 1,180,410

Q So that means that's how much money Mr. Maybank would have to come up with, according to this proposal to unwind

and roll?
A Yes, sir
MR. KRISTINIK: Thanks, Mandy.
BY MR. KRISTINIK:
Q Let me show you what's been marked as Agreed Upon Exhibit No 32
Can you tell us what this is?
A. It's two e-mails, sort of an e-mail chain, starting from Mike Lackey to myself on January 12th
Q. And what's the date?
A. January 12th, 2009.
MR KRISTINIK Mandy, let's pull this one up And please cull out Mr Lackey's e-mail at the bottom
BY MR. KRISTINIK:
Q. What is Mr. Lackey communicating to you?
A It says that Frank wants to have a conference call with the tax advisor and myself.
Q. Do you remember participating in a call with Mr Maybank's tax advisor?
A I do.
Q. Would that call have occurred before or after the unwind and roll transaction?
A. It would have come before
Q Was anyone else on that call with you and the tax

advisor?

A The tax advisor, Frank Maybank, and I would have someone from Wealth Management

Q. Okay.

MR KRISTINIK Thank you, Mandy

BY MR KRISTINIK.

Q. I'm going to show you what's been marked as Agreed Exhibit No 33 Can you please tell us what this is?

A Yes, sir, this is an e-mail from myself to Anthony Mahfood and Mike Lackey.

MR. KRISTINIK. Mandy, let's pull this one up.

And if you would go ahead and cull out the body of the e-mail Thank you.

BY MR KRISTINIK

Q. What are you telling Mr. Mahfood and Mr. Lackey in this e-mail?

A. I'm explaining the price, based on a quote I received from J.P. Morgan to unwind the initial transaction at the market price of $22 35 is, you know, 4 719 million

Q Okay Now, you say in the second line "I am still waiting on one more dealer quote " How many dealers were you going to at this point in time, do you remember?

A Multiple. Those are -- I mean, it's our practice to do multiple quotes to determine, you know, what the best -- you know, what the best price was you can get for the client.

MR. KRISTINIK: All right. Thanks, Mandy

BY MR KRISTINIK

Q Let me show you what's been marked as Exhibit No. 194. This has already been admitted into evidence.

Can you please tell us what this is?

A. Yes, sir, it's an e-mail from myself.

Q. And what's the date on this e-mail?

A. January 14th, 2009.

Q. And is that before the unwind and roll transaction?

A. Yes, sir.

Q. And what's your recollection as to when that transaction actually was executed?

A. The roll was January 20th

MR KRISTINIK: Mandy, let's pull up this Exhibit No 194

BY MR. KRISTINIK:

Q What are you telling -- what are you communicating to Mr. Mahfood and Mr. Lackey in this e-mail?

A What I'm telling them is that these two scenarios that are attached are based on Deutsche Bank quotes, which it says I determine where the best -- who gave us the best pricing.

We also talked about -- or I also mentioned the dividends, dividend caps, which we had previously discussed with Frank

Q Can you explain to us what dividend cap is?
A When you set up a Pre-Paid Variable Forward, you build into the contract an agreed upon max dividend threshold that the client will receive over the course of the contract.
Q Dividend caps, do they ever guarantee that the dividends will be paid?
A No, sir.
Q Did you attach two pre-paid illustrations to your e-mail?
A Yes, sir.
Q And what's the difference between those two illustrations?
A There are several differences. The length of the term is the one that jumps out at me most, apparently.
MR. KRISTINIK: Let's pull up the first of these two illustrations.
And if you could cull out the shaded box in the upper right-hand corner.
BY MR KRISTINIK:
Q Now, what's the term in years for the first one, the one we are looking at right now?
A This is a two year contract.
Q What's the total out-of-pocket cash indicated here to unwind and roll?
A. 1 178,760 dollars.

Q Okay

MR KRISTINIK And now let's go to the second illustration, Mandy.

And please cull out the shaded box in the upper right-hand corner

BY MR KRISTINIK

Q. All right What's the term of years for the second pre-paid illustration?

A This is a three year contract.

Q And what's the total out-of-pocket cash that would be needed to do the unwind and roll, in accordance with this proposal?

A 1 714,713 dollars

Q And you would have sent both of these --

Well, let me ask you this So the total cash out-of-pocket would be less for a two year contract than a three year?

A Correct

Q And you sent both of these proposals with your January 14th e-mail to Mr. Mahfood and Mr Lackey?

A Yes, sir

Q And what was your expectation that they would do with these proposals?

A Share them with Frank Maybank

MR KRISTINIK All right, Mandy.

BY MR KRISTINIK

Q Let me show you what's been marked as Exhibit 36. Can you tell us what this is?

A. It's another of my e-mails This one to -- well, the most -- the latest one is from me to Anthony Mahfood and Mike Lackey

Q. Are you forwarding this e-mail from someone else?

A Yes, from my contact from J P Morgan, Nkonye

Q And what's the date on both of these e-mails?

A January 20th, 2009

MR KRISTINIK Mandy, let's pull this e-mail up

BY MR KRISTINIK

Q What are you communicating in this e-mail?

A I'm letting them know what an updated pricing for the unwind

Q Now, does your contact with J P Morgan, does she indicate what the price per share will be for the calculation of the unwind obligation?

A She does It was $18 90 per share.

MR KRISTINIK Mandy, let's cull out that section right there

BY MR. KRISTINIK

Q Now, see the term premium down at the bottom next to $18 90, the share price you just mentioned Can you explain to us what premium means in this context?

A. Yeah, basically that's -- that's -- they are telling you that's the price per share that the contract will be unwound on.

It's called a premium just to differentiate it from the spot price, which is to reflect the remainder of the value embedded in the contract when it's unwound early.

Q Okay. So the premium price is less than the actual stock price on that date?

A. That's correct

Q Okay And why is that? Why is a discounted stock price used to calculate the unwind obligation?

A. Like I said, it's kind of -- it's kind of complicated to explain, but ultimately there is still value left in the contract, so it's -- the contract is not calculated -- or the unwind price is not calculated based on the spot price, the price in the market, at that time.

Q Okay. So is a discount provided because there is still time left on the original pre-paid that's being unwound early?

A Yes, sir

Q. Let me show you what's been marked as Defendants' Exhibit No. 57, and can you tell us what this is?

A. This is the final settlement overview reflecting the terms of the unwind of Mr Maybank's -- or unwind and roll for Mr. Maybank's Pre-Paid Variable Forward

Q. And would you have created this document?
A. I would have
MR. KRISTINIK Your Honor, we would move to admit into evidence Defendants' Exhibit No 57
MR WILLOUGHBY. No objections.
THE COURT All right.
(Whereupon, Defendants' Exhibit No 57 was entered into the record as evidence)
BY MR KRISTINIK
Q. What investment bank was used for this second pre-paid contract?
A. Deutsche Bank
Q Was there a phone call with Deutsche Bank prior to the execution of this pre-paid?
A There is a phone call made with Deutsche Bank to execute the pre-paid
Q Who would have been on that call?
A. A representative from Deutsche Bank, myself, Mr Maybank
Q And what happened during that call?
A. Review of the terms of the contract that Mr Maybank was entering and his authorization to execute the contract.
Q Did he give that authorization during that phone call?
A Yes, he would have had to
Q Now, at the time of the unwind and roll, did you

believe that this was a prudent financial decision for Mr Maybank?

A. Again, based on what his expectation of the stock was, and cratering and wanting to have a lower -- a lower cash obligation to settle, wanting to extend a contract maintaining the dividend income over the course of the two years that the contract was going to be in place, as well as giving him 25 percent upside and exposure appreciation of the stock

Q Anytime while you were working on the unwind and roll transaction, did you ever tell Mr. Maybank that the dividends on the BB&T stock would be protected or would be guaranteed?

A I did not.

Q. Back to that time you were working with Mr. Maybank on his unwind and roll, was there any rule or policy at BB&T Asset Management that prohibited direct contact between you and the client?

A. No, sir.

Q If Mr Maybank had ever wanted to ask you any questions about the pre-paid transaction and wanted to speak to you directly, would you have provided him an opportunity to do so?

A Yes, sir.

Q Are you aware of any requests from Mr. Maybank -- after

the unwind and roll, are you aware of any requests from him to reverse the transaction?

A I'm not

Q. Let me show you -- I just have a couple more exhibits

Let me show you what's been marked as Exhibit No. 188 Can you tell us what this is?

A It's an e-mail from Anthony Mahfood to myself, dated April 21st, 2009.

MR KRISTINIK For the record, this has already been admitted into evidence.

BY MR. KRISTINIK:

Q What is Mr Mahfood asking you in his first e-mail?

A. There are a few -- the initial -- the initial e-mail is asking what would an unwind and restructure -- or an unwind and a roll look like, basically.

Q And this is in April of 2009?

A Right, it's a couple months after the roll.

Q Is this about three months after that January roll?

A Uh-huh

Q What was your response to the inquiry from Mr Mahfood?

A I basically told him that it was a little quick, and -- you know, we saw these as long-term contracts and that it wasn't a good idea to trade them actively.

Q Was your recommendation at that time to not pursue another unwind and roll?

A. At that time that was my recommendation.
Q Okay Let me show you what's been marked as Defendants' Exhibit No 167 Can you please tell us what this is?
A It's another series of e-mails, mostly between myself and Mike Lackey
Q What's the date of e-mail exchange, your e-mail exchange with Mr. Lackey?
A. August 7th, 2009
Q And what's the topic in these e-mails?
A. There were -- they were asking me about considering another roll
Q. And would you have -- you are the one that wrote the e-mails that are indicated on this document that -- or indicated as being from you?
A Yes, sir
Q. And does this appear -- this document that I handed you marked as Defendants' Exhibit 167, does it appear to be true and accurate copy of the e-mail exchange you had with Mr. Lackey on August 7th, 2009?
A. Yeah
MR. KRISTINIK: Your Honor, we move to admit into evidence Defendants' Exhibit No 167
MR. WILLOUGHBY: No objections, Your Honor.
THE COURT. All right

(Whereupon, Defendants' Exhibit No 167 was entered into the record as evidence)

MR KRISTINIK: Mandy, let's project this on the big screen

And if you would pull out the body of the middle e-mail beginning with "given with "

BY MR KRISTINIK

Q What are your explaining to Mr. Lackey in your e-mail from August of 2009?

A I'm basically saying it's still early in the contract to be considering a roll, unless we expected the stock to, what I say here "rip higher", or go higher fast

Q Okay. And is this in response to a second request to unwind and roll?

A I'm not sure which in the order of requests, but this is another request

Q Okay

MR. KRISTINIK Thank you, Mandy

BY MR KRISTINIK

Q. Now, Mr Deal, this is my last exhibit, Defense Exhibit No 192 Could you please tell us what this is?

A This is an e-mail from Anthony Mahfood to myself on Friday, April 23rd, 2010.

Q All right So this is over a year and three months from the unwind and roll at this point in time?

A Yes, sir.

MR KRISTINIK: Let's project this on the big screen

BY MR. KRISTINIK:

Q Please read this e-mail. It's not very long.

A "Thank Nate. I spoke with Mike Lackey and he was wondering if you could run some rollover scenarios for Frank. Frank called in and asked to see some hypotheticals. Many thanks, Anthony."

Q. Did this inquiry about a roll ever lead to the unwind of the second pre-paid for Mr. Maybank?

A No, not as far as I know.

Q All right. So you received at least three different requests to look into rolling the second pre-paid, right?

A Yes, sir.

Q. Did you ever actually handle another unwind and roll for Mr. Maybank after January of 2009?

A No, sir.

Q Why did you agree to go forward with the unwind and roll in January of 2009, but not to participate or recommend an unwind and roll in response to these future requests?

A. Well, again, the first -- the first roll was closer to the maturity of the contract than the others

Also we had specific interest in what -- or idea where we thought the stock was in its sort of cycle So it was at

the low point, in that he wanted to unwind the initial contract when the price was low

Q. Did you see potential benefit that justified the expensive unwinding and roll with respect to these three subsequent requests?

A. There were benefits there, but not enough to consider rolling them. Certainly not benefits as significant as there were at the time that we did roll.

Q Thank you.

MR KRISTINIK Okay Mandy. Thanks.

BY MR. KRISTINIK

Q. I'll ask you questions, Mr Deal. Did Shawn Gibson depart BB&T Asset Management while you were still there?

A Yes, sir.

Q And what were your responsibilities after Shawn left?

A. They remained unchanged.

Q. Did you have any resource to turn to if you needed input about pre-paids or other solutions for concentrated positions after Mr. Gibson left?

A So BB&T -- or what it was at the time, just Scott & Stringfellow, had a -- sort of a counterpart to me, someone that did the same thing that I did named Steve Gowe, so I could always touch base with him, if I needed him to check or something, or whatnot

Q Is Mr Gowe experienced with pre-paid transactions?

A. Yes, sir
Q. Did he have experience with other solutions for concentrated stock positions?
A. Yes, sir.
Q. Okay. When did you leave BB&T Asset Management?
A. It was early 2011
Q And why did you leave -- or was -- had BB&T Asset Management changed its name by that point in time?
A. It was -- it had changed its name to Sterling Capital
Q. And why did you leave Sterling Capital?
A I was interested in returning to Richmond, where I accepted a job with another firm.
Q. Okay. All right Thank you, Mr. Deal.
Please answer any questions of counsel for the plaintiffs.
A Yes, sir
THE COURT Okay We will take a short break.
(The following takes place outside the presence of the jury panel)
THE COURT All right, Mr. Deal, you can step down Don't discuss your testimony with anybody.
THE WITNESS: Yes, sir.
(Whereupon, proceedings were recessed)
(Whereupon, proceedings were reconvened)
THE COURT This is a note finding out if we are

Q And all of the other job responsibilities that you have had did not afford you with any training related to Pre-Paid Variable Forward Contract?

A Not specifically to Pre-Paid Variable Forward, correct.

Q And it would also be true that when you got to BB&T Asset Management you were not provided with any formal training? You were basically under the mentorship of Mr Shawn Gibson?

A. Yeah, outside of that formal -- you know, if you call it informal mentorship, I guess that's accurate.

Q. Now, when you were confronted with Mr. Maybank's rollover, when you were asked about assisting with that, your job is, I presume, like a --

Were you in the courtroom when Mr. Gibson's deposition was played?

A I wasn't, unfortunately, no, sorry

Q. So -- no, that's okay

Mr Gibson indicated -- if Mr. Gibson indicated that the job of your position and his position was to support the wealth advisors and the portfolio managers, is that consistent with what you understand the role to be?

A I think supporting them is a fair characterization

Q And the client contact was always with the wealth managers, the wealth advisors, and the portfolio managers, correct? The client contact?

A. I did not have a one-on-one conversation with Mr Maybank, no

Q. Nor did you -- you were in Richmond or Raleigh at the time?

A. Of the January -- of the -- January 20th, 2009, I was in Raleigh at that time.

Q. In Raleigh?

A. Yes, sir.

Q. And there was no meeting, face-to-face meeting, between you and Mr Maybank, correct?

A. That's correct.

Q. Now, I think -- would it be true for Mr. Maybank's rollover that you didn't perform any suitability analysis?

A. I don't think that's entirely fair There is some, you know, basic assessment of the appropriateness of a transaction for the client, Mr Maybank in this case, that would happen. Not all necessarily would have been documented formally, but certainly in the context of an understanding of what his needs were and what the -- you know, what a Pre-Paid Variable Forward transaction could provide for him would have been taken into consideration

Q. Would it also be true that if you did not believe and had not recommended that a rollover was in Mr. Maybank's best interests, you wouldn't have advised that he proceed forward with the rollover, correct?

A So I wouldn't have necessarily gotten into his way to prevent him from doing it. I'm not exactly sure if I answered -- or if I understand the question entirely.

Q I think in response to a question of Mr. Kristinik, you indicated that you thought the rollover was a prudent transaction.

A Correct, I didn't think that decision to roll at that time, in January of 2009, was an imprudent decision, based on the assumptions that we -- that we had at the time.

Q And one of the primary assumptions that you had, and I think you agreed with this, is that your view was that the stock was likely to go higher as opposed to going lower?

A. I did not have that view. I -- I -- I make it a point to not in my position take a view of the direction of the stock, because that's not -- it's no longer my expertise.

When I was a research analyst earlier in my career, I would have been doing fundamental analysis to determine what direction the stock was going. At this point I'm more focused around what it is that the client needs, what their expectations are for the stock and things of that sort.

Q Well, if you can't make some -- I think you indicated that one of the principle reasons that you would do a rollover or enter into a pre-paid in the first place is when you were optimistic about the stock ripping higher, correct?

A. No, not at all. No, no, no, not at all I didn't --

I -- I definitely would not characterize the stock ripping higher being a good time to enter into a Pre-Paid Variable Forward Contract, outside of all other information.

I guess -- I'll bring in the context of that particular e-mail I did say if our expectation was that a stock was ripping higher from the point that it was at at that time, it may have made sense to gain -- you know, have exposure up to the upside from that point So we would -- if the -- if the -- if the client, in concert with whatever other resource he was using to determine what direction the stock was going to go, he would want to have a way to manage his concentrated position in place such that he could have upside exposure to that move --

Q Well --

A -- if at all possible.

Q Well, we may look at the e-mail in just a second, but you remember the e-mails that Mr Kristinik showed you where you said would the stock rip higher, correct?

A Yes, sir.

Q And isn't that an indication that for doing a rollover at that time, that the only reason that you would do it is if you expected the stock to, in your words, rip higher?

A That would not be the only reason, but that would be among the reasons that we would take a more serious --

I think that if -- if our expectation was that the

what the basis in the stock is, what they paid for it many years ago, and what it's worth today. So the basis is stepped up to what the value of the stock is today, the date the person passes away, so that their heirs that are inheriting this stock, or their estate, depending on what their will says, doesn't have to pay those taxes between the basis and what the value of the stock is today.

Q Thank you.

Have you been asked to render any expert opinion regarding the tax impact on the stock sale in 2006?

A. Yes, I have.

Q I'm going to show you this chart.

Can you tell us what that the chart is and if you prepared it?

A Yes, I prepared this chart.

Q Is it a chart that reflects your expert opinion relating to the tax impact of the stock sale in 2006?

A Yes, it is.

Q I would like --

A Can you put it up on the exhibit?

MS. HORNE Yeah, I was going to say I would like to move this Defendant's Exhibit No. 174 into evidence.

MR. JOHNSON No objection, Your Honor.

THE COURT Okay.

(Whereupon, Defendants' Exhibit No. 174 was entered into the record as evidence)

MS. HORNE: Could you pull up the top so he can read it a little bit better, please, Mandy?

BY MS HORNE:

Q. Mr. Penny, would you please walk us through this chart?

A. Sure I just mentioned to you that Mr. Maybank entered his first pre-paid in 2006. And that an alternative to entering that pre-paid in 2006 was to have sold the stock And since he did the pre-paid, he didn't have any taxes to pay relative to his BB&T stock in 2006.

If he had -- if he had gone the other alternative and sold his 220,000 shares, the stock value at that time on August 11th, 2006, that is the first line there, was worth 9,328,000.

Now, his basis -- he had owned this stock for a long time since before he ever went to work with BB&T when he was running his own firm. His basis in the stock, what it was -- what it cost him, in effect, was $3.06. And so he would get to deduct the basis in the stock, and that's 673,200. That's the second line there.

So he would have had a taxable gain, had he sold his stock in 2006, of 8,654,800 That's the third line that you see up there

And he would have had to pay capital gains tax both for

federal and state purposes on that gain

And the federal tax -- the federal capital gains tax at that time in 2006, it's gone up this past year. It was 15 percent. And the State -- the South Carolina state tax that most of us pay is a 7 percent tax, but they give a 44 percent exclusion for capital gains, South Carolina does. So the combined late the is 18.92 percent

So in the event that he had sold his 220,000 shares in 2006, he would have owed 1,637,488 in taxes

Q It's your conclusion that Mr Maybank, if he had sold his stock in August of 2006, that he would have incurred a capital gains tax liability in the amount of $1,637,488, is that correct?

A That's my opinion, yes

Q Have you been asked to form an opinion about the tax impact if Mr Maybank's pre-paid contract had settled in 2009?

A Yes, I have

Q I hand you a chart Can you tell us what that chart is and if you prepared it?

A Yes, I prepared this chart, and this is very similar to what we did for what I just explained to you for 2006, except this was waiting until 2009, and what would have happened had he sold his stock in 2009.

MS HORNE Your Honor, I would move to admit

Defendants' Exhibit No 220 into evidence

MR JOHNSON: No objection.

THE COURT Okay

(Whereupon, Defendants' Exhibit No. 220 was entered into the record as evidence)

BY MS HORNE

Q. Mr. Penny, can you explain this chart that you prepared to us?

A. Yes. It's exactly like the previous chart, except this relates to what happened if he would have sold his stock, how much taxes he would owed if he would have sold his stock if 2009

Well, the 220,000 shares on 8-11-2009 was worth $25 18 a share So when you multiply 220,000 times 25 18, you get proceeds that he would have received, had he sold the stock then of 5,539,600.

Now, the basis in his stock goes way back before 2006, and it's exactly the same as the last chart that I showed you, and that's 3.06, so that's still 673,200.

So if he would have waited until August of 2009 and decided to sell his stock, he would have had a taxable gain at that point of 4,866,400.

And, of course, the rate is exactly the same as the previous chart as if he would have sold in 2006, because the tax rates didn't change between 2006 and 2009 So he would

have had additional income taxes in 2009, had he elected to sell his stock, of $920,723

Q Mr Penny, can you explain the significance of using the date of August 11th, 2009? Does that relate to the pre-paid contract?

A That was the expiration date of the original pre-paid contract that was entered in August of 2006 It was a three-year contract originally

Q And you -- it's your opinion that if Mr Maybank had just waited until August of 2009 to turn over his stock, that he would have had to pay a capital gains tax of $920,723, is that correct?

A If he had either sold his stock or relinquished his stock to satisfy the pre-paid agreement, that would have been his taxes, yes

Q Mr Penny, have you been asked to form an opinion relating to the actual tax impact of using the pre-paids and selling the stock in 2012?

A Yes, I have.

Q I'm going to hand you a chart Can you tell us what that chart is and if you prepared it?

A. Yes, I prepared this chart.

This chart that you are about to see is information, for the most part, that came directly from Mr Maybank's tax returns for 2006 through 2012

MS HORNE Your Honor, I would like to move to admit Defendant's Exhibit No. 175 into evidence.

MR JOHNSON No objection.

THE COURT Okay.

(Whereupon, Defendants' Exhibit No 175 was entered into the record as evidence)

BY MS. HORNE

Q. Can you please tell us about this chart?

A Okay As I mentioned, I was asked to review Mr. Maybank's tax returns for 2006 through 2012 So in order to put things in order and figure out exactly what the impact of these pre-paids were and the sale of his stock, I went ahead and excerpted from those tax returns the actual numbers that you see in columns one and columns two here -

Column one is his adjusted gross income. For example, in 2006, Mr Maybank had adjusted gross incomes on his tax return of 512,933.

And on 2012, when he actually sold his BB&T stock, Mr. Maybank had adjusted gross incomes of 2,807,772.

And the second column there, the actual taxes from both his federal and his state return, I just took the taxes directly off the returns, the federal taxes and the state taxes, and added them together, so you can see what taxes that he actually paid.

For example, in 2006, on a $512,000 worth of income, he

paid about $59,615 in taxes

And then in 2012, as you go down the listing, on the 2.8 million in income, he paid $515,000 in taxes

Now, included in his tax return were several items. He had income sources other than just his stock investments He had farm income He had other deductions Just like anybody that files a tax return and doesn't take a standard deduction, takes itemized deductions, he had itemized deductions in his tax return, but what I wanted to do is isolate, and that's the third column, the actual impact of what the pre-paids and the sale of his stock actually did to his tax situation.

As I mentioned to you previously, since the pre-paid allowed deferral of his income taxes from beginning of 2006 to 2009, there was no impact in 2006, 2007, and 2008, from the pre-paids on his tax return, and he did not sell any of his BB&T stock during those years.

Then in 2009, when the first pre-paid settled, when he elected to enter into a new pre-paid, or roll forward the pre-paid, or however you want to talk about it in January of 2009, he had a gain of about 1 7 million on his first pre-paid. And that gain caused him to pay income taxes relative to the pre-paid, caused him to owe income taxes relative to the pre-paid of $313,876

Well, you may say well, how can you possibly have

318,376, when his actual taxes for that year were only 143,000 Well, that's because Mr Maybank also elected to sell a substantial amount of other stock which he had losses in that aren't related to the BB&T stock during that year, and that reduced the amount of taxes that he had to pay But had he not sold these other stocks and just paid taxes on the impact of the pre-paid in 2009, he would have owed $313,876.

Then the additional pre-paids again deferred taxes in 2010 and 2011, and one year he had a gain and one year he had a loss, but all that got deferred to 2012.

And then in 2012, Mr Maybank elected to sell all of his BB&T stock There was something more than the 220,000 shares, but I adjusted it just to talk so that we are talking about apples and apples the whole time, which is talking about 220,000 shares for 2006, all the way through 2012. And when he sold his stock in 2012, he had to pay taxes on the gain from selling his stock of 457,033.

So the total tax impact of all the pre-paids and the sale of his stock from 2006 to 2012 was 770,909.

Q Does this account for all five of Mr. Maybank's pre-paid contracts?

A. Yes, it does, all of his pre-paid contracts.

Q. So the total tax liability incurred by Mr Maybank related to the pre-paid contracts and the disposition of his

BB&T stocks was $770,909, as indicated here?
A. That's correct
Q. Let's compare the first chart we talked about to this chart.
MS HORNE. If you could pull those up for us? Thanks.
If you could cull out things -- pull that out and we will put out the total taxes that were actually incurred
BY MS. HORNE:
Q So from the first chart, the outright stock sale resulted in a tax liability is this number $1,637,488?
A That's correct. If he had sold his stock in 2006, that would have been his tax liability
Q And can you please read for us the tax liability that was actually incurred?
A From all of the five pre-paids and from the sale of his stock in 2012, he incurred liability of 770,909
Q. From a tax liability perspective, in your expert opinion, did Mr Maybank save taxes by entering into the pre-paid transactions?
A Did he save taxes by entering into a pre-paid transaction?
Q Yes, sir.
A Well, he certainly paid less taxes in 2012, when he sold his stock, than he would have paid in 2006.

that would indicate that Mr. Maybank's advisors advised him that one of the benefits of a Pre-Paid Derivative Transaction was this stepped-up basis?

A Not that I recall.

Q Let's return to your other opinion regarding tax deferral.

You testified in your deposition that Mr. Maybank sold his concentrated -- had he sold his concentrated stock position in August, on August 11th of 2006, rather than continue to hold it with the pre-paid contract, as he was required to do, that he would have incurred capital gains taxes in the amount of, and I'm rounding here, but approximately $1.6 million, correct?

A Approximately, yes

Q And you also testified that you reviewed Mr. Maybank's tax returns in order to render your opinion, correct?

A Yes

Q And from those tax returns you extracted figures that is Defendant's Exhibit 175, your chart, that shows that Mr Maybank actually paid approximately $770,000 in taxes related to his BB&T stock, correct?

A Related to the pre-paids and his BB&T stock, yes

Q And if I understand your testimony, from those two numbers you inferred that Mr Maybank has paid approximately 830,000 less in taxes over the life of the pre-paids than he

would have paid, had he sold the stock on day one, correct?
A That's true
Q. And, Mr. Penny, what was the price of BB&T Corporation stock that you used to determine what would have been Mr. Maybank's tax liability in August of 2006?
A Well, it was roughly 42
Q 42 40 sound right?
A. Yes.
I could tell you exactly if you want me to go back to it and look
Q I would represent to you that it's $42.40
A 42 40 is correct
Q So the value of Mr Maybank's shares, when he entered the pre-paid contract, was approximately $9.3 million, correct?
A That's correct
Q And Mr. Maybank's first taxable event occurred in January of 2009, as a result of the rollover, correct?
A. That's correct
Q Do you know the price that BB&T Corporation stock was trading on the day of the January 2009 rollover?
A I have seen the price It was around 18 or 19 dollars.
Q And I would represent to you that it was trading at $19.84 on the day of the 2009 rollover.
A I'll accept that

Q And so the value of Mr. Maybank's BB&T stock at his first taxable event, if you do the math, 220,000 times the 19 84 was only approximately $4.3 million, correct?

A I didn't do that calculation. I don't know.

Q I would represent to you that my math is correct. So it's about $4 3 million, the value of Mr Maybank's shares at the time of the rollover

A. Given your representation, I have no reason to argue that point.

Q. So in that short period of time, that two years and five months, or so, in which Mr. Maybank continued to hold his BB&T stock as a part of this pre-paid derivative transaction that requires that he maintain his concentrated position in BB&T stock, Mr Maybank shares of BB&T stock had dropped approximately $5 million, 9 3 minus the 4.3, $5 million, correct?

A That's true.

Q. And so just so I understand your testimony, you contend that Mr Maybank benefitted from entering the pre-paid derivative transaction and continuing to hold his BB&T stock position, because he paid approximately $800,000 less in taxes than he would have paid on day one?

A Well, my calculation includes the impact of the pre-paids too

Your calculation, where you are using the value of the

broker-dealer and investment advisor regulations.

MR. WILLOUGHBY: No objection.

THE COURT. Okay.

BY MR. KRISTINIK:

Q. Have you reviewed records materials related to Mr Maybank's case?

A Yes, I have

Q. Why don't you tell us what those materials were

A. I have reviewed Mr Maybank's amended complaint.

I have reviewed the Wealth Management Agreement, which Mr Maybank signed

I also reviewed the Concentrated Stock Risk Management Addenda, also signed by Mr. Maybank.

Q Do you have any opinions to offer in this case?

A. Yes, my opinion is that the one time up-front advisor's fee that BB&T Asset Management charged Mr. Maybank was fair, reasonable and fully disclosed to Mr. Maybank

Q. Let's talk about investment advisors for a moment.

Tell us generally what kind of regulation investment advisors are subject to

A. They are subject to the Investment Advisors Act of 1940, which spells out requirements for a registered investment advisor from the standpoint of filings; reports that need to be made to the SEC; disclosure that needs to be reported to the SEC, as well as investors That's the form,

what they call the Form ADV. It also sets out various requirements with regard to books and records, conflicts, and a host of other things.

Q Is the purpose -- of all these requirements placed on registered investment advisors, is the purpose the protection of the investor?

A. Yes

Q You said that you are of the opinion that fees charged by BB&T related to the pre-paid transactions advisory fee was fair and reasonable and fully disclosed. Would you please explain to us the basis for your opinion?

A. Well, I reviewed the Forms ADV which were filed by BB&T Asset Management over the period in question, in this case 2006, and again 2009, and there was clearly disclosure with regard to the one time up-front advisor's fee that was charged Mr. Maybank.

In addition to that, I reviewed the Concentrated Stock Risk Management Addenda, which Mr Maybank signed both for 2006 and 2009, and there was full disclosure in each of those documents with respect to the one time up-front advisor's fee.

Q. Are you aware of any SEC rules or regulations or statutes that would prohibit BB&T Asset Management from charging the one time advisory fee on Mr. Maybank's pre-paid transactions?

MR. WILLOUGHBY. Objection, Your Honor. He's asking for a legal conclusion from this witness.

MR. KRISTINIK: No, Your Honor.

THE COURT: I'm sorry, I wasn't listening to the question. Ask it again

MR. KRISTINIK: Your Honor, I asked him if he's aware of any SEC rule or regulation or any statute that would prohibit charging a one one-time advisory fee by BB&T Asset Management

THE COURT I don't -- I don't think that's -- I'll overrule the objection Okay

BY MR KRISTINIK

Q Mr Merolla?

A I am not familiar with any such prohibition in any of the statutes, whether federal or the state Uniform Securities Act

Q Do any state or federal statutes or regulations dictate to investment advisors how their fees should be charged?

A No. In fact, you know, from a federal standpoint, the SEC does not wish to get in the business of dictating what fees investment advisors should charge

Q Now, to determine the propriety of the fees charged to Mr Maybank, did you assess whether BB&T Asset Management was acting as a broker-dealer with respect to Mr Maybank's pre-paid transactions?

A. Yes, I did
Q. And what was your assessment?
A. My assessment is that BB&T Asset Management was clearly acting as an investment advisor and not a broker-dealer
Q. And please give us the basis for that assessment
A. A broker-dealer is an entity which effects transactions, buy and sell transactions of securities for its clients or its own accounts, and it's generally paid a fee for those transactions, which is normally called a commission.

Broker-dealers also tend to keep custody of the securities or cash, if they're customers

And in this case BB&T Asset Management performed none of those functions. They were simply advising Mr. Maybank as to managing his asset pool. And the fact is that they needed to go to third-party broker-dealers to consummate the pre-paid transactions and they went to Bear Stearns in one instance and Deutsche Bank in another instance in order to have the transaction actually executed. Execution is not a function of an investment advisor.
Q. Does the charging of a one-time fee based on the amount of the transaction, is that fee determinative of whether or not an entity is deemed to be a broker-dealer?
A Well, a fee in this case was a one time up-front advisor's fee

To answer your question, a transaction fee is not dispositive of whether an entity is a broker-dealer or not. There are other criteria that you look at.

An isolated fee, absent some kind of continuum with regard to those charges, does not render an entity a broker-dealer

Q We've been talking about broker-dealers and investment advisors. Why don't you go ahead and just tell us the difference between those two types of entities.

A Well, as I said before, a broker-dealer, its main function is to effect or execute trades, buys and sells of securities on behalf of their customers or sometimes for their own account. They hold custody of those securities in many instances

An investment advisor, as I said before, is regulated under a separate act, which is the Investment Advisors Act of 1940, and they are looking to manage and advise an investor as to his pool of assets

Q Mr. Merolla, in your opinion and based on your review of materials in this case, what was BB&T Asset Management's role with respect to Mr Maybank's pre-paid transactions?

A. They were acting as an investment advisor.

Q Thank you, Mr Merolla Please answer any questions of counsel for the plaintiffs.

BB&T Asset Management?

A. BB&T Asset Management was and is a registered investment advisory firm. He was a client of an investment advisory firm.

Q. And what are the primary obligations of an investment advisor to a client?

A. The investment advisor is a fiduciary. The nature of the relationship is that he owes his client undivided loyalty, upmost good faith. He has an obligation to render advice which is unbiased and non-conflicted. He has an obligation to put the interests of his clients ahead of his own interests. That's -- that's basically -- that's the core of the obligation

In addition, there are conflicts that can arise between parties always, you know, in advisory relationships. The advisor has an obligation to disclose all of the conflicts and that is the way in which an advisor discharges his duty as a fiduciary.

Q. Can you tell us what the term fiduciary duty means from the perspective of industry standard of care?

A Well, it's a high standard, but the essence of it is is that the advisor is required to put the interests of the client ahead of his own interests.

Q And what's the basis for your opinion?

A When you register as an investment advisor, you get a

packet from the Securities & Exchange Commission. Inside that packet there are a number of materials, one of which is actually a case from 1963 It's called SEC v. Capital Gains Research. The reason they send this to you is that there is language that the Securities & Exchange Commission wants you to read that advises you of exactly what your duties are as an advisor.

Q. Is there a specific suitability rule that's applicable to investment advisors?

A There is not. There is -- there is --

Unlike in the brokerage world, for example, if you ever go down to Merrill Lynch, or, you know, a regular brokerage firm, they have an actual suitability rule. There is no such rule for investment advisors.

Q. Is there an industry standard of care that investment advisors must adhere to?

A. There is

Q. And what is that industry standard of care?

A. The standard of care is that if you make recommendations, that your recommendations have to have a reasonable basis.

So you have to have, in effect, a reasonable basis to believe that the recommendation you are making, if it involves the purchase or sale or exchange of security, that you have grounds to believe that that recommendation is

suitable. In effect, it's an opinion, that you have an opinion that the recommendation that you made has reasonable grounds, it's a reasonable basis. It's not just something frivolous It's, you know, something that is reasonable

Q. What's the basis for your opinion as to the industry standard of care for investment advisors?

A. Back in 1994, the Securities and Exchange Commission discussed adopting a suitability rule; the language, in effect, that I just recited. The rule never got adopted, but the language that they took was from the brokerage community. The brokerage community, the brokerage industry has a rule which was at that time known as Article 3, Section 2 of the Rule For Fair Practice. It's called Recommendations to Customers And the language that I cited "for the recommendation of a purchase, sale, or exchange of security and members shall have reasonable grounds to believe that the recommendation is suitable," that language has been adopted as a standard of care for the investment advisory business. So when you read literature from investment advisors, you see the same language, but it's not -- it is not a formal rule as exists in the brokerage community.

Q Were you present in the courtroom last week and the testimony of Dr McCann?

A. Yes, I was

Q And do you recall that Dr. McCann used the term "the best thing to do with respect to suitability of investment recommendations " Do you remember that?

A I do recall that.

Q Is that language consistent with your professional understanding of the suitability standard of care?

A It is not.

Q In your opinion, why is the use of "best thing to do improper with respect to the suitability of standard of care?"

A. Well, first of all, that is not -- that is not the standard of care, but there is a -- there is a fundamental reason behind that

This is -- it's a test -- suitability is the test of reasonableness. So if you had five different professionals that had ideas, solutions for problems, all five of them might go about trying to solve an investment-related problem in a different way The key is whether or not each one of those individuals has a reasonable basis for coming up with the solution to the problem

It isn't a matter of looking back in hindsight after you already know what happened in the market and saying what was the best thing to do. The question is if you come up with the solution, do you have a reasonable basis for recommending that solution

So, in effect, you could have five people go at a problem different ways and all five of them could be correct All five of them could be making suitable recommendations, so long as their solution, there are reasonable grounds to -- you know, they have a reasonable foundation for making the -- you know, for coming up with the solution.

Q As an expert, how do you go about determining whether an investment that is at issue in a lawsuit was or was not suitable for the client?

A What I do is I basically put myself in the seat of the investment advisor and go back in time to look and see what the circumstances are, to see what different types of solutions would be possible.

And so, you know, we know what the solutions that have been offered here, the facts of this case We know what various other experts have come in and said you should or shouldn't do

So I'm just going to go back in time and put myself in that chair and say what types of things might I have come up with, you know, for that -- you know, for that point in time

Q Well, applying that analysis to the facts of this case, what are the key factors that you would want to take into account?

do the best, if a whole market goes down, even the good stocks go down. So you would want at that point in time to see --

What we know now, we know that in the middle of 2008 everything went haywire We know that the market had, you know, pretty much of a, you know, historical collapse between summer, say, of 2008 -- really the beginning or almost at the end of 2007, into the early part of 2009 Were there any signs on the horizon that that was going to occur at the time that this recommendation, or transaction, or whatever you want to call it, you know, would have been made? And the answer to that question is, as far as I know, back in 2006, no The signs, the sort of tsunami that hit, the first real signs of that, in my opinion, and in my experience, were really more towards the end of 2007. The flags that started to rise then would not have been a factor in July or August of 2006.

Q We have heard some opinions in this courtroom about whether Mr. Maybank should have sold his stock back in 2006. I want to ask you, what would have been the benefits of keeping the stock?

A The benefit of keeping the stock, stock is primarily the dividend stream So Mr. Maybank needed cash He had a lot of expenses And so if he keeps the stock, he continues to get that dividend stream

Other two benefits are that he avoids paying the capital gains tax, which as the previous expert just -- or that Mr. Penny testified was approximately $1 6 million So he doesn't have to pay that capital gains tax, at least not at that time

And also there was reference made to step up in basis. So that, you know, if he does hold onto the stock, you know, through his lifetime, there is a tax benefit to him from the estate standpoint.

Q. If the stock is sold, as you said the dividend income is lost, in your opinion could the dividend income be replaced?

A. I don't think so. In fact, it's not that I don't think so, it could not have been replaced in a safe way

So this is an analysis that I did look at. What happens is that after if you sell the stock flat out, you make the sale, there is a couple of things that you have to do. There was a 9 3, or so, million dollar whatever you will get for the stock I think that's the price that he would get. Then you would have to pay off the debit balance, the margin balance, and then you would have to pay the capital gains shares to the government. You know, they are going to come and they are going to want their cut. Well, after you do that, you are left with somewhere in the low $5 million, you know, 5 2, 5 3 million dollars. And

then you have to take that amount of money and go out and reinvest it in a way that is consistent with Mr. Maybank's investment objectives, which would at that point mean not taking undue risks. Like you wouldn't want to go out and by junk bonds, or something like that And to be able to replace the dividend or to replace that dividend income so to deal with that other problem of financing those expenses. I couldn't find a safe way to do it.

One of the problems that you run into with bonds, they are, of course, a source of income, is that with the exception of treasury bonds, almost all bonds have what is known as a call provision. And what that means is that when a bond -- if a bond has a high rate of interest. Let's say it's yielding seven or eight percent. When interest rates come down, the issuer of the bond could take that bond back. They do that for a reason. They want to -- it's just like refinancing your house You have got a mortgage that's at eight percent The mortgage rates have dropped down to five percent What are you going to do? You are going to go to the -- you are going to go to your bank and you are going to try to refinance to get a lower rate. Well, that's -- a bond is just like a loan It's just like a mortgage in a lot of ways. They are going to -- they have a contractual provision where they can refinance that bond, in effect, and so they could borrow money at a lower rate That's great

for them, but if you are somebody that has a lot of expenses and you are depending on that cash flow, all of the sudden those bonds that you were depending on to deal with to pay those expenses, you don't have them any more, because the issuer took them away. And as we all know, you know, at least I think, if you have been down to your bank to go look at CD rates, or whatever, or try to find anything that's appearing today, the amount of interest you could get on that stuff is just about nothing. And in most cases, very low rates, two percent, three percent. That's good -- you know, that's good for people who are borrowing money, but if you need money to pay expenses, that's a real risk.

So do I think that the dividend income -- it couldn't have been replaced in 2006, and over time the odds of it being -- even if you were to put something in there that got close to replacing them, you know that those things are eventually going to get called away if interests rates decline. That's a real risk that any bond investor has to take a serious look at. So that's a very treacherous approach.

Q. Are there any other factors that would play in your analysis that you want to address?

A. I think that's basically it.

Q. Okay. Did you analyze the different choices available to deal with Mr. Maybank's concentration -- concentrated

stock position that existed back in July of 2006?
A. I did
Q And in your opinion what were the choices available to Mr Maybank at that time?
A. It was basically only three things The reason I say that is there is lots of choices There is, you know, probably seven, or eight, or ten different things that somebody might do, but there is only a couple that are realistic, and that's because he had these three issues he had to deal with. He had the issue of, you know, getting rid of the margin debt He had the issue of the expenses and the concentration. When you look at all three, it really reduces your choices.

One of them is that you could have sold all the stock Those have been proposed in the course of this proceeding. Selling all the stock would have provided him cash, would have given him money to, you know, reinvest. But, of course, he would have had to pay the taxes.

Q If he sells the stock, what stock price would he have gotten back on August 12th of 2006?
A. He would have gotten $42 a share
Q. All right. So put a few numbers on the board.
So 42 if he sells?
A. That's correct
Q. All right.

A The next choice is what actually occurred. You could do a transaction in a Variable Pre-Paid. The nature of this, the particular contract that was entered into, suggests and contractually guarantees that the lowest price you can get, if you have to sell the stock, is $32 a share How do I get to that number?

Well, if you will recall, the stock was worth about, you know, 9 3 million, or so, dollars, and I know that the prior witnesses I'm sure have testified that when Mr. Maybank entered into this pre-paid transaction, he got an immediate payment of $7.1 million.

In effect, at the end of the three years all Mr. Maybank -- the only thing he was required to do is either pay money to keep the stock or turn the stock over. If he turns the stocks over, it's effectively the sale of the stock. What did he get for it? He got the $7.1 million His worse-case scenario really is $32 a share.

So as opposed to selling it outright he can do the pre-paid at the end of the three years. Instead of handing the stock over on day one, he hands it over in three years. He's gotten his $32 a share and he's gotten dividends at the end of -- you know, for those three years Those dividends are in excess of a million dollars.

And then there is the third part. If, as was suggested, by Value Line, the market didn't crater and, you

know, things go the way maybe some people thought they might, he could have gotten as much as $56 a share.

Q. Well, let me put those numbers on here.

So $32 to $56 a share?

A. Correct.

Q And that's -- those are the -- that's the range under the pre-paid scenario?

A That's what the contract calls for

And then there is the third thing, which is your base line, really, because one of the things you could do is you can do nothing. You know, you could -- you know, you could just keep what you have Well, if that happens and the market or the price of the stock does collapse and you don't have a pre-paid, you don't have some type of a hedge on it and the stock starts falling, you still have that margin debt out there. And one of the things about a margin account that's important to note is that whoever holds that stock as collateral for the debt, they want you -- they have -- they have requirements that you keep a certain amount of equity

It's just like if you wanted to go get a house and now the bank says "I will give you the loan, but you got to put 20 percent down " I know that's old school Now it's like ten, or five, or whatever it is, you know. If it got really bad you didn't have to put anything down, but in the old

days that's what they said, it was like 20 percent you got to put down.

Well, stock works the same way. So if you want to borrow against stock, you have to keep up a minimum amount of equity And if you have a concentrated position in the stock, they want you to keep higher equity. In this case it was about 40 percent

Well, as the stock starts to decline, if you have less equity, then what the lending institution requires, you to got to either bring in more money or you got to sell some stock to raise money to meet the equity requirements. Well, if you have a huge debt and you are spending, more than likely you don't have any money to bring in, so you have got to sell stock

In this case, in this particular case, had he held on, he would have had to sell a lot of the stock In fact, he would have to had to sell almost all of the stock. And the price of the stock was going down, down, down. And the lower the stock price goes, the more stock you got to sell to raise the capital to get your equity up higher.

I calculated -- I know I testified in my deposition that he would sell stock at 25, 20, and 15 I went back after and I -- that was correct. The average price that he would have gotten for selling most of his stock is about $20 a share. It was actually $19 65

Q. Let me add this to the board, the last number we put up here. 20?

A 20

Q So if he does nothing, on average he is selling at $20 a share?

A Yes, and it's -- it's not only is he selling at $20 a share, but because of his obligations to pay off that debt and because of the still existing expenses, by the middle of 2009, probably as early as April of 2009, he would have run through his money. He would have nothing left. So he would have had to sell his stock. And each time you sell the stock, now, remember, you have got fewer and fewer shares. That means the dividends that the stock is producing, you are getting less and less of that, because you don't have as many shares and you get paid dividends per share. So it's really like a death spiral until you sold off all your stock and then you had to pay off all your margin debt and you are between that and your expenses, you are basically out of money.

Q In your opinion, how much better off would Mr Maybank have been by doing the pre-paid as opposed to doing nothing?

A It's pretty simple. In his worse case scenario he would have gotten his $32 a share, which is the $7 1 million. And he got -- you know, for that he would have handed over the shares, you know, the 220,000 shares.

And in the other case, in his doing nothing case, he would have all his stock gone, basically sold, or most of it -- actually about 176,000 shares of it had to have been sold, and you would have gotten 20. So all you got to do is take the amount of shares that he would have had to sell, 176,000, and multiply it by the 12 points. It's that simple, because he gets 12 points better off than the pre-paid than if he had done nothing and was forced to sell the stock, because the margin declines, and that's about $2.1 million.

Q. Mr Tulman, you have now told us about three different choices that Mr Maybank could have made back in the summer of 2006. Of these three choices, which ones would you consider to have been suitable choices?

A. Either selling the stock, as Dr McCann proposed, or doing the pre-paid. Either one of those choices would have been suitable.

Q. And how is it that you can have more than one suitable choice?

A. This goes back to my earlier testimony. You could have a couple of people, five people in the room sitting around trying to figure out what the possible solutions are. One person might say "I think you ought to sell the stock." Is that a reasonable -- are there good reasons that you can come up with to sell that stock? Absolutely. Is it --

would it be -- would there be a reasonable basis to make that recommendation? Absolutely.

In the same vein, with the pre-paid you ask yourself the same question. Are there good reasons to do the pre-paid? Would doing the pre-paid put the client in the better position than he otherwise would be in if he just does nothing. Well, I have gone through all the needs that Mr. Maybank had, the need to produce cash flow, the outlook for this stock, his profile. I don't have any problem for me if I was sitting in that chair saying yeah, I could come up with a -- you know, it's reasonable. It's reasonable to take that approach

Really, if you think about it, it's just a -- it's just a simple tradeoff. In one case he gets the $42 a share In the other -- but he gives up his dividends He doesn't get those any more and he has to pay his capital gains taxes.

And the second case, the pre-paid, instead of getting 42, he gets $32 a share However, within that three-year period he might get as much as $56 a share He might He's going to get the dividend for three years He will have to pay taxes that he has as well That's a factor you have to consider.

I look at it as a trade-off. I don't look at it one of them -- this isn't an either/or situation. This is where a couple of people have come up with different approaches to

solving the problem and I think both approaches would be suitable.

Q So, Mr. Tulman, if both approaches would be suitable, is it your opinion that a pre-paid would have been a suitable option back in the summer of 2006 for Mr Maybank?

A Yes, and the test for me, is I put myself in that chair as the investment advisor and I said "okay, can I come up with enough reasons, enough foundation that somebody who might look at this would say he took a reasonable approach."

Maybe at the end, because the market collapsed, you know, maybe at the end it didn't work out You know, maybe the market crashed and, you know, it didn't work out like he thought it was, that's not the way you look at it. You don't look at it in hindsight.

Put yourself in that chair at that time, and if it's reasonable, if appears reasonable and there is good basis for it, then it is suitable and in my view that's -- you know, that would indicate that they wouldn't have liability for making the, you know, that recommendation, if, in fact, he even made a recommendation.

Q Before we move to damages, let me just ask you one more question Is your opinion, the suitability in this case, is it to a reasonable degree of professional certainty?

A Yes.

Q Okay. Let's move forward to damages.

Are you familiar with well managed damages approach?
A. Yes.
Q. And can you tell us what that is?
A. Basically what you are doing is that you are taking an amount of money that the parties would agree on Everybody knows how much money was in a particular account, and you are saying here is what actually happened. What would have happened if this breach, or if this, you know, alleged bad act hadn't have occurred

And so in order to make those comparisons, what you do is you say, all right, instead of doing what they actually did, call that X, I got a way that they should have done, Y, and we are going to measure the difference between what apparently was a not good approach and one that you think, you know, would be a good approach. All you are doing is measuring the difference

So when you do this, or when you do any damages analysis or computation, you are going to walk into a courtroom and present it to the trier of fact. The important thing is -- the most important thing is it cannot be speculative. So when you set up the parameters of how you are going to run this analysis, it can't be speculative. So that means that when you are measuring against different cash flows, like, you know, when you are using your surrogate or your replacement security, the cash flows have

CROSS EXAMINATION BY MR WILLOUGHBY

Q Just a couple of questions, Mr Tulman

You are being paid for your testimony in this case, is that correct?

A. I wouldn't -- I am being paid in this case, but I don't believe it's accurate to say I'm paid for testimony. I'm paid for the work that I have done throughout the process of the case.

Q. And you are being paid at the rate of $325 an hour?

A. That's correct.

Q. And would you estimate that your time through your testimony today will exceed $50,000?

A A little bit above that, yes. Not a lot

Q 60,000?

A It's somewhere between 50 and $60,000 for the life of the case

Q Thank you very much.

MR WILLOUGHBY That's all I have, Your Honor

MR KRISTINIK No redirect

THE COURT. All right. Thank you. You may step down.

MR KRISTINIK: Your Honor, we would ask that Mr Tulman be excused from the trial

MR WILLOUGHBY: No objection

THE COURT All right. Thank you

MR KRISTINIK And, Your Honor, the defendants BB&T and Sterling, we rest our case.

THE COURT: All right

Ladies and gentlemen, I need to discuss some issues with the lawyers, so I would ask you all to step back to your room and we'll get right back with you. Thank you.

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

THE COURT Is there going to be any reply?

MR. WILLOUGHBY: There is going to be no reply, Your Honor.

THE COURT Okay

MR. BROWN Your Honor, we would renew our directed verdict motions at this time on the grounds that we have stated previously to the court, as well as on the grounds that we presented in our summary judgment motion to the court as previously stated. I would be happy to go through as much or as little of that as possible. We want to make sure the record is preserved on all of the grounds that we have presented, both in writing and verbally to the court

THE COURT Okay Well, let's just break until about -- are y'all going to -- before any restart going into the in-depth arguments, why don't we break for lunch and see where we are, okay?

MR. BROWN: And judge --

THE COURT: And begin -- then argue all this after, because, you know, there have been some talk about shedding causes of action I just wanted to see what happens, okay?

MR WILLOUGHBY Your Honor, we will have some directed verdict motions as well.

THE COURT Sure, I know. I understand.

THE COURT. All right. Well, let's narrow the issues as much as we can in the next two hours All right, we will see you at 2:15

MR. WILLOUGHBY. And, Your Honor, your plan for this afternoon then?

THE COURT Well, I'm going to have the jury come back at 2 15 -- 2.30 I'm going to tell them to come back at 2 30 and we will see where we are

MR WILLOUGHBY We will come back at 2:15, Your Honor?

THE COURT 2 15

MR WILLOUGHBY Fair enough

THE COURT Yes All right

Would you tell them to go to lunch and come back at 2.30.

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)