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22939

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Tanya A. Gee
Circuit Court Judge

Case No. 2014-CP-40-07917

Appellate Case No. 2015-001845

RECEIVED
OCT 17 2016
SC Court of Appeals

John M. McIntyre and Silver Oak Land
Management LLC, ... Appellants,
v.
Securities Commissioner of South Carolina, ... Respondent.

**RECORD ON APPEAL
VOUME THREE**

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**RECORD ON APPEAL
INDEX**

VOLUME I

ORDERS and JUDGMENTS

Cease and Desist Order dated April 19, 2013	1
Hearing Officer Recommendations dated May 6, 2014.....	10
Remand Order dated September 12, 2014	32
Recommendation dated October 22, 2014	62
Final Order dated November 20, 2014	75
Circuit Court Order dated May 7, 2015	87
Order denying Motion for Reconsideration dated July 21, 2015.....	102

PLEADINGS

McIntyre and Silver Oak Land Management Petition for Review dated December 19, 2014	105
--	-----

TRANSCRIPTS

Notice regarding pages ROA_0114 - 0160.....	114
Administrative Proceedings Hearing July 30, 2013	1017
(Contained in Volume III)	
Opening Remarks	1022
Testimony	1063
John McIntyre.....	1063
Direct by Crapps	1063
Cross by Mathison	1126
ReDirect by Crapps	1186
ReCross by Mathison	1198
Administrative Proceedings October 1 – 3, 2013	161
Testimony	171
Phil W. Hartman	171
Direct by Crapps.....	171
Cross by Mathison	196

ReDirect by Crapps	230
ReCross by Mathison	232
Further Examination by Crapps	243
Further Examination by Mathison	244
 Richard Silver	 250
Direct by Crapps	250
Voir Dire Exam by Crapps	338
Cross by Mathison	341
Continued Direct by Crapps	343
 Paul Finn	 354
Direct by Crapps	354
Cross by Mathison	381
ReDirect by Crapps	436
 Richard Silver	 440
Continued Direct by Crapps	440
Cross by Mathison	442

VOLUME II
(begins at ROA_0501)

James Russell Paris	578
Direct by Mathison	578
Cross by Crapps	588
 Sandra Matthews	 595
Direct by Crapps	595
Cross by Mathison	630
ReDirect by Crapps	685
ReCross by Mathison	690
 John McIntyre	 694
Direct by Mathison	694
Cross by Crapps	761
ReDirect by Mathison	782
ReCross by Crapps	795
Closing Statements	797
 Court of Common Pleas Hearing April 17, 2015	 807
 <u>EXHIBITS/DOCUMENTS</u>	
Silver Oak I Operating Agreement	867
Silver Oak II Operating Agreement	886

Silver Oak IV Operating Agreement	904
Silver Oak V Operating Agreement.	935
Silver Oak Energy Operating Agreement.	962

VOLUME III
(begins at ROA_0985)

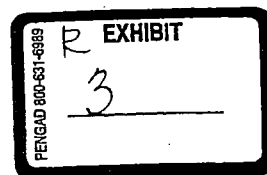
Silver Oak VII Operating Agreement.	985
--	-----

OTHER MOTIONS and MISCELLANEOUS

McIntyre and Silver Oak Land Management Motion for Reconsideration Dated June 19, 2015	1014
---	------

Notice of Appeal.....	1016
-----------------------	------

Certificate of Counsel



OPERATING AGREEMENT

FOR

SILVER OAK LAND TRUST VII, LLC

THIS OPERATING AGREEMENT, effective as of March 6th, 2009, is entered into by and between the Members (as defined herein).

WHEREAS, the Members desire to enter into this Operating Agreement to govern the conduct of the business and affairs of the Company and to set forth the understanding of the Members regarding all other matters concerning the Company;

NOW, THEREFORE, in consideration of the premises and covenants contained herein and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Members, intending to be legally bound, do hereby agree as follows.

1. Certain Definitions.

When used herein, the following terms shall have the meanings set forth below.

1.1 "Act" means the South Carolina Limited Liability Company Act, §33-44-101, et seq. Code of Laws of South Carolina (1976 as amended).

1.2 "Agreement" means this Operating Agreement as the same may be amended and supplemented from time to time.

1.3 "Articles" means the articles of organization, and all amendments thereto, executed and filed pursuant to the Act and the terms of this Agreement.

1.4 "Code" means the Internal Revenue Code of 1986, as amended. All references herein to specific sections of the Code shall be deemed to refer also to the corresponding provisions of succeeding law.

1.5 "Company" means Silver Oak Land Trust, VII, LLC, a South Carolina limited liability company.

1.6 "Manager" means initially, Silver Oak Land Management, LLC, a South Carolina limited liability company.

1.7 "Member" means those Persons set forth in Exhibit "A".

1.8 "Ownership Percentage" means the percentage that a Member's total capital contributions to the Company bear to all the capital contributions made to the Company, as initially reflected in the attached Exhibit "A".

1.9 "Person" means any individual, limited liability company, limited liability partnership, partnership, corporation, trust or other person or entity.

1.10 "Treas Reg. and Regulations". mean the income tax regulations promulgated

under the Code, as such regulations may be amended from time to time.

1.11 Other Definitions. Unless otherwise provided in this Agreement, any other term used in this Agreement which is elsewhere defined in this Agreement shall have the same meaning as such term is respectively given by this Agreement.

2. **Organization.**

2.1 Formation. The Members hereby agree to be bound by the terms and conditions of this Agreement, evidenced by affixing their signatures to this Agreement. Thus, commensurate with the execution of this Agreement, the Members of the Company shall adopt the Articles that were filed with the Office of the South Carolina Secretary of State.

2.2 Limited Liability Company. The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than federal and state tax purposes, and this Agreement may not be construed to suggest otherwise.

2.3 Foreign Qualifications. Prior to the Company's conducting business in any jurisdiction other than South Carolina, the Members shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Members, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of the Members, each Member shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Operating Agreement that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

3. **Capital Contributions and Related Matters.**

3.1 Initial Capital Contributions. The Members shall make their initial capital contributions to the Company as reflected on *Exhibit 'A'* which is affixed hereto and incorporated herein. If a Member fails to make an initial capital contribution it shall be considered in default under Section 3.3.

3.2 Additional Capital Contributions. If the majority of Members (voting based upon Ownership Percentages) determine that the Company needs additional capital, the additional capital contributions made by the Members shall be in proportion to their respective Ownership Percentages in the Company.

3.3 Default.

(a) Non-Defaulting Member's Remedy. In the event a Member fails to pay an initial capital contribution or additional capital contribution when due and such default is not cured within ten days after written notice to the defaulting Member by the non-defaulting Member requesting that such capital contribution be paid, a non-defaulting Member may make the capital contribution owed by the defaulting Member and such amount shall be deemed a loan to the Company. The terms of the loan shall be in accordance with Section 3.4.

(b) Company's Remedy. In the event a Member fails to pay an additional capital contribution when due and such default is not cured within ten days after written notice to the defaulting Member by the Company or a non-defaulting Member requesting that such capital contribution be paid, the Company may commence legal proceedings against the defaulting Member to collect the due and unpaid amount of the capital contribution, plus the expenses of collection, including court costs and attorneys' fees, in which case the defaulting Member would remain a Member upon successful enforcement and payment in full of such capital contribution (and any interest thereon as may be awarded), plus the expenses of collection. This remedy shall not be available:

(i) if a non-defaulting Member elects to contribute the additional funds, either by a loan or an additional capital contribution to the Company, pursuant to Section 3.3(a) above; or

(ii) if a defaulting Member is an IRA plan. Instead the defaulting Member's membership interest shall be diluted proportionately to the amount of the unpaid capital contribution until such time as the capital contribution shall be paid.

(c) Loans By Members. A Member shall be allowed to make a loan to the Company if the Members unanimously agree to the making of said loan or if the loan is made pursuant to Section 3.3(a). All loans from a Member to the Company shall accrue interest at the prime rate posted by the lending institution at which the Company has its primary operating account, plus two percentage (2%) points. For example, if the prime rate is four percent (4%) the loan from the Member would accrue interest at the annual rate of six percent (6%).

3.4 Withdrawal of Capital. The Members shall only be entitled to withdraw or to receive distributions of his capital contributions in accordance with the terms and conditions of this Agreement.

3.5 Interest on Capital Contributions. No interest shall accrue on any capital contributions made by the Members.

3.6 Capital Accounts. The Company shall establish and maintain for each Member a capital account initially reflecting an amount equal to each Member's initial capital contribution. The capital account shall be adjusted from time to time to reflect the Member's additional capital contributions, if any, allocable shares of net profits or net losses or any items thereof, distributions made to any Member, and as otherwise required by the provisions of this Agreement and the Code and its Regulations including, but not limited to, Treas. Reg. 1.704-1(b)(2)(iv).

4. Profits, Losses, Distributions and Taxable Income.

4.1 Allocation of Profit and Loss and Taxable Income, Gain, Loss, Deduction, and Credit. Both profits and losses of the Company and, items of taxable income, gain, loss, deduction and credit, shall be apportioned among the Members in the same percentage as each Member's total capital contributions bear to the total of all capital contributions made to the Company.

4.2 Distribution to Members. The Company may make distributions of cash or cash equivalents to the Members from time to time. The Manager shall determine the total amount of the distribution which may be made to the Members, and each Member shall share in such total distribution in accordance with its Ownership Percentage.

4.3 Distributions in Kind. Except as may be provided in an amendment to this Agreement, no Member regardless of the nature of the Member's contribution to capital, may demand or receive a distribution from the Company in any form other than cash or cash equivalents.

4.4 Limitation on Distributions. No distribution may be made by the Company if after giving effect to the distribution: (i) the company would not be able to pay its debts as they become due in the usual course of business; or (ii) the assets of the Company would be less than the sum of its liabilities plus, the amount that would be needed, if the Company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other Members upon dissolution which are superior to the rights of the Member receiving the distribution.

5. Members.

5.1 Representations and Warranties. Each Member hereby represents and warrants to the Company and the other Members that: (i) it is duly organized, validly existing and in good standing under the law of the state of its formation and is duly qualified and in good standing as a foreign entity in all jurisdictions which require it to be qualified; (ii) it has all necessary power and authority to execute and agree to this Agreement and to perform obligations hereunder; (iii) it has duly executed and delivered this Agreement; and (iv) its authorization, execution, delivery, and performance of this Agreement does not conflict with any other agreement or arrangement to which that Member is a party or by which it is bound.

5.2 Change of Ownership of a Member. A Member that is not a natural person may not cause or permit an interest, direct or indirect, in itself to be transferred without the consent of the other Members if after such transfer the Member shall cease to be controlled by the same Person who control it as of the date of its admission to the Company. Upon the non-compliance of this Section, the Company shall have the option to buy, and on exercise of that option, the non-complying Member shall sell, its interest in the Company, in accordance with Section 8.1.

5.3 Information. In addition to the other rights specifically set forth in this Operating Agreement, each Member is entitled to all information to which that Member is entitled to have access pursuant to South Carolina Code §33-44-408.

5.4 Fiduciary Duties.

(a) Duty of Loyalty. Each Member's and Manager's duty of loyalty to the Company and the other Members is limited to account to the Company and to hold as trustee for the Company any property, profit or benefit derived by the Member or the Manager in the conduct or winding up of the Company's business. A Member or a Manager does not violate the duty of loyalty by engaging in a competing business or pursuing other business opportunities, even if the business opportunity could have been pursued by the Company.

(b) Duty of Care. Each Members' and Manager's duty of care to the Company and the other Members in the conduct of and winding up of the Company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(c) Good Faith and Fair Dealing. Each Member and Manager shall discharge his duties and exercise any of his rights consistently with the obligation of good faith and fair dealing which he owes to the Company and the other Members. A Member or a Manager does not violate a duty of good faith or fair dealing to the Company merely because the conduct furthers the Member's or Manager's own interest. Further, a Member or a Manager does not violate the duty of good faith and fair dealing by engaging in a competing business or pursuing other business opportunities, even if the business opportunity could have been pursued by the Company.

6. Management of the Company.

6.1 Decisions of the Company. Except as otherwise set forth herein, all decisions effecting the operations of the Company shall be decided by consent of the Manager.

6.2 Authority and Power of the Manager. The Manager shall have the authority and power necessary to discharge the business of the Company. Without limiting the foregoing, the Manager shall have the authority and power to perform the following acts on behalf of the Company:

(a) Execute and deliver any and all agreements, contracts, documents, certifications and instruments necessary or convenient in connection with the carrying on in the usual way of the business and affairs of the Company;

(b) Execute and deliver any deed, lease, mortgage, mortgage note, bill of sale, easement, license, contract or other instrument purporting to convey, sell, exchange or encumber all or any part of the Company's property;

(c) Deposit or invest Company funds in such interest bearing or non interest bearing investments or bank accounts as they deem advisable to the extent such funds are not then required for Company operations, and are not required to be distributed, pursuant to this Agreement;

(d) Retain or employ and coordinate the services of employees,

independent contractors, supervisors, accountants, attorneys and other persons necessary or appropriate to carry out the business and purposes of the Company;

(e) Engage in any kind of activity and to perform and carry out such contracts of any kind necessary to operate the business and purposes of the Company, in accordance with this Agreement; and

(f) Pay all debts and other obligations of the Company, to the extent that funds of the Company are available therefor.

6.3 Liability of the Members and the Manager. The Members and the Manager shall not be liable to the Company or to any Member for any debts owed by the Company, or for any actions taken or omissions made in good faith and reasonably believed by the Member or the Manager to be in the best interests of the Company, or for errors of judgment, except to the extent such acts or omissions constitute gross negligence or willful misconduct. Provided the standards of this Section 6.3 are satisfied, the Company shall indemnify each Member and Manager for all costs and expenses, including reasonable attorneys' fees, associated with the defense of any action or claim brought against the Member or Manager by any other Member, the Company or a third party, except for an action brought pursuant to Section 3.3(b).

6.4 Conflicts of Interests. The pursuit of other ventures and activities by Members or Manager, even if directly competitive with the business of the Company, is hereby consented to by the Members and shall not be deemed wrongful or improper. No Member or Manager shall be obligated to present any particular investment opportunity to the Company, even if such opportunity is of a character which, if presented to the Company, could be taken by the Company. The Company may enter into agreements with one or more Members or Managers (or an affiliated entity) to provide management, consulting, marketing, construction or other services to the Company.

6.5 Waiver of Derivative Suit. All Members hereby agree to waive any and all rights to institute a derivative suit pursuant to South Carolina Code §33-44-1101.

7. Transfers of Interests; Admission.

7.1 Transfer Restrictions. No Member may sell, assign, transfer, pledge, hypothecate or otherwise dispose of its interest or any interest therein unless the transfer meets the requirements of Section 7.2 or Section 7.3. Any transfer of any Member's interest in violation of this Agreement shall be void and of no effect.

7.2 Permitted Transfers. Compliance with Section 7.3 shall not be required for the gratuitous transfer by a Member of their distributional interest in the Company (as defined in South Carolina Code §33-44-101) to the following individuals and/or entities:

(a) transfers to the spouse or any one or more of the issue, or in trust for the benefit of any one or more of the spouse and issue, of such Member; or

(b) transfers to the estate of the Member.

All transferees under this Section shall be considered a transferee of a distribution interest under South Carolina Code §33-44-502.

7.3 Right of First Refusal. If a Member receives a bona fide offer ("Offer") which the Member ("Selling Member") proposes to accept, whether or not solicited, to sell or otherwise dispose of all or any portion of his interest, then the Selling Member shall furnish to the non-selling Members written notice of the receipt of the Offer together with the principal terms and conditions of the sale, including the minimum price ("Sale Price") at which such interest is proposed to be sold, and a statement as to the identity of the real party in interest making the Offer. The Company and/or the non-selling Members, shall then have the right to purchase any portion of the interest ("Offered Interest") proposed to be sold by the Selling Member upon and subject to the terms and conditions as set forth in this Section 7.3. In the event more than one offeree accepts the offer, those accepting shall purchase the membership in proportion to their Membership Interests, unless they agree otherwise.

(a) The price and terms at which the Offered Interest may be purchased shall be the price and terms contained in the Offer. However, if the offeree elects to purchase only a portion of the interest being sold, then the purchase price shall be in proportion to the price contained in the Offer. If the price contained in the Offer shall consist (in whole or in part) of consideration other than cash, payable at the closing thereof or at a later date, the cash equivalent fair market value of such other consideration shall be included in the price at which the Offered Interest may be so purchased.

(b) The Company and non-selling Members shall have thirty days after receipt of the notice to elect to purchase the Offered Interest. The purchase transaction (unless otherwise agreed to with third-party purchasers) shall be consummated at a closing to be held at the principal executive offices of the Company, or at such other location as may be agreed by the parties, within thirty days following the date of the offeree's election to purchase the Offered Interest, or any portion thereof. At the closing, unless otherwise stipulated in the Offer, the offeree shall deliver to the Selling Member the full purchase price, against delivery of an instrument appropriately transferring the Offered Interest sold thereby.

(c) If the Company or a non-Selling Member does not elect to purchase the Offered Interest, or any portion thereof, then the Selling Member may accept the Offer and, pursuant thereto, sell the Offered Interest. However, if the Selling Member does not sell the Offered Interest pursuant to the Offer within sixty days after the termination (by passage of time or otherwise) of the rights of first refusal created under this Section 7.3, the Selling Member may not thereafter transfer the Offered Interest, or any part thereof, without again complying with the provisions of this Section 7.3.

7.4 New Members. Upon unanimous consent of the Members, the Company shall have the ability to admit new Members either by the Members selling a portion of their interest to the new Member or by the Company granting an additional interest to the new Member. In either event, the new Member must comply with Section 7.5 in order to be recognized as a Member of the

Company.

7.5 Admissions.

(a) All transfers by a Member of his interest, or any interest therein, shall entitle the transferee only to receive the allocations and distributions to which the transferring Member would otherwise be entitled, and shall be considered and treated as a transferee of a distribution interest under South Carolina Code §33-44-502. A transferee shall become a Member only upon compliance with the requirements of this Section 7.5 and only with the written consent of all of the other Members, which consent shall be given in the sole and absolute discretion of the other Members.

(b) No Person to whom a transferring Member has transferred his interest or any interest therein shall be eligible to be admitted as a Member of the Company unless (i) provision therefor is made by the instrument of assignment and (ii) such Person executes and acknowledges such instruments as the Members reasonably deems necessary or advisable to effect the admission of such Person as a Member, including but not limited to, executing the Operating Agreement currently governing the operations of the Company.

(c) Any transferee admitted to the Company as a Member pursuant to this Section 7.5 will succeed to all rights and be subject to all the obligations of the transferor Member. Further, the transferor Member shall not be released of any obligations owed to the Company. In connection with such transferee becoming a Member, all other steps shall be taken which, in the opinion of the Members, are reasonably necessary to admit such transferee under the Act as a Member.

7.6 Distributions and Allocations in Respect to Transferred Interests. If any Member's interest is sold, assigned or transferred, or any Person is otherwise admitted as a Member during any fiscal year in compliance with the provisions of this Agreement, net profits, net losses, each item thereof, and all other items attributable to such interest for such fiscal year shall be allocated among the Members by taking into account their varying interests during such fiscal year in accordance with Code §706(d). Unless otherwise required by the applicable Regulations, such sale, assignment, transfer or admission shall be deemed to have occurred at the end of the calendar month during which such event shall have actually occurred, and such allocations shall be determined and made pursuant to a pro forma closing of the books of the Company as of the end of such month. With respect to a transferred Member's interest or any interest therein, all distributions on or before the deemed date of such transfer shall be made to the transferor and all distributions thereafter shall be made to the transferee. The Company shall not incur any liability for making allocations and distributions in accordance with this provision.

8. **Death, Bankruptcy or Change of Ownership.** On account of a Member's (i) bankruptcy or assignment of its interest for the benefit of a creditor; (ii) the change of ownership of a Member as set forth in Section 5.2; or (iii) death ("Transferring Member"), the Company shall enjoy an option to purchase the Transferring Member's interest in the Company. If this option to purchase is exercised by the Company, it shall pay the purchase price in accordance with Section 8.1.

8.1 Purchase Price for Member's Interest. If this option to purchase is exercised by the Company, the purchase price shall be the fair market value of the Transferring Member's interest in the Company. For purposes of this Agreement, the fair market value of the Transferring Member's interest shall be as agreed upon by the Company and the Transferring Member's representative or estate. If a valuation can not be agreed upon, then such fair market value shall be determined by two independent M.A.I. appraisers, one selected by the Company and one selected by the Transferring Member's representative or estate. If the two appraisers set the fair market value at amounts which do not differ by more than thirty percent, then the average of the two values shall be the fair market value of the interest. If the differential of the two appraisals is greater than thirty percent (30%), then a third appraiser shall be appointed, by mutual agreement of the two appraisers, for the purpose of choosing which of the two appraisals more nearly reflects the fair market value of the interest. Whichever value the third appraiser chooses shall be the fair market value of the interest.

8.2 Terms of Purchase. If the Company elects to purchase the Transferring Member's interest in the Company, then the Company shall have the option of remitting the purchase price in a lump sum, or with a down payment equal to fifty percent (50%) of the purchase price and a promissory note for the remainder of the purchase price. If the purchase price is paid in a lump sum, then it shall be made within ninety days of the written election by the Company to purchase the interest. If the Company elects to make payment which includes a promissory note, the amount of the note shall be paid in equal consecutive monthly installments over a number of months, not exceeding one hundred twenty (120) months. The down payment of the purchase price shall be made within ninety (90) days of the written notice by the Company to purchase the interest. Any subsequent payments due thereafter shall commence on the first day of the first month following the payment of the down payment. Interest on the promissory note shall be adjusted annually and shall be at the prime rate of bank in which the Company has its primary operating account. The promissory note shall be subject to prepayment, without penalty, in whole or in part, at any time and, provided further, that the amounts due on account of the promissory note shall be accelerated upon default in the payment of the principal or interest due on said note.

8.3 Transfer of Member's Interest. Each Member agrees that upon receipt of cash or cash equivalents, or a promissory note in full payment of the purchase price for his interest in the Company, the legal representative of his estate will execute and deliver to the Company all the documents which are required to transfer the Transferring Member's interest in the Company to the Company.

9. Withdraw and Dissociation. No Member shall be allowed to withdraw or dissociate from the Company. Any attempted dissociation or withdraw by a Member shall be null and void and not recognized by the Company. If an event of dissociation occurs for any reason whatsoever, the Company shall not dissolve and the Member causing the dissociation, if any, shall be liable to the Company for such wrongful dissociation. In no event shall the dissociated Member be entitled to have its Ownership Interest purchased by the Company.

10. Dissolution and Deficit Capital Accounts. The Company shall be dissolved upon the written consent of all Members. Upon dissolution and notwithstanding anything contained in this Agreement or any custom or rule of law to the contrary, a Member's deficit capital account, if any, shall not be an asset of the Company and such Member shall not be obligated to contribute such amount to the Company to restore the balance of such Member's capital account to zero.

11. Distribution of Proceeds on Dissolution. Upon the dissolution of the Company, the Members shall proceed with the liquidation of the Company as promptly as possible, but in an orderly and businesslike manner and the proceeds therefrom and any other funds and assets of the Company shall be applied and distributed in the following order of priority:

11.1 First, to the payment of all debts of the Company owed to non-Members;

11.2 Second, to the payment of all debts owed to a Member on account of a loan made to the Company;

11.3 Third, to the Members in accordance and in proportion with the net credit balances of their respective capital accounts, as determined after taking into account all capital account adjustments for the Company's taxable year during which such liquidation or dissolution occurs;

11.4 Fourth, to the Members in accordance with their Ownership Percentages.

12. Miscellaneous Matters.

12.1 Captions and Headings. Section and paragraph headings or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

12.2 Applicable Law. This Agreement is to be formed in the State of South Carolina and shall be governed by and construed in accordance with the laws of the State of South Carolina. Any action brought to enforce or interpret this Agreement shall be brought in the court of appropriate jurisdiction for Beaufort County, South Carolina.

12.3 Severability. Every provision of the Agreement is intended to be severable. If any term or provision hereof is deemed illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity or legality of the remainder of this Agreement.

12.4 Benefit. Except as herein otherwise provided to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties, their heirs, personal representatives, successors and assigns.

12.5 Amendments. This Agreement may be amended only by a written instrument executed by all the Members.

12.6 Further Action. Each Member, upon the request of the other Member, agrees to perform all further acts and execute, acknowledge, and deliver any documents which may be reasonably necessary, appropriate, or desirable to carry out the provisions of this Agreement.

12.7 Construction and Interpretation. If any provision of this Agreement requires judicial interpretation, it is agreed that the court interpreting or considering this Agreement shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule or conclusion or agreement that a document shall be construed against the party who itself or through its agents prepared the same.

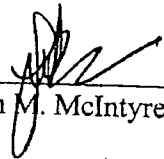
12.8 Attorney Representation. The Members acknowledges that McNair Law Firm, P.A. prepared this Agreement on behalf and in the course of its representation of the Company and that the Members have been advised by McNair Law Firm, P.A. that a conflict exists between their interests. Each Member acknowledges that it has had the opportunity to seek independent legal counsel.

12.9 Entire Agreement. This Agreement, including Exhibit "A", embodies the entire agreement and understanding between the Members relating to the subject matter hereof and supersedes all prior representations, agreements and understandings, oral or written, relating to such subject matter.

This Agreement is executed by the Members, effective as of the date first above written.

MEMBERS:

Silver Oak Land Management, LLC
a South Carolina limited liability company

By: 
John M. McIntyre, Manager

[ADDITIONAL MEMBER SIGNATURES ON FOLLOWING PAGES.]

12.8 Attorney Representation. The Members acknowledges that McNair Law Firm, P.A. prepared this Agreement on behalf and in the course of its representation of the Company and that the Members have been advised by McNair Law Firm, P.A. that a conflict exists between their interests. Each Member acknowledges that it has had the opportunity to seek independent legal counsel.

12.9 Entire Agreement. This Agreement, including Exhibit "A", embodies the entire agreement and understanding between the Members relating to the subject matter hereof and supersedes all prior representations, agreements and understandings, oral or written, relating to such subject matter.

This Agreement is executed by the Members, effective as of the date first above written.

MEMBERS:

Silver Oak Land Management, LLC
a South Carolina limited liability company

By: _____
John M. McIntyre, Manager

[ADDITIONAL MEMBER SIGNATURES ON FOLLOWING PAGES.]

Exhibit A

Silver Oak Land Trust VII, LLC

Members Ownership

Percentage		Contribution	Owner
0.71	\$	4,741.84	Victor DelGuercio
3.54	\$	23,709.12	Pensco Trust Company
3.54	\$	23,709.12	M&S Telecommunications Corp of America Inc
4.724	\$	31,612.17	Dave Fauerby
4.724	\$	31,612.17	John Fauerby
7.08	\$	47,418.25	Pensco Trust Company
7.08	\$	47,418.25	Passaloukas, John & Jeanne Zailckas
7.08	\$	47,418.25	Rose Patteson Ryan
7.08	\$	47,418.25	Alvin Prusoff
7.08	\$	47,418.25	Stephen B Lane
8.264	\$	55,321.30	DaveJeff LLC
10.62	\$	71,138.00	Paul Finn
14.17	\$	94,836.50	Pensco Trust Company
14.29	management service		Silver Oak Land Management

MEMBER SIGNATURE PAGE

1

John Passaloukas

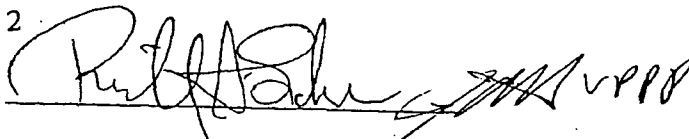
John Passaloukas, Individually

Jeanne Zailckas

Jeanne Zailckas, Individually

MEMBER SIGNATURE PAGE

2

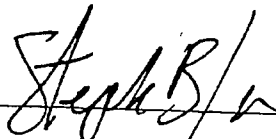
A handwritten signature in black ink, appearing to read "Richard A. Silver", followed by a series of stylized, overlapping letters that look like "VPPD".

PENSCO Trust company Custodian FBO

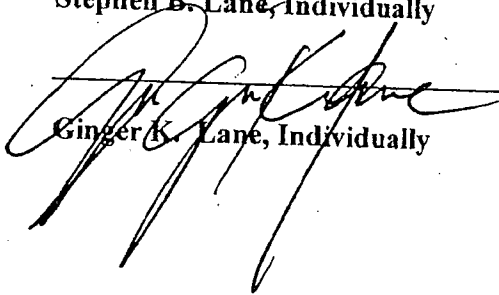
Richard A. Silver, Individually IRA

MEMBER SIGNATURE PAGE

3



Stephen B. Lane, Individually



Ginger K. Lane, Individually

MEMBER SIGNATURE PAGE

⁴ Paul Finn 7/4/09

Paul Finn, Individually

ROA 151004

Silver Oak Land Trust VII, LLC
Operating Agreement

Exhibit A

MEMBERS, INITIAL CONTRIBUTIONS, AND OWNERSHIP PERCENTAGES

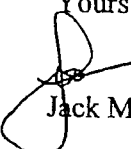
Member	Contribution	Ownership Percentage
Silver Oak Land Management, LLC	Management Services	14.29%
John Passaloukas, Jeanne Zailckas	\$ 47,418.25	7.08%
Pensco Trust, Richard A Silver IRA	\$ 94,836.50	14.17%
Stephen B. and Ginger K. Lane	\$ 47,418.25	7.08%
Paul Finn	\$ 71,138.00	10.62%
Pensco Trust, Victor DelGuercio IRA	\$ 47,418.25	7.08%
Pensco Trust, James R. Paris IRA	\$ 23,709.12	3.54%
Dave-Jeff LLC	\$ 23,709.13	3.54%
Mildred Fauerby	\$ 94,836.50	14.17%
Rose Patteson	\$ 47,418.25	7.08%
Alvin Prusoff	\$ 47,418.25	7.08%
Victor DelGuercio	\$ 4,741.84	0.71%
M&S Telecommunications of America Inc	\$ 23,709.12	3.54%
TOTAL	\$573,771.47	100%

SILVER OAK LAND TRUST VII, LLC.

We hope that you have an interest in this project. We encourage you to return your membership offer form and a check as soon as you can. If you have any questions or need more information please call me anytime at 843-342-3363. All membership payments must be received before the deadline of August 7, 2009.

We reserve the right, in our sole discretion, to accept or reject any membership, in whole or in part. We reserve the right to accept memberships on a first come, first serve basis. If the offering is oversold, or if we do not accept all or a portion of an interest, we will return the unaccepted portion.

Yours Truly,


Jack McIntyre

MEMBERSHIP OFFER

ATTN: JACK MCINTYRE
Silver Oak Land Trust VII, LLC.
P.O. Box 22827
Hilton Head Island, SC 29925

I hereby submit \$23,709.12 for every 3.04% interest in Silver Oak Land Trust VII, LLC a South Carolina Limited Liability Company. Silver Oak Land Trust VII, LLC, currently has 258.39+- acres of land in Fairfield County, South Carolina under Purchase Agreement with Crescent Resources LLC. After the closing this property will be the only asset of Silver Oak Land Trust VII, LLC.

Number of Units: 1 at \$23,709.12 each; Total \$ 23,709.12

Date: 8-3-09

Print Name: Paul Finn

Address: 8 Lavington Road

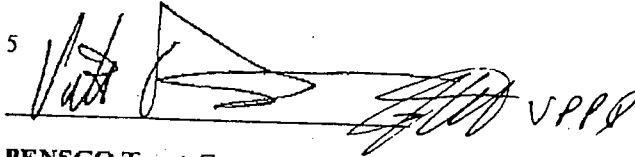
Telephone Number: _____

E-mail address: paul@commonwealthmediation.com

Signature: Paul C. Finn

Fax to: 843-342-3364

MEMBER SIGNATURE PAGE

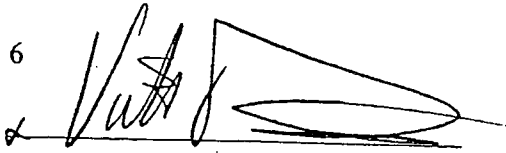
5  VPPD

PENSCO Trust Company Custodian FBO

Victor DelGuercio, Individually

MEMBER SIGNATURE PAGE

6

A handwritten signature in black ink, appearing to read 'Victor DelGuercio', written over a horizontal line.

Victor DelGuercio

SILVER OAK LAND TRUST VII, LLC.

We hope that you have an interest in this project. We encourage you to return your membership offer form and a check as soon as you can. If you have any questions or need more information please call me anytime at 843-342-3363. All membership payments must be received before the deadline of June 1, 2009.

We reserve the right, in our sole discretion, to accept or reject any membership, in whole or in part. We reserve the right to accept memberships on a first come, first serve basis. If the offering is oversold, or if we do not accept all or a portion of an interest, we will return the unaccepted portion.

Yours Truly,

Jack McIntyre

MEMBERSHIP OFFER

ATTN: JACK MCINTYRE
Silver Oak Land Trust VII, LLC
P.O. Box 22827
Hilton Head Island, SC 29925

I hereby submit \$47,418.25 for every 7.08% interest in Silver Oak Land Trust VII, LLC a South Carolina Limited Liability Company. Silver Oak Land Trust VII, LLC, currently has 258.39+ acres of land in Fairfield County, South Carolina under Purchase Agreement with Crescent Resources LLC. After the closing this property will be the only asset of Silver Oak Land Trust VII, LLC.

Number of Units: 112 at \$47,418.25 each; Total \$ 23,709.12

Date: 5-26-09 PENSCO Trust Co Cust

Print Name: James R. Pavis IRA

Address: P.O. Box 26903 SF CA 94126-6903

Telephone Number: 843-785-5588

E-mail address: Jim@HiltonHeadrealstate.com

Signature: James R. Pavis VPPR

Fax to: 843-342-3364

Account Holder:

PenSCO Trust Company Custodian
FBO - James R. Pavis IRA

MEMBER SIGNATURE PAGE

9

Susan B. Vick, member
Dave-Jeff LLC

MEMBER SIGNATURE PAGE

10

Mildred E. Fauerby by Susan B. Vitek p.o.a.
Mildred Fauerby

MEMBER SIGNATURE PAGE

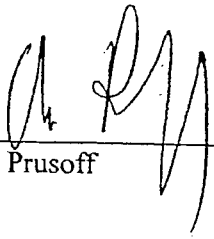
11

Rose C. Patteson
Rose Patteson

MEMBER SIGNATURE PAGE

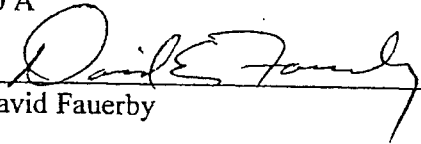
12

Alvin Prusoff

A handwritten signature in black ink, appearing to be 'Alvin Prusoff', written over a horizontal line.

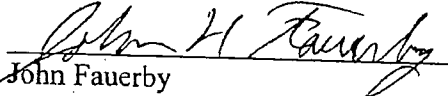
MEMBER SIGNATURE PAGE

10 A


David Fauerby

MEMBER SIGNATURE PAGE

10


John Fauerby

SILVER OAK LAND TRUST VII, LLC.

We hope that you have an interest in this project. We encourage you to return your membership offer form and a check as soon as you can. If you have any questions or need more information please call me anytime at 843-342-3363. All membership payments must be received before the deadline of July 15, 2009.

We reserve the right, in our sole discretion, to accept or reject any membership, in whole or in part. We reserve the right to accept memberships on a first come, first serve basis. If the offering is oversold, or if we do not accept all or a portion of an interest, we will return the unaccepted portion.

Yours Truly,

Jack McIntyre

MEMBERSHIP OFFER

ATTN: JACK MCINTYRE
Silver Oak Land Trust VII, LLC.
P.O. Box 22827
Hilton Head Island, SC 29925

I hereby submit \$23,709.13 for every 3.54% interest in Silver Oak Land Trust VII, LLC a South Carolina Limited Liability Company. Silver Oak Land Trust VII, LLC, currently has 258.39+- acres of land in Fairfield County, South Carolina under Purchase Agreement with Crescent Resources LLC. After the closing this property will be the only asset of Silver Oak Land Trust VII, LLC.

Number of Units: 1 at \$23,709.13 each; Total \$ 23,709.12

Date: 7/13/09

Print Name: _____

Address: _____

Telephone Number: _____

E-mail address: _____

Signature: Wayne P. Smith

Fax to: 843-342-3364

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
(Case No. 2014-CP-40-07917)

JOHN M. McINTYRE and SILVER)
OAK LAND MANAGEMENT, LLC,)
)
Plaintiffs,)

v.)

SECURITIES COMMISSIONER OF)
SOUTH CAROLINA,)
)
Defendant.)

NOTICE OF MOTION AND MOTION
(Reconsideration)

TO: The Defendant, SECURITIES COMMISSIONER OF SOUTH CAROLINA,
by and through His Attorney, JORDAN CRAPPS, Esquire.

PLEASE TAKE NOTICE that the Plaintiffs herein, by and through their undersigned attorney, ten (10) days after the service hereof, upon such date and at such time as shall be scheduled by the Court, will move before the Honorable Tanya A. Gee, at the Richland County Courthouse, 1701 Main Street, Columbia, South Carolina, for the following relief:

1. An Order, pursuant to Rules 52(b) and 59(e), SCRCP, amending or modifying the Order dated and filed on May 7, 2015, a copy of which was mailed to the attorney for the Plaintiffs on May 12, 2015 and was received by him on May 14, 2015, in the following particulars and upon the following grounds:

(a) To specify, with respect to each of the seven limited liability companies formed by the Plaintiffs and others, what act or omission by either Plaintiff, **"made in connection with the offer, sale, or purchase of a security"** constituted either (i) "an untrue statement of a material fact," or (ii) the omission "of a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading," or (iii) "an act, practice or course of business that operates . . . as a fraud or deceit upon another person," or (d) amounts to "a device, scheme or artifice to defraud."

(b) To specify whether any false statement or omission to state a material fact, which fulfills the criteria in subparagraph 1(a), also amounted to the misstatement of a presently existing fact that related to the security being offered, sold or purchased.

(c) To specify when organized entities in which the Plaintiffs have an interest are properly to be treated as entirely separate and discrete, such as for purposes of condemning loans between them, even though, in many instances, the members of the borrower and the lender were the same (and often had approved the loans).

(d) To specify when otherwise separate and discrete organized entities in which the Plaintiffs have an interest may be aggregated so as to disregard their independence such that paying a personal expense in Silver Oak Land Company (herein "SOLT") would make the manager culpable unless he disclosed that payment in forming an entirely new entity, such as SOLT III, in which no similar indiscretion had, or could have, occurred.

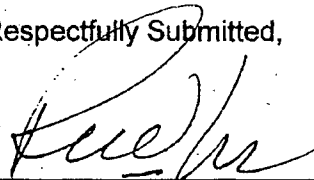
(e) To specify which (and how many) of the 54 discrete memberships in the SOLT companies actually belonged to friends and relatives of the Plaintiffs and/or of the principals in Silver Oak Land Management and Dave-Jeff, LLC, none of whom claim to have been defrauded, and none of whom participated in the proceedings before the Securities Commissioner.

The grounds for this Motion are that the arguments set forth above may have been overlooked or misperceived.

This Motion is premised upon the Complaint dated December 19, 2014, the argument of the Plaintiffs' attorney at the hearing of the Motion and the applicable law.

Respectfully Submitted,

By:



Robert V. Mathison, Jr.
Attorney for the Plaintiffs

MATHISON & MATHISON
Post Office Box 5271
Hilton Head Island, SC 29938-5271
Telephone: (843) 785-6503
Email: rmathlaw@aol.com

May 26, 2015

Hilton Head Island, South Carolina.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Tanya A. Gee, Circuit Court Judge

Case No. 2014-CP-40-07917

77694

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SC Court of Appeals

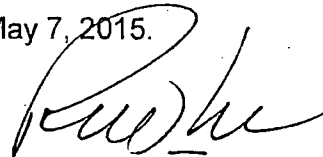
JOHN M. McINTYRE and SILVER OAK LAND MANAGEMENT, LLC, ...Appellants,

v.

SECURITIES COMMISSIONER OF SOUTH CAROLINA Respondent.

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the Appellants herein, John M. McIntyre and Silver Oak Land Management, LLC, appeal from the Order of the Honorable Tanya A. Gee dated and filed on July 21, 2015, written notice of which was postmarked and mailed to the Appellants' counsel on July 29, 2015, and was received by him on July 31, 2015, as well as from all previous orders of Judge Gee in this case, including, without limitation, the Order of Judge Gee dated and filed on May 7, 2015.



Robert V. Mathison, Jr.
Mathison & Mathison
Post Office Box 5271
Hilton Head Island, SC 29938
Telephone: (843) 785-6503
Email: rmathlaw@aol.com

Attorneys for the Appellants
John M. McIntyre and Silver
Oak Land Management, LLC

August 27, 2015

Hilton Head Island, South Carolina.

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:) FILE NO. 12058
)
)
JOHN M. MCINTYRE)
AND SILVER OAK LAND)
MANAGEMENT, LLC,)
)
RESPONDENTS.)
)
_____)

Taken before Sandra M. Snead, a Notary Public in
and for the State of South Carolina, commencing at the
hour of 10:06 a.m., Tuesday, July 30th, 2013, at the
Office of the Attorney General, State of South Carolina,
1000 Assembly Street, Suite 501, Columbia, South
Carolina.

COPY

Reported by
Sandra M. Snead

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www.scottreporting.com ♦ bscott@scottreporting.com

Appearances

Hearing Officer: T. Parkin Hunter, Esquire
Office of the Attorney General
State of South Carolina
1000 Assembly Street, Suite 501
P.O. Box 11549
Columbia, SC 29211-1549

For the Office of the
SC Attorney General/
Securities Division: Jordan Crapps, Esquire
Tracy Meyers, Esquire
Office of the Attorney General
State of South Carolina
1000 Assembly Street, Suite 501
P.O. Box 11549
Columbia, SC 29211-1549

For the Respondents: Robert V. Mathison, Jr.,
Esquire
Mathison & Mathison
55 New Orleans Road, Suite 203
P.O. Box 5271
Hilton Head Island, SC 29938

Also Present: Susan Matthews
Tyler Faw
John M. McIntyre
Dr. Susan Vitek
Richard Silver
James Paris
Paul Finn

Reported By: Sandra M. Snead

Index

Opening Remarks by The Hearing Officer..	6
Opening Statement by Mr. Crapps..	8
Opening Statement by Mr. Mathison..	16
Testimony of Witness: John M. McIntyre	
Direct Examination by Mr. Crapps..	47
Cross-examination by Mr. Mathison.	110
Re-direct Examination by Mr. Crapps.	170
Re-cross-examination by Mr. Mathison..	182
Certificate..	186

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State's Exhibits

Marked as State's Exhibit Number 1; copy of Order Designating Hearing Officer; one page.	6
Marked as State's Exhibit Number 2; copy of Operating Agreement for Silver Oak Land Trust II, LLC; 18 pages.	52
Marked as State's Exhibit Number 3; copy of Silver Oak Land Trust IV, LLC Membership Offer; eight pages (not entered into evidence).	57
Marked as State's Exhibit Number 4; copy of Operating Agreement for Silver Oak Land Trust IV, LLC; 31 pages	59
Marked as State's Exhibit Number 5; copy of Silver Oak Land Trust VII, LLC Membership Offering; four pages (not entered into evidence).	65
Marked as State's Exhibit Number 6; copy of Silver Oak Land Trust V, LLC Membership Offering; seven pages (not entered into evidence).	68
Marked as State's Exhibit Number 7; copy of Silver Oak Land Trust I, LLC Secondary Offering; nine pages. . .	70
Marked as State's Exhibit Number 8; copy of Operating Agreement for Silver Oak Energy, LLC; 21 pages. . . .	97
Marked as State's Exhibit Number 9; copy of Bank Meridian check dated 6/30/13; two pages.	108
Marked as State's Exhibit Number 10; copy of Operating Agreement for Silver Oak Land Trust, LLC; 19 pages.	174
Marked as State's Exhibit Number 11; copy of Operating Agreement for Silver Oak Energy, LLC; 17 pages. . .	175
Marked as State's Exhibit Number 12; Silver Oak Energy, LLC Membership Offer; one page.	177

Respondent's Exhibits

Marked as Respondent's Exhibit Number 1; plat; one
page. 111

Marked as Respondent's Exhibit Number 2; copy of e-mail
correspondence; two pages.. . . . 130

Marked as Respondent's Exhibit Number 3; copy of
Operating Agreement for Silver Oak Land Trust VII, LLC;
29 pages. 148

Marked as Respondent's Exhibit Number 4; copy of
Certificate of Membership; one page.. . . . 148

Marked as Respondent's Exhibit Number 5; copy of Silver
Oak Energy, LLC Business Plan; 28 pages.. . . . 157

Marked as Respondent's Exhibit Number 6; copy of
Agreement for Services; five pages. 158

Marked as Respondent's Exhibit Number 7; copy of
Employee Contract Between Silver Oak Energy, LLC and
John M. McIntyre and corresponding e-mail; three
pages.. . . . 161

Marked as Respondent's Exhibit Number 8; Employment
Contract Between Silver Oak Energy, LLC and John M.
McIntyre; two pages.. . . . 163

Court Reporter's Note: This transcript may contain
quoted material. Such material is reproduced as read or
quoted by the speaker. Double hyphens (--) denote
interruption of speech, incomplete sentence/phrase, or
trailing off. [ph] denotes phonetically written. [sic]
denotes written as spoken.

1 The Hearing Officer: I'm Parkin Hunter.
2 I'm the hearing officer in this case, and our
3 court reporter is Ms. Sandra Snead. And to
4 start off with, this is in the matter of John
5 M. McIntyre and Silver Oak Land Management,
6 LLC, file number 12058, and I've been
7 appointed to be the hearing officer by the
8 Securities Commissioner, Alan Wilson, South
9 Carolina Commissioner. And, with that, unless
10 anybody objects, I would like to -- I'm going
11 to attach this Hearing Exhibit 1 to the
12 record, -- this is just the order appointing
13 me hearing officer -- so that we'll have a
14 complete record.

15 Mr. Mathison: I don't have an objection.
16 No objection from the respondent.

17 Mr. Crapps: No objection.

18 Marked as State's Exhibit Number 1;
19 copy of Order Designating Hearing
20 Officer; one page.

21 The Hearing Officer: And I know I had
22 written and said that we would probably start
23 out with maybe 15-minute opening statements.
24 They don't have to be 15 minutes, or if you
25 want to go longer, that will be fine, too, and

1 then, after that, we'll have the -- South
2 Carolina start with its case. And I'm going
3 to have the -- Ms. Snead swear in the
4 witnesses for testimony. And then if y'all
5 are ready, we can start with Mr. -- Well, I'd
6 like to go around the table first and have
7 everybody give their name and spell their name
8 so the court reporter will know who everybody
9 is and the correct spellings of their names.
10 So, we might start out with Mr. Crapps and go
11 around the table, and we'll catch the side of
12 the room, too.

13 Mr. Crapps: It's Jordan Crapps, J-o-r-d-
14 a-n C-r-a-p-p-s.

15 Ms. Matthews: I'm Sandra Matthews, S-a-
16 n-d-r-a M-a-t-t-h-e-w-s, and I'm with the
17 Securities Division.

18 Tracy Meyers: Tracy Myers, T-r-a-c-y M-
19 e-y-e-r-s, again, with the Securities
20 Division.

21 Mr. Faw: I'm Taylor Faw, T-a-y-l-o-r F-
22 a-w, and I'm also with the Securities
23 Division.

24 Dr. Vitek: I'm Dr. Susan Vitek. I'm a
25 member of Silver Oak Land Management, all the

1 Silver Oak Land Trusts.

2 Mr. Mathison: (to Mr. McIntyre) Jack?

3 Mr. McIntyre: John M. McIntyre, M-c-I-n-
4 t-y-r-e, manager and member of all the Silver
5 Oak entities.

6 Mr. Mathison: And I'm Robert Mathison,
7 M-a-t-h-i-s-o-n, and I'm the attorney for the
8 respondents, Mr. McIntyre and Silver Oak Land
9 Management, LLC.

10 Mr. Silver: I'm Richard Silver, S-i-l-v-
11 e-r. I am an investor in five of the seven
12 LLCs being discussed and the current manager
13 of all six of the Silver Oak Land Trusts.

14 The Hearing Officer: And I'm Parkin
15 Hunter, as I said before, P-a-r-k-i-n Hunter.
16 And if we're -- Does anybody else have any
17 preliminary matters before we start with the
18 opening statements?

19 Mr. Crapps: I don't.

20 The Hearing Officer: Okay. Well, Mr.
21 Crapps, are you -- I'll have you begin.

22 Mr. Crapps: Your Honor, the Division
23 sees this case as a simple one. You know, the
24 respondents, in connection with the offer and
25 sale of the security, told investors that

1 their money would be used for one thing, and
2 they used the money for something completely
3 different, and, namely, themselves. John
4 McIntyre, individually and through his
5 management company, Silver Oak Land
6 Management, went -- went first to his friends
7 and then to others to sell these investments.
8 He would tell them that he had selected a
9 great piece of property and was raising money
10 to purchase that land, that, once purchased,
11 they would manage the land to harvest and sell
12 the timber. He told them that timber, as an
13 asset class, would produce generally an 11 to
14 12 percent return on investment annually and,
15 on top of all this, there was tax advantages
16 with tree farming. He also told them that he
17 would be able to -- to improve the properties
18 and that, at the end, further profit would
19 come when they would sell the property for
20 higher and better use. The Division will show
21 that all six of the land trust LLCs operated
22 generally in the same fashion. Mr. McIntyre
23 or his management company would sell the
24 investments, and the investors would receive a
25 percent share in the company. Mr. McIntyre,

1 again, or his management company, would
2 receive a portion of the company for his
3 efforts managing the entity. McIntyre and
4 Silver Oak Land Management would then be the
5 managing member of a manager-managed LLC. Mr.
6 McIntyre stated or represented to the
7 investors that all timber revenue would be
8 distributed to investors per ownership share,
9 the overhead was going to be minimal.
10 Investors were told that the only expenses
11 that were to come from the account were --
12 were the purchase price of the property and a
13 few other direct ownership expenses, such as
14 taxes. Once formed, the manager, whether that
15 be Mr. McIntyre or Silver Oak Land Management,
16 and the investors agreed to an operating
17 agreement. Mr. McIntyre and his management
18 company also sold investments intended to be
19 used to grow and harvest Miscanthus grass for
20 use as a renewable energy source. This
21 company became known as Silver Oak Energy,
22 LLC. Much like the land trust, it is also a
23 manager-managed LLC with Mr. McIntyre and his
24 land management company as the manager. This
25 entity was supposed to involve a little more

1 labor by the manager, and, so, for his
2 efforts, Mr. McIntyre and his management
3 company would receive a 35 percent stake in
4 the company for his efforts. The investors
5 were told that their money would be used to
6 purchase and fund the operation of the farm
7 and some associated marketing efforts.
8 Unfortunately, this did not happen. The State
9 feels these investments are clearly
10 securities. The South Carolina Uniform
11 Securities Act defines a security to include,
12 among other things, an investment contract.
13 The South Carolina Act defines an investment
14 contract further, and it states, "An
15 investment contract may include, among other
16 things -- among other contracts, an interest
17 in a limited partnership and a limited
18 liability company." The investment contracts
19 are defined in South Carolina through the
20 Howey test as laid down by the Supreme Court.
21 Howey defined an investment contract as an
22 investment of money in a common enterprise
23 with the expectation that they would earn a
24 profit solely through the efforts of the
25 promoter or someone other than themselves.

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1 The requirement that the efforts be solely
2 from the efforts of others has been
3 significantly relaxed. The South Carolina Act
4 defines an investment contract with this
5 version of the Howey test, quoted, "An
6 investment in a common enterprise with the
7 expectation of the profits to be derived
8 primarily from the efforts of a person other
9 than the investor." The Division will show
10 that the investors intended for their
11 investments to be passive and to require
12 little to no contribution of their time and
13 efforts. They expected profits from timber
14 revenue and from the manager's ability to sell
15 the properties for higher and better use.
16 Further, the case law will ask you to look at
17 the economic reality of the situation and the
18 agreement. The Division will show that these
19 investors did not know anything about tree
20 farming or Miscanthus grass. The Division
21 will also show that the investors did not have
22 access to records showing the financial well-
23 being of the company and, therefore, could not
24 have exercised any control, if they had wanted
25 to. Further, the operating agreements left

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1 the investors with little or no ability to
2 control the management, again if they had
3 wanted to. The Division will show that the
4 investors indeed, in fact, requested these
5 types of financial documents from the
6 respondents, and the respondents repeatedly
7 refused to provide them. The investors placed
8 their trust in and were dependent on the
9 respondents. Unfortunately, contrary to what
10 investors were told their investments would go
11 to, Mr. McIntyre used the investors' money to
12 fund hundreds of thousands of dollars of loans
13 to himself and his management company and
14 further paid himself consulting and management
15 fees contrary to his representations about
16 what his compensation from the company would
17 be. Mr. McIntyre then made hundreds of
18 personal expenses out of the accounts,
19 including restaurants, his kids' college
20 application fees, shopping trips, groceries,
21 and the list will go on, as timber income
22 would come in, oftentimes paying himself
23 significantly more than anyone else, leaving
24 the shareholders with far less than what they
25 were entitled to. And in an effort to conceal

1 the most egregious of these expenses, the
2 respondents altered the company's QuickBooks
3 accounts, outright changing the expense or
4 writing a fictitious explanation for the
5 expense. When the investors began to realize
6 the fraud and demanded the books and records
7 for the company, for weeks and months the
8 respondents refused and attempted to dodge
9 their requests. Today the State will show
10 that on multiple occasions Jack McIntyre and
11 his management company, in connection with the
12 offer and sale for the purchase of a security,
13 directly or indirectly, employed a device,
14 scheme or artifice to defraud. Mr. McIntyre
15 took investments under the guise of a business
16 and used them for personal gain and use.
17 Further, he altered the QuickBooks records in
18 an attempt to conceal the abuse of the
19 investor funds. Further, the respondents made
20 untrue statements in material fact. He told
21 investors that timber income would be
22 distributed by percent ownership. He told
23 them that little or no expenses would come
24 from the account. He told them that his only
25 compensation from these companies would be his

1 share of the revenues defined by the percent
2 ownership that they were told he was getting.
3 Today we'll show that none of this was true.
4 Further, the respondents omitted to state a
5 material fact necessary in order to make the
6 statements made, in light of the circumstances
7 under which they were made, not misleading.
8 Mr. McIntyre conveniently failed to tell
9 investors that their money would be used to
10 fund his personal life. He omitted to tell
11 investors that large percentages of their
12 money could be transferred to himself. He
13 omitted to tell investors that he would take
14 large sums of money out of the account as
15 consulting expenses. Further, the respondents
16 engaged in the act, practice or course of
17 business that operates or would operate as a
18 fraud or deceit upon a person. Even as the
19 misappropriation began, the respondents would
20 go back to the same investors and find other
21 investors to continue to fund his personal
22 lifestyle. Further, respondents purposefully
23 lied in the companies' QuickBooks records in
24 an attempt to hide the securities fraud.
25 Again, Your Honor, at the outset, I said this

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1 case was simple, and today we'll show you.

2 Thank you for your time.

3 The Hearing Officer: Thank you. Are you
4 ready to proceed, Mr. Mathison?

5 Mr. Mathison: Because of the elementary
6 simplicity of the matter, I don't know that I
7 need to make an elaborate response. I will
8 tell you that there's a distinction between
9 the timber-owning companies, which are Silver
10 Oak Land Trusts. There was an original
11 company that was formed in 2005, and that was
12 essentially a company of five friends. Silver
13 Oak Land Trusts then, through repetition of
14 itself, spawned successors, and the objective
15 of each of these was to purchase timberland to
16 generate some revenue in the interim by
17 harvesting timber and holding the property for
18 long-term potential resale for highest and
19 best use. Much of the land that was acquired
20 was, in fact, in areas close to waterways,
21 both here in South Carolina and North
22 Carolina, and all of that property still
23 exists. The fundamental value in each one of
24 the land partnerships, Silver Oak Land Trusts,
25 is in the land and the trees on the land. No

1 material devaluation has occurred with the
2 exception of that which happened as a result
3 of market trends prevailing from 2008 until
4 2011. No one has lost any money in the Silver
5 Oak Land Trusts matters. The conflation of
6 Silver Oak Land Trusts with Silver Oak Energy
7 is something that we're going to have to deal
8 with throughout the course of these
9 proceedings because they're very different in
10 terms of their objectives; they're very
11 different in terms of their operation,
12 different in terms of what the ultimate goal
13 was. Silver Oak Energy, on the other hand,
14 was spawned late in the game by several of the
15 initial investors in Silver Oak Trusts and
16 some new investors. The objective was to
17 raise biofuel for the purpose of selling it.
18 Miscanthus is a highly-efficient biofuel.
19 Consequently, instead of raising trees, which
20 are harvested infrequently, largely when they
21 reach maturity, Miscanthus is harvested
22 annually and replaces itself annually. The
23 objective was to operate a business that had a
24 great deal more current volume of work and
25 expense, and there are distinctions that will

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1 show up throughout. Before the Securities
2 Commissioner got involved in this case, there
3 was, in fact, the lawsuit filed in Beaufort
4 County by Silver Oak Land -- Silver Oak Energy
5 against my client, Mr. McIntyre and his
6 company, Silver Oak Land Management, and the
7 thrust of the case in Beaufort County is that
8 essentially my client took expenses which they
9 think are too liberal. The Attorney General,
10 for reasons best known to him, have taken what
11 is an expense account case and recast it as a
12 securities case. There is nothing in this
13 Order of Cease and Desist that says that what
14 Mr. Crapps told you here today did in fact
15 happen. Those representations that were made
16 as to Mr. McIntyre and his company -- his
17 management company not taking expenses, the
18 representation that the money would only be
19 used for acquisition of land, the
20 representation -- Those aren't -- They don't
21 appear in here. This document doesn't say
22 that. They have been calculated since the
23 respondents replied and said nothing you said
24 in this Order of Cease and Desist has even a
25 remote connection with the offer and sale of a

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1 security. So, now they've recast what appears
2 in here, and they're telling you that -- that
3 all these representations were made. Well,
4 the truth of the matter is there isn't a
5 single written word in which any of those
6 representations appears, not one. What you're
7 going to hear is you're going to hear someone
8 to bootstrap himself into a securities case by
9 saying that he was told that no one was going
10 to take expenses, that no one was going to
11 receive consulting fees. Yet, if you look at
12 the operating agreements, the documents that
13 these gentlemen signed, these very
14 sophisticated investors, it says that expenses
15 will be taken and consulting fees will be
16 paid. Essentially what started out as a your-
17 expense-account-is-too-liberal case in the
18 Court of Common Pleas in Beaufort County has
19 now been converted into a securities case by
20 somebody alleging that their oral
21 representations, none of which exist in any
22 document that I've seen, not in any of the
23 organic agreements, not in any of the several
24 thousand pages of documents that were made
25 available to me yesterday, -- There's not a

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1 single written representation that backs up
2 what Mr. Crapps said. Not only that, but
3 there are multiple individuals who are
4 involved in these entities, and especially the
5 land trusts entities, the tree farms, that
6 don't have any interest in this proceeding,
7 none. They don't want to see the land trusts
8 fail, and under the management of Mr. Silver,
9 who will testify, one has already been -- the
10 property of one has already been sold for
11 substantially less than it was worth, in large
12 measure to generate funds with which to repay
13 themselves. We believe that we will be able
14 to show -- and if I may, I'd like to refer to
15 you as The Court and Your Honor because it
16 just -- I realize that you may not want that,
17 the dignity or dignification, but for me it's
18 a lot easier. We believe that we can show
19 that what we have here, if anything, is an
20 argument about whether or not Mr. McIntyre's
21 business expenses were ordinary and necessary,
22 that there has been no statement, material
23 misstatement, made in connection with any
24 offer to sell a security, that, in point of
25 fact, contrary to what Mr. Crapps told you,

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1 virtually every single one of the original
2 SOLT members was a participant in the
3 activities of the limited liability company;
4 they all had a role; they all had a function.
5 The same thing is true of Silver Oak Energy.
6 One of the people who is the loudest
7 complainer is a gentleman by the name of Paul
8 Finn, whose curriculum vitae is attached to
9 the Silver Oak Energy materials that were
10 disseminated widely, and he's characterized in
11 there as the Director of Business Development.
12 This is a person who is now telling you, or
13 told these people, that he's a passive
14 investor with no expectation of profit except
15 through the efforts of others. He was the
16 Director of Business Development up until the
17 natural gas market went to hell in the
18 handbasket. When natural gas prices came
19 down, there was no market for Miscanthus. The
20 investment was not a good one. People parted
21 with significant amounts of money and want
22 something in the interim. The market will be
23 back. All markets come back. But at this
24 juncture, the allegation that these are
25 passive investors somehow fooled into thinking

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1 that the efforts of others were going to
2 convert their money into -- literally lead
3 into gold is -- is foolish. Not only were the
4 original investors all worker ants, but in
5 Silver Oak Energy, the only possible non-
6 worker ant is sitting over there right now.
7 Everybody else was working, had a role and
8 was, in fact, up until 2012, actively engaged
9 in either seeking markets for Miscanthus or
10 developing the product itself. We don't
11 believe that we have a security here. The
12 operative language with respect to limited
13 liability companies is that under certain
14 circumstances it may be -- an interest in a
15 limited liability company may be treated as a
16 security. And, certainly, limited partnership
17 interests that are traded on exchanges and
18 limited liability company interests that are
19 freely traded ought to be treated as
20 securities. But, in our case, not a single
21 person can sell his interest in one of these
22 limited liability companies unless he first
23 offers it for sale to the company. They're
24 all restricted. There's no possibility this
25 is going to get loose in commerce.

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1 Transferability is one of the indicia of a
2 security. There is none here. The second is
3 a security is typically where someone invests
4 and expects someone else to make money for
5 him. With the exception of one or two of
6 these Silver Oak Land Trusts cases, that
7 hasn't happened. Everybody was a participant
8 and was working, and that's why, if anything,
9 you have a slight minority, or a slight
10 minority interest, here complaining about
11 what's happened. You don't have universal or
12 unanimous consent that -- that Mr. McIntyre,
13 his company, did something wrong. Ms.
14 Matthews, in her capacity as the investigator,
15 sent all of the people questionnaires, asked
16 them what -- their view of what had happened,
17 and a significant minority, if not an equal
18 number of people, responded that they didn't
19 feel that there were any improprieties, not
20 that they had been -- suffered
21 misrepresentations or a failure to disclose.
22 So, what's going to happen here, in my
23 opinion, is that people are going to attempt
24 to make a record that expenses were taken that
25 shouldn't have been taken, and I'm going to

1 object to every one of those because I don't
2 think that has anything to do with a
3 securities violation, unless a proper
4 foundation is -- is laid. Unless someone can
5 say that this is in some way connected with
6 the inducement to get somebody to buy a
7 security, I'm going to object to it because I
8 don't think it's appropriate. I think the
9 expenses taken largely are ordinary and
10 necessary. There are exceptions to every
11 rule. But my point is that I just don't
12 believe the case has been made. I realize
13 that I can't prevent people from testifying as
14 to what representations were -- were made or
15 what facts were not disclosed, but the fact of
16 the matter is the only place that you will
17 hear that or read it is from the voice of a
18 witness. You won't read it in the Order of
19 Cease and Desist. You won't read it in the
20 file that I read yesterday. You won't read it
21 in any of the e-mail. You won't read it in
22 any of the operating agreements. All of this
23 is derived within the last three months in an
24 effort to save what in my opinion should be a
25 sinking ship of a case. Last, -- and I say

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1 this with a good deal of restraint because I
2 think Mr. Crapps has been a gentleman in this
3 case in all respects. He's made available to
4 me what I need in order to assess it and try
5 it, but I think that there is a due process
6 argument here that originates from the fact
7 that under the Securities Act of 2005, the
8 Attorney General's office was empowered and,
9 indeed, required to create procedures that
10 would govern how to conduct a fair hearing.
11 To the best of my knowledge, no such
12 procedures have been promulgated either in the
13 form of a rule, an order or anything else.
14 When I sought to get a subpoena issued, I had
15 to prevail upon Mr. Crapps' good nature and
16 your willingness to accommodate me to get one
17 issued. The subpoena issued to the McNair
18 Firm, while it wasn't honored, an agreement
19 was reached. I also served a subpoena on one
20 of the limited liability members, Mr. Jim
21 Paris. Mr. Paris has not responded to that
22 subpoena, and he hasn't entered any objection.
23 The reason I wanted Mr. Paris here is Mr.
24 Paris is the person that induced this
25 gentleman to come into the limited liability

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1 organizations that he's now complaining about.
2 Mr. Paris sold multiple houses to this
3 gentleman over here. Despite the fact that
4 Mr. Crapps has told you that the first contact
5 or connection was with Mr. McIntyre, my
6 client, Mr. Paris is the glue that brought in
7 and caused to stick both Mr. Silver and Mr.
8 Finn who are the chief complaining witnesses
9 in this proceeding. In point of fact, with
10 the exception of the questionnaires and one or
11 two occasional pieces of correspondence,
12 they're the only people that are complaining,
13 and Mr. Paris was responsible for bringing
14 them both in. Mr. Paris's connection with Mr.
15 Finn is that Mr. Finn worked for him when he
16 was the sales director at Sea Island Resort in
17 Sea Island, Georgia. Just to give you an
18 example, if Mr. Paris were to challenge the
19 subpoena, he probably would take the position
20 that there is no authority created by rule or
21 created by any form of order or precedent to
22 do what was done in terms of issuing the
23 subpoena. There is no definition as to
24 exactly how we're supposed to proceed, with
25 the exception of, under the Securities Act of

1 2005, there are several burden-shifting
2 requirements, which I think could only apply
3 in a civil case and couldn't comply in a
4 criminal case. And that leads me to the last
5 point that I wish to make, and that's this.
6 My client was served with a subpoena duces
7 tecum, by Ms. Matthews, which didn't reference
8 any statutory authority whatsoever, and he
9 sent a letter questioning whether or not that
10 was appropriate, and I and Ms. Meyers reached
11 an agreement whereby we would furnish the
12 information provided they would reissue the
13 subpoena and cite the correct statutory
14 authority and assure us that there would not
15 be a criminal implication to what was going on
16 and this would be a civil-only proceeding. I
17 wrote a letter memorializing that, and
18 literally within an hour of delivering the
19 letter by e-mail to the Attorney General's
20 office, it was repudiated, first by Ms.
21 Matthews and then subsequently, several days
22 later, by Ms. Meyers because Ms. Meyers told
23 me that she couldn't give me any assurance
24 that the Criminal Division was not already
25 investigating this and that there's,

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1 evidently, some kind of Chinese wall, she
2 didn't know what they were doing, they don't
3 know what she's doing. The result was that my
4 client was prepared to cooperate and let them
5 see whatever documents he had and testify, if
6 that's what they wanted, if this was a civil
7 case, and they would not give me that
8 assurance. The reason they wouldn't give me
9 that assurance is that this gentleman over
10 here, Mr. Silver, has been threatening my
11 client with criminal conviction for pretty
12 close to a year, he and Mr. Finn, countless e-
13 mails, e-mails to my client's wife. One of
14 their collaborators even thought it would be
15 appropriate to e-mail my client's daughter at
16 Clemson University and put something on her
17 Facebook page describing my client as Jack
18 Crook. This investigation is being conducted
19 for the benefit of people who ought to be in
20 The Court of Common Pleas in Beaufort County
21 putting on their own case, and it's not -- If
22 it's, in fact, inflected at all with public
23 interest, the people in the State of South
24 Carolina, I've yet to figure out what it is.
25 From my standpoint, the only reason that there

1 would be criminal implications to this is
2 because these people have already told lots of
3 people, not just my client, that my client is
4 a criminal, and I try defamation cases, and
5 they have defamed my client, because he's not,
6 and one of these days they're going to get an
7 opportunity to answer for that. They're
8 hoping that these folks will make them right.
9 That's what this proceeding is about. And
10 with that, I'll conclude. I would say this.
11 Now that Mr. Paris has not honored the
12 subpoena that I served on him, how do I go
13 about enforcing it since there is no procedure
14 issued by the Attorney General's office to
15 finding how these proceedings are to go
16 forward?

17 The Hearing Officer: Well, as to the --
18 as to the subpoena, the way I understand this,
19 -- and I think this is sort of novel -- I
20 think that the Circuit Court is supposed to
21 enforce the subpoenas of the Securities
22 Commission, and if you think -- we need to
23 discuss it -- that this is material to your
24 case, then, you know, I'm willing to put this
25 off if you want to go to the Circuit Court and

1 have the subpoena enforced.

2 Mr. Mathison: Well, we've got a lot of
3 people here. And my case depends upon two
4 things, and I'm not arguing at this juncture.
5 If the State had done what I believe it's
6 supposed to, when my client declined to appear
7 because they reneged on the agreement that we
8 had reached, they should have gone to the
9 Circuit Court and gotten a subpoena, and my
10 belief is they would have had to have given
11 him some kind of immunity to make him testify,
12 and he would have testified. He would have
13 testified if they'd just told him there wasn't
14 a criminal proceeding pending. I don't expect
15 to use Mr. Paris until I begin my case in
16 chief. So, if they want to put up their case
17 and then let me go get Mr. Paris, that would
18 be fine with me, rather than wasting
19 everybody's time. By the same token, it's
20 plain to me that I don't have any right, in
21 the name of the respondent, to issue a
22 subpoena to anyone and that your decision that
23 it had to be issued in your name for the
24 Securities Commissioner was the correct one
25 because that's the only subpoena power that

1 exists under the Act. So, I'm amenable to
2 doing it either way.

3 The Hearing Officer: Well, as to the --
4 Now, as to the subpoena for your client's
5 documents, what is your position with -- in
6 regard to that?

7 Ms. Meyers: The subpoena for -- for the
8 client -- for his client's documents?

9 The Hearing Officer: Right. I assume
10 that you didn't get --

11 Ms. Meyers: Your Honor, --

12 The Hearing Officer: -- the documents.

13 Ms. Meyers: -- he is -- I certainly did
14 not give assurances. We can't give
15 assurances. In fact, I told him I'm not aware
16 of any criminal prosecution but I wouldn't be
17 aware of one because it's a Chinese wall, that
18 he was welcomed to call the criminal side of
19 the office, but I said I am not aware of any
20 criminal prosecution, and I think I may have
21 -- have sent an e-mail asking if anyone was
22 aware of one, and no one responded to me. Of
23 course, if it's grand jury, they can't, by
24 law, tell us, so, you know, -- But as Your
25 Honor may or may not know, the Securities

1 Division can't -- We're not a criminal
2 agency. We can't give immunity. We subpoena
3 people. If they want to come and they want to
4 assert the Fifth in a civil setting, that is
5 -- that's used against them. It's -- It's --
6 It means -- You know, from a civil
7 standpoint, that's basically an admission, but
8 -- and that's all we need to stop the ongoing
9 securities activity, to keep people from
10 offering securities in the future. But to say
11 that we need to go give criminal immunity, we
12 don't have that authority, that -- and the
13 code is very clear on that point, and I can
14 get you a cite if you need it.

15 The Hearing Officer: Well, if I -- if I
16 were to continue this, would -- do you want to
17 go to the Circuit Court and put forth a motion
18 to compel for him?

19 Ms. Meyers: Absolutely not, because I
20 don't even know that a circuit court would
21 give us his testimony at that point. I don't
22 know the procedures. We just -- It's our
23 office policy that we do not make -- If
24 people assert the Fifth, we do not make them
25 testify.

1 The Hearing Officer: And I apologize.

2 You are, in the --

3 Mr. Silver: Mr. Silver.

4 The Hearing Officer: Mr. Silver, now,
5 are you represented here? I assume Mr.
6 Mathison doesn't represent you.

7 Mr. Silver: No.

8 Mr. Mathison: He's represented in the
9 civil case in Beaufort by Rick -- Rick Haight,
10 Ehrick K. Haight of Minor, Haight & Arundell.

11 The Hearing Officer: He was a law school
12 classmate of mine.

13 Mr. Mathison: A good man.

14 Mr. Silver: I was just going to inform
15 the Court, or whatever -- whatever this is,
16 that Mr. Paris is complying with the subpoena
17 and will be here today. In spite of having
18 been served with that subpoena at 8:30
19 yesterday morning, on short notice, and having
20 to cancel multiple meetings he had scheduled
21 for today, he is complying with the subpoena.

22 The Hearing Officer: He hasn't complied.
23 It's ten o'clock, --

24 Mr. Mathison: Right.

25 The Hearing Officer: -- and he's not

1 here.

2 Mr. Silver: He is own his way.

3 The Hearing Officer: Well, do you want
4 to -- When -- Do you want to proceed with
5 the State's case? And if Mr. Paris gets here
6 before your case, then we would keep going,
7 or, otherwise, we would discontinue at the end
8 of the State's case and allow you to enforce
9 the subpoena. I mean, how would y'all like --
10 or would y'all like to just continue it now?
11 I mean, --

12 Mr. Mathison: Let me --

13 The Hearing Officer: Between the two
14 lawyers, what's everybody's preference?

15 Mr. Crapps: I believe, to avoid the
16 prejudice on the witnesses we have here, I
17 would suggest we proceed. I'd rather not be
18 in a position where we present our case and
19 this thing is stayed a couple weeks, allowing
20 them that additional time to prepare their
21 defense, but if Mr. Paris is coming, I would
22 much rather proceed now.

23 Mr. Mathison: I can understand why
24 Jordan would want to put -- wouldn't want to
25 put his case up and then give us weeks to

1 evaluate it and figure how to frustrate it.
2 By the same token, he hasn't complied with the
3 subpoena. May I consult with my client just
4 very briefly?

5 The Hearing Officer: Sure.

6 [Off the record at 10:43 a.m.;
7 back on the record at 10:44
8 a.m.]

9 Mr. Mathison: May it please the Court,
10 we would rather, with him not here, wait and
11 do it in such a way that if he doesn't show up
12 we have an opportunity to compel his
13 attendance. And if we could get the
14 assurances that we asked for, we'd give them
15 all our documents. To be honest with you,
16 they have the documents that we have. And
17 what I said to you is literally true. You
18 will not find a single document with any of
19 the representations in it that Mr. --

20 Ms. Meyers: Your Honor, he has testified
21 a lot of times. He's -- You don't need to
22 say the same argument over and over. It's an
23 argument. I would object to him continuing to
24 say the same thing over.

25 Mr. Mathison: We would ask that it be

1 continued until we can go to court and enforce
2 it.

3 The Hearing Officer: Well, I think --
4 Ms. Meyers?

5 Ms. Meyers: We actually would oppose to
6 the continuance. He's had weeks' worth of
7 notice for this hearing. Subpoenas generally
8 -- Witnesses don't have to comply unless
9 they're issued ten days in advance. He had
10 plenty of time to issue the subpoena ten days
11 in advance. He chose not to. I don't think
12 that the State should be prejudiced with the
13 number of people that are here, the witnesses
14 that are coming, the people that have dropped
15 their schedules to be here, when he chose --
16 He's known for a long time about this hearing,
17 and he chose not to issue that subpoena ten
18 days in advance, --

19 The Hearing Officer: Well, --

20 Ms. Meyers: -- and there's --

21 The Hearing Officer: My view is I would
22 consider this, I believe, the equivalent of a
23 trial subpoena, which can be issued on the day
24 of the trial or even during the trial, and,
25 for that reason, it's my ruling that we'll

1 continue it and allow you to go to circuit
2 court and enforce the subpoena. Yes, Mr.
3 Silver?

4 Mr. Silver: He's going to be here at
5 noontime approximately, Mr. Paris, in
6 compliance with the subpoena. He's on his
7 way, so --

8 The Hearing Officer: Well, I mean, the
9 subpoena was issued for a specific time and
10 place, and I don't think we can --

11 Mr. Mathison: It's issued for ten
12 o'clock.

13 The Hearing Officer: -- right -- can
14 stand -- stay and wait, whether he may come or
15 may not come, so --

16 Mr. Crapps: I would ask that we -- we
17 stay, then, until he arrives, later today, to
18 avoid prejudice of our case.

19 Ms. Meyers: You've got a number of
20 people that freed up time and schedules.
21 These guys have come up from -- I guess it's
22 Hilton Head. Mr. Silver, I assume, is from
23 Hilton Head or Beaufort.

24 Mr. Silver: From -- I have to take a
25 boat just to get to Hilton Head.

1 Ms. Meyers: We've got another witness
2 that we've got that's freed up time and is
3 coming out. So, I think that asking to stay
4 it for an hour and 15 minutes to see whether
5 he shows up is preferable to coming back and
6 trying it, you know, later and getting all
7 these people's time again on the same day.

8 The Hearing Officer: Are you amenable to
9 that, Mr. Mathison?

10 Mr. Mathison: Certainly. If he gets
11 here by noon, we'll go forward.

12 The Hearing Officer: Okay. We'll stand
13 adjourned until noon, then.

14 Mr. Crapps: Thank you.

15 [Off the record at 10:47
16 a.m.; back on the record
17 at 12:27 p.m.]

18 The Hearing Officer: Okay. We're
19 reconvening at approximately 12:30, and Mr.
20 Paris, who is subject to a subpoena is here,
21 and I'd like -- Mr. Paris, if you would,
22 introduce yourself for the court reporter, and
23 spell your name and everything.

24 Mr. Paris: My name is James Paris, J-a-
25 m-e-s P-a-r-i-s, like the city in France,

1 resident at Hilton Head.

2 The Hearing Officer: Okay. Now, let's
3 see. Jordan's not here. When Jordan --

4 Mr. Crapps: I'm here.

5 The Hearing Officer: Oh.

6 Ms. Meyers: Jordan's here.

7 Mr. Mathison: There he is.

8 The Hearing Officer: Jordan, now, you
9 may start whenever you're ready.

10 Mr. Crapps: Thank you.

11 The Hearing Officer: Mr. Crapps. I
12 apologize.

13 Mr. Crapps: We'd like to call Jack
14 McIntyre.

15 The Hearing Officer: Mr. McIntyre, if
16 you will let the court reporter swear you in
17 as a witness.

18 Mr. Mathison: I need to talk to my
19 client before he takes the stand.

20 The Hearing Officer: Okay.

21 [Off the record at 12:29 p.m.;
22 on the record at 12:37 p.m.]

23 The Hearing Officer: Okay. Are we
24 ready?

25 Mr. Mathison: Yes. I have something to

1 put on the record, Your Honor.

2 The Hearing Officer: Okay. Before you
3 do that, may I ask the gentleman that just
4 walked in --

5 Mr. Finn: Oh.

6 The Hearing Officer: -- to introduce
7 himself and spell his name for --

8 Mr. Finn: Paul Finn, Your Honor.

9 The Hearing Officer: I didn't --

10 Mr. Finn: Paul Finn, F-i-n-n.

11 The Hearing Officer: Okay.

12 Mr. Mathison: May it please the court,
13 what the State is doing here is they're
14 circumnavigating or circumventing what I
15 consider to be a statutory requirement which
16 is set forth in 35-1-602, Investigations and
17 Subpoenas, and since they failed to comply
18 with the agreement reached between Ms. Meyers
19 and myself, as memorialized in my letter which
20 is in the file -- They should have proceeded
21 under, specifically, Section C -- excuse me
22 35-1-602, 3E, which says, "Individuals not
23 excused from attending, testifying, filing a
24 statement, producing a record or other
25 evidence, or obeying a subpoena, the

1 Securities Commissioner, under this chapter,
2 or in an action or proceeding instituted by
3 the Securities Commission under this chapter,
4 on the ground that the required testimony,
5 statement, record or other evidence, directly
6 or indirectly, may tend to incriminate the
7 individual or subject the individual to a
8 criminal fine, penalty or forfeiture if the
9 individual refuses to testify, file a
10 statement or produce a record or other
11 evidence on the basis of the individual's
12 privilege against self-incrimination, the
13 Securities Commissioner may apply to the
14 Richland County Court of Common Pleas to
15 compel the testimony, the filing of the
16 statement, production of the record or the
17 giving of the other evidence. Testimony
18 record or other evidence compelled under such
19 an order may not be used directly or
20 indirectly against the individual in a
21 criminal case except in prosecution for
22 perjury or contempt or otherwise failing to
23 comply with an order." They never applied to
24 Richland County for an order, and what they're
25 doing now is attempting to put my client under

1 oath under such circumstances that he has to
2 take The Fifth so that they can require an
3 inference from that that everything they said
4 is correct. And my client has been apprised
5 of what his Fifth Amendment rights are about.
6 My objection is that they didn't follow the
7 required procedure. I don't think it's
8 discretionary. I think it's mandatory. And
9 now, effectively, without a subpoena, because
10 he's appeared to defend himself, they're going
11 to ask him to testify under circumstances
12 where he cannot assert the Fifth Amendment. I
13 believe that that Hobson's choice is not
14 envisioned by the Rules. I don't think it
15 comports with due process. He's been advised
16 of his rights and, reserving those rights,
17 he's agreed to testify. So, I'm calling him.

18 Mr. Crapps: Parkin -- Mr. Hunter, let
19 me put on the record, we're certainly not
20 trying to compel any testimony, you know, over
21 Mr. McIntyre's Fifth Amendment rights. He is
22 really the only witness to everything that
23 happened in this span of years, and we feel it
24 necessary, and I feel, to make a proper
25 decision, you need his testimony. That's why

1 we're calling him. We're not compelling
2 testimony over any Fifth Amendment rights.

3 The Hearing Officer: Well, I believe the
4 -- we will swear in Mr. McIntyre, and you can
5 proceed and ask your questions, and he may
6 assert his Fifth Amendment rights as -- as he
7 wishes, and then -- You know, I have no
8 authority, the way I read these, to make
9 somebody testify or whatever, and, if
10 necessary, you will be able -- you can go to
11 Circuit Court and try to compel the answers.

12 Mr. Mathison: May it please the Court,
13 he was going to testify under a procedure
14 where we would respond to the State's case.
15 They're calling him as their witness. My
16 position is they're putting him in a position
17 where he either declines to testify and
18 asserts his rights or begins testifying, in
19 which case his rights will be waived, and I
20 don't believe the procedure envisions that,
21 but, of course, we don't have any feel or --
22 we don't have any inflexibility of the procedure
23 because the Attorney General's office hasn't
24 seen fit to supply, by rule or order, any
25 proceeding or -- or rules as to how this

1 proceeding would be conducted. My client has
2 decided to testify. He's going to testify.

3 The Hearing Officer: Okay. And anything
4 else?

5 Ms. Meyers: Well, I mean, he -- We
6 could --

7 The Hearing Officer: And state --

8 Ms. Meyers: -- respond to that, that the
9 law is very clear --

10 The Hearing Officer: (to the court
11 reporter) This is Ms. Meyers.

12 Ms. Meyers: We could respond to that,
13 that the law is very clear on what -- what --
14 the investigatory stage and the hearing stage
15 and what rights are asserted, but there's not
16 really any sense responding since you said he
17 -- he's going to go ahead and take the stand.
18 So, it's kind of a moot point.

19 Mr. Mathison: They're forcing him to
20 waive his Fifth Amendment rights -- that's
21 what they're doing -- without presenting their
22 case. And there's no procedure that -- that
23 would allow me to resist it because there is
24 no procedure at all. There are no rules or a
25 handbook for how this case is supposed to be

1 conducted. So, I'm not going to resist.

2 Mr. Crapps: I want to put on the record
3 again we are certainly not forcing Mr.
4 McIntyre to waive his Fifth Amendment rights.

5 The Hearing Officer: Well, if it's okay,
6 we'll proceed, and we will see what he does
7 when he takes the stand.

8 Mr. Mathison: (to Mr. McIntyre) Go
9 ahead.

10 The Hearing Officer: And Mr. McIntyre,
11 if you would please sit here in that -- near
12 the court reporter. And you can see her
13 microphone on the table. We need to direct,
14 as much as you can, toward the microphone so
15 that we'll have a clean record. And when you
16 answer the questions, don't answer with
17 gestures or uh-huh and yeah and things like
18 that. We need to have clear yes or no answers
19 and -- and all for the record.

20 [John McIntyre, State's witness, sworn.]

21 The Hearing Officer: And Mr. Crapps will
22 proceed with the examination, and, of course,
23 you're represented by your attorney, Mr.
24 Mathison.

25 Mr. McIntyre: May I take notes or --

1 Mr. Mathison: Sure. Let me give you a
2 pad.

3 Mr. McIntyre: Well, I've got one right
4 here.

5 Mr. Crapps: Your Honor, we'd like to ask
6 permission to treat Mr. McIntyre as a hostile
7 witness and ask leading questions.

8 Mr. Mathison: He hasn't proven hostile
9 so far, has he?

10 Mr. Crapps: He's a respondent in the
11 case. I think it goes without saying.

12 Ms. Meyers: I think that there's -- that
13 it's in the rules that -- the civil rules that
14 if someone's a party on the other side, that
15 they are -- that they can be treated -- Let's
16 find that.

17 The Hearing Officer: Well, let's proceed
18 with direct questions until we determine
19 whether or not he is, in fact, a hostile
20 witness. And I notice that you have a legal
21 pad and it has writing on it. I mean, do you
22 want to remove the writing on it, or do --
23 because if -- if -- Do you want a clean legal
24 pad? Are those your notes or -- The reason I
25 ask this is --

1 Mr. Mathison: (to Mr. McIntyre) Do you
2 mind Mr. Crapps seeing what you've got written

3 --

4 Mr. McIntyre: Not at all, --

5 Mr. Mathison: -- down there?

6 Mr. McIntyre: -- no.

7 Mr. Mathison: Then show it to him.

8 Ms. Meyers: Is he going to be testifying
9 from what's written down there?

10 Mr. Mathison: No. That's simply his --

11 Mr. McIntyre: Oh. It's --

12 Mr. Mathison: -- legal pad, where he had
13 it turned to, ma'am.

14 Mr. McIntyre: Well, I mean, couldn't he
15 just turn to the next page?

16 Mr. Crapps: Yeah, we'll just turn it to
17 the next page, and if he refers back, we'll --
18 we'll ask to see it at that time.

19 The Hearing Officer: Okay.

20 Direct Examination

21 By Mr. Crapps:

22 Q Mr. McIntyre, what is Silver Oak Land Management?

23 A It's a South Carolina LLC.

24 Q When was it formed?

25 A I don't recall.

- 1 Q Okay.
- 2 A In the past five years.
- 3 Q And who all are the members in that company?
- 4 A Myself, John M. McIntyre, and Dave Jeff, LLC.
- 5 There were two members.
- 6 Q And what is Dave Jeff, LLC?
- 7 A It's a South Carolina LLC.
- 8 Q And who are the members in that LLC?
- 9 A I believe -- because I'm not a party to that --
- 10 it's a single-member LLC, and it's Susan Vitek.
- 11 Q And what is Silver Oak Land Trust? And by that I
- 12 mean, what is what seems to be commonly referred to
- 13 as Silver Oak Land Trust I, and what was the
- 14 purpose of that entity?
- 15 A The purpose of setting up the LLC was to have --
- 16 I'm not an attorney, and I'm winging this -- a
- 17 vessel to hold a piece of property, and that piece
- 18 of property was on -- is on Route 278 in Hilton
- 19 Head, South Carolina.
- 20 Q And what was your intention for that -- for that
- 21 company?
- 22 A Well, the original intention -- I think I need to
- 23 give you a little background first and then explain
- 24 how in business things morph and change. So,
- 25 originally, we were out looking at investments, and

1 I decided to look at the timber industry in South
2 Carolina. Is it all right if I get a -- I'm a
3 little nervous. Can I get a glass of water --

4 The Hearing Officer: Sure. And I'll say
5 --

6 The Witness: Thank you.

7 The Hearing Officer: Since, you know, we
8 -- Since we are in the middle of lunch hour
9 and everything and -- if anybody is desperate
10 to get something or anything, just let me
11 know, and we can take a break. The canteen
12 downstairs closes at three, I think, so -- I
13 don't want anybody to pass out from hunger
14 here.

15 The Witness: Thank you. Sorry.

16 A The -- We started looking at different
17 investments. These friends, at the time, -- well,
18 hopefully, still friends -- were looking at
19 different investments. The members -- Jim Paris
20 was one of the original members. We were in
21 business together and invest -- co-invested in
22 other -- other deals. We had a rental company on
23 Hilton Head. So, we were actively looking at what
24 our next investment would be. I started
25 researching timber tracks and the implications of

1 whether they made sense, and that's -- that would
2 be the beginning of it. We -- I identified these
3 timber tracks. I contacted International Paper,
4 looked at thousands and thousands of acres, and we
5 identified one right off the island, and we all got
6 together, all friends, -- we were -- some of us
7 went to the gym every day together -- some of us
8 were friends 20 years -- and we -- we pooled our
9 money and purchased that piece of property on 278,
10 and that was Silver Oak I -- well, Silver Oak Land
11 Trust. There was no I.

12 Q And who are all the members of SOLT I?

13 A Myself; Jim Paris; Murray Reed; Martin Rehder; and
14 Dave Jeff, LLC.

15 Q And --

16 The Hearing Officer: When you say --
17 Are you saying SOLT, S-O-L-T, not salt, s-a-l-
18 t?

19 Mr. Crapps: Yeah. I'm sorry.

20 The Hearing Officer: Is that correct?

21 Mr. Mathison: It's an acronym. S-O-L-T,
22 Silver Oak Land Trust.

23 Mr. Crapps: And I may use that acronym
24 again, so --

25 The Hearing Officer: It's fine. I was

1 just concerned about the court --

2 Mr. Crapps: Okay.

3 Mr. Mathison: Each of the land trusts is
4 essentially a tree farm, Your Honor.

5 Q And what was the purpose of SOLT II?

6 A SOLT II was another South Carolina LLC that we
7 purchased a piece of property in Fairfield County,
8 South Carolina.

9 Q And do you know the members of that company?

10 A I have a list of them. I know -- May I refer to
11 my list? I -- I can't -- Some of them have three
12 or four members. Some of them have ten or so.

13 Q Do you recognize this document here?

14 A Yes.

15 Q What is that document?

16 A That is an Operating Agreement for Silver Oak Land
17 Trust II.

18 Mr. Crapps: We can go ahead and enter
19 that into the -- into the record.

20 The Hearing Officer: Do you need to
21 review it Mr. Mathison?

22 Mr. Mathison: I don't think so. I just
23 want to see whether this is one of the signed
24 ones or one of the unsigned ones.

25 Mr. Crapps: That came from --

1 Mr. Mathison: Your file?

2 Mr. Crapps: -- your file.

3 Mr. Mathison: My file?

4 Mr. Crapps: From McNair.

5 Mr. Mathison: Oh. It -- This is one of
6 the official absolute -- McNair furnished
7 ones. Okay. I don't object.

8 The Hearing Officer: Okay.

9 Marked as State's Exhibit Number 2;
10 copy of Operating Agreement for
11 Silver Oak Land Trust II, LLC; 18
12 pages..

13 Q Does that contain a list of the members?

14 A Yes, it does.

15 Q Could you read those out to us?

16 A Murray Reed; Martin Rehder; Jack McIntyre; Dave
17 Jeff, LLC; Bourbon Place Partners, LLC; M. Fauerby;
18 Mick McDonough; Phil Kart; William Slater; Jim
19 Delamarter; Rory Gardiner; Clifford Emory; and
20 Thomas S. Woods.

21 Q What was your relationship to those individuals --
22 individuals before -- before you began the process
23 of SOLT II? And you can just go one by one there.

24 A Murray Reed I've known for -- since I've moved to
25 Hilton Head, maybe -- or shortly after I moved to

1 Hilton Head in '93 or '94. Martin is Murray's
2 partner in a -- former partner in their marketing
3 company in Tenerife. So, I met him over the years.
4 Jack McIntyre I've known well. Dave Jeff, LLC is
5 -- is Dr. Vitek. Bourbon Place Partners is Jim
6 Paris. M. Fauerby is Dr. Vitek's mother. Mick
7 McDonough is a Hilton Head resident, Forest Beach
8 area. Phil Kart and I worked together in -- in
9 Florida. William Slater I met over the years with
10 Murray, a friend of ours. Jim Delamarter I don't
11 -- I met him at Murray's house. Rory Gardiner I
12 met at Murray's house shortly before. Clifford
13 Emery was a friend of Murray's. I met him -- I
14 had no relationship with him prior to this outside
15 of maybe a party. And Thomas Woods is a neighbor
16 on Hilton Head.

17 Q What -- (I guess we can -- What was the purpose of
18 SOLT III, and where was that property located?

19 A SOLT III is a South Carolina LLC set up to hold the
20 property that we purchased in Newberry County, in a
21 town called Prosperity, South Carolina. It was 70-
22 some-odd acres. When we -- The original S-O-L-T
23 members purchased that, and it was originally held
24 as an investment for S-O-L-T. It was owned by S-O-
25 L-T, the original members, but held -- The title

1 was under S-O-L-T.

2 Q And where was the property in SOLT IV located?

3 A The property in S-O-L-T IV is in a town called

4 Edenton, and that is North Carolina.

5 Q And is -- We'll get back to that. And what was

6 the -- Where is the property of SOLT V?

7 A It is in a small town called Winton, -- that's

8 North Carolina -- on the Chowan River.

9 Q And SOLT VII?

10 A Is -- I think it's 230 or 258 acres in -- It's a

11 town called Ridgeland, but it's Fairfield County.

12 It's South Carolina.

13 Q And the -- the -- the general purpose of these

14 entities was timber properties?

15 A Well, it was -- Timber was a component of it. We

16 were -- And you can't -- you can't lump them all

17 together, but -- Actually, you shouldn't lump them

18 all together. I'll be specific on -- Give me one

19 to be specific on, and I'll tell you.

20 Q Well, we'll go back to SOLT IV.

21 A Okay. SOLT IV is in a town called Edenton, North

22 Carolina, and it's -- has a small parcel that --

23 It's a large parcel. I think it was 420 acres. It

24 has a small parcel that goes into the Albemarle

25 Sound, and when we purchased it, the timber value

1 was very good, the timber quality was great, the
2 timber stands were great, but the location, being
3 on the largest -- according to North Carolina, the
4 largest freshwater inlet in North America -- So,
5 you could actually take your boat from 30-some-odd
6 miles on the river -- it was seven miles wide at
7 that point -- and go right out to the Atlantic
8 Ocean. So, when we purchased it, Wayne Huizenga
9 had purchased some land, almost contiguous, a
10 thousand acres, and was going to build a
11 development where you could pull your boat under
12 your home. And, so, that particular parcel had
13 great -- a great location, a great timber tract, a
14 wonderful town. They wash -- In Edenton, they
15 wash the streets every night except for Christmas.
16 And we were hoping that in a better market, better
17 real estate market, that a developer would come
18 along, see the value, or the higher and better use
19 value of that property..

20 Q Do you recognize this document here?

21 A Yes.

22 Q And what is that?

23 A That is -- The first page are photos of the
24 various parts of town and then photographs of the
25 property and photographs of homes across the street

1 from the property.

2 Q Do you recognize the document as a whole?

3 A Yes.

4 Mr. Mathison: (to the witness) May I
5 see it?

6 (The witness presents document to Attorney
7 Mathison.)

8 Q And what was that document?

9 A That was a membership offering.

10 Mr. Mathison: I believe it is except for
11 a certificate signed by Mr. Silver which
12 doesn't appear to be part of the -- what's in
13 our files.

14 Mr. Crapps: We'll admit that into
15 evidence.

16 Mr. Mathison: Taking out the
17 certificate? I mean, I --

18 Mr. Crapps: I believe the certificate
19 was part of the packet.

20 Mr. Mathison: But not completed.

21 Mr. Crapps: Correct.

22 Mr. Mathison: Just mark that one for
23 identification. You can have him identify it
24 later.

25 Mr. Crapps: Okay.

1 Marked as State's Exhibit Number 3;
2 copy of Silver Oak Land Trust IV,
3 LLC Membership Offer; eight pages.

4 Q Besides the handwriting on this page, did you draft
5 this? And this is page two of that packet?

6 A Did I draft that? I -- I sent this out.

7 Mr. Mathison: (to Mr. McIntyre) He
8 asked you if you drafted it. That's what he
9 asked you.

10 A I don't -- I don't recall this specific one, that I
11 --

12 Q Is that your name at the bottom?

13 A Jack McIntyre, yes.

14 Q Is there anybody else who would have drafted this?

15 A Well, I don't know -- What I was suggesting is
16 that I -- I sent this out, no question. I don't
17 recall if I drafted this or it was something from a
18 prior offering that I --

19 Q Okay.

20 A -- borrowed the information from. I'm not saying
21 I'm the author of all the verbiage, but --

22 Q Can you read that -- that second paragraph starting
23 with "We reserve"?

24 A "We reserve the right, in our sole discretion, to
25 accept or reject any offer, in whole or in part.

1 We reserve the right to accept offers on a first
2 come, first serve basis. If the offering is
3 oversold, or if we do not accept all or a portion
4 of an offer, we will return the unaccepted
5 portion."

6 Q How did you solicit investors in SOLT IV?

7 A If I could look at the list of members, I could
8 probably tell you. That's (indicating) II.

9 Q Before we leave this, we'll go ahead and go -- Can
10 you turn to the second to last page there?

11 A (Complies.)

12 Q What is this page here? Did you draft this?

13 A Yes.

14 Q Can you read the first paragraph there?

15 A "Silver Oak Land Trust IV will attempt to generate
16 a stable tax-efficient cash flow from timber tracts
17 purchased in the Southeast United States. The
18 primary intention is tree farming coupled with the
19 potential opportunities of long-term real estate
20 holdings."

21 Q And the very last clause there at the bottom of the
22 page, starting with timber?

23 A "Timber, as an asset class, has shown an average
24 annual compounded return of over 11 percent for the
25 past 30 years. We will try to beat the industry

1 average rate of return and enhance that with HBU
2 sales."

3 Q Can you review this document I've handed you?

4 A It looks like the operating agreement for S-O-L-T
5 IV, so --

6 Mr. Crapps: Robert, do you want to
7 review that?

8 Mr. Mathison: Sure. This, also, is from
9 McNair?

10 Mr. Crapps: Yes. I believe it's Bates-
11 stamped, down there at the bottom, from
12 McNair.

13 Mr. Mathison: It is. Without objection.
14 Do you want me to give it to him or you?

15 Marked as State's Exhibit Number 4;
16 copy of Operating Agreement for
17 Silver Oak Land Trust IV, LLC; 31
18 pages.

19 Q Where in this agreement does it give you the
20 ability to take management fees and consulting
21 expenses?

22 The Hearing Officer: For my clarity,
23 could you state which exhibit number that is,
24 relevant to this agreement?

25 The Witness: 4.

1 The Hearing Officer: 4. Sorry to --

2 A Can you say that again?

3 Q Where does it give you the ability to take
4 management fees and consulting expenses?

5 A I guess it's Article 6.

6 Q Can you read the clause in there that --

7 A Actually, let me just look at it for a second and
8 see if there's anything else in there. Okay.

9 Sorry.

10 Q Can you read the clause that -- that gives you that
11 ability?

12 A "6.1, Decision of the Company. Except as otherwise
13 set forth herein, all decisions effecting the
14 operations of the Company shall be decided by
15 consent of the Manager. 6.2, Authority and Power
16 of the Manager. The Manager shall have the
17 authority and power necessary to discharge the
18 business of the Company. Without limiting the
19 foregoing, the Manager shall have the authority and
20 power to perform the following acts on behalf of
21 the Company; (a) -- 6.2(a), Execute and deliver any
22 and all agreements, contracts, documents,
23 certifications and instruments necessary or
24 convenient in connection with the carrying on in
25 the usual way of the business and affairs of the

1 Company; (b), Execute and deliver any deed, lease,
2 mortgage, mortgage note, bill of sale, easement,
3 license, contract or other instrument purporting to
4 convey, sell, exchange or encumber all or any part
5 of the Company's property; ©, Deposit or invest
6 Company funds in such interest bearing or non-
7 interest bearing investments or bank accounts as
8 they deem advisable to the extent such funds are
9 not then required for Company's operations, and are
10 not required to be distributed, pursuant to this
11 Agreement; (d), Retrain -- Retain or employ and
12 coordinate the services of employees, independent
13 contractors, supervisors, accountants, attorneys
14 and other persons necessary or appropriate to carry
15 out the business and purposes of the Company; (e),
16 Engage in any kind of activity and to perform and
17 carry out such contracts of any kind necessary to
18 operate the business and purposes of the Company,
19 in accordance with this Agreement, and (f), Pay all
20 debts and other obligations of the Company, to the
21 extent that funds of the Company are available
22 therefor.

23 Q And what are the duties imposed by Section 5.4?

24 A "Fiduciary Duties. (a), Duty of Loyalty. Each
25 Member's --

1 Q You don't have to --

2 A Okay. Sorry.

3 Q You can just read the subheadings there.

4 A Okay. "(a), Duty of Loyalty, (b), Duty of Care and
5 ©, Good Faith and Fair Dealing."

6 Q Was that operating agreement executed before or
7 after the sale of the investments?

8 A I can't tell from the signature page, and I think I
9 would have to know the date of the closing to give
10 you a --

11 Q Was it your --

12 A -- valid answer.

13 Q Was it your general operating procedure to hand
14 that out in conjunction with the offer of the
15 security?

16 A I don't recall.

17 Ms. Meyers: (to the witness) Can you
18 take a standard procedure regarding the
19 agreement --

20 Mr. Mathison: Excuse me.

21 The Hearing Officer: Just one lawyer.

22 Q If this operating agreement was entered into --
23 Well, how could the operating agreement be entered
24 into before the offer and sale of the investment if
25 --

1 A The -- How could it be entered into before?

2 Q Mm-hmm.

3 A I would imagine that the process would be -- let me

4 just work this through in my -- my little head --

5 that we would identify the property, and then I

6 would be -- I would negotiate the terms of the

7 purchase and sale agreement. So, until -- At that

8 point, I wouldn't know the exact amount of the

9 purchase. Then once I've done that, then I would

10 put -- you know, get with McNair, do an operating

11 agreement. And, typically, the challenge is -- in

12 answering this question is pretty much everyone --

13 not pretty much everyone -- all of -- a lot of us,

14 of the core investors, would just -- would

15 automatically go into the next deal. So, I -- I

16 would know, before I was looking, if there was an

17 appetite to make a purchase. I would identify the

18 land and go through the process. We'd do up a

19 member offering, and then once we had a closing

20 date -- I don't know if we had the operating

21 agreement all filled in with all the members names

22 on it at that closing or whether it was done at the

23 same time, before or shortly thereafter. I don't

24 know.

25 Q So, you don't know if -- if you had sold the -- the

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1 memberships before you would get the operating
2 agreement?

3 A Would I know if I had all the members that I sold
4 -- before the operating agreement?

5 Q You said you don't know?

6 A Well, I -- Yeah, there's -- You can make -- I
7 would make the assumption that I had this sold out,
8 but you wouldn't know until you had the money.

9 Q When you were selling these investments in the land
10 trusts, what did -- what was the money -- what did
11 you tell investors you were going to use the money
12 for?

13 A Purchase timber tracts in the Southeast United
14 States.

15 Q What did you tell investors your -- your
16 compensation for your efforts would be?

17 A It depended on the transaction. On, I think, II
18 and III, I had a management fee, and on some of the
19 other ones I had no management fee. On Silver Oak
20 I, that was a hybrid. On Silver Oak Energy, that
21 was a totally different deal. So, there was no --
22 no boilerplate.

23 Q Let me go back. Can you identify this?

24 A It's much better in color. Yeah, that is a
25 membership offering on Silver Oak VII, which is 258

1 gorgeous acres with direct access to Lake Wateree.
2 I think back then it was 18-year-old timber. So,
3 it's got to be pushing 25 years old, ready for
4 final thinning, so --

5 Mr. Mathison: I have the same objection
6 as the last one. It didn't have the
7 membership certificate -- or the certificate
8 filled in when it was sent out.

9 Mr. Crapps: We'll mark this for
10 identification, as well.

11 Marked as State's Exhibit Number 5;
12 copy of Silver Oak Land Trust VII,
13 LLC Membership Offering; four pages.

14 Q Can you read the first paragraph on the second page
15 of that?

16 A The second paragraph?

17 Q The first paragraph.

18 A First paragraph. "Silver Oak Land Management, LLC
19 has negotiated a very favorable purchase contract
20 on the June Creek Tract located midway between
21 Charlotte, North Carolina and Columbia, South
22 Carolina. An interest is offered to you by
23 purchasing a membership in the Silver Oak Land
24 Trust VII, LLC. This is a large tract of
25 approximately 258 acres."

1 Q And can you go to the third page and the first
2 paragraph there?

3 A "Silver Oak Land Trust attempts to generate a
4 stable tax efficient cash flow from timber tracts
5 purchased in the Southeastern United States. The
6 primary intention is tree farming coupled with the
7 potential opportunities of long-term real estate
8 holdings."

9 Q And the last paragraph?

10 A "Timber, as an asset class, has shown an average
11 annual compounded return of over 11 percent for the
12 past 30 years. We will try to beat the industry
13 rate of return and enhance that with higher and
14 better use sales."

15 Q And if you'd go to the last page and the top
16 section. If you can read that for me.

17 A "We hope that you have an interest in this project.
18 We encourage you to return your membership offer
19 form and a check as soon as you can. If you have
20 any questions or need more information, please call
21 me anytime at 843-342-3363. All membership
22 payments must be received before the deadline of
23 April 30th, 2009."

24 Q You can go ahead to the second paragraph.

25 A "We reserve the right, in our sole discretion, to

1 accept or reject any membership, in whole or in
2 part. We reserve the right to accept memberships
3 on a first come, first serve basis. If the
4 offering is oversold, or if we do not accept all or
5 a portion of an interest, we will return the
6 unaccepted portion."

7 Q And whose the -- the signatory on -- I know you
8 didn't personally sign, but what's the salutation
9 there?

10 A Oh. Yes. Jack McIntyre.

11 Q And at the very bottom of the page, below the
12 break, what does that say?

13 A "Information courtesy of Silver Oak Land
14 Management, LLC."

15 Q Okay. Can you identify this document?

16 (The witness reviews document.)

17 Q Can you identify that?

18 A I'm sorry?

19 Q Can you identify it?

20 A Yeah. That's a Silver Oak Land Trust V membership
21 offering.

22 Mr. Mathison: Except for the last
23 document, which was not part of the offering,
24 and the handwriting on the second page, which
25 I assume is, perhaps, Mr. Silver's.

1 Q What is the last page of that packet I gave you?

2 A A Certificate of Membership.

3 Q And that's signed by who?

4 A John M. McIntyre. Me.

5 Mr. Crapps: I took this (indicating)
6 out.

7 Mr. McIntyre: Okay.

8 Mr. Crapps: And I'm going to mark this
9 for identification.

10 Marked as State's Exhibit Number 6;
11 copy of Silver Oak Land Trust V, LLC
12 Membership Offering; seven pages.

13 Q Can you read the last paragraph on the second page?

14 A "From the 131 acres, Silver Oak Land Trust
15 Management, LLC, will generate --"

16 Q I'm sorry. Can you reread that?

17 A Want me to read --

18 Q Start over, -- I'm sorry -- yeah.

19 A Yeah. That's fine. "From the 131 acres, Silver
20 Oak Land Management, LLC, will generate income for
21 Silver Oak Land Trust V, LLC. As always, this is
22 done with consideration toward improving future
23 development potential using the best silviculture
24 practices possible."

25 Q And the next page, what is that page?

- 1 A Membership offering. Membership Offer.
- 2 Q And whose the -- Who is that page -- the signatory
- 3 down there?
- 4 A Jack McIntyre.
- 5 Q And the last page. And what is this page here?
- 6 A I think that's just a -- actually part of our --
- 7 That's a web page on a website.
- 8 Q And what is the first paragraph? Can you read the
- 9 first paragraph?
- 10 A Okay. "Silver Oak Land Trust will attempt to
- 11 generate a stable tax-efficient cash flow from
- 12 timber tracts purchased in the Southeast United
- 13 States. The primary intention is tree farming
- 14 coupled with the potential opportunities of long-
- 15 term real estate holding."
- 16 Q And the last paragraph?
- 17 A "Timber, as an asset class, has shown an average
- 18 annual compounded return of over 11 percent for the
- 19 past 30 years. We will try to beat the industry
- 20 rate of return and enhance that with HBU sales."
- 21 Q All right. Can you identify this document?
- 22 A Silver Oak Land Trust I Secondary Offering.
- 23 Mr. Crapps: I'll enter that into
- 24 evidence.
- 25 Mr. Mathison: No objection.

1 Marked as State's Exhibit Number 7;
2 copy of Silver Oak Land Trust I, LLC
3 Secondary Offering; nine pages.

4 Q What does it mean by secondary offering?

5 A Silver Oak Land Trust already owned the property,
6 and we raised more money on that land. That's what
7 it meant to me.

8 Q Why were y'all raising more money?

9 Mr. Mathison: (to the witness) He said

10 --

11 A Excuse --

12 Mr. Mathison: -- why were you raising
13 more money.

14 A Oh. Why we were raising money. The members of
15 Silver Oak I, of Silver Oak Land Trust, before it
16 was I, had a mortgage on the property, and we were
17 paying the mortgage off.

18 Q Can you go to the second to last page?

19 A (Complies.)

20 Q And read the second paragraph.

21 A "Only seven new members will be accepted. I
22 reserve the right, in my sole discretion, to accept
23 or reject any membership, in whole or in part. I
24 reserve the right to accept memberships on a first
25 come, first serve basis. If the offering is

1 oversold, or if I do not accept all or a portion of
2 an interest, I will return the unaccepted portion."

3 Q And who's that signed by?

4 A Jack McIntyre.

5 Q When you were raising money for Silver Oak IV, did
6 you tell investors that you would pay yourself
7 consulting or management fees?

8 A IV. I don't -- Well, let me just -- I don't
9 believe that ever came up.

10 Q When you were raising money for Silver Oak IV, did
11 you -- did you tell investors that you would use
12 money to loan yourself -- to loan to yourself?

13 A I don't believe that came up.

14 Q When you were raising money for Silver Oak IV, did
15 you use -- did you tell investors that you would
16 use money for the other entities?

17 A I don't believe that came up.

18 Q When you were raising money for Silver Oak I the
19 first time, did you tell investors that you would
20 pay yourself consulting or management fees?

21 A Silver Oak I was a small group of members that were
22 also on a -- if not a daily conversation, at least
23 a weekly conversation of what was going on. So,
24 that was a -- We made, collectively made,
25 decisions on a lot of things.

1 Q Do you feel that the other parties of Silver Oak I
2 were active in the management of the company?

3 A Absolutely.

4 Q What knowledge of the finances and -- and -- What
5 financial information did those members have access
6 to?

7 A Well, -- On Silver Oak I?

8 Q (Nods head.)

9 A Again, we were making decisions, actively making
10 decisions on a weekly basis about what -- you know,
11 how to spend the money -- how to spend the money,
12 what to do, what to -- what -- the purchases of the
13 other tracts that we invested in. We all --
14 Everything we did in Silver Oak I was -- was done
15 by unanimous consent. So, if we were going to
16 purchase a boat, we would all decide that's what we
17 were going to buy, and we did. When it came time
18 to build a road system, we'd get offers, we'd get
19 quotes, I guess, estimates, we would discuss and
20 decide what to do. When it came time to get what
21 land delineations done, -- Murray had a pal who
22 was in that business in Florida. We flew him up.
23 We hung out with him and went out for dinner with
24 him, and he got our wetland engineers and things
25 done up. When we needed a land planner, Jim's --

1 Jim's pal from years ago, Perry Woods, -- We all
2 went together -- Almost all of us went together
3 and -- and met with him. When any decision was
4 made -- When we sold off some of that property, we
5 were all at the auction, except for Martin, who was
6 in Tenerife, by phone. I couldn't -- You know, if
7 I had something to refer to, I could go on and on
8 and on about who was doing what, when and at what
9 time, collectively.

10 Q Did y'all collectively decide to buy a truck?

11 A Absolutely.

12 Q Everybody agreed to that?

13 A Absolutely. Now, let me tell you that story. May
14 I?

15 Mr. Mathison: (to the witness) Sure.

16 He ask you a question.

17 The Witness: Okay. Does that make me
18 hostile? I'm just --

19 A We were -- We bought a piece of property that had
20 very little amount of upland on it. We thought --
21 We all thought that -- and I still think, to this
22 day, that is one of the largest parcels on Route
23 278 on the gateway to Hilton Head. It has over a
24 mile of frontage. It had very little uplands when
25 we bought it. We went in, put in a road system.

1 Murray, Jimbo and I and Sue and -- We went camping
2 there. Murray kept his trailer there. He took his
3 son hunting there. We were all very active in
4 trying to get that in the higher and better use
5 situation. So, we all took a relatively marginal
6 piece of property and tried to make a much better
7 piece out of it. And then I lost my train of
8 thought. What was -- What --

9 Mr. Mathison: (to the witness) The
10 truck.

11 The Witness: The truck. Okay. Thank
12 you.

13 A So, we -- A part of that property, on the back
14 side behind OC Welch, the Ford dealership on Route
15 278, there was about a 70-foot space of land that
16 we did not own, so we could not have access to the
17 side road that would take you to the University of
18 South Carolina. We thought that if we could get an
19 egress to that side street, that would raise the
20 value of the property. I went in to see OC Welch
21 and told him I was his next-door neighbor and what
22 we were trying to do. He -- We started chatting,
23 and he was interested. He had ten acres contiguous
24 to our property and his property, and he -- we
25 started chatting about timber values, and he wanted

1 to sell off that timberland. So, I said -- I
2 negotiated an easement to get on and off the
3 property for timber harvesting, which I paid \$1500
4 for, and one of the demands of Mr. Welch was that I
5 had to purchase a -- I -- I was going onto the
6 property with a Toyota Tundra, and that was making
7 him crazy. So, he nicely forced me into making a
8 -- purchasing a Ford. We all agreed to that. I
9 was spending six, seven days a week on these
10 properties, working continuously on these, and
11 everyone agreed that that was something I should --
12 I should have.

13 Q Where is that truck now?

14 A I sold it.

15 Q Where did that money go?

16 A To pay legal fees.

17 Q What legal fees?

18 A I'm being sued by those gentlemen over there.

19 Q In SOLT VII -- I'm sorry. Whose name was the
20 truck titled in?

21 A I -- I honestly don't recall. Silver Oak
22 something, but I -- If you have that, I'll --

23 Q You don't recall who it was titled to?

24 A No.

25 Q Was it titled in your name?

1 A No.

2 Q Was it titled in the SOLT I's name?

3 A Again, I don't remember which Silver Oak, but it

4 was one of them.

5 Q One of the Silver Oak Land Trusts?

6 A Something with Silver Oak on it. I don't recall.

7 Q Do you recall if it was Silver Oak -- one of the

8 Silver Oak Land Trusts or Silver Oak Land

9 Management?

10 A I don't recall.

11 Q Did everybody agree to sell it?

12 A When -- Yes. When -- When we were doing our

13 secondary offering, Silver Oak had various assets,

14 namely, an investment in Silver Oak III, an

15 investment in Silver Oak II, an investment in

16 Silver Oak IV, a truck and a boat, and maybe some

17 other things, but those are the big ones. We --

18 When we were raising -- doing our secondary

19 offering, we were not -- The only -- And I think

20 it's on the documents. The only asset that the --

21 that Silver Oak Trust -- Land Trust would own at

22 that closing was the 159 acres on Route 278. So,

23 we had to decide what to do with those other

24 assets. So, prior to doing that, we -- I gave

25 Murray -- Because it was his boat originally, I

1 sent him down the title for his boat. I got to
2 keep the truck. The other members get to keep the
3 investments in II, III and IV in their percentages
4 of I. I don't think I explained that correctly
5 that you could understand it, but whatever their
6 investment was in Silver Oak I was the same
7 percentage in -- in their investment in II, III and
8 IV. So, we converted that back to their individual
9 names or LLCs. That's --

10 Q So, maybe I didn't understand. How did the truck
11 fit in there?

12 A I got to keep the truck. That was the conversation
13 for --

14 Q Conversation for what?

15 A For my involvement.

16 Q And that was prior to the secondary offering?

17 A Mm-hmm.

18 Q When you were originally soliciting investments in
19 SOLT I, did you tell those gentlemen that you would
20 use money for personal expenses?

21 A Silver Oak I?

22 Q Yes.

23 A We -- I don't recall a conversation about personal
24 expenses.

25 Q Did you, in fact, make personal expenses out of

1 SOLT I?

2 A I think, because it was a small group, we did
3 things collectively that -- collectively that you
4 might -- some of it could be considered personal
5 expenses. If you were -- If we were meeting --
6 You know, Jimbo and I would meet with various --
7 We hired Tom DeMint to market the property. We
8 hired all kinds of contractors to work on it, built
9 fences, put in road systems. We spent a lot of
10 money getting the land prepared for higher and
11 better use. I don't consider any of that personal
12 expenses. Did we go to lunch on occasion and
13 discuss who we were going to hire and then --
14 Yeah, we did.

15 Q Did you make loans to yourself?

16 A Yes.

17 Q Do you remember how much?

18 A Out of Silver Oak --

19 Q I.

20 A I. I don't recall, but it's on the tax return.

21 Q Were those gaining interest?

22 A I don't have the loan document in front of me, so I
23 don't --

24 Q You kept a loan document for each time you loaned
25 yourself money?

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1 A Yeah.

2 Q You did?

3 A Well, I stopped doing it, but yeah.

4 Q How long did you do it?

5 A Well, I think I had to -- We file tax returns

6 every year, so they are recorded on my -- on the

7 1065. So, they must have been attached or

8 somewhere in the file.

9 Q How much of those loans did you pay back?

10 A On I?

11 Q Mm-hmm.

12 A I haven't paid any back.

13 Q Do you remember when you started to do that?

14 A I'd have to look at the tax returns.

15 Q So, are you denying making personal expenses out of

16 SOLT I?

17 A There's -- I looked at some of those -- There's a

18 few accounting errors, a few misnames that are

19 incorrect.

20 Q And what do you mean by that?

21 A There were several entity -- entries -- excuse me

22 -- entries that were not put into the right

23 account.

24 Q Were not -- Did you use Land Trust I money at

25 Victoria's Secret?

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1 A I made a purchase at Victoria's Secret with a Land
2 Trust card.

3 Q What was the business purpose of that expense?

4 A I believe -- I -- That was one for \$62.50, I
5 think, right?

6 Q I can pull it, if you --

7 A Yeah, well, whatever. I believe it was one of --
8 If it was around -- I think it might have been a
9 gift for -- a gift for a vendor or a gift for
10 someone that had been good to the company or -- I
11 assume it was a gift.

12 Q So, the Victoria's Secret was a gift for?

13 A I -- Unfortunately, I don't ever -- I'm not a
14 Victoria's Secret's guy. I don't go into those
15 places. So, I'm really drawing a blank on what I
16 was doing.

17 Q How did you record all of your expenses?

18 A On Quicken.

19 Q Why would that Victoria's Secret purchase be
20 entered in Quicken as Vic's on the River for dinner
21 with IP staff?

22 A When -- When you type in the first few letters of
23 a word, it automatically fills whatever Quicken has
24 in its database, so I -- I gather the original
25 Vic's on the Waterfront -- I marked it down as IP.

1 We were buying land from IP. I spent a lot of time
2 in Savannah, which is where the -- all the maps
3 were for all the different deals we looked at. So,
4 I was -- That's what happened there.

5 Q Did you pay personal credit card bills out of SOLT
6 I?

7 A I paid personal credit card bills if I had put
8 something on my expense account, yeah.

9 Q So, all those expenses to credit cards were
10 payments?

11 A Yeah. If I were -- For instance, we looked at
12 tens of thousands of acres of land before --
13 thousands -- let me say thousands of acres --
14 before we purchased Silver Oak II or III -- And
15 let's just go with III, for instance. If we were
16 going to spend our money on Silver Oak III, --
17 which we did -- it required me to identify specific
18 property. So, I would travel to those places. I
19 would put gasoline in my truck. I would -- If I
20 were negotiating with a -- with Crest Resources or
21 International Paper, I would meet them, we'd go to
22 lunch, we'd -- I'd stay overnight. I would, you
23 know, go to Staples. I would make photocopies of
24 plans. I would do all kinds of things, and
25 sometimes I would -- Well, because I had my own

1 credit card for the gas, I'd put it on that, and if
2 I had -- I have a Staples card, so I'd save some
3 money there. I had a Marriott card, because I'd
4 get a discount on my room rates. So, I'd put it on
5 those cards sometimes and then pay myself back.

6 Q I'm sorry. I've lost my train of thought. Who all
7 had debit cards on SOLT I's account?

8 A Just me.

9 Q No one else had a debit card?

10 A Correct.

11 Q When you were raising money for SOLT II, did you
12 tell those investors that you would be paying
13 yourself consulting or management fees?

14 Mr. Mathison: (to Mr. Crapps) I'm
15 sorry. I didn't hear the end.

16 Mr. Crapps: Consulting or management
17 fees.

18 A Yes, on -- You're saying II?

19 Q Yes.

20 A Yes. There's a management fee under 6.3.

21 Q Of how much?

22 A Fifteen percent.

23 Q Of what?

24 A Okay. "The management fee -- The Management shall
25 receive as a management fee 15 percent of all

1 revenue received by the Company. The fee shall be
2 paid within 30 days of receipt of the revenue.
3 Except in the event that all the real property
4 owned by the Company is sold in one transaction,
5 then the Members shall first receive their capital
6 contribution pro rata; then the Manager shall
7 receive his Management fee, and then the remaining
8 funds, if any, shall be distributed in accordance
9 with the ownership percentages."

10 Q So, the management fee was 15 percent of --

11 A Yeah.

12 Q -- revenue?

13 A All revenue received, correct.

14 Q Did you tell investors --

15 A Excuse me for one second. May I make a request to
16 --

17 The Hearing Officer: Do we need to take
18 a break?

19 Mr. Mathison: We need a break, I think.

20 The Witness: Okay.

21 Mr. Mathison: We've been at it for an
22 hour and half.

23 The Hearing Officer: Yeah, we can
24 certainly take a break.

25 [Off the record at 1:56 p.m.;

back on the record at 2:42

p.m.]

The Hearing Officer: Okay. Yeah, Mr.
Crapps, you can continue your examination.

Direct Examination Continues

By Mr. Crapps:

Q Mr. McIntyre, I believe when we left off, we were
talking about SOLT II, that the operating agreement
states that, as a management fee, you'll take 15
percent of the revenue. Any management fee in
excess of that, would that be excessive?

A Would that be --

Q What would be the basis for taking management fees
in excess of 15 percent of revenue?

A Excessive? It would be over the amount. It would
be -- It would have to be accounted for, yeah.

Q Excuse me?

A That would have to be accounted for.

Q When you were raising money for SOLT II, did you
tell investors that you would be loaning yourself
money?

A I don't believe that ever --

Mr. Mathison: Objection. Asked and
answered.

The Hearing Officer: (to the witness)

1 You can answer.

2 The Witness: Oh. Okay.

3 A I don't believe that ever came up.

4 Q Did you tell investors that you would be paying
5 yourself consulting expenses?

6 A I don't believe that ever came up.

7 Q Did you pay yourself consulting expenses?

8 A I don't know if I did in this specific entity, but
9 yes, I did.

10 Q And what was the basis for that?

11 A It depended on the -- I'd have to look at the
12 records, but I think on certain entities, there was
13 maybe more work required, maybe more specific
14 duties that weren't envisioned under the original
15 agreement, requiring me to be spending a lot more
16 time at a particular property than I anticipated.

17 Q And, so, you paid yourself for the consulting
18 expenses. What were those amounts based on?

19 A The amount of time.

20 Q So, you were paying yourself for your time?

21 A Yeah. There were other consulting expenses that
22 I'd do, consulting foresters, maybe -- I'd have to
23 be -- That -- Have to be more specific.

24 Q Were the consulting expenses to yourself?

25 A Yeah.

1 Q And in SOLT I, I believe I asked you about credit
2 cards?
3 A Correct.
4 Q Were those credit cards used exclusively for SOLT
5 I?
6 A No.
7 Q But you would use them in the course of business
8 for SOLT I?
9 A I would use them in the course of business, sure.
10 Q And you would refund yourself for those -- for
11 those expenses?
12 A (No response.)
13 Q And if I'm not being clear, please let me know. I
14 --
15 A Yeah, I'm not understanding the question.
16 Q The question is this. Why would the credit card
17 companies be receiving the payment instead of
18 refunding yourself?
19 A Oh. Okay. If you're -- You're asking why did I
20 make a payment -- a direct payment to, like, the
21 Shell credit card --
22 Q Or American Express.
23 A -- or American Express versus not writing a check
24 to myself and then paying that?
25 Q Correct.

1 A No -- A good answer, no reason to do it any way
2 other than that.

3 Q Were any personal expenses ever paid out off of
4 those credit cards by investor money?

5 A There's a possibility that I would make a mistake
6 or round up, round down.

7 Q Did you ever pay yourself based on projected
8 distributions out of SOLT II?

9 A Yes.

10 Q What was the basis for that?

11 A I had a signed timber-harvesting agreement, and I
12 decided to -- to pay myself.

13 Q Were any other investors paid in advance for that?

14 A No.

15 Q Were investors paid -- Did the revenue ever come
16 in?

17 A I resigned, I believe, if that's the one you're
18 talking about -- You're talking about the current
19 thinning or the first thinning we -- So, on Silver
20 Oak II, we had our first thinning -- Just for the
21 record, our first thinning on Silver Oak II, I
22 believe -- I'm going to round up here, but it was
23 \$72,000 in income. The members unanimously decided
24 that we would purchase the contiguous property from
25 Crescent Resources. And this was a point of land

1 that went out into the lake. We -- I negotiated a
2 great price. It took me six months to negotiate a
3 price with Crescent Resources. All the members
4 decided it would enhance the value of the parcel
5 having that much more lakefront. So, instead of
6 distributing that money, we all come up with a few
7 more dollars and took that timber income and put it
8 back into the property.

9 Q So, the rest of the timber income not paid to you
10 in those projected payments was used to purchase
11 the extra land?

12 A I'd have to look. I don't know if -- I know I put
13 in additional money, also, so I don't -- I know
14 that all the funds -- I think all the funds from
15 that transaction went into purchase more property.

16 Q All of the -- the other funds?

17 A All of the timber funds, yeah.

18 Q So, no other investor got distributions out of that
19 --

20 A Correct.

21 Q So, the only distribution out of that timber income
22 was those projected distributions?

23 A No. No. No. I was going back to -- That went
24 back several years. So, you have to be specific as
25 to which timber harvest you're talking about.

1 Mr. Mathison: There are two different
2 ones, Jordan.

3 Mr. Crapps: Okay.

4 Mr. Mathison: You were asking about one,
5 and he dropped back on you and went to a
6 previous one.

7 Mr. Crapps: Okay.

8 Q One second. Did you -- When you were soliciting
9 investments in SOLT II, did you tell those
10 investors that you would be loaning money to other
11 SOLT entities?

12 A I don't believe that ever came up.

13 Q And when you were raising -- soliciting investors
14 for SOLT VII, did you tell those investors that you
15 would be making loans to yourself?

16 A I don't believe that ever came up.

17 Q And did you make payments to yourself?

18 A I believe I did.

19 Q And when you were soliciting investments in SOLT
20 VII, did you tell those investors you would be
21 loaning to other SOLT entities?

22 A I don't believe that ever came up.

23 Q And did you loan monies between SOLT entities, from
24 VII to others?

25 A I don't have that in front of me, but I believe I

1 did. To other S-O-L-T entities?

2 Q Yes.

3 A Yeah.

4 Q And I'm sorry to backtrack here, but the timber
5 distribution I was talking about earlier, where you
6 took projected distributions, was -- was around
7 July 2012?

8 A Correct.

9 Q And what was the basis for those distributions,
10 again?

11 A The -- We had a signed timber contract, and my
12 rationale was I would take my distribution first.

13 Q Was that contract fulfilled?

14 A I don't know. I resigned, and I haven't received
15 any documentation or any information on anything
16 current.

17 Q How much was that contract for?

18 A I don't recall. We had two of them outstanding, so
19 --

20 Q Why did you create a savings account at Bank of
21 America for SOLT I?

22 A Hmm. The -- The history on the mortgage with Bank
23 Meridian -- We had a mortgage with Bank Meridian.
24 We used the land on S-O-L-T I as collateral, myself
25 and Murray. We had signed personally. We

1 personally guaranteed the loan.

2 Q How much was that for?

3 A Originally, five -- 500 or 550 thousand. And we --
4 With that money, we made our investment, our
5 purchase of Silver Oak II, III, IV and investments
6 in the land and improvements. Now, we -- The
7 market had changed. We went back to the Bank
8 Meridian and asked for some help, which they were
9 readily thrilled to do. So, I made a -- Murray
10 and I -- Murray had come up many a time, and we
11 would meet with the bank. And the city officer, I
12 think it was, and I and Murray worked on a plan.
13 So, after a month or two, I started chasing him,
14 hot and heavy, and then, finally, I went in there
15 and was told that he was no longer with the firm.
16 So, the next fellow was the vice president of the
17 bank. I told him what we were working on, and he
18 claimed he didn't know anything about it but, in
19 principle, he didn't have any problem with it. He
20 said, "Yeah, that sounds like a good plan." So, --

21 Q What plan were you working on? ~

22 A A workout on the loan.

23 Q On the 500,000-dollar loan?

24 A Yeah, whatever the note was. We were doing the
25 workout. So, we went along and along and along,

1 and he came back and said, "Well, you know, I told
2 you that we could do this, but the board said we
3 can't do it," and had some other requirements.
4 Number one, they said, "Well, you're paying your
5 mortgage, so we can't negotiate with you if you're
6 paying your mortgage." So, I said, "What are you
7 telling me, not to pay the mortgage?" He said,
8 "Yeah. If you're not paying it and you get behind,
9 then we can help you." So, I did that. We worked
10 at a plan, worked at a plan, and when the time came
11 to execute this plan, he was fired. And this is
12 all in a span of several months. So, the --
13 Pretty much everybody at the bank that I knew was
14 fired -- well, no longer with the bank. So, they
15 have a couple of guys in Columbia, at their workout
16 department, that they brought in specifically to
17 help the bank. So, I had come up here several
18 times. We had teleconferences -- And this was in
19 the day of -- when the bank industry was in
20 upheaval. So, we work out a deal. I bring them
21 in, and I -- I have to be loose with the numbers
22 because I don't have these in front of me. They
23 told me to bring in \$35,000 and they'd rewrite the
24 note. I am definitely nervous because everyone
25 I've ever dealt with at the bank is no longer there

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1 and these guys I've never met before. So, I bring
2 in the money, and they said, "Well, we have to put
3 the money to your account, and we'll have all the
4 paperwork for you on Monday." So, on Friday night,
5 the FDIC comes in and takes over Bank Meridian.
6 It's now the South Carolina Bank and Trust. So, I
7 go in there and, of course, "Where's my deal?"
8 "Well, that's the old bank." So, it's not going
9 well. Everything that they promised they had
10 reneged on, maybe not because they were trying to
11 do it, but the bank was in serious trouble, which
12 we didn't know, and they were, obviously, taken
13 over by SCBT. The FDIC gave SCBT 31 million
14 dollars to take it over and then guaranteed 80
15 percent of the loans. So, I started over again,
16 and, in the meantime, the bank had started chasing
17 me for the money. I was uncomfortable with raising
18 money and leaving it in that bank. I thought,
19 because I didn't know the bank and the bank was not
20 doing anything like the old days, that they might
21 just grab the money, and then I would have
22 endangered the investors' money, and I would have
23 been on the hook. So, I opened up an account at
24 the Bank of America and put the money there,
25 outside of the bank.

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- 1 Q And what money was deposited into that Bank of
2 America account?
- 3 A The amount or -- What money, like --
- 4 Q Where did the money come from?
- 5 A The money came from, I believe, two investors, Rich
6 Silver and Rose Patteson.
- 7 Q Did you tell those investors -- And what offering
8 was that --
- 9 A That was --
- 10 Q -- where Rich and Rose were --
- 11 A -- the secondary offering on S-O-L-T.
- 12 Q Did you tell those investors that their money would
13 be loaned to yourself?
- 14 A No.
- 15 Q Did you loan some of that money out of the Bank of
16 America account to yourself?
- 17 A I don't recall.
- 18 Q And whose name was that Bank of America account
19 titled in, titled to?
- 20 A Silver Oak Land Trust.
- 21 Q This is a printout of a Quicken account for Silver
22 Oak Land Trust I. You can see these loans to
23 Silver Oak Land Management coming out of the
24 savings account. In all, they total about \$42,750.
25 Do you remember making those loans?

1 A You're talking about the Bank of America --
2 Q Yes.
3 A -- account, right?
4 Q Correct.
5 A Yeah, this is -- That can't be correct. I didn't
6 have it back in 2009, 2010.
7 Q I'm sorry. The -- It's only the amounts here
8 beside the savings numbers, and their dates were
9 over here. I think they're all 2011, in between
10 January 21st, 2011 and April 15th, 2011.
11 A Okay.
12 Q Do you remember making the loans?
13 A They would be recorded on the tax return, I assume.
14 Q Excuse me?
15 A They would be recorded on the tax return. That
16 would be my backup to confirm it.
17 Q But -- So, you don't remember?
18 A Not exactly, no.
19 Q Can you tell us a little bit about Silver Oak
20 Energy, the genesis of that entity?
21 A Yeah. The -- We were -- When the real estate
22 bubble burst, the price of saw -- chip-n-saw and
23 sawtimber took a serious hit, meaning the price was
24 drastically reduced. We had 1300 acres of -- of
25 timberland, and we were looking for alternative

1 ways -- and the -- Not only did the timber market
2 head south, but the real estate market, in general,
3 went south, in addition to the banking industry
4 going south. So, even if you could sell a piece of
5 raw land, which was difficult, it was extremely
6 difficult, almost impossible to go to a bank at the
7 time. To go the bank, at the time, and ask for a
8 land loan was laughable. So, we were faced with a
9 challenge. So, we decided to look at another crop
10 to put on the land that could generate income. So,
11 the biomass renewable industry was on the news
12 every night. Back then, even President Bush was
13 suggesting we start planting switchgrass. So, we
14 started looking at various crops that we could grow
15 on the timber tracts. If we had a second row or a
16 third row of thinning, there would be a row of
17 trees that we'd cut, and then until we replanted,
18 -- and it could be ten, 15 years later -- that --
19 from our point of view, that land was fallow. So,
20 we started researching all of the various forms of
21 biomass that we could grow on the farms, and that
22 was the genesis.

23 Q Can you identify this document for me?

24 A It looks like the operating agreement for Silver
25 Oak Energy.

1 Q If you'll let Rob look at that.

2 A Sure.

3 Mr. Mathison: Thanks. That's it.

4 Mr. Crapps: We'll enter this into
5 evidence, Silver Oak Energy Operating
6 Agreement.

7 Marked as State's Exhibit Number 8;
8 copy of Operating Agreement for
9 Silver Oak Energy, LLC; 21 pages.

10 The Hearing Officer: (to the court
11 reporter) What is that exhibit number, ma'am?

12 The Court Reporter: 8.

13 Mr. Crapps: 8.

14 Q Who are the investors in Silver Oak Energy?

15 A Silver Oak Land Management, Paul Finn, Brian Mone,
16 David Short, Richard Silver, and either Jim Paris
17 or Bourbon Place, his LLC.

18 Q Okay. What was the -- What did you tell those
19 investors their money would be going to?

20 A I had -- This is not a timberland operation,
21 although our largest purchase was a plot of land
22 for a farm, a Miscanthus farm. When that -- When
23 I started the Silver Oak Energy, I had spent a --
24 the prior year going around, mostly east of the
25 Mississippi, mostly, looking at the various crops

1 that might grow in and around our properties. I
2 had purchased the Illinois Clone, which --
3 Miscanthus x giganteus --

4 The Witness: And has everybody read all
5 that information?

6 A Okay, --

7 Mr. Mathison: (to the witness) Excuse
8 me just a second.

9 The Witness: Sure.

10 Mr. Mathison: (to the hearing officer)
11 You haven't read it, have you --

12 The Hearing Officer: No, I have not --

13 The Witness: Oh. Oh. Sorry.

14 Mr. Mathison: You need to discuss what
15 you're talking about --

16 The Witness: Okay.

17 Mr. Mathison: -- for the judge's
18 benefit.

19 The Witness: I apologize.

20 A A good -- When we were sitting around, various
21 members, thinking of what we could grow on our
22 crops -- or on our fields, we looked around and
23 noticed that biomass was the up and coming thing at
24 the time. Still is. We were also keenly aware
25 that our troops were in Afghanistan and Iraq, in

1 countries that were floating around on a bed of
2 oil, and we thought it was rather silly that a
3 country this size couldn't come up with an
4 alternative to fossil fuels. Now, the -- the
5 fossil fuels extremely harmful to the environment.
6 If anyone's ever seen coal mining, strip mining,
7 where they blow up the side of the mountain -- So,
8 we were, obviously, trying to make a profit -- I
9 don't deny that -- but trying to do it and -- and
10 maybe help out a little bit. So, we figured out
11 that this Miscanthus grass can yield around 15 tons
12 of biomass per acre. Our timber was going to give
13 us maybe four tons per acre, but you'd have to wait
14 ten, 15, 20 years to harvest it. Miscanthus, you
15 could grow it in the spring, harvest it in the
16 fall. When it's senesced, it would dry, you could
17 harvest it, but it was a perineal grass, so you
18 didn't have to do anything the following season and
19 it would grow back, and you would keep doing this
20 and doing this and doing this. So, in South
21 Carolina -- which I spent a lot of time at this
22 building here and the building next door, trying to
23 convince everybody here that, instead of burning
24 coal, bringing 300 trainloads a day of coal from
25 West Virginia, that we could grow our own.

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1 electricity here, instead of Santee Cooper burning
2 coal, we could grow this crop, specifically, up in
3 the corridor of shame where the farmers needed the
4 work, and we could, without polluting or destroying
5 the environment and sending 1.8 billion dollars a
6 year up to Virginia and Pennsylvania, -- that we
7 could help the cause. Now, -- So, I had spent
8 that prior year, before everyone else's
9 involvement, at various entities, from the
10 University of Illinois, where they were testing
11 this, to pretty much everyone else in that
12 industry. So, we had -- We looked at Jatropha
13 curcas, which is an oil-based. We looked at Arundo
14 donax. We ended up with Miscanthus x giganteus
15 because it seemed to get the best yield and the
16 best results in this environment. Jatropha curcas
17 wouldn't -- was a much better product in the
18 tropics, but -- It was a learning curve, and I was
19 not -- I'm not a scientist. And I spent all that
20 time and went up to Connecticut and met with a PhD
21 up there, dug up trials of Miscanthus, various
22 types of Miscanthus. We purchased the -- I guess,
23 the Illinois clone. We ended up getting a Nagara
24 clone -- but not at that time -- and various other
25 clones, brought them back to South Carolina and

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1 started testing them and planting them here. At
2 that point, I owned -- When I started Silver Oak
3 Energy, I owned a hundred percent of it. This
4 wasn't -- This agreement wasn't a gift to me. I
5 had started that company, and I owned all the crop.
6 I paid for it.

7 Q So, you owned a hundred percent, and then you --
8 How did the other investors come in?

9 A Paul Finn was the first one in, in two thousand and
10 -- I won't tell you -- I can't remember -- and he
11 had three percent of the company. So, our first
12 year, I owned 97 percent and he owned three
13 percent.

14 Q When was that operating agreement entered into?

15 (The witness reviews documents.)

16 Q It may be the -- the first page of that.

17 A Okay. Sorry. November 2009.

18 Q And when did the investors come in?

19 A Paul Finn was the first one. He came in in 2009.
20 The rest came in 2010.

21 Q Okay. When you were raising -- When these
22 investors were coming in, did you -- did Silver Oak
23 Land Management also put money in?

24 A Silver Oak Land Management -- At the time of this
25 investment, at the time they made their investment,

1 no.

2 Q What percent does Silver Oak Land Management

3 possess, I guess?

4 A I believe it's 35 percent.

5 Q And why did you receive that?

6 A Why did I receive it? I owned it. I didn't

7 receive anything.

8 Q Okay.

9 A I -- I sold off percentages of my 100 percent to my

10 partners.

11 Q And you -- When you were seeking these other

12 members, did you tell them that you would use the

13 money for personal expenses?

14 A For personal expenses? No, that didn't come up.

15 Q Did you make personal expenses out of Silver Oak

16 Energy's account?

17 A If I did, it was accidental.

18 Q Did you make payments to doctors out of Silver Oak

19 Energy's --

20 A A dentist you mean? Is that what it was?

21 Q Dr. Galloway.

22 A Yes. She's my dentist.

23 Mr. Mathison: And a good one.

24 The Witness: Yeah.

25 Q What's the business reason for that expense?

1 A I think it was a -- I don't -- to clean teeth, I
2 guess.
3 Q Did you spend Silver Oak Energy investor money at
4 Stevemadden.com?
5 A I believe so.
6 Q What was the business reason for that expense?
7 A I don't -- I don't even -- I don't know what
8 Steve Madden is, so I've got to -- I'll have to
9 look that up.
10 Q Did someone else spend the money at
11 stevemadden.com?
12 A No. I -- I was the only one with a card.
13 Q Did you spend Silver Oak Energy investor money for
14 college application fees?
15 A Yes, I did.
16 Q And what's the business reason for those expenses?
17 A Oh, I have to think that -- one of a couple of
18 reasons. We had -- Including some of the
19 partners, we had our kids doing work. Jim's son
20 was working at the greenhouse. I paid him in cash.
21 I've had my daughter do various things. And either
22 I owed some compensation for some -- These are 50-
23 dollar items, -- excuse me -- and either it was
24 for, you know, doing something technological that I
25 am incapable of doing on a cell phone or a website

1 or I just grabbed the wrong credit card. I don't
2 know which one.

3 Q Who were those college application fees for?

4 A My daughter.

5 Q Did you spend investor money -- Silver Oak Energy,
6 investor money at the Goldsmith Shop?

7 A Yes.

8 Q What is the Goldsmith Shop?

9 A It's a -- excuse me -- a jewelry store in Hilton
10 Head.

11 Q And what was the business reason for that expense?

12 A I was -- It was -- I don't recall exactly. I'd
13 have to look at the dates, but I believe one of --
14 You know, either -- It wasn't -- It wasn't enough
15 money to be a -- Well, it was either -- We had
16 been doing a lot of trading, bartering with -- with
17 vendors to get some work done on our various
18 greenhouses. We had three greenhouses, and they
19 required maintenance and work, and I can only be in
20 one place at a time, and I did, on various
21 occasions, pay people off with -- compensate people
22 with like-kind exchanges.

23 Q So, you used jewelry to -- to pay someone?

24 A Possibly.

25 Q Do you remember doing that?

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- 1 A I did -- I do remember doing it with a greenhouse
2 crew up in -- up in Lake Wateree. They were new to
3 the country, and I -- I did various things for them
4 at various times. It was a -- Yeah.
- 5 Q And you paid those people with jewelry?
- 6 A I -- I'm saying I did -- At various times, I -- I
7 did barter with them to get them -- to keep them
8 working when I couldn't do things, so -- Or I used
9 the wrong credit card. I don't -- I don't even
10 know what it was that was purchased, so --
- 11 Q Why would the entries for the college application
12 fees to Wake Forest and Vanderbilt be listed in the
13 Quicken books as Home Depot?
- 14 A I don't know. A typographical error. I was trying
15 to remind myself of something, home -- maybe I was
16 doing home, household. I don't know. It --
- 17 Q Why would the purchases at stevemadden.com and also
18 a purchase at Macy's be labeled as Greenhouse
19 Construction?
- 20 A Probably, at the time, I think I looked at that
21 page about -- There's 30 or 40 entries, and 25 or
22 30 of them were Greenhouse Construction, so --
- 23 Q Why would the purchase at the Goldsmith Shop be
24 entered in the Quicken, or QuickBooks, records as
25 Jaderloon Greenhouse Company, Inc.?

1 A Jaderloon is where we bought our -- our
2 greenhouses, so either it was a -- my attempt to
3 remind myself of something or an error.
4 Q Did you ever use investor money to pay personal
5 property taxes?
6 A Yes.
7 Q What was that incidence?
8 A If I recall, I had -- When the bank was going
9 through their transitions, I had gone to the front
10 counter and done a countercheck and paid my taxes
11 with it. I -- And we had six, seven, eight
12 different accounts there, and they took it out of
13 one account, which was the wrong account, and I
14 repaid that when it was brought to my attention.
15 Q Do you remember when that -- that the payment took
16 place?
17 A I do not.
18 Q Do you recognize that document?
19 A Yes.
20 Q Is that the payment that you used to pay your
21 personal property taxes?
22 A I believe that's part of it.
23 Q There's more --
24 A There would be some -- You know, there would be
25 some backup documentation to this showing -- I did

1 this at the counter, --

2 Q Mm-hmm.

3 A -- so that's obviously not a check that I -- that
4 came out of my computer. So, there would be some
5 -- There would be documentation with that, but
6 that's -- I'm sure that's what the bank sent them.

7 Q What's the date on that check?

8 A June 30, 2011.

9 Q When did you pay it -- pay that back?

10 A I don't recall. After that date.

11 Q You don't remember when you paid it back?

12 A No.

13 Q Do you know how long after that date it was?

14 A June of 2011, so it was probably in 2012, probably
15 -- six -- I'm going to guess the end of 2012.

16 Q So, it took you over a year to repay it?

17 A If that's what I'm saying, yes.

18 Q Okay. I'm trying to understand how that's
19 consistent with an accidental withdrawal.

20 Mr. Mathison: Is that a question,
21 Counsel?

22 Q If it was an accidental withdrawal that you paid
23 back, I guess I'm asking why it took over a year to
24 pay it back.

25 A Well, either it came to my attention after that

1 fact -- This was a -- I fouled this one up.
2 There was a -- The bank had it listed as a
3 miscellaneous debit or a miscellaneous transaction.
4 I put it in the wrong account. When we looked at
5 the check with the -- or the statement, the bank
6 statement, it shows up. It glaringly shows up that
7 it's in the wrong account. So, I put it back.

8 Mr. Crapps: We can go ahead and enter
9 this into evidence.

10 Mr. Mathison: Without objection.

11 Marked as State's Exhibit Number 9;
12 copy of Bank Meridian check dated
13 6/30/13; two pages.

14 Q This second page here, did you write that?

15 A I signed it, yeah.

16 Q What --

17 A That's not my -- I didn't write -- I signed it,
18 but the handwriting is not mine.

19 Q What entity is -- is that account -- or is that
20 payment coming out of?

21 A S-O-L-T IV.

22 Q And you signed it after that was written?

23 A I don't know because -- I have no idea. I -- I
24 would -- I had a great relationship with the bank.
25 Everyone there -- I was in there almost daily. I

1 would -- They would do things and would, you know,
2 do them at the end of the day or -- I have no idea
3 if that was before. I would assume that was done
4 -- Yeah, there's two signatures on it. That was
5 done after I left.

6 Q Did you know this payment was coming out of SOLT
7 IV?

8 A No.

9 Q You didn't?

10 A (Shakes head.)

11 Q Even though --

12 A It did come --

13 Q -- you signed the slip --

14 A It --

15 Q -- approving the -- the withdrawal?

16 A Well, it came out of SOLT IV. I -- I concur. I
17 went in and said can you give me a check for that
18 amount and then signed a slip and then it went --
19 it was taken out of the wrong account after I left.

20 Q So, the bank teller just chose SOLT IV?

21 A If -- If you have more -- If you have the
22 documents showing what I -- what they -- I left
23 there, my instructions maybe -- They could have
24 made a mistake. I could have made a mistake.

25 Q Did you use investor money to make payments on your

1 house?

2 A No.

3 Q Did you use investor money that you loaned to
4 yourself to make payments on your house?

5 A Possibly. I pay my bills, yeah.

6 Mr. Crapps: One second, please. I think
7 that's all we have for this witness.

8 The Hearing Officer: Do you have any
9 questions, Mr. Mathison?

10 Mr. Mathison: I will. It might be
11 helpful for us to take a break, if you don't
12 mind, before --

13 The Hearing Officer: That's fine.

14 Mr. Mathison: -- asking my few
15 questions.

16 [Off the record at 3:36 p.m.;
17 back on the record at 3:48
18 p.m.]

19 Cross-examination

20 By Mr. Mathison:

21 Q Mr. McIntyre, I believe that my opponent initially
22 asked you about Silver Oak Land Trust, and it's
23 been referred to as I or SOLT I but actually is
24 just Silver Oak Land Trust, a limited liability
25 company. Is that correct?

- 1 A That is correct.
- 2 Q And I'm going to hand you a plat by Ward Edwards,
3 Inc. showing 349.39 acres and ask if you can
4 identify that for me, please.
- 5 A Yes, that's the original purchase.
- 6 Q And I think you said you purchased that from
7 International Paper or one of their subsidiaries?
- 8 A That's correct.
- 9 Q And on that plat, there is an area marked in
10 yellow. What is that?
- 11 A That's the remaining 159.37 acres.
- 12 Q Okay. So, the entire parcel that you initially
13 purchased is what's set forth on the plat?
- 14 A Correct.
- 15 Q And the net amount after, I believe you said, an
16 auction?
- 17 A Correct.
- 18 Q What you have left now is what's encircled; is that
19 correct?
- 20 A That's correct.
- 21 Mr. Mathison: I'd like to have that
22 marked as Defendant's Exhibit -- or
23 Respondent's Exhibit 1.
- 24 Mr. Crapps: There's no objection.
- 25 Marked as Respondent's Exhibit

- 1 Number 1; plat; one page.
- 2 Q And I'd like you take a pen and put an arrow, if
- 3 you would, on the portions of property that were
- 4 sold in the auction.
- 5 A Okay. An arrow?
- 6 Q Just an arrow on each one.
- 7 A Okay. (Complies.)
- 8 Q What was the initial purchase price of the property
- 9 that you acquired from International Paper?
- 10 A I believe it was 560 or 580 thousand.
- 11 Q 560 or 580; is that correct?
- 12 A Yes.
- 13 Q And that was the price paid by the original members
- 14 of SOLT; is that correct?
- 15 A That's correct.
- 16 Q And how much, if any, money did you get from
- 17 auctioning off the parcels that you have marked?
- 18 A From memory, it was around \$375,000.
- 19 Q So, would I be correct in assuming that the
- 20 original members got more than 60 percent of their
- 21 original investment back?
- 22 A That -- That's correct.
- 23 Q And I think you, also, in response to Mr. Crapps's
- 24 questions, indicated that you had purchased a truck
- 25 from OC Welch. Is that correct?

- 1 A That is correct.
- 2 Q Would you put a circle on the OC Welch property
- 3 that appears on that plat, just a circle?
- 4 A He owns two parcels here.
- 5 Q Mm-hmm.
- 6 A So, should I circle twice?
- 7 Q Circle them both.
- 8 A (Complies.)
- 9 Q And does the remaining property that Silver Oak
- 10 Land Trust owns encompass, or surround, OC Welch's
- 11 property?
- 12 A Yes, it does.
- 13 Q Did you negotiate for an easement that gave your
- 14 property another access on the eastern side of OC
- 15 Welch's property?
- 16 A I negotiated an easement, a timber easement, on the
- 17 east side for timbering but never got him to enter
- 18 into a long-term easement.
- 19 Q Okay. And where exactly is the easement?
- 20 A We -- Hmm. We come in -- Can I put a little
- 21 star?
- 22 Q Sure.
- 23 A It was right about here.
- 24 Q Did you, in fact, harvest timber for OC Welch and
- 25 sell it along with your own timber?

- 1 A Yes, we did.
- 2 Q Has timber been sold off of this parcel and the
3 money distributed to the members of the LLC?
- 4 A There was a -- a first timber -- There was one,
5 when we -- shortly after we bought, that was
6 distributed to the members, and then the second one
7 we didn't distribute to the members. We put that
8 towards the loan, to pay -- pay the mortgage.
- 9 Q Okay. And is that property, that is, the property
10 that you have remaining in Silver Oak Land Trust --
11 is it currently for sale?
- 12 A Yes, it is.
- 13 Q And how many acres remain, that is, the acreage
14 that's defined within the yellow outline on that
15 plat?
- 16 A 159.37.
- 17 Q And how many of those acres are high ground or
18 elevated sufficiently that you can actually build
19 on them?
- 20 A Somewhere between 35 and 36.
- 21 Q When you initially bought the property, what was
22 the measurement of high-ground acreage within that
23 portion of it?
- 24 A Yeah. Under 21.
- 25 Q And the wetland study that y'all commissioned, did

1 it increase your acreage substantially?

2 A Yes, it did.

3 Q How many acres?

4 A It went from 21 to 36. So, 15 acres.

5 Q And am I correct that the property is not only for

6 sale but listed by a gentleman in this room?

7 A That was correct the last time I checked.

8 Q All right. And when you last knew, what was the

9 list price for the acreage that still remains in

10 Silver Oak Land Trust?

11 A I believe it's listed now for 4.5 million.

12 Q What was it before recently?

13 A The last -- When I was involved, the commercial

14 division that Jim's company had -- It was 8.75

15 million.

16 Q Okay. And Mr. Paris is the person that we're

17 discussing whose got the listing agreements on this

18 property; is that right?

19 A I believe that's correct.

20 Q The people that were taken in in what's been

21 referred to as the second offering, who were they?

22 A Rich Silver, Rose Patteson, and -- I think there's

23 something going on with a marriage or a wedding --

24 I have her as Rose Ryan and Rose Patteson -- and

25 Bruce Barfield.

1 Q How much did Mr. Silver pay for his interest?
2 A A little under 100,000.
3 Q \$99,500. And what percentage of interest did he
4 buy for that?
5 A Seven percent.
6 Q Do you know, right offhand, if Mr. Paris's current
7 estimate of the value of that property as the list
8 price were to be obtained, exactly how much money
9 Mr. Silver would make as a result of this
10 investment?
11 A If it sold, if it were the price today and -- a
12 full-price offer, over \$200,000.
13 Q More than what he put in?
14 A Yeah, in addition to what he --
15 Ms. Meyers: I'm going to have to object.
16 What's the relevance?
17 Mr. Mathison: You're taking the position
18 --
19 The Hearing Officer: I'm going to have
20 to -- Mr. Crapps is the attorney in the case.
21 Mr. Meyers: You're right. I'm sorry.
22 Mr. Crapps: We can have a second chair
23 --
24 The Hearing Officer: But you're --
25 Y'all may consult, but Mr. Crapps has to carry

1 out the examination.

2 (Attorney Crapps and Attorney Meyers confer.)

3 Mr. Crapps: I'll object to the relevance
4 of that.

5 The Hearing Officer: Overruled. I think
6 it's probative.

7 Mr. Crapps: Thank you, Your Honor. I
8 think the relevance is abundantly clear. This
9 is a tremendous investment that -- Assuming
10 the people in the room know what they're
11 talking about, it's going to yield a
12 tremendous return for people who are
13 complaining about bills at Victoria's Secret
14 --

15 Mr. Crapps: And I think our argument
16 would be, you know, the securities fraud
17 occurs at the outset, and -- and, so, all
18 these actions, you know, post the sell of the
19 security are irrelevant.

20 The Hearing Office: I'm still going to
21 overrule it and let it in.

22 Q Did you work to add value to this property during
23 the period that it was held?

24 A Yes.

25 Q I believe you said that you -- and the other

1 members agreed on installing roads?

2 A We put in a road system. When we purchased the
3 property, you needed a machete to get within five
4 feet of that property. So, the -- Identifying the
5 upland, which was the -- the value in the property,
6 along with the frontage and the curb cuts, -- but
7 identifying the upland was important, so we needed
8 to get to the uplands, and we needed to put in a
9 road system.

10 Q Did you also dig ditches where the roads were?

11 A Yes.

12 Q Did that aid in draining the property?

13 A Absolutely.

14 Q Is there, to your knowledge, any statement in the
15 operating agreement for Silver Oak Land Trust that
16 you would not take ordinary and necessary business
17 expenses as a manager?

18 A Not to my knowledge.

19 Q You are the manager individually in that one, are
20 you not?

21 A I was.

22 Q In response to a question by Mr. Crapps, you
23 answered his question about whether anybody had
24 asked you whether you were going to take expenses
25 or a management fee by saying it never came up; is

1 that right?

2 A Correct.

3 Q Did anybody ever ask you that?

4 A No.

5 Q What did you assume was the understanding?

6 A I assumed the understanding was there were ongoing

7 expenses in any business. I didn't think it was a

8 -- I never thought that everyone would understand

9 that --

10 Q Did anyone ever ask you, with respect to SOLT I,

11 that -- whether you would be making loans from one

12 of the SOLT entities to another one of the SOLT

13 entities?

14 A No.

15 Q Did anyone ever ask you whether you would be making

16 loans to yourself?

17 A No one ever asked.

18 Q Is there any expression or documentation in the

19 Silver Oak Land Trust agreement that would prohibit

20 or preclude what you did, to the best of your

21 knowledge?

22 A Not to the best of my knowledge.

23 Q In response to questions about SOLT II, that Silver

24 Oak Land Trust Number II, is it correct that the

25 original SOLT was initially a member of SOLT II?

- 1 A That's correct.
- 2 Q Was it the only member or were there others
- 3 initially?
- 4 A I believe that Silver Oak -- SOLT, S-O-L-T, made
- 5 the initial down payment on that property, and,
- 6 normally, I would -- Normally, I would put it
- 7 under the name of whoever made out the check and
- 8 then put in and/or signs.
- 9 Q Were other members subsequently taken into SOLT II,
- 10 or did it remain solely and exclusively a single-
- 11 member LLC with SOLT, the original LLC, as the only
- 12 member?
- 13 A No. It was -- We took in members immediately.
- 14 Q And who were those, if you can recall?
- 15 A I'd have to look and read them off because --
- 16 Q I think we're right here (indicating). Excuse me.
- 17 A Okay. It was Dave Jeff, LLC, Bourbon Place
- 18 Partners, LLC, --
- 19 Q And that would be Dr. --
- 20 A Dr. Vitek's, --
- 21 Q And Mr. Paris respectively?
- 22 A -- a single-member LLC. Yes.
- 23 Q And who else?
- 24 A Murray Reed.
- 25 Q And?

1 A Martin Rehder; Jack McIntyre; M. Fauerby; Mick
2 McDonough; Phil Kart; William Slater; Jim
3 Delamarter; Rory Gardiner; Clifford Emory; and
4 Thomas Woods.

5 Q And what property does SOLT II own?

6 A The property at -- in Fairfield County on Lake
7 Wateree.

8 Q Do you know what the current value of that property
9 is?

10 A I don't. On II?

11 Q Yes.

12 A I don't think we've had it for sale in a -- a long
13 time. The last time it was on the market --

14 The Witness: Do you remember, Sue?

15 The Hearing Officer: No, --

16 Mr. Mathison: No, you can't do that.

17 The Witness: Oh. Oh. I see. Sorry.

18 A Tom DeMint had it listed, and I want to say it was
19 listed for a million-four. Now, --

20 Q What would you have to sell it for to get the
21 investment of each of the individuals who put money
22 in?

23 A Can I use a calculator?

24 Q Sure.

25 A In the 700,000-dollar range.

1 Q In other words, half of what it's listed for?

2 A What it was listed for, yeah. And I think we had
3 it listed higher than that, but --

4 Q Are you aware or were you aware of any problems
5 with SOLT II when you resigned in response to
6 requests from the people who opposed your
7 incumbency?

8 A No.

9 Q Did anyone inquire of you whether or not you were
10 going to pay your ordinary and necessary business
11 expenses for your participation in SOLT II?

12 A No.

13 Q Did anyone inquire whether you were going to engage
14 in making loans of SOLT II money to other companies
15 or the receipt of SOLT II money from other SOLT
16 entities?

17 A No.

18 Q Did anyone at any point ask you whether you would
19 make loans to yourself?

20 A No.

21 Q So that I don't have to keep repeating these
22 questions, would it be safe to say that nobody at
23 any juncture until the beginning of the flare-up,
24 the unpleasantness, -- let's call it the recent
25 unpleasantness, to use a Civil War metaphor, since

1 we're 150 years out -- the recent unpleasantness,
2 questioned anything that had been done with respect
3 to -- with respect to your paying your own expenses
4 or making loans from one entity to the other?

5 A No.

6 Mr. Crapps: I'm going to raise an
7 objection to the -- this line of questioning.
8 It's -- It's immaterial whether anybody asked
9 or not. It's -- I mean, material omission is
10 what we're here -- we're arguing, so I'm going
11 to object to the relevance.

12 The Hearing Officer: Well, I'm going to
13 overrule. I think it's probative, and I think
14 it's within the scope of your direct
15 examination.

16 Q And am I correct in assuming that SOLT III, as with
17 SOLT II, was also initially formed by having a
18 single-member limited liability company consisting
19 entirely of SOLT I?

20 A That's correct.

21 Q And then, subsequently, SOLT I sold its interest to
22 other people that were taken in, or not?

23 A No. SOLT III was -- We took the original members
24 of SOLT I, their capital, percentages, and we
25 distributed the Silver Oak III to those members

1 individually.

2 Q So, what happened was you had a single-member

3 entity, because the member was SOLT I?

4 A Correct.

5 Q And you amended that to reflect each person owning

6 in SOLT III in the same proportion that he owned in

7 SOLT -- SOLT I; --

8 A That's correct.

9 Q -- is that correct?

10 A That's correct.

11 Q Do you remember when that was done?

12 A I don't recall.

13 Q Did anyone have to pay additional money to have his

14 or her membership converted from a participation in

15 SOLT I, which was the only member of SOLT III, into

16 an individual ownership interest in SOLT III?

17 A No.

18 Q So, there was no investment at all in that once it

19 was established; --

20 A Correct.

21 Q -- is that correct?

22 A That's correct.

23 Q What is it that SOLT III owns?

24 A Seventy- -- 70-some-odd acres at -- up at -- in the

25 Lake Murray area of a little town called

1 Prosperity.

2 Q What was that property used for?

3 A It was a timber tract.

4 Q Is it still owned by SOLT III or not?

5 A I believe it is not owned by SOLT III.

6 Q Do you know what's happened to it?

7 A It -- I believe -- Well, it was sold, but I don't

8 -- I did not receive any information. It was not

9 -- That was not on the list of -- Even though I
10 am a 20-percent owner, a member, I was not informed
11 of any decision to sell it or what had happened
12 previous to it over the years or --

13 Q Who is the managing member who has held that
14 position since you ceased holding that position?

15 A Richard Silver.

16 Mr. Crapps: For the record, I'm going to
17 raise the same relevance objection.

18 The Hearing Officer: Well, I'm going to
19 overrule it and let Mr. Mathison proceed.
20 When I do the analysis, I'll review the -- the
21 evidence and accord the weight I think it
22 needs.

23 Q Have you ever been formally notified that SOLT III
24 has, in fact, sold all of its property?

25 A No, I haven't.

- 1 Q Have you received anything from Mr. Silver
2 indicating what the list price was, what the sales
3 price was or anything else?
4 A No, I haven't.
5 Q Do you know whether you're due money from SOLT III
6 or not?
7 A Yes.
8 Q Has anybody told you what that is?
9 A No.
10 Q At one juncture, I believe you testified that SOLT
11 I had opened up a line of credit; is that right?
12 A That's correct.
13 Q And who was it that had to sign personally in order
14 to get the line of credit approved?
15 A There were two of us, myself and Murray Reed.
16 Q And the initial line of credit was how much?
17 A 500 or 550 thousand. I think it was 500,000.
18 Q Was there, in addition to your personal signature
19 and Mr. Reed's personal signature, a mortgage
20 given?
21 A Yes.
22 Q And was -- What was encumbered by the mortgage
23 given?
24 A The property on 278, --
25 Q Which is --

- 1 A -- the S-O-L-T property.
- 2 Q -- what we've already identified --
- 3 A Correct.
- 4 Q -- in Defendant's Exhibit 1; is that right?
- 5 A That's correct.
- 6 Q And it's the net amount -- that is, the amount in
- 7 yellow -- that was mortgaged; is that --
- 8 A Correct.
- 9 Q -- correct?
- 10 A That's correct.
- 11 Q Was the line of credit subsequently increased?
- 12 A Yes, it was.
- 13 Q And how did you go about retiring the debt on SOLT
- 14 I?
- 15 A We, collectively, the members that could, put money
- 16 in, and we brought in three new investors.
- 17 Q Was one of them Mr. Silver?
- 18 A Yes.
- 19 Q And one of them was Rose?
- 20 A Yes.
- 21 Q And her name is variously --
- 22 A Pate -- Ryan, Patteson.
- 23 Q Okay. And who is the third one?
- 24 A Bruce Barfield.
- 25 Q Had SOLT I furnished money for SOLT III?

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- 1 A Yes.
- 2 Q What did SOLT I do for SOLT III?
- 3 A It paid the purchase price.
- 4 Q Of the property that was acquired by III?
- 5 A Correct.
- 6 Q Was that before the three new investors --
- 7 A Oh, yes.
- 8 Q -- came in?
- 9 A Definitely.
- 10 Q So, at the time they came in, there was a mortgage
- 11 on the property; you were looking to retire the
- 12 mortgage, and SOLT I had put up the purchase price
- 13 for the property that was owned by SOLT III?
- 14 A That's correct.
- 15 Q Would it be safe to assume that the time -- at the
- 16 time that the new investors came in, that's when
- 17 each of the original SOLT I members received his
- 18 percentage of interest?
- 19 A Well, before that. We had to do it before that.
- 20 Q Okay. Has SOLT III -- Excuse me. Was SOLT III's
- 21 debt extinguished by the distribution of the
- 22 interest in SOLT III to the original SOLT I
- 23 investors?
- 24 A If I recall, there was no debt on Silver Oak III.
- 25 Q They got money from SOLT I?

1 A Correct.

2 Q How was that money repaid to SOLT I?

3 A It wasn't.

4 Q And I'm asking you, is that -- did the investors in
5 SOLT I receive an interest in SOLT III in lieu of
6 return of the money?

7 A Yeah.

8 Q I'm handing you this document, which is an e-mail
9 to you from Murray Reed having to do with the
10 repayment of the loan and the various dealings
11 between SOLT I and SOLT III, after I hand it to my
12 colleague.

13 Mr. Crapps: What's it being admitted
14 for?

15 Mr. Mathison: I'm going to ask him
16 whether or not that's an accurate assessment
17 of exactly how the matter worked out. That's
18 in your file.

19 (Attorney Crapps and Attorney Meyers confer.)

20 Mr. Crapps: I mean, I would probably
21 make a hearsay objection since it was drafted
22 by Murray Reed and you have Mr. McIntyre here
23 to tell you how -- how it happened.

24 The Hearing Officer: (to Mr. Mathison)
25 Would you like to respond?

1 Mr. Mathison: I simply want to present
2 it to him and use it to refresh his memory.
3 That's his -- the other person that was
4 personally liable on the debt that he
5 testified to, and that's a recapitulation that
6 was circulated to all of the members.

7 The Hearing Officer: And, so, you're
8 asking him whether, in his view, it's an
9 accurate representation, correct?

10 Mr. Mathison: Yes.

11 The Hearing Officer: So, I'll let it in
12 as -- on that basis.

13 Mr. Crapps: Would you like to mark it?

14 Mr. Mathison: Yes. Let's mark that as
15 Defendant's Exhibit 2.

16 Marked as Respondent's Exhibit
17 Number 2; copy of e-mail
18 correspondence; two pages.

19 Mr. Crapps: I'll just renew the
20 objection for the record.

21 The Hearing Officer: That's fine.

22 Q I've handed you a memo, which details certain
23 financial facts with respect to the loan and the
24 interaction between SOLT III and SOLT I, prepared
25 by the other person personally liable on the same

1 loan that you were and ask if that's an accurate
2 assessment of what took place?

3 Mr. Crapps: I'll object to the form of
4 the question. I feel that counsel is
5 testifying.

6 The Hearing Officer: (to Mr. Mathison)
7 Would you like to restate the question?

8 Mr. Mathison: I'll read it, and then I
9 would be testifying.

10 The Hearing Officer: I'll overrule. I
11 think the question is okay.

12 A That's -- That's Murray.

13 Q All right. Is it correct as far as you know?

14 A As far as I know, yeah.

15 Q Okay. With respect to each one of these agreements
16 -- or -- Excuse me. With respect to the
17 promotional material that predated each one of the
18 operating agreements, Mr. Crapps asked you whether
19 or not you had set forth the expected annual rate
20 of return that would be earned as a result of
21 silviculture on the property; is that correct?

22 A He -- I didn't understand that 100 percent.

23 Q All right.

24 A I thought he was saying something different than
25 what I believe --

1 Q He was asking you to read from --
2 A Uh-huh.
3 Q -- what is a repeated statement that --
4 A Right.
5 Q -- that recurs in a number of these promotional
6 materials, which is the return that would likely
7 come from tree forestry.
8 A Yes. Okay.
9 Q All right.
10 A Right.
11 Q Where did that figure come from? Did you just
12 invent that? Where did it come from?
13 A That came from the South Carolina Forestry
14 Commission.
15 Q And it's repeated in every one of the documents; is
16 that --
17 A Yes.
18 Q -- correct? To the best of your knowledge, has the
19 rate changed?
20 A No.
21 Q Okay. So, you're telling your investor that,
22 according to the Forestry Commission, that's the
23 annual rate that they could expect; is that
24 correct?
25 A That's correct.

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- 1 Q And as far as you know, that rate hasn't changed?
- 2 A That's correct.
- 3 Q Okay. Is there any in which you made up a rate or
- 4 used a rate other than from the Forestry
- 5 Commission?
- 6 A No. We -- We would actually attach this South
- 7 Carolina Forestry Commission report.
- 8 Q Okay. I think you testified that the property in
- 9 SOLT IV was on the largest freshwater inlet on the
- 10 east coast. Is that correct?
- 11 A That's correct.
- 12 Q And that's Albemarle Sound?
- 13 A Albemarle Sound.
- 14 Q Do you know what the present value of that property
- 15 is?
- 16 A I do not. I do not. It's -- I -- The timber
- 17 value is -- It's a great tract, but I haven't had
- 18 an appraisal done on the property in years, and I
- 19 haven't spent any time on it.
- 20 Q Do you know whether your successor has that
- 21 property listed for sale?
- 22 A I don't know. I don't know anything about that.
- 23 Q What would -- How many acres are in the Albemarle
- 24 property?
- 25 A Four hundred -- A little shy of 420.

- 1 Q I think you said it had access, albeit small
2 access, --
- 3 A Yeah.
- 4 Q -- to the Sound itself?
- 5 A Yeah. Yeah, had a lot of second-row frontage on
6 the Sound. So, if you put your -- built a new
7 home, you'd actually have views of the Sound.
- 8 Q Do you know what the highest and best use of this
9 property is at present?
- 10 A I'm not -- I don't. I -- It's certainly not a
11 tree farm. That would not be the higher and best
12 use. There -- A house lot up there, even in the
13 worst of times, on Nixon Beach Road, was -- an
14 empty lot was over several -- over two or three
15 hundred dollars. So, just a few home lots, just a
16 couple of home lots, -- and we have I don't know
17 how many potential lots on Indian Trail Road, Bowen
18 Road, -- I don't know -- a mile -- a mile or so,
19 maybe more. Just a few house spots would pay for
20 the whole deal.
- 21 Q To recoup the entire investment?
- 22 A Yeah.
- 23 Q What is the entire investment?
- 24 A It was a little over a million dollars, a million-
25 one.

1 Q Also, with respect to SOLT IV --

2 Mr. Crapps: You need SOLT IV --

3 Mr. Mathison: That's what I'm looking
4 for. I don't appear to have the front page of
5 it. Here it is. Let's put it together.
6 Thank you. There's more here than I'd
7 remembered. That must be all the signature
8 pages.

9 Q I believe Mr. Crapps argued whether or not, under
10 certain provisions, you had a duty of loyalty. Is
11 that --

12 A Yeah.

13 Q -- correct?

14 A That was number five, I think, --

15 Q "Duty of Loyalty." This is under paragraph 5.4,
16 Fiduciary Duties; is that correct?

17 A Yes.

18 Q But he didn't ask you to read what came after that?

19 A No.

20 Q Why don't you read what it says after that.

21 A "5.4 (a) Duty of Loyalty. Each Member's and
22 Manager's duty of loyalty to the Company and the
23 other Members is limited to account to the Company
24 and to hold as trustee for the Company any
25 property, profit or benefit derived by the Member

1 or the Manager in the conduct of winding up the
2 Company's business. A Member or a Manager does not
3 violate the duty of loyalty by engaging in a
4 competing business or pursuing other business
5 opportunities, even if the business opportunity
6 could have been pursued by the Company."

7 Q And he also asked you whether it -- does it say you
8 also have a duty of care; isn't that correct?

9 A That's correct.

10 Q But there is more than just duty of care in that
11 document, isn't there? There's a complete
12 definition of what duty of care is; isn't that
13 right?

14 A That's correct.

15 Q Would you read what the duty of care is defined as
16 being?

17 A "Duty of Care. Each Member's and Manger's duty of
18 care to the Company and the other Members in the
19 conduct of and winding up of the Company's business
20 is limited to refraining from engaging in grossly
21 negligent or reckless conduct, intentional
22 misconduct, or knowingly -- or a knowing violation
23 of law."

24 Q Okay. And then he asked you whether or not there
25 was a provision about conflicts of interest; isn't

1 that right?

2 A I don't remember --

3 Q Mr. Crapps.

4 A Yeah, I don't --

5 Q Is there a provision about conflicts of interest?

6 Excuse me. Good faith and fair dealing is what he

7 asked you about.

8 A Okay. Sorry.

9 Q Is there something about good faith and fair

10 dealing?

11 A Yes, there is.

12 Q And is there more than just those words?

13 A There's more than those words. There's a

14 paragraph.

15 Q All right. And what does the paragraph say?

16 A "Good Faith and Fair Dealing. Each Member and

17 Manager shall discharge his duties and exercise any

18 of his rights consistently with the obligation of

19 good faith and fair dealing which he owes to the

20 company and other Members. A Member or a Manager

21 does not violate a duty of good faith or fair

22 dealing to the Company merely because the conduct

23 furthers the Member's or Manager's own interest.

24 Further, --"

25 Q Excuse me. Would you read that again, please?

1 A Mm-hmm. "A Member or Manager does not violate a
2 duty of good faith or fair dealing to the Company
3 merely because the conduct furthers the Member's or
4 Manager's own interest. Further, a Member or a
5 Manager does not violate the duty of good faith and
6 fair dealing by engaging in a competing business or
7 pursuing other business opportunities, even if the
8 business opportunity could have been pursued by the
9 Company."

10 Q And this document was signed by every member; isn't
11 that right?

12 A That's correct.

13 Q And every one of these operating agreements
14 contains the same language, doesn't it?

15 A That's correct.

16 Q And every one of these operating agreements has
17 been signed by the same people; isn't that right?

18 A (No response.)

19 Q To the best of your knowledge, --

20 A Yeah.

21 Q -- can all these people read?

22 A Yes, I think they can read.

23 The Witness: Five --

24 Mr. Mathison: I think that's
25 inadvertently --

1 The Witness: Yeah.

2 Mr. Mathison: -- attached.

3 Q And in addition, does each one of these agreements
4 contain a provision on conflict of interest,
5 specifically, in paragraph 6.4?

6 A Yeah.

7 Q And what does 6.4 say?

8 A "Conflicts of Interests. The pursuit of other
9 ventures and activities by Members or Manager, even
10 if directly competitive with the business of the
11 Company, is hereby consented to by the Members and
12 shall not be deemed wrongful or improper. No
13 Member of Manager shall be obligated to present any
14 particular investment opportunity to the Company,
15 even if such opportunity is of a character which,
16 if presented to the Company, could be taken by the
17 Company. The Company may enter into agreements
18 with one or more Members or Managers to provide
19 management, consulting, marketing, construction and
20 other services to the Company."

21 Q Consulting, is that one of the things that a
22 manager can provide?

23 A Yes.

24 Q Is that provision in every one of these agreements?

25 A I believe it is.

1 Q Did you, yourself, personally, prepare this
2 document?
3 A No.
4 Q Who did?
5 A The McNair Law Firm.
6 Q They prepared every single one of them, didn't
7 they?
8 A That's correct.
9 Q Every -- Every one that was signed by these same
10 people who are here complaining; is that right?
11 A That's correct.
12 Q And would it be your understanding that the duty
13 -- duty of loyalty and the duty of care and the
14 duty of -- to avoid self-dealing is that which is
15 set forth in that agreement?
16 A That's correct.
17 Q What specific property does SOLT VII own?
18 A SOLT VII owns 238 acres at -- also in Lake Wateree
19 in Fairfield County but in the town of Ridgeland.
20 Q And this is also property on the water?
21 A That's correct, direct access to Lake Wateree.
22 Q And do you recall who are the members of SOLT VII?
23 A Not off the top of my head. I could look at the --
24 Mr. Mathison: I don't think we had that
25 one in the record.

1 The Witness: (to The Hearing Officer)

2 Can I look at my notes?

3 The Hearing Officer: You can't --

4 The Witness: No?

5 The Hearing Officer: You can't address
6 me. You have to go through --

7 The Witness: Oh. No. I'm sorry.

8 The Hearing Officer: -- your attorney,
9 just --

10 The Witness: Sorry.

11 Mr. Mathison: Hold on one second. May
12 I, Your Honor, --

13 The Hearing Officer: (Nods head.)
14 (Attorney Mathison confers with Dr. Vitek.)

15 Mr. Mathison: I'm going to put this in,
16 Jordan, and what was attached to it is the
17 certificates -- not the certificates but the
18 agreements. I'll use yours, if you've got
19 McNair's.

20 Mr. Crapps: It doesn't matter to me.

21 Q I'm handing what I represent to you as Silver Oak
22 Land Trust VII, LLC, the agreement to which I have
23 now -- It did appear in the document with the
24 attached subscriptions, and I've just handed you
25 the signature pages. I want to see if the

1 signature page --

2 Mr. Mathison: No, I haven't. Let's put
3 this on there. Put that on there.

4 The Witness: Okay.

5 Q May I ask if you can identify that as the SOLT VII
6 agreement?

7 A That's the SOLT VII agreement.

8 Q Can you identify, from that, who the members of
9 that limited liability company are?

10 A Yes, I can. Silver Oak Land Management; John
11 Passaloukas and Jeanne Zailckas; -- they're one
12 member -- Pensco Trust, Richard A. Silver IRA;
13 Stephen B. and Ginger K. Lane; Paul Finn; Pensco
14 Trust, Victor DelGuercio IRA; Pensco Trust, James
15 R. Paris IRA; Dave Jeff, LLC; Mildred Fauerby; Rose
16 Patteson; Alvin Prusoff; Victor DelGuercio; M&S
17 Telecommunications of America.

18 Q Okay. Does the same language, with respect to --
19 appear in paragraph 5?

20 A "Duty of Loyalty, Duty of Care, Good Faith and Fair
21 Dealing." Yes.

22 Q And they have not modified that since we discussed
23 it in the context of the last one; is that correct?

24 A That's correct.

25 Q And look at Conflicts of Interest, if you would, in

1 paragraph six.

2 A "6.4 Conflicts of Interest."

3 Q Is that the same?

4 A That's the same.

5 Q And there was a document that was, I think,
6 attached to the agreement for one of the materials
7 that was entered, which was called a Certificate of
8 Membership.

9 Mr. Mathison: Do you happen to have
10 that, Jordan?

11 The Witness: Yeah, you showed that to us
12 earlier.

13 Mr. Crapps: What are you looking for?

14 Mr. Mathison: It's a Certificate of
15 Membership. It's got a little filagree
16 outline on it. It looks like a stock
17 certificate.

18 Mr. Crapps: I have this in Number 7. Is
19 that what you're looking for?

20 Mr. Mathison: I believe it was in 7.
21 That's where I've got it.

22 Mr. Crapps: This one is 5.

23 Mr. Mathison: Excuse me. It's for 5.
24 Forgive me. I'm sorry. If you'll just keep
25 it out, I'm going to ask him about it, if you

1 don't mind.

2 Q To the best of your recollection, did you make any
3 statement, or representation, to anyone of those
4 members other than what's set forth in what's been
5 marked as State's Exhibit Number 5 here, which is
6 called Silver Oak Land Trust VII, LLC?

7 A This was a standard offering.

8 Q And it includes the language about what the
9 Forestry --

10 A Yeah.

11 Q -- Commission says --

12 A Yeah.

13 Q -- is the expected rate of growth, rate of return,
14 does it not?

15 A That's correct.

16 Q In the course of soliciting interest in
17 participation in these LLCs, have you made it a
18 habit, or a practice, to vary or depart from the
19 statements, photographs and things that are
20 routinely depicted in each one of these documents
21 that my colleague handed to you and -- and called
22 offerings? Specifically, there's State's Exhibit
23 3, State's Exhibit 5, State's Exhibit 6. Are you
24 in the habit of varying from what's in there?
25 A Only with respect -- I don't think we did anything

1 like that on Energy, but on all the land trusts,
2 that's the --

3 Q To the best of your knowledge, is there anything
4 factually inaccurate in any of the written
5 materials that have been identified here that were,
6 in fact, sent to investors?

7 A No, there's nothing unfactual at all.

8 Q And am I correct in assuming that each one of these
9 limited liability interests comes restricted, and,
10 by that, I mean that it must be offered for
11 purchase by the LLC itself before it can be sold to
12 anyone else?

13 A That's correct. It has to be -- We have a Right
14 of First Refusal clause in all of them that, if
15 anyone wants to sell, they have to bring that
16 proposal back to the company first.

17 Q Do you know of any public market in which you can
18 sell a limited liability interest which is subject
19 to a Right of First Refusal in the limited
20 liability company?

21 A I'm not aware of any that I could find.

22 Q To the best of your knowledge, while you were the
23 manager, while Silver Oak Land Management was the
24 manager, was any interest in an LLC sold or
25 transferred except upon offering it to the LLC

1 first?

2 A No. I believe -- May I just say, there was a
3 death of one of the members, and it went to the
4 heirs.

5 Q But that's because the agreement specifies --

6 A Yes.

7 Q -- that it does so?

8 Mr. Mathison: (to Mr. Crapps) Would you
9 show me the certificate?

10 (Attorney Crapps presents document to Attorney
11 Mathison.)

12 Mr. Mathison: Thanks.

13 Q There was a document that was produced before,
14 which is a rather inelegant Certificate of
15 Membership, and I'm going to show you one and ask
16 you where that came from and why.

17 A We would produce this and send a package out to
18 every member with a Certificate of Membership, the
19 operating agreement, typically, the closing
20 documents, maybe a map or two, so they'd have it
21 available.

22 Q Was this supplied because it was requested or was
23 this done as a matter of routine?

24 A I -- I believe it would -- it just made the package
25 look nicer. The -- The membership percentages are

1 spelled out in the operating agreement, so it's not
2 -- It was purely -- I think, purely aesthetic, not
3 substantive.

4 Q Okay. And the one that you have is actually for
5 Pensco Trust --

6 A Yes.

7 Q -- for Richard A. Silver?

8 A That's correct.

9 Q And which LLC is that?

10 A That's Silver Oak Land Trust V.

11 Mr. Mathison: Okay. Well, let's mark
12 that for identification. And there's another
13 one here which also has Mr. Silver's name on
14 it, and it is for V, as well, and we'll put
15 them together. And that would be Defendant's
16 Exhibit 3?

17 The Court Reporter: Were you marking
18 that one or not?

19 Mr. Mathison: Oh, forgive me. Let's put
20 -- Let's put VII in first, and then make the
21 two exhibits together as -- as 4.

22 Mr. Crapps: I believe they are copies.

23 Mr. Mathison: Pardon?

24 Mr. Crapps: They're copies of -- Do you
25 want them both?

1 Mr. Mathison: Well, I was going to put
2 them both in since they're different, I mean,
3 but -- One is for Mr. Silver individually,
4 and one is for his trust -- or -- excuse me --
5 for his IRA, isn't it?

6 The Witness: I think they're both --

7 Mr. Crapps: I think they're both IRA.

8 The Witness: -- both IRA. It looks like
9 a copy.

10 Mr. Mathison: Okay. Let me see. I'm
11 sorry. You're correct, and I stand corrected.
12 One is fine.

13 Marked as Respondent's Exhibit

14 Number 3; copy of Operating
15 Agreement for Silver Oak Land Trust
16 VII, LLC; 29 pages.

17 Marked as Respondent's Exhibit

18 Number 4; copy of Certificate of
19 Membership; one page.

20 Q In raising money for Silver Oak Land Trust I, in
21 what Mr. Crapps referred to as the second offering,
22 did any person that you sought to interest in
23 acquiring a position in Silver Oak Land Trust
24 inquire of you whether you would pay yourself
25 ordinary and necessary -- reimburse your ordinary

1 and necessary business expenses?

2 A No.

3 Mr. Crapps: Just for the record, I'll
4 raise my --

5 The Hearing Officer: I understand the
6 objection, but overruled.

7 Q Did any of these people inquire, or ask you,
8 whether you would loan money from Silver Oak Land
9 Trust to another Silver Oak entity?

10 A Prior to investing, no.

11 Q Did the people to whom you sold know that the money
12 that you were raising would be used to pay off a
13 mortgage and provide clear title to the property?

14 A I believe we told everyone that that was what the
15 money was for, and then, once we closed, if we did,
16 it would be -- it would be debt-free.

17 Q And was it debt-free upon closing?

18 A Yes, it was.

19 Q Does it remain debt-free?

20 A It was debt-free when I resigned.

21 Q Resigned. And did anyone ever inquire whether you
22 would loan money to yourself?

23 A No. There -- Can I think a minute? I believe
24 that, after the closing, there was -- there was no
25 bank debt, but I believe there was an outstanding

- 1 loan or two.
- 2 Q Okay. Do you know whether those have since been
- 3 paid or not?
- 4 A I do not know.
- 5 Q The initial Silver Oak Land Trust consisted of five
- 6 persons, as that term is known, including an LLC.
- 7 Did -- How many of those five persons participated
- 8 in the business itself of SOLT?
- 9 A All of them.
- 10 Q Mr. Paris, Mr. -- All of them?
- 11 A All of them.
- 12 Q Okay. How many persons participated in the
- 13 business of SOLT after the new individuals were
- 14 taken in?
- 15 A I believe that Martin was in Spain at that -- at
- 16 that interim time, and I don't think he -- I don't
- 17 think he was active. But we were all doing
- 18 something to benefit the company.
- 19 Q How much money has passed through your hands, in
- 20 one form or another, either as investment or loan
- 21 proceeds or otherwise, since 2005, in connection
- 22 with these transactions?
- 23 A I believe we raised around four and a half million
- 24 dollars.
- 25 Q That's for all of them?

- 1 A Yeah.
- 2 Q And does that include the Energy company or does
3 that just include the land trusts?
- 4 A I can't do the math in my head. I think that was
5 all of them.
- 6 Q How long after the formation of Silver Oak Land
7 Trust did -- excuse me -- Silver Oak Energy did --
8 Was it before Mr. Finn became a member?
- 9 A He became a member, I believe, in either November
10 or December of 2009.
- 11 Q And did you and Mr. Finn subsequently sell the
12 interest that you held 97 percent and three percent
13 to other persons?
- 14 A Yes, we brought in four other partners.
- 15 Q And has that Silver Oak Energy brought a suit
16 against you?
- 17 A Yes, it has.
- 18 Q Have they brought a suit against Mr. Finn who was
19 your co-participant when it started?
- 20 A No.
- 21 Q How many of the folks in Silver Oak Energy actually
22 have participated in the business of Silver Oak
23 Energy?
- 24 A Well, to varying degrees, everyone.
- 25 Q What, if anything, has Mr. Paris done in Silver Oak

1 Energy?

2 A Well, actually, he was -- He did everything. He
3 -- He helped at the greenhouse at -- We have a
4 joint venture agreement with the Technical College
5 of the Lowcountry, and he and Jamie came over and,
6 you know, worked -- These rhizomes are -- have to
7 be propagated manually, so you physically have to
8 cut them, and it's -- They come in a pot, and in
9 order to rip them apart, it's grueling, really
10 grueling hard labor. So, he was there with me
11 cutting Miscanthus. He would have been a lot --
12 He had -- He was active that way. And I know we
13 planted some crops here and there that he was
14 involved in. And he was -- If he hadn't any
15 health issues, he was always there helping. And he
16 was also helpful -- We were -- I said earlier
17 that we -- I spent a lot of time in this building
18 meeting with everyone, from the governor to the
19 secretary of agriculture to the commerce
20 secretaries, the under secretaries, and Jimbo,
21 being a native Carolinian, was helpful in getting
22 me some of the appointments.

23 Q Did Silver Oak Energy, in an effort to market
24 itself, produce a business plan that was shown to
25 various people with whom you hoped to do business?

- 1 A Yes.
- 2 Q Is there attached to this business plan a summary
3 of the participants and exactly the roles in which
4 they were serving for Silver Oak Energy?
- 5 A Yes.
- 6 Q And I'm handing you the business plan, which is
7 entitled Silver Oak Energy, LLC, quote, "Renewable
8 Fuel through Agriculture" and ask if you can
9 identify that for me?
- 10 A That is one of our business plans.
- 11 Q And there's handwriting on the back four or five
12 pages, specifically, names and people like that
13 who, I assume, are contacts. Other than those, can
14 you identify that as an authentic copy of the
15 Silver Oak Energy Business Plan that was routinely
16 delivered to potential customers and people who
17 could be of assistance to you and your business?
- 18 A That's correct.
- 19 Q And turn, please, to page eight, and look and see
20 what, if anything, Mr. Finn is listed as being
21 responsible for.
- 22 A Okay. On page nine --
- 23 Q Well, first, who starts -- Who is the first person
24 listed --
- 25 A Okay.

- 1 Q -- on page eight?
- 2 A Me.
- 3 Q And then who's next?
- 4 A Susan B. Vitek, DDS.
- 5 Q All right. And who's next?
- 6 A Richard Silver.
- 7 Q And tell me what Mr. Silver's curriculum vitae says
- 8 about him.
- 9 A "Financial Advisor. Silver was Treasurer of the
- 10 Fidelity funds and was an employee of Fidelity
- 11 Management Research, 1997. Currently, he serves on
- 12 the -- on their Board of Directors of The Korea
- 13 Fund, Inc. and also serves as a Chairman of the
- 14 Audit Committee of the Board. Before joining FMR,
- 15 Mr. Silver served as Executive Vice Present, Fund
- 16 Accounting & Administration at First Data Investor
- 17 Services Group, Inc., 1996 to 1997. Prior to 1996,
- 18 Mr. Silver was Senior Vice President and Chief
- 19 Financial Officer a The Colonial Group, Inc. Mr.
- 20 Silver also served as Chairman of the
- 21 Accounting/Treasurer's Committee of the Investment
- 22 Company Institute, 1987 through 1993."
- 23 Q And do you know who furnished that information
- 24 about Mr. Silver that was picked up and used in the
- 25 business plan?

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- 1 A Mr. Silver.
- 2 Q And what, if any, role did Mr. Silver play directly
- 3 in advancing the goals of Silver Oak Energy?
- 4 A He was not very active. He -- I believe he
- 5 brought us a -- We were trying to raise more money
- 6 to purchase more land to grow more crops, and he
- 7 made an introduction for -- someone who was
- 8 qualified to raise money.
- 9 Q Who's the next person listed in your business plan?
- 10 A Paul Finn, JD.
- 11 Q And read what it says about Mr. Finn.
- 12 A "Legal Advisor. Finn is Chief Executive Officer of
- 13 Commonwealth Mediation and Conciliation, Inc. of
- 14 Brockton, Massachusetts. Finn has mediated and/or
- 15 arbitrated more than 5,000 claims. He also serves
- 16 as the chief administrator and marketing executive
- 17 for the company. Finn graduated from Stonehill in
- 18 1971 with a bachelor's degree in history. He
- 19 receives a JD from New England School of Law in
- 20 1976 and a master's degree in government from
- 21 Harvard University in 1990."
- 22 Q And did Mr. Finn participate directly in the
- 23 business?
- 24 A Yes, he did.
- 25 Q What was his role, specifically?

1. A Well, he was the director of business development.
2. Q What does that mean?
3. A Well, it was a catchall phrase. We were trying to
4. -- At one stage, we were trying to garner an off-
5. take agreement with any power company we could find
6. so that we could fund the acquisition of more crop
7. and more land, and we were focused on that quite a
8. bit.
9. Q Stop and tell the court what an off-take agreement
10. is.
11. A An off-take agreement would be a supply agreement
12. that a power company would require, whether it's an
13. existing facility or a new one. In several cases,
14. we were dealing with companies that were building
15. new -- new biomass facilities. In order for them
16. to get funded to build that biomass facility, they
17. would need a bankable crop, whatever that crop
18. would be. In our case, we were hoping it was
19. Miscanthus. So, they would -- We would send in
20. RFIs, which were Requests for Information, giving
21. them our credentials, what we were growing, our
22. capacity, how we could gear up to get to that
23. point. And in the industry, that would be called
24. an off-take agreement.
25. Q Did, in the course of working for Silver Oak

1 Energy, Mr. Finn routinely prepare legal documents?

2 A No, not routinely prepare them. He was -- He'd
3 spend most of his time trying to get these off-take
4 agreements and new accounts.

5 Q Okay.

6 A On occasion, he would review the documents. I was
7 entering into material transfer agreements, into
8 venture agreements. So, I would rough them out,
9 draft them out, work them through, and then he
10 would review them.

11 Q Okay. Can you identify this as the business plan,
12 exclusive of the writing on the back?

13 A Yes.

14 Mr. Mathison: I move the introduction of
15 that document as Defendant's Exhibit -- 6, I
16 believe.

17 The Court Reporter: 5.

18 Mr. Mathison: 5.

19 Marked as Respondent's Exhibit

20 Number 5; copy of Silver Oak Energy,

21 LLC Business Plan; 28 pages.

22 Q Did Mr. Finn prepare a document providing for
23 reimbursement to you for the years 2010 and on?

24 A Yes. Pay -- The compensation agreement?

25 Q Yes.

- 1 A Yeah.
- 2 Q And sent it to you; is that correct?
- 3 A That's correct.
- 4 Q Did he also routinely sign documents by and on
- 5 behalf of the Silver Oak Energy company, such as an
- 6 Agreement for Services that I'm holding in my hand?
- 7 A That's correct.
- 8 Q And did he routinely sign these documents as the
- 9 Director of Business Development?
- 10 A (No response.)
- 11 Q I'm going to hand you that document and ask if you
- 12 can identify it for me, please?
- 13 A Yes, that is an Agreement for Services between Jan
- 14 Ziemecki, a consultant for us in Warsaw, Poland,
- 15 and it was signed by Paul Finn, Director of
- 16 Business Development, Silver Oak Energy, LLC.
- 17 Q When was that entered into?
- 18 A The 26th day of July 2011.
- 19 Mr. Mathison: I move the introduction of
- 20 that document as Defendant's Exhibit 6.
- 21 Mr. Crapps: No objection.
- 22 Marked as Respondent's Exhibit
- 23 Number 6; copy of Agreement for
- 24 Services; five pages.
- 25 Q So, if I understand correctly, everybody that's

1 listed in your business plan was a direct
2 participant in the business?

3 A Correct.

4 Q And Mr. Finn styled himself, in his own
5 handwriting, the director of business development?

6 A Correct.

7 Q Okay. Was he, in fact, that?

8 A Correct.

9 Mr. Mathison: May it please the court, I
10 need a brief recess. I need to find the
11 compensation agreement.

12 The Hearing Officer: Sure.

13 Mr. Mathison: I thought I had it, and I
14 don't.

15 [Off the record at 5:02 p.m.;
16 back on the record at 5:17
17 p.m.]

18 The Hearing Officer: Okay. We're going
19 back on the record. It's 5:18, and it's
20 become apparent we're not going to be able to
21 finish the hearing today, and what we've
22 decided is we're going to finish the testimony
23 of Mr. McIntyre, in the State's case, today,
24 and then, after that, Mr. Crapps and Mr.
25 Mathison will come up with a date when we will

1 continue this hearing. And I've talked to Mr.
2 Paris, who's here under subpoena, and he's
3 agreed that he will come at a new date, with
4 sufficient notice, subject to the outstanding
5 subpoena. Okay. Are you ready to finish?

6 Mr. Mathison: I'm ready. Thank you,
7 Your Honor.

8 Cross-examination Continues

9 By Mr. Mathison:

10 Q You referred to a compensation agreement, and I'm
11 going to hand you this document and ask if you can
12 identify it for me, please?

13 A It's an employment contract between Silver Oak
14 Energy and John M. McIntyre.

15 Q Who prepared that document?

16 A It was prepared by Paul Finn.

17 Q And did he send it to you by e-mail?

18 A Yes, he did.

19 Q And I'm handing you this document and ask if you
20 can identify that for me, please?

21 A That's the e-mail that came with it. Here is the
22 compensation agreement, and the e-mail is relating
23 to this document.

24 Q And what's the date on the e-mail that he sent that
25 to you?

1 A December 30, 2011.

2 Q Okay.

3 Mr. Mathison: I move the introduction of
4 the e-mail and the agreement as Defendant's
5 Exhibit 7.

6 Mr. Crapps: No objection. Did you want
7 these marked separately?

8 Mr. Mathison: No. Just go ahead and --

9 Mr. Crapps: Okay.

10 Mr. Mathison: -- put them all together.

11 Marked as Respondent's Exhibit

12 Number 7; copy of Employee Contract
13 Between Silver Oak Energy, LLC and
14 John M. McIntyre and corresponding
15 e-mail; three pages.

16 Q What did Mr. Finn propose to pay you for your work
17 as manager of Silver Oak Energy?

18 A "For the period from January 1st, 2011 through
19 December 31st, 2011, Jack shall be paid \$260,000 as
20 compensation for the work he has performed for SOE
21 from the beginning of the LLC until 12/31 of 2011."

22 Q What did he propose to pay you thereafter?

23 A "Ongoing Compensation. For the period from January
24 21st, 2012 through December 31st, 2016, Jack shall
25 be paid \$260,000 per year, to be paid monthly.

1 Jack shall be entitled to four weeks paid vacation.
2 Jack shall be entitled to be reimbursed for
3 reasonable business expenses." "Life insurance,
4 health insurance, pension, other benefits to be --
5 at a later date."

6 Q And the document that was sent to you, were you, by
7 yourself, empowered to sign that?

8 A Yes.

9 Q And did you subsequently sign it?

10 A Yes, I did.

11 Q And I'll hand you this document, and I -- with the
12 right to substitute and ask if that's the original
13 of the document that you signed?

14 A That's my signature. That's the original.

15 Mr. Mathison: Then, I'd like that marked
16 as Defendant's Exhibit 8 -- excuse me --
17 Respondent's Exhibit 8 -- that's 7 that you
18 have in your hand --

19 The Witness: Okay.

20 Mr. Mathison: -- with the right to
21 substitute, Your Honor, if you don't mind,
22 because that's the original document..

23 The Hearing Officer: That's fine. I
24 agree. You have no objection, I assume, in
25 substituting?

1 Mr. Crapps: No. No objection.

2 Marked as Respondent's Exhibit

3 Number 8; Employment Contract

4 Between Silver Oak Energy, LLC and

5 John M. McIntyre; two pages.

6 Q Where was Silver Oak Energy growing Miscanthus?

7 A We had -- one, two, three -- four locations. Three

8 of them were greenhouses. Well, two were

9 greenhouses, one at the Technical College of the

10 Lowcountry in Beaufort, and they also had an actual

11 biology class that'd come in and work the crop.

12 And the second one was at our -- at Silver Oaks

13 VII, which is 3,000 square feet. Hopefully, it's

14 -- it's all there. The third location was at Super

15 Sod in Orangeburg, South Carolina. And I hope

16 that's still there. And we have a joint venture

17 agreement with Super Sod. And, also, at our farm

18 that we purchased in Clio, South Carolina.

19 Q All right. Has Silver Oak VII's real property been

20 sold?

21 A That's my understanding.

22 Q And do you know whether or not the greenhouse that

23 was on that property was sold?

24 A I have no idea.

25 Q I'm handing you a book, which is a production about

1 the Miscanthus that Silver Oak Energy was growing
2 and attempting to sell, and I'll call your
3 attention to a greenhouse on -- Is that the
4 greenhouse that was at Silver Oak VII?

5 A That's the greenhouse.

6 Q What was in that greenhouse?

7 A I think 90 percent of it was our Silver Oak Select,
8 which we felt was a more robust, a much better
9 grower, producer in this climate than anything we
10 had found. We had considered patenting it.

11 Q When you say that it's Silver Oak Select, how did
12 it come to be selected?

13 A Well, I'm not enough of an agronomist to give you
14 the definitive answer, but we had several strains,
15 and whether they were phenotypically different than
16 anything else we had seen before or it was a
17 combination of them growing with the other crops, I
18 don't know, but they were definitely a different --
19 They were different-looking and much stronger.

20 Q Were they time-tested? That is to say did they
21 strive under adverse conditions more readily than
22 others?

23 A Yeah. We -- We had a drought when we planted them
24 in Clio, -- when was it -- 2010, and they came
25 right back.

1 Q What I'm looking at in that picture in the
2 greenhouse, are those rhizomes? Are those plants?
3 What are they?

4 A Those are the plants.

5 Q Do you know whether or not those plants in the
6 greenhouse were sold by Mr. Silver when he sold
7 that property, the real estate owned by SOLT VII,
8 on which they sat?

9 Mr. Crapps: I'm struggling to find the
10 relevancy here, here again, so I'm going to
11 object based on relevancy.

12 The Hearing Officer: Well, I'm going to
13 overrule and let Mr. Mathison proceed. And
14 there's no jury, and I will give it whatever
15 weight I think it's due at the end.

16 Q Do you know whether those were sold or not?

17 A I do not know.

18 Q Is there value in what's in that greenhouse?

19 A Absolutely.

20 Q And what is the value in that?

21 A I calculated, when I resigned, that we probably --
22 we had somewhere in the neighborhood of 200,000
23 rhizomes in that greenhouse. So, to come up with a
24 price, if you were to go to -- You can't buy them,
25 that I know of, in the open market. If you were

1 going to buy the -- You can't buy the Nagara,
2 which is very comparable. The only other crop you
3 can buy on the open market would be the Illinois
4 clone, which doesn't do anything in South Carolina,
5 and it's all over the map. It's 50 cents apiece
6 to, you know, \$15 for a plant. So, if you're going
7 to buy it for ornamental, it's one price. If
8 you're going to buy it in bulk, it's another price,
9 so -- It -- It has value. And we were one of the
10 few players left that could actually enter into an
11 off-take agreement. You know, the pellet market,
12 since -- All of this has changed. The pellet
13 market has heated up. So, the -- A couple of
14 years ago, you couldn't find a buyer for pulp,
15 pulpwood and any of our crops, whether it was pulp,
16 chip-n-saw or sawtimber, but now the pellet makers
17 have come into this country in mass. The Germans
18 built the largest pellet mill in the world in
19 Statesboro, Georgia, 750 tons a year. Drax has --
20 Drax -- Sorry. Drax Energy, from the UK, has a
21 mandate to convert their largest facility in the UK
22 to biomass. They're opening up two facilities in
23 the southeast. So, the price of pulp is going up
24 and up and up, and at some point, under the EU
25 Guidelines, they're going to have to switch from

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1 the woody biomass to something more sustainable.

2 And I still get calls for -- to discuss off-take

3 agreements, even a few weeks ago. So, it's --

4 Q Apart from the rhizomes and plants in that
5 greenhouse, do you still have a viable plant stock
6 at the sod farm in Orangeburg?

7 A Yes.

8 Q And who is the person that's responsible for that
9 sod form -- sod farm?

10 A The owner?

11 Q Mm-hmm.

12 A Is Jim Roquemore.

13 Q Are they the same strain so that you could
14 repropagate what you've got, the Silver Oak Select,
15 --

16 A Yes.

17 Q -- on his property? Is there a potential market
18 for Miscanthus currently in Orangeburg?

19 A I was working with a -- a company that was trying
20 to build a biomass facility. I did hook them up
21 with the Orangeburg County Development Commission,
22 and, theoretically, there could be. I don't know
23 if that's going to happen.

24 Q Just so I understand, what's the advantage of
25 Miscanthus over wood chips or pulpwood for burning

1 as a biomass fuel?

2 A There's a couple of key factors. Number one is the
3 growth. We can get an annual crop, which means we
4 don't have to plant it again, that can yield, after
5 the second or third year, 15 tons of biomass
6 annually. You cut it in the fall. You -- It'll
7 grow right back in the spring. The crop -- If you
8 wait until it senesces, which means until it
9 matures, all of the moisture and all of the
10 nutrients flow back into the rhizome -- And if
11 there's any farmers here, I apologize. It -- it
12 flows back into the rhizome, and the biomass, at
13 that point, is less than -- about 15 percent
14 moisture. If you take and cut down a pine tree,
15 it's going to be 45 to 50 percent moisture. Now,
16 that pine tree is going to yield, as I just said
17 earlier, four, maybe five tons a year, but you're
18 going to wait, depending on the crop, ten or 15
19 years before you can get that tonnage. Miscanthus
20 will renew each year. It's dry. The BTU output or
21 -- is wonderful. And it will grow in South
22 Carolina. It would be a great -- a great idea
23 here.

24 Q Do chips require drying before they're utilitarian
25 --

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1 A Yes, they do. They --

2 Q -- as fuel?

3 A They have to get down to 15 percent moisture before
4 they can be burned, and in order to -- In RWE,
5 which I mentioned, in Statesboro, Georgia, they
6 need -- they need 750,000 tons of pellets annually,
7 which means they need to cut down 1.5 million tons
8 of timber and dry that. In order to dry that, if
9 they use the bark and the products, they need
10 another 750,000 to burn to dry it to get to the
11 750. So, this bypasses all of that.

12 The Hearing Officer: I would like to
13 request that we move on --

14 The Witness: Okay.

15 The Hearing Officer: -- on this issue.

16 Q Last question.. Is there significant value left in
17 Silver Oak Energy notwithstanding the possible sell
18 -- sell-off of the Miscanthus stock on Silver Oak
19 VII's property?

20 A If the crop is there and it's still maintained, --
21 I haven't been there in a month -- yes. There's
22 other products that -- Canadians are you using it
23 to make plastic injection parts. There's paper
24 companies that are using it to make paper. So,
25 yes, there is value there.

1 Mr. Mathison: Please answer any
2 questions that Mr. Crapps has.

3 Re-direct Examination

4 By Mr. Crapps:

5 Q Mr. McIntyre, you indicated that -- that Jim Paris
6 played a role in SOLT I by listing the property.
7 Is that subject to a listing agreement?

8 A Well, he had several listing agreements over the
9 years on Silver Oak I. He had the initial one when
10 we first bought it, and then I believe it's on his
11 website today -- or recently.

12 Q And were all those formalized into a traditional
13 agreement?

14 A I don't know if the one that he has now is.

15 Q Was Mr. Paris to get a commission on the sale?

16 A Yes.

17 Q So, he wasn't acting as an agent for the company,
18 per se, as an employee, but was acting in his real
19 estate realtor capacity?

20 A Well, I don't know. I'm not a real estate
21 attorney, but if you're asking in one specific
22 instance was he acting on his own behalf, I'm not
23 qualified to answer that. When we had -- Silver
24 Oak I, when we met with the land planners, which --
25 Perry Woods, which was Jim's -- He was there at

1 all the meetings, representing Silver Oak. When we
2 brought in Lake View Concepts, Bill Edmunds, Jim
3 was at all the meetings. Matter of fact, Jim
4 cooked dinner for him and Murray and I, and we hung
5 out for a few days. So, collectively, we were
6 doing things on a weekly basis.

7 Q But on the -- For the sale of the property, he was
8 to get a commission as the realtor?

9 A I would -- I would hope so.

10 Q Mr. Mathison pointed you back to this language that
11 appears in all of the offering documents that says,
12 to the effect -- Let me see if I can find it. I'm
13 looking -- from State's Exhibit 3 here. That last
14 clause at the end, could you read that one more
15 time for us?

16 A The last clause?

17 Q Mm-hmm.

18 A "Timber, as an asset class, has shown an average
19 annual compounded return of over 11 percent for the
20 past 30 years. We will try to beat the industry
21 rate of return and enhance that with HBU sales."

22 Q So, you were communicating to investors a possible
23 rate of profit from these properties?

24 A I believe that timber, as an asset class,
25 historically, has some kind of rate of return which

1 I took from the South Carolina Forestry Commission.
2 I couldn't -- I don't think anyone would expect me
3 to make a future prognostication.

4 Q But the purpose of that being in there is to
5 communicate to investors that timber, as an asset,
6 generally returns a profit of 11 percent?

7 A That's according to the industry, yeah.

8 Q Okay. You also spent some time going through the
9 operating agreements. Were all of those provided
10 to investors prior to or in connection with the
11 offer or sale of the security?

12 A I believe that some folks -- some members asked for
13 a -- an agreement first and some would get it when
14 it was completed and all filled out.

15 Q So, some members didn't get that agreement before
16 they invested?

17 A It's possible.

18 Q You also said the Certificate of Membership was
19 given along with an operating agreement in a
20 packet?

21 A Mm-hmm.

22 Q Was that the traditional practice?

23 A Mm-hmm.

24 Q So, the Certificate of Membership came after the
25 operating agreement was effective?

1 A The certificate came when we'd put the packets
2 together after we had purchased the property.
3 That's correct.

4 Mr. Mathison: What are you looking for,
5 Jordan?

6 Mr. Crapps: SOLT I --

7 Q Can you identify that?

8 A Operating Agreement for Silver Oak Land Trust, LLC.

9 Q Can you go down to the -- I'm not quite sure what
10 paragraph number it is, but the definition of
11 member on the front page?

12 A "Member means Murray M. Reed, John M. McIntyre,
13 Martin Rehder, Dave Jeff, LLC, a South Carolina
14 limited liability company, and Bourbon Place III,
15 LLC, a South Carolina limited liability company.

16 Q So, the members were defined and established at --
17 before the -- that operating agreement was entered
18 into?

19 A Say that again.

20 Q The members were already members before that
21 operating agreement -- They'd already --

22 Mr. Mathison: Object as to form. You
23 can't be already a member if it's not
24 organized.

25 The Hearing Officer: Sustained. If you

1 can restate it.

2 Q The operating agreement was entered into on what
3 date?

4 A Oh. Let's see. It's effective December 13, 2005.

5 Q And that operating agreement defines the members --
6 defines member and includes the names of the
7 members?

8 A That's correct.

9 Mr. Crapps: Unless you have an
10 objection, Rob, we can go ahead and enter that
11 one, as well?

12 Mr. Mathison: I just want to make sure I
13 know which one it is since there are multiple
14 iterations of the same one.

15 Mr. Crapps: That should be the one from
16 McNair, as well.

17 Mr. Mathison: It is. That's good. I'm
18 good with that. Thank you.

19 Marked as State's Exhibit Number 10;
20 copy of Operating Agreement for
21 Silver Oak Land Trust, LLC; 19
22 pages.

23 Mr. Mathison: What exhibit is that?

24 Mr. Crapps: 10.

25 Mr. Mathison: Thanks.

1 Q When -- You described Silver Oak Energy company as
2 you selling off three percent and keeping 97. Did
3 you tell Mr. Finn that that was the situation?

4 A Absolutely. He signed the operating agreement.
5 It's on the tax returns. It's on everything.

6 Mr. Crapps: Do we have Energy yet?

7 Mr. Mathison: I don't know. I don't
8 think so.

9 The Witness: I don't think so.

10 Q Can you identify this?

11 A Operating Agreement for Silver Oak Energy.

12 Mr. Crapps: Rob, do you want to review
13 that one?

14 Mr. Mathison: Please. This one's not
15 McNair. That's right, it couldn't be because
16 they didn't give it --

17 Mr. Crapps: Right.

18 Mr. Mathison: -- to us. Mr. Short is
19 the -- Short. Take Silver's membership stuff
20 off the back of it, and we're good to go.

21 Mr. Crapps: I'll enter this into
22 evidence, as well.

23 Mr. Mathison: Without objection.

24 Marked as State's Exhibit Number 11;
25 copy of Operating Agreement for

1 Silver Oak Energy, LLC; 17 pages.

2 Q If you can turn to the last page of that document.

3 A Mm-hmm.

4 Q What's your ownership share there?

5 A Thirty-five percent.

6 Q And can you identify that document?

7 A (No response.)

8 Mr. Mathison: I haven't seen it. I
9 don't know what it is.

10 The Witness: Oh. Okay. I -- I didn't
11 know.

12 Q What is that document?

13 A Membership offering.

14 Q How many individuals did you send that -- that form
15 out to?

16 A I have no idea. This one confirms the three-
17 percent number that I gave you earlier, and the
18 amount was \$49,000. In 2009, on our tax return,
19 you'll see -- and on Paul's K-1, you'll see he
20 owned three percent of that, of Silver Oak Energy,
21 as I explained.

22 Mr. Mathison: (to Mr. Crapps) Are you
23 going to mark that?

24 Mr. Crapps: We can mark into evidence.

25 Mr. Mathison: You can mark it for

1 identification.

2 Mr. Crapps: Okay.

3 Mr. Mathison: I'm not going to object to
4 it if you want to put it into evidence.

5 Mr. Crapps: We'll go ahead and put it
6 into evidence, then.

7 Marked as State's Exhibit Number 12;
8 Silver Oak Energy, LLC Membership
9 Offer; one page.

10 Q When did you say Mr. Finn invested?

11 A The last quarter of 2009, initially.

12 Q Where did his money deposit into?

13 A Silver Oak Energy bank account.

14 Q If you owned a hundred percent of the company and
15 were selling three percent off, your three percent,
16 I guess, why is that -- why was that not your
17 money?

18 A Well, maybe, technically, that's a great question,
19 but in the -- what we were trying to accomplish is
20 -- is we were in business, we were beginning a new
21 business. We needed funds to purchase land. And
22 that's what we were doing, trying to grow the
23 company.

24 Q What did you tell Mr. Finn at the end of -- of
25 raising capital for Silver Oak Energy your interest

1 in the company would be?

2 A Well, we never -- we never ended raising capital
3 for the company because we were always trying to
4 find equity investors, or even bonds, whatever kind
5 of capital we could to grow the company. I -- Is
6 that -- Maybe I didn't understand the question.

7 Q I guess my question is when did you relay to the
8 investors that you would have 35 percent for your
9 management?

10 A When -- Not to make a distinction, but when did I
11 decide to sell off 65 percent of the company?

12 Q Did you put money into the company?

13 A Absolutely.

14 Q Okay. How much?

15 A I had -- I don't know. The -- I probably put
16 several months' worth of traveling and traveling
17 expenses and picking out rhizomes at all these
18 various places that I told you.

19 Q So, you didn't -- you didn't put in cash as
20 capital, in -- in the meaning of this kind of
21 document here (indicating)?

22 A Correct.

23 Q You indicated Mr. Paris's involvement in the
24 company was generally helping at the greenhouse and
25 cutting Miscanthus?

1 A Um, --

2 Q You also --

3 A Yeah.

4 Q You also said he helped with meetings with
5 government?

6 A Yeah.

7 Q How long was his involvement, working at the
8 greenhouse?

9 A I believe that he was unable -- he was working at
10 the -- the Beaufort -- the Technical College of the
11 Lowcountry greenhouse, and I don't know if he was
12 just bringing his son or they came together and
13 worked together -- I know they did -- while we got
14 that crop established. And that took -- I don't
15 know. We were up and running in a few months.

16 Q And you said Rich Silver was not very active?

17 A Correct.

18 Q Did Brian Mone have a title in the company?

19 A Yes.

20 Q What was his title?

21 A Director of Government Affairs or something like
22 that.

23 Mr. Mathison: (to the witness) Ask to
24 see the business plan.

25 The Witness: Oh.

1 A May I see the business plan?

2 (The witness reviews documents.)

3 A Yeah, it was probably legal affairs and government
4 -- well, affairs.

5 Q Is it listed in that document that way?

6 A No. It was on his business card. I don't know.

7 Q And what role did he play in the company?

8 A He -- He was several things. He was trying to
9 raise money, like we all were. He was bringing in
10 -- trying to bring in capital. He had -- I think
11 he had a contact in California, and he was trying
12 to bring in some investors from California. He
13 also accompanied Paul and I on a trip to England to
14 meet with Drax. We had a meeting with, at the
15 time, the largest energy producer in the United
16 Kingdom, and we met with their renewable energy
17 guy. He also accompanied us, Paul and I, on a trip
18 to Poland where we met with three companies, I
19 think, a company called Bioenergia, which is a
20 Polish company in the bioenergy space, and then a
21 couple of -- and a company up in Gdansk and in
22 Gdynia, I think it was. And he was at those
23 meetings.

24 Q So, he had a contact in California, and he made a
25 trip to England and made a trip to Poland?

1 A Correct.

2 Q Did David Short have a title in the company?

3 A I think he was -- Let me look. He was our -- He

4 was going to be the marketing guru.

5 Q Is it listed in that agreement -- or that business

6 plan?

7 A No.

8 Q What role did he play?

9 A He had done some PowerPoint-type presentations.

10 May I show you?

11 Q No.

12 A Okay.

13 Q Anything else?

14 A It was a marketing -- His expertise is in

15 marketing, so he was --

16 Q He made some PowerPoint presentations?

17 A Yeah. There was another term for them, but yeah.

18 Mr. Crapps: (to Mr. Mathison) Do you

19 have the Compensation Agreement?

20 Mr. Mathison: It's in the stack right

21 there.

22 The Witness: Oh. Here's the --

23 Mr. Crapps: Do you have the e-mail?

24 The Witness: Yeah, it's -- I thought I

25 just gave it to you, --

1 Mr. Crapps: It's the one from Murray.

2 The Witness: -- what's in -- Yeah. Oh.

3 Sorry.

4 Q Who signed this document, this Compensation
5 Agreement?

6 A John M. McIntyre.

7 Q For who and in which capacity?

8 A Manager.

9 Q Is there another signature on that page?

10 A Mine.

11 Q In what capacity?

12 A Silver Oak Energy, LLC.

13 Q Is there any other signature on that page?

14 A There is not.

15 Mr. Crapps: One second. That'll be --

16 That'll be all.

17 The Hearing Officer: (to Mr. Mathison)

18 Okay. Do you have any follow-up questions?

19 Mr. Mathison: Just one.

20 Re-cross-examination

21 By Mr. Mathison:

22 Q Did you ever receive any of the \$260,000 promised
23 to you in the Compensation Agreement?

24 A I did not.

25 Q Did you pay some of your expenses?

1 A Absolutely.

2 Mr. Mathison: Thank you. I don't have
3 any further questions.

4 The Hearing Officer: Okay. Then, I
5 guess we're through for the day. I wanted to
6 -- to make sure to ask Mr. Paris if he would
7 acknowledge, for the court reporter, what I
8 had said earlier about being still under the
9 subpoena. I didn't have you --

10 Mr. Paris: Yes.

11 The Hearing Officer: -- do that. Okay.
12 Did you get that?

13 The Court Reporter: (Nods head.)

14 The Hearing Officer: And one thing for
15 me, I wanted to be sure what is in evidence
16 and what isn't. I'm not sure I've made a
17 formal ruling on all of the things, and I
18 think that the State's case had two that were
19 for identification purposes only and the --
20 and the respondents had either one or two for
21 identification -- because I only did -- Are
22 those still for identification purposes only
23 and the rest are moved into -- or admitted
24 into evidence?

25 Mr. Crapps: Correct. I'll -- I'll get

1 the rest in a different way.

2 The Hearing Officer: Okay. Do you agree
3 with that, Mr. Mathison? I just don't want
4 there to be any loophole.

5 Mr. Mathison: They're --

6 Mr. Crapps: I guess we should identify
7 which --

8 Mr. Mathison: The couple of -- A couple
9 of documents that he -- that Jordan put in
10 have attached to them this certificate, which
11 I don't believe, necessarily, is in --
12 attached in the original, all right?

13 The Hearing Officer: Okay. And you are
14 holding up, Rob, Response 12 -- or is that
15 what that is?

16 Mr. Mathison: There is a certificate
17 like this that is attached to a number of the
18 documents, --

19 The Hearing Officer: Okay.

20 Mr. Mathison: -- as they were furnished
21 to the Attorney General's office by Mr.
22 Silver. He furnished his copies of these, but
23 they're not attached to the original
24 agreements, and that was my only objection.

25 The Hearing Officer: Okay.

1 Mr. Mathison: And Jordan took one of
2 them off. Actually, twice he took them off,
3 and he if takes them off, then they're in
4 evidence.

5 The Hearing Officer: Okay. So, they're
6 in evidence; if that document happens to be on
7 it, that's to be ignored, as far as being in
8 evidence; --

9 Mr. Mathison: Correct.

10 The Hearing Officer: -- is that correct?

11 Mr. Mathison: Yes, sir.

12 The Hearing Officer: Is there anything
13 else today we need to address?

14 Mr. Crapps: Do we -- No, not for me. I
15 guess Rob and I will figure out a time to
16 reconvene.

17 The Hearing Officer: Right. If y'all
18 will just let me know. In general, I'm pretty
19 open, you know. We'll see what we can -- what
20 we can do. And we'll reconvene back here.

21 (Whereupon the hearing was adjourned at 6:00
22 p.m.)

State of South Carolina)
) Certificate
County of Lexington)

Be it known that the foregoing hearing in the matter of John M. McIntyre and Silver Oak Land Management, LLC was held before me;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matter in controversy aforesaid;

The foregoing transcript of 185 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Signed this 11th day of August 2013.

Sandra M. Snead

Notary Public for South Carolina
My commission expires October 17, 2013.

Note: Recordings are retained for twelve (12) months from date of certification.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Tanya A. Gee
Circuit Court Judge

Case No. 2014-CP-40-07917

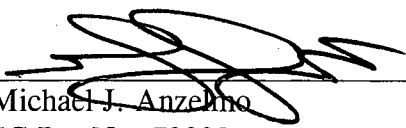
Appellate Case No. 2015-001845

John M. McIntyre and Silver Oak Land
Management LLC, ... Appellants,
v.
Securities Commissioner of South Carolina, ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

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October 10, 2016

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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Circuit Court Judge

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John M. McIntyre and Silver Oak Land
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Securities Commissioner of South Carolina, ... Respondent.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley
& Scarborough LLP, attorneys for John M. McIntyre and Silver Oak Land Management LLC,
do hereby certify that I have served all counsel in this action with a copy of the pleading(s)
hereinbelow specified at the following address(es):

Documents Served: **RECORD ON APPEAL**

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September 14, 2016