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S.C. SUPREME COURT

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Richland County
Court of Common Pleas
Tanya A. Gee, Circuit Court Judge
Appellate Case No. 2015-001845

JOHN M. MCINTYRE AND SILVER OAK LAND MANAGEMENT, LLC,

Respondents,

vs.

SECURITIES COMMISSIONER OF SOUTH CAROLINA,

Petitioner.

APPENDIX

CORY E. MANNING
Nelson Mullins Riley & Scarborough LLP
1320 Main Street, 17th Floor
Columbia, South Carolina 29201

ROBERT V. MATHESON, JR.
Matheson & Matheson
Post Office Box 5271
Hilton Head Island, South Carolina 29938

ALAN WILSON
Securities Commissioner

JONATHAN B. WILLIAMS
Assistant Deputy Attorney
General

IAN P. WESCHLER
Assistant Attorney General
S.C. Bar. No. 101422
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina
29211

ATTORNEY FOR THE RESPONDENTS ATTORNEYS FOR THE PETITIONER

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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 ONE**

Cory E. Manning
Michael J. Anzelmo
Kristen E. Horne
NELSON MULLINS RILEY &
SCARBOROUGH LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, South Carolina 29201
803.799.200

Robert V. Mathison, Jr.
Mathison & Mathison
Post Office Box 5271
Hilton Head Island, South Carolina 29938
843.785.6503

Attorneys for Appellants

Alan Wilson
Securities Commissioner

Tracy A. Meyers
Deputy Securities Commissioner

Officer of the Attorney General
State of South Carolina
Securities Division
Post Office Box 11549
Columbia, SC 29211
803.734.4172

Marilyn E. Gartley, Esquire
Assistant Attorney General

Attorneys for Respondent

**RECORD ON APPEAL
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ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:)
)
John M. McIntyre and) ORDER TO CEASE AND DESIST
Silver Oak Land Management, LLC,) File No. 12058
)
)
Respondents.)

WHEREAS, the Securities Division of the Office of the Attorney General of the State of South Carolina (the "Division"), pursuant to authority granted in the South Carolina Uniform Securities Act of 2005 (the "Act"), S.C. Code Ann. §§ 35-1-101 to 35-1-703 (Supp. 2012), received information regarding alleged activities of John M. McIntyre and Silver Oak Land Management, LLC (collectively "Respondents"), which, if true, could constitute violations of the Act; and

WHEREAS, the information led the Division to open and conduct an investigation of the Respondents pursuant to S.C. Code Ann. § 35-1-602; and

WHEREAS, in connection with the investigation, the Division has determined that evidence exists to support the following findings and conclusions:

1. Respondent John M. McIntyre ("McIntyre") is a South Carolina resident with the last known address of 45 Percheron Lane, Hilton Head Island, South Carolina 29926.
2. McIntyre is the registered agent of Silver Oak Land Management, LLC.
3. Silver Oak Land Management, LLC ("SOLM") is a South Carolina limited liability company with the last known address of 45 Percheron Lane, Hilton Head Island, South Carolina 29926.
4. McIntyre was also the registered agent of Silver Oak Land Trust, LLC ("Land Trust I"), Silver Oak Land Trust II, LLC ("Land Trust II"), Silver Oak Land Trust III, LLC ("Land Trust III"), Silver Oak Land Trust IV, LLC ("Land Trust IV"), Silver Oak Land Trust V, LLC ("Land Trust V"), Silver Oak Land Trust VII, LLC ("Land Trust VII"), and Silver Oak Energy, LLC ("SOE").

5. The Respondents represented, stated, and implied, in connection with the offer and sale of the securities at issue, that Land Trust I, Land Trust II, Land Trust III, Land Trust IV, Land Trust V, and Land Trust VII (collectively the "Land Trusts") were being formed for the purpose of purchasing a parcel or parcels of land identified by the Respondents.
6. The Respondents represented, stated, and implied, in connection with the offer and sale of the securities at issue, that investors in the Land Trusts would profit from the managerial efforts of the Respondents to lease the land, sell timber, and put the land to higher and better use.
7. The Respondents represented, stated, and implied, in connection with the offer and sale of the securities at issue, that SOE was being formed to purchase land for farming and the cultivation of Miscanthus grass.
8. The Respondents represented, stated, and implied, in connection with the offer and sale of the securities at issue, that investors in SOE would profit from the managerial efforts of the Respondents to cultivate, harvest, and sell the grass as a renewable source of energy.
9. To fund the land purchase(s), operation, and administration of each entity, the Respondents solicited investors to purchase membership units in the corresponding entity.
10. The membership units offered and sold to South Carolina investors constitute securities as that term is defined in the Act.
11. The Respondents solicited investments in Land Trust I beginning in or around December, 2005 ("Land Trust I Initial Offering"). The Land Trust I Initial Offering was offered and/or sold, in or from the State of South Carolina.
12. The Respondents solicited investments in Land Trust II beginning in or around May, 2006 ("Land Trust II Offering"). The Land Trust II Offering was offered and/or sold in or from the State of South Carolina.
13. In or around January of 2007, members of Land Trust I were awarded interests in Land Trust III in proportion to their interests in Land Trust I via a transfer of capital from Land Trust I to Land Trust III.

14. The Respondents solicited investments in Land Trust IV beginning in or around August, 2007 (“Land Trust VI Offering”). The Land Trust IV Offering was offered and/or sold in or from the State of South Carolina.
15. The Respondents solicited investments in Land Trust V beginning in or around February, 2008 (“Land Trust V Offering”). The Land Trust V Offering was offered and/or sold in or from the State of South Carolina.
16. The Respondents solicited investments in Land Trust VII beginning in or around March, 2009 (“Land Trust VII Offering”). The Land Trust VII Offering was offered and/or sold in or from the State of South Carolina.
17. The Respondents solicited investments in SOE beginning in or around December, 2009 (“SOE Offering”). The SOE Offering was offered and/or sold in or from the State of South Carolina.
18. The Respondents conducted a second offering of Land Trust I membership units beginning in or around 2010 and continuing into 2011 (“Land Trust I Second Offering”). The Land Trust I Second Offering was offered and/or sold in or from the State of South Carolina.
19. In connection with the offer and sale of the membership interests in each of the Land Trusts and in SOE, the members and McIntyre or SOLM executed an operating agreement to control the management of the relevant entity.
20. The operating agreement of each Land Trust, except for Land Trust II and Land Trust III, does not provide for the payment of the manager, whether that was McIntyre or SOLM.
21. The operating agreements of Land Trust II and Land Trust III provide that the “Manager shall receive as a management fee fifteen percent (15%) of all revenue received by the Company.”
22. In connection with the offer and sale of the membership interests in Land Trusts I, IV, V, and VII, and in SOE, the Respondents represented to South Carolina investors that their compensation for the managerial services provided was only a stated and defined percent interest in the company

23. In contradiction to the representations made to South Carolina investors in connection with the offer and sale of the membership interests, the Respondents used investor funds to pay for personal expenses of McIntyre and McIntyre's family.
24. Further, the Respondents paid themselves significant manager fees and other compensation despite representations to the contrary made in connection with the offer and sale of the securities at issue.
25. The Respondents began to misappropriate investor money from the Land Trust I bank account beginning at least by 2007.
26. The Respondents used Land Trust I investor money for personal expenditures such as dining, groceries, online retailers, clothing, wine and spirits, and pet hospital and kennel visits.
27. Further, the Respondents used Land Trust I investor money to make so called loans to themselves.
28. The Respondents also used Land Trust I investor money to pay themselves consulting fees in violation of the operating agreement and in contradiction to the representations made to investors in connection with the offer and sale of the securities at issue.
29. The Respondents encumbered the land purchased for Land Trust I with a \$500,000 mortgage in or around 2007. The Respondents eventually increased the mortgage to \$750,000.
30. In order to service the debt, the Respondents caused the other entities, including Land Trust VII and SOE, to transfer investor money to Land Trust I to make the payments.
31. Even as Land Trust I was struggling to make its mortgage loan payments, the Respondents were using investor money for personal expenses.
32. The Land Trust II operating agreement permitted the Respondents to take fifteen percent of all revenue received by the company as a management fee. However, the Respondents misappropriated Land Trust II investor funds by paying themselves significant consulting fees on top of taking the permitted distributions pursuant to the operating agreement.

33. The Respondents misappropriated Land Trust III investor funds by transferring thousands of dollars to SOLM from August, 2011, to December, 2011. Further, during this same time period, the Respondents caused thousands of dollars of Land Trust III investor funds to be transferred to Land Trust I.
34. The Respondents misappropriated Land Trust IV investor funds by transferring thousands of dollars to themselves and by causing smaller amounts to be transferred to the other entities under the Respondents' control.
35. The Respondents misappropriated Land Trust VII investor funds by paying themselves thousands of dollars in self-titled commissions, consulting fees, and loans between June 1, 2009, and May 31, 2011, in violation of the operating agreement and in contradiction to the representations made to investors in connection with the offer or sale of the Land Trust VII securities.
36. The Respondents misappropriated thousands of dollars of SOE investor funds for personal expenses such as ladies shoes, college applications, numerous restaurants, jewelry, pet care, and dentist bills.
37. Further, from December 9, 2009, through November 22, 2010, the Respondents wrongfully transferred approximately \$70,000 from SOE's operating account to SOLM's bank account.
38. The Respondents represented to investors in connection with the offer and sale of the securities of the various entities that the investors' money would be used in furtherance of the entity in which they invested. In contradiction to this representation, the Respondents made multiple transfers and so called loans between the various entities resulting in a comingling of funds among the various Land Trusts and SOE.
39. Further, expenditures were made from accounts in the name of one entity for the benefit of other entities, further comingling the funds.
40. In order to conceal the misuse of investor funds, the Respondents mislabeled several expenditures in the corporate QuickBooks accounting software. Specifically, to illustrate by example, the Respondents:

- a. On January 8, 2011, used Land Trust I investor money at Evergreen Pet Lodge and entered the transaction in QuickBooks as "Evergreen Buffet."
 - b. On December 27, 2010, used Land Trust I investor money at Victoria's Secret and entered the transaction in QuickBooks as "Vic's on the River" for dinner with "ip staff."
 - c. On September 15, 2011, used Land Trust I investor money at Plantation Animal Hospital and entered the transaction in QuickBooks as an advertising expense at "Plantation Deli."
 - d. On December 16, 2009, used SOE investor money at SteveMadden.com and Macy's Department Store and labeled the purchases in QuickBooks as "Greenhouse Construction."
 - e. On December 20, 2009, used SOE investor money for college applications to Wake Forest University and Vanderbilt University and labeled the purchases in QuickBooks as "Home Depot."
 - f. On December 23, 2009, used SOE investor money at the Goldsmith Shop, Inc., a jewelry store on Hilton Head Island, and labeled the purchase in QuickBooks as "Jaderloon Greenhouse Co. Inc."
41. The Division attempted to subpoena documents and testimony from the Respondents, but the Respondents refused to comply with the subpoena unless Respondent McIntyre was provided criminal immunity, which the Division cannot provide.
42. Pursuant to S.C. Code Section 35-1-501, it is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:
- a. To employ a device, scheme, or artifice to defraud;
 - b. To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
 - c. To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

43. On at least 39 occasions, the Respondents, jointly and severally, in connection with the offer, sale, or purchase of a security, directly or indirectly,
- a. Employed a device, scheme, or artifice to defraud;
 - b. Made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
 - c. Engaged in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person

CEASE AND DESIST ORDER

WHEREAS, pursuant to S.C. Code Ann. § 35-1-604(a)(1), if the Securities Commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of the Act or a rule adopted or order issued under the Act or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of the Act or a rule adopted or order issued under the Act, the Securities Commissioner may issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with the Act; and

WHEREAS, pursuant to S.C. Code Ann. § 35-1-604(b), an order issued under Section 35-1-604(a) is effective on the date of issuance and must include a statement of any civil penalty or costs of investigation the Division will seek, a statement of the reasons for the order, and notice that a hearing will be scheduled if one is requested;

NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a), IT IS HEREBY ORDERED that:

- a. The Respondents immediately cease and desist from transacting business in this State in violation of the Act and, in particular, Section 35-1-501 thereof;
- b. Any exemption available to the Respondents under the Act is hereby permanently revoked prospectively; and
- c. The Respondents each pay a civil penalty in an amount not to exceed \$10,000 for each violation of the Act committed by that Respondent, and the actual cost of the investigation and proceedings. In the alternative, if a Respondent chooses to let this Order become effective by operation of law, that Respondent shall pay a civil penalty of \$50,000 for violating the Act as detailed in this Order.

REQUIREMENT OF ANSWER AND

NOTICE OF OPPORTUNITY FOR HEARING

The Respondents are hereby notified that they have the right to a hearing on the matters contained herein. To schedule such a hearing, a Respondent must file with the Securities Division, Post Office Box 11549, Rembert C. Dennis Building, Columbia, South Carolina, 29211-1549, attention: Thresechia Navarro, within thirty (30) days after the date of service of this Order to Cease and Desist a written Answer specifically requesting a hearing. If a Respondent requests a hearing, the Division, within fifteen (15) days after receipt of a request in a record from a Respondent, will schedule the hearing.

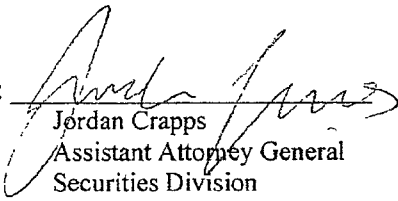
In the written Answer, the Respondent, in addition to requesting a hearing, shall admit or deny each factual allegation in this Order, shall set forth specific facts on which the Respondent relies, and shall set forth concisely the matters of law and affirmative defenses upon which the Respondent relies. A Respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state.

Failure by a Respondent to file a written request for a hearing in this matter within the thirty-day (30) period stated above shall be deemed a waiver by that Respondent of the right to such a hearing. Failure of a Respondent to file an Answer, including a request for a hearing, shall result in this Order,

including the stated civil penalty and any assessed fees, becoming final as to that Respondent by operation of law.

CONTINUING TO ENGAGE IN ACTS DETAILED BY THIS ORDER AND/OR SIMILAR ACTS MAY RESULT IN THE DIVISION'S FILING ADDITIONAL ADMINISTRATIVE ACTIONS AND/OR SEEKING FURTHER ADMINISTRATIVE FINES. WILLFUL VIOLATION OF THIS ORDER COULD RESULT IN CRIMINAL PENALTIES UNDER S.C. CODE ANN. § 35-1-508 OF THE ACT.

IT IS SO ORDERED, This the 19 day of April, 2013.

By: 
Jordan Crapps
Assistant Attorney General
Securities Division
Rembert C. Dennis Building
1000 Assembly Street
Columbia, S. C. 29201
(803) 734-9916

REPORT AND RECOMMENDATION BY HEARING OFFICER DESIGNATED **14**
THE SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:)
) Report and Recommendations
John M. McIntyre and Silver Oak Land)
Management, LLC) Case Number 12058
)
Respondents,)
)
_____)

RECOMMENDATION

I recommend that the Securities Commissioner find that the limited liability company interests which constitute the investments at issue in this matter are not securities because the preponderance of the evidence does not establish that they are investment contracts under the facts of this case and the law of South Carolina.

I recommend that the Securities Commissioner dismiss the Cease and Desist Order.

Hearing

This matter came before me by hearing commenced on July 30, 2013, which continued on October 1 through October 3, 2013, in the offices of the Securities Commissioner for the State of South Carolina. Testimony was taken and evidence was presented.¹

Witnesses that appeared on behalf of the Securities Division of the Office of the Attorney General of the State of South Carolina (the "Division") were Mr. Phil W.

¹ The hearing on July 30, 2013, was transcribed (Tr1) by Sandra M. Snead. The hearing on October 1, 2013, through October 3, 2013, was transcribed (Tr2) by Jennifer L. Thompson, CVR-M, Nationally Certified Verbatim Court Reporter.

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15 Hatman, Mr. Richard A. Silver, Mr. Paul Fin, Mr. James Russell Paris, and Ms. Sandra Matthews.

Mr. John M. McIntyre was called by the Division and by Respondent.

Jurisdiction

This matter was heard pursuant to Order Designating Hearing Officer (the "Order of Appointment") dated June 14, 2013, issued by the Securities Commissioner in accordance with the South Carolina Uniform Securities Act of 2005, S.C. Code Ann. § 35-1-101 *et seq.* (the "Act").

The Order of Appointment grants the hearing officer the authority to hear the case and to take all actions he deems relevant or material to his recommending findings as to the matters alleged in the Order to Cease and Desist (the "Cease and Desist Order") issued April 19, 2013, and his recommending appropriate action based on his findings.

Burden of Proof

The Act does not set forth the burden of proof the Division must meet to prove that it is entitled to the remedies sought which include penalties and bars. The proceedings conducted by the Division are not subject to the requirements of the South Carolina Administrative Procedure Act. S.C. Code Ann. § 35-1-604(c), South Carolina Reporter's Comment 3. However, the South Carolina Supreme Court has looked to federal law for guidance in interpreting the Act. The South Carolina Supreme Court held that "cases interpreting Section 12(2) of the Securities Act of 1933, while not binding authority on this Court, are looked to for guidance in interpreting the corresponding South Carolina Code provision with which we are dealing." Bradley v. Hullander, 272 S.C. 6, 21, 249 S.E.2d, 486, 494 (1978). The South Carolina court noted that the statute

under consideration there was taken almost verbatim from Section 12(2) of the Securities Act of 1933. 15 U.S.C.A. § 77L(2). I note that S.C. Code Ann. § 35-1-501 is not identical to Section 17A of the Securities of 1933, but for the purposes of this litigation, there is no reason to treat it as significantly different for purposes of using federal cases to provide guidance for interpreting the Act. With this in mind, the decisions of the U.S. Supreme Court and South Carolina courts show that the appropriate burden of proof to be applied in administrative securities actions is a preponderance of the evidence standard. The United States Supreme Court, citing Steadman v. SEC, 450 U.S. 91, 101 S. Ct. 999 (1981), stated "we upheld use of the preponderance standard in SEC administrative proceedings concerning alleged violations of the anti-fraud provisions." Herman & MacLean v. Huddleston, 459 U.S. 375, 390, 103 S. Ct. 683, 691 (1983).

The United States Supreme Court has not required the higher standard of clear and convincing evidence in securities cases and no case in South Carolina has done so. Therefore, the preponderance of the evidence standard is the applicable standard.

Findings of Fact and Conclusions of Law

As to matters delineated as "recommended findings," they should be construed as findings of fact or conclusions of law as appropriate. For factual matters that are not referenced to the record in the body of this report, see the transcripts of record and the exhibits which are incorporated into this report.

Procedural Background

Pursuant to the Cease and Desist Order, the Division alleged that Respondents in connection with several limited liability companies "represented, stated, and implied, in connection with the offer and sale of the securities at issue. . . ." See paragraphs 5, 6, 7,

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17 8 of the Cease and Desist Order. In their Answer (the "Answer"), Respondents deny that the membership interests were "securities" as defined in the Act giving rise to these proceedings. See paragraphs 4 and 5 of the Answer. Respondent also raises an affirmative defense that states in part that the "limited liability memberships are not securities under the circumstances of this case." See paragraph 38 of the Answer.

The Division ordered the following relief pursuant to the Cease and Desist Order:

NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a), IT IS HEREBY ORDERED that:

- a. The Respondents immediately cease and desist from transacting business in this State in violation of the Act and, in particular, Section 35-1-501 thereof;
- b. Any exemption available to the Respondents under the Act is hereby permanently revoked prospectively; and
- c. The Respondents each pay a civil penalty in an amount not to exceed \$10,000 for each violation of the Act committed by that Respondent, and the actual cost of the investigation and proceedings. In the alternative, if a Respondent chooses to let this Order become effective by operation of law, that Respondent shall pay a civil penalty of \$50,000 for violating the Act as detailed in this Order.

The Division found in the Cease and Desist Order that:

43. On at least 39 occasions, the Respondents, jointly and severally, in connection with the offer, sale, or purchase of a security, directly or indirectly,
 - a. Employed a device, scheme, or artifice to defraud;
 - b. Made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
 - c. Engaged in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

The Cease and Desist Order, among other things, ordered that “The Respondents ¹⁸ immediately cease and desist from transacting business in this State in violation of the Act and, in particular, Section 35-1-501 thereof.

The South Carolina Securities Act

The operative section of the Act for purposes of this matter is S.C. Code. Ann. § 35-1-501 (emphasis added) that provides that:

It is unlawful for a person, in connection with the **offer, sale, or purchase of a security**, directly or indirectly:

- (1) to employ a device, scheme, or artifice to defraud;
- (2) to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

The first inquiry in this matter must be whether or not the limited liability company interests were securities. Otherwise, the Act is not applicable.

The Investments

The matters at issue in this case involve a set of limited liability companies. There are six limited liability companies delineated as land trusts: Silver Oak Land Trust, llc [sic] (“SOLT I”); Silver Oak Land Trust II, LLC (“SOLT II”); Silver Oak Land Trust III, LLC (“SOLT III”); Silver Oak Land Trust IV, LLC (“SOLT IV”); Silver Oak Land Trust V, LLC (“SOLT V”); and Silver Oak Land Trust VII, LLC (“SOLT VII”).² These may be collectively referred to as the “SOLT Entities.” Another company, Silver Oak Energy, LLC (“SOE”), was the last company formed and was formed to engage in the renewable energy business by growing biomass. Respondent Silver Oak Land Management, LLC

² There is not a Silver Oak Land Trust VI.

19 SOLM") was formed as a land management company and serves as the manager for certain of the SOLT Entities and SOE. SOLT I made a secondary offering and brought in three new members after SOLT I was formed.

The members in the various SOLT Entities and SOE vary both in ownership percentages and in number of members. SOLM was the first company formed and has two members.³

Each company is manager managed. John McIntyre is the manager of SOLT I, SOLT II, and SOLT III.⁴ SOLM is the manager of SOLT IV, SOLT V, SOLT VII, and SOE.

SOLT I has five members which was expanded to eight members after the SOLT I Second Offering in 2010. Tr1, p. 123, ll. 13-24., SOLT II has 13 members. The interests in SOLT III were distributed to the five members of SOLT I. SOLT IV has the most members at 24. SOLT V has thirteen members as derived from the signature pages to the SOLT V Operating Agreement. However, three of these membership interests are taken up by Clifford D. Emery and Betsey A. Emery as joint tenants as one membership and two more memberships by Clifford D. Emery and Betsy A. Emery individually. Thomas M. Woodbury and Gloria B. Woodbury also own two separate membership interests. SOLT VII has 13 members. SOE has six members.

The SOLT Entities were engaged in timber land investments. SOE was formed to grow bio fuel and engaged in the cultivation of miscanthus grass.

³ Dave Jeff, LLC and John M. McIntyre are the members of SOLM. Dave Jeff, LLC is a single member LLC whose member is Susan Vitek. Tr1, p. 44, ll. 3-10.

⁴ The interests in SOLT III were distributed to the members of SOLT I. There is no evidence in the record that SOLT III was managed differently than SOLT I.

For the Act to apply, the interests in the limited liability companies must qualify as securities. To be a security under the the Act, there must be “investment in a common enterprise” with the “expectation of profits to be derived primarily from the efforts of a person other than the investor.” As set forth in the Act, the term “security” includes:

an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a “common enterprise” means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors.

S.C Code Ann. § 35-1-102(29)(D).

The Act goes on to state that an “investment contract may include, among other contracts, an interest in a limited partnership, and a limited liability company...” S.C. Code Ann. § 35-1-102(E) (emphasis added).

When interpreting the Act, the courts may look for guidance in the interpretation of the federal securities laws. *Majors v. South Carolina Securities Commission*, 373 S.C. 153, 163, 644 S.E.2d 710, 715 (2007). An investment contract has been defined at the federal level as a “contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party...” *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946). In fact, the South Carolina Supreme Court has applied the *Howey* Test in defining an investment contract. *Majors*, 373 S.C. at 163, 644 S.E.2d at 715-716. As cited above, the Act refers to the “expectation of profits to be derived primarily from the efforts of a person other than the investor.” The Act, relying on primarily rather than solely through the efforts of others is consistent with the current *Howey* jurisprudence. For examples of the lessening

21 The “solely” requirements, see *United Housing Foundation, Inc v. Forman*, 421 U.S. 837, 852 (eliminating the word “solely” from the recitation of the *Howey* test); *Securities and Exchange Commission v. Glenn W. Turner Enterprises, Inc.*, 474 F.2d 476, 482 (9th Cir. 1973) (“We adopt a more realistic test, whether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.”); *Bailey v. J.W.K. Properties, Inc.*, 904 F.2d 918, 920 (4th Cir. 1990) (“The most essential functions or duties must be performed by others and not the investor.”). “Investment contracts may be found where the investor has duties that are nominal and insignificant or where the investor lacks any real control over the operation of the enterprise.” *Majors*, 373 S.C. at 167, 644 S.E.2d at 717-718, citing *O’Quinn v Beach Associates*, 272 S.C. 95, 105, 249 S.E.2d 734, 739 (1978). In *O’Quinn*, the court found that the sale of condominium units under the facts of that case were not investment contracts.

In this case, there were eight investment offerings that spanned five years beginning in 2005 and continuing until 2010. These were SOLT I (2005), SOLT II (2006), SOLT III (date uncertain from the record), SOLT IV (2007), SOLT V (2008), SOLT VII (2009), SOE (2009), and the Second Offering of SOLT I (2010 based on testimony of Richard Silver as to the time of his investment, Tr.2, p. 118, ll. 9-22). Whether the sales of interests in the limited liability companies were sales of interests in investment contracts is the key to this analysis.

Investment Contract Analysis

As set forth earlier, interests in limited liability companies are not *per se* securities. The Act clearly sets forth that these interests “may” be securities. The record

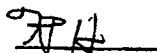
in this matter contains testimony with regard to investor participation in the operation of the enterprises. For example, when asked "Do you feel that the other parties of Silver Oak I were active in the management of the company?" Mr. McIntyre responded "Absolutely." Tr 1, p. 68, l. 3. See Tr2, p. 544, ll. 2 - 21 for testimony about how the members of SOLT I worked on SOLT I's land including "with the exception of Martin, all of us went in there weekly and monthly and identified property lines, identified upland, that we thought was upland." See Tr2, p. 544, ll., 14-18.

In analyzing the record, we may look at how the Silver Oak Entities and SOE actually operated to answer questions of the allocation of control.

As an evidentiary matter, however, we may look at how the RLLPs [registered limited partnerships] actually operated to answer the question of how control was allocated at the outset. See *Albanese v. Fla. Nat'l Bank*, 823 F.2d 408, 412 (11th Cir. 1987) (looking to "reality" of partners' control over placement of ice machines as evidence of amount of control present at inception); *Rivanna Trawlers Unltd. V. Thompson Trawlers, Inc.*, 840 F.2d 235, 242 (4th Cir. 1988) (noting as evidence of control at inception, that the managers were in fact replaced on two later occasions)

SEC v. Merchant Capital, LLC, 483 F3d 747, 756 (11th Cir. 2007)

The resolution of the dispute with regard to participation in the operation of the companies by the members is aided by the lines of cases that discuss the importance of the powers retained by the investors. Therefore, an analysis of cases that have recognized the importance of the allocation of manager rights and powers and the nature of the investors is relevant to this analysis. A discussion of the allocation of responsibility for management is set forth in Bishop, Carter G. and Kleinberger, Daniel S., *Limited Liability Companies: Tax and Business Law*, Thomson Reuters, 2014 at paragraphs 11.02. They compare general partnership cases with limited liability company cases because, among other things, "the management structure of both entities is almost


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flexibly flexible. The promoters of both types of enterprise can allocate management rights virtually as they see fit." *Id.*

Carter and Bishop note that "The most important general partnership case is *Williamson v. Tucker* [645 F.2d 404 (5th Cir. 1981), cert. denied, 454 U.S. 897 (1981)], which has become the touchstone of analysis for most LLC 'securities' cases." *Id.*

In *Garett v. Snedigar*, 293 S.C. 176, 359 S.E. 2d 283 (Ct. App. 1987, overruled on other grounds, *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 580 S.E.2d 440 (2003)), the South Carolina Court of Appeals recognized *Williamson* as the "leading recent case on this issue . . . whether an interest in a general partnership is a security." *Id.* 293 S.C. at 181, 359 S.E.2d at 286. The Court of Appeals cited the following in this regard:

(1) [whether] an agreement among the parties leaves so little power in the hands of the partner or venturer that the arrangement in fact distributes power as would a limited partnership; or (2) [whether] the partner or venturer is so inexperienced and unknowledgeable in business affairs that he is incapable of intelligently exercising his partnership or venture powers; or (3) [whether] the partner or venturer is so dependent on some unique entrepreneurial or managerial ability of the promoter or manager that he cannot replace the manager of the enterprise or otherwise exercise meaningful partnership or venture powers.

Id., 293 S.C. at 181, 359 S.E. at 286, citing *Williamson*, 645 F.2d at 424.

The *Snedigar* partnership agreement "provides that Mr. Snedigar, as managing partner, has 'full charge of the management, conduct and operation of the Partnership business in all respects' and that "Mr. Snedigar can be replaced as managing partner by a two-thirds vote of the other partners." *Snedigar*, 293 S.C. at 179, 359 S.E.2d at 285. The *Snedigar* court pointed out the following in their decision finding that the general partnership interests were not securities:

Further, it appears from the record that at least **two of the partners are lawyers and several others are businessmen**. We recognize that these partners may not have specific expertise in the field of commercial development. However, **it does not necessarily follow as a matter of law that they lack the business experience and knowledge necessary to exercise partnership powers intelligently or that they were dependent on Mr. Snedigar to the extent they could not replace him or otherwise exercise meaningful partnership powers.** 24

Id., 293 S.C. at 182, 359 S.E.2d at 286 (emphasis added)

Key elements of the *Snedigar* decision are the Court of Appeals' recognition of the factors set forth in *Williamson*, the fact that the general partners were lawyers and businessmen, and that the partnership agreement, though making *Snedigar* the managing partner, provided that he could be removed by a two-thirds vote of the other partners.

The *Snedigar* court noted that the agreement also provided that:

No one member of the Partnership, including the Managing Partner, shall be authorized or empowered without the consent of the majority of the other Partners (but with such consent shall be authorized and empowered) on behalf of the Partnership to borrow (from any Partner or third party) or lend money, or make, deliver or accept any commercial paper, or execute any mortgage, deed, release or purchase or contract to purchase, or sell or contract to sell any property, or compromise or release any claims or debts, or obligate the Partnership in an amount in excess of or withdraw any money of the Partnership having a value or being in excess of \$1,000.00.

Id., 293 S.C. at 179, 359 S.E. 2d at 285

Given the analysis by the South Carolina court in *Snedigar*, the favorable recognition of *Williamson*, and the emphasis on rights that the investors retained, it seems appropriate to apply the *Williamson* analysis to the limited liability companies in this case by analogy and that this is consistent with South Carolina law.

In *Securities and Exchange Commission v. Merchant Capital, LLC*, 483 F.3d 747 (11th 2007) the court summarized the three situations (the "*Williamson* Factors") where a general partnership would qualify as an investment contract as follows:


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(1) “[A]n agreement among the parties leaves so little power in the hands of the partner or venturer that the arrangement in fact distributes power as would a limited partnership,”

(2) “[T]he partner or venturer is so inexperienced and unknowledgeable in business affairs that he is incapable of intelligently exercising his partnership or venture powers,” or

(3) “[T]he partner or venturer is so dependent on some unique entrepreneurial or managerial ability of the promoter or manager that he cannot replace the manager of the enterprise or otherwise exercise meaningful partnership or venture powers,”

Id., at 755.

In performing its analysis of the *Williamson* Factors, the *Merchant* court, with regard to the first factor, whether the arrangement in fact distributed power as would a limited partnership, found barriers to removal of the managing partner to include (1) a unanimous vote, (2) removal was for cause only, (3) the investors were geographically dispersed with no preexisting relationship and (4) the lack of face-to-face contact among the partners exacerbated the other difficulties and rendered the supposed power to remove *Merchant* illusory. *Id.*, at 758.

With regard to the second factor, whether the partners were so inexperienced and unknowledgeable in business affairs that they were incapable of intelligently exercising partnership or venture powers, the court pointed out that the business in *Merchant* was a debt purchasing business. The court stated “The ultimate question is whether the investors were led to expect profits solely from the efforts of others. Regardless of investors' general business experience, where they are inexperienced in the particular business, they are likely to be relying solely on the efforts of the promoters to obtain their profits.” *Id.*, at 762. In Footnote 12, the court stated “it is clear here that general business experience does not have any significant overlap with the debt purchasing business. *Id.*


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“[T]he SEC presented uncontradicted evidence that the individual partners have no experience in the debt purchasing business. They were members of the general public, and included a railroad retiree, a housewife, and a nurse. Their possible general business experience is not significant in this case.” *Id.* The court found that this second factor was present.

With regard to the third factor, whether the partners were so dependent on the manager’s entrepreneurial or managerial ability that they could not replace it or otherwise exercise meaningful powers, the court found that the partners did not have a reasonable alternative to the manager because the assets were held in pools.

[T]he RLLP partners did not have any realistic alternative to management by Merchant (in addition to having no practical ability to remove Merchant). That is because Merchant effectively had permanent control over each partnership’s assets. Merchant pooled the partnerships’ assets and invested them in pools of accounts owned by New Vision. Merchant had a service contract with New Vision that gave Merchant a right to the return of debt accounts only in certain limited circumstances, or upon termination of the entire contract.

Id. at 764.

The court concluded:

D. Conclusion: RLLP [registered limited liability partnership] interests were investment contracts.

For all of these reasons, the RLLP interests were investment contracts covered by the federal securities laws. The partners had the powers of limited partners, since they had no ability to remove Merchant and the purported authority to approve purchases was illusory. They were completely inexperienced in the debt purchasing industry. Finally, even if they could have removed Merchant (which they could not), they had no realistic alternative to Merchant as manager because their debt pools were in fractional form with a company whose only contractual relationship was with Merchant.

Id., at 765-766.

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27 Analysis of the *Williamson* Factors as to the SOLT Entities and SOE

Factor 1

Do the agreements among the SOLT Entities and SOE leave so little power in the hands of the partners or venturers that the arrangement in fact distributes power as would a limited partnership?

The SOLT Entities and SOE are all controlled by Operating Agreements.⁵

As set forth in the Uniform Limited Liability Company Act of 1996 (the "LLCACT"):

(a) Except as otherwise provided in subsection (b), all members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the company and the conduct of its business, and to govern relations among the members, managers, and company. To the extent the operating agreement does not otherwise provide, this chapter governs relations among the members, managers, and company.

S.C. Code Ann. § 33-44-103(3)(i).

The removal and replacement of the manager is not addressed in any of the Operating Agreements. However, the LLCACT provides that unless not otherwise set forth in the operating agreement, "a manager: (i) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members." S.C. Code Ann. § 33-44-404.

Each Operating Agreement contains provisions that enable the investors to protect their interests. The following provisions are in each of the Operating Agreements for the SOLT Entities, including SOE (emphasis added):⁶

⁵ The various Operating Agreements refer to Articles of Organization. I note that no Articles of Organization were placed in the Hearing record.

⁶ The various operating agreements are in the record as follows: SOLT I at Exhibit 10, SOLT II at Exhibit 2, SOLT IV at Exhibit 4, SOLT V at State Exhibit #14, SOLT VII at R Exhibit 3, and SOE at Exhibit 11.

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(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) [payment by non-defaulting members of defaulting members obligations].

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.

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.

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

The LLC ACT gives the members the following rights to information:

§ 33-44-408. Member's right to information.

(a) A limited liability company shall provide members and their agents and attorneys access to its records, if any, at the company's principal office or other reasonable locations specified in the operating agreement. The company shall provide former members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(b) A limited liability company shall furnish to a member, and to the legal representative of a deceased member or member under legal disability:

As discussed earlier, there is not an operating agreement for SOLT III in the record and there was not a SOLT VI. However, as regards SOLT III, it was formed on the basis of SOLT I.


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(1) without demand, information concerning the company's business or affairs reasonably required for the proper exercise of the member's rights and performance of the member's duties under the operating agreement or this chapter; and

(2) on demand, other information concerning the company's business or affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(c) A member has the right upon written demand given to the limited liability company to obtain at the company's expense a copy of any written operating agreement.

By default, since the Operating Agreements are silent, the members can replace the managing member by majority vote. The *per capita* majority required for action ranges from 3 in a 5 member entity to 13 in a 24 member entity.

The overlapping and partially overlapping memberships, and testimony of how the members knew each other make it reasonable that the members could effectively communicate with each other and exercise their retained powers.

Trial testimony indicates that members knew each other for the most part. As to SOLT I, Mr. McIntyre testified that "Silver Oak I was a small group of members that were also on a - - if not a daily conversation, at least a weekly conversation of what was going on. So, that was a - We made, collectively made, decisions on a lot of things." Tr1, p. 67, ll. 21-25. As to SOLT IV, McIntyre testified "I'm fairly confident that each and every one of them [SOLT IV members] were one degree of separation from an existing member, a friend or a family member." Tr2, p. 565, ll. 6-8. As to SOLT II, Mr. McIntyre testified

We had all of the Silver Oak I people. We had my friend Phil Cart. We had Murray's pal Jim Delamarter. We had, you know, Jim brought somebody. You know, Dr. Vitek brought in a couple of her friends, local friends and maybe relatives.

Tr2, p. 558, ll. 7-11.

Mr. McIntyre referred to Jim Paris, Dr. Vitek and Murray Reed as friends. Tr2, p. 540, ll. 1-3.

Mr. McIntyre testified that Martin Rehder was Murray Reed's business partner, Tr2, p. 540, ll. 9-11.

Mr. Silver testified "I became friendly over time." with Jim Paris "through whom I later met Jack McIntyre." Tr2, p. 91, l. 18 - 20.

Mr. Finn testified that he learned about Silver Oak land operations through his "friend" Jim Paris. Tr2, p. 195, ll. 1-5. Mr. Paris testified that Mr. Silver and Mr. Finn were real estate customers of his. Tr1, p. 418, ll. 13-21.

Mildred Fauerby is Dr. Vitek's mother. Tr2, p. 575, ll. 13-14. Mr. Paris testified that his participation was through Bourbon Place, LLC. Tr2, p. 420, ll. 12-13.

By analogy to another general partnership case, it is not necessary that all members be active or sophisticated.

The fact that some of the general partners may have remained passive or lacked financial sophistication or business expertise does not affect the result. General partners who are capable of exercising significant managerial powers cannot convert their partnership interests into a security merely by remaining passive. [citation omitted] Moreover, members of a general partnership who lack financial sophistication or business expertise nevertheless may exercise intelligently the powers conferred on them by the partnership agreement and state law. They are entitled to receive financial reports and have the right to inspect and obtain copies of partnership books and records. [citation omitted]. To the extent a partner needs advice or assistance in the exercise of his powers, he is of course free to consult with more knowledgeable partners or third persons, or to employ accountants and lawyers. In a word, a general partner is not

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31 dependent only on the degree of his own business sophistication in order to exercise intelligently his partnership powers.

Rivanna Trawlers Unlimited v. Thompson Trawlers, Inc., 840 F2d 336, at 242, footnote 10.

I recommend that the Securities commissioner find, based on the (1) requirement of a simple majority of the members to replace the manager, (2) the small number of votes required to replace the manager due to sizes of the memberships and the per capital majority rule, (3) the requirement that a majority approve any additional capital contributions, (4) the protections afforded the members by requiring unanimous consent for any member to make loans to the entities, (5) the inability to amend the operating agreements without unanimous consent, (6) the requirement that new members be admitted only upon unanimous consent, (7) the access to financial information afforded by the Operating Agreements and the LLC ACT, (8) the interrelatedness of the various entities, and (9) the relationships between the members, that the preponderance of the evidence shows that the members have retained enough powers to protect their interests, to replace the management should they so elect, and to confer with each other to do so should they so elect.

I also recommend that the Securities Commissioner find, by the preponderance of the evidence and given the terms of the Operating Agreements, that the SOLT Entities and SOE are not entities "where the investor lacks any real control over the operation of the enterprise." *Majors*, 644 S.E.2d at 717-718, citing *O'Quinn v Beach Associates*, 272 S.C. 95, 105, 249 S.E.2d 734, 739 (1978) and that this is not a case where the "investor was required to put up his money and then sit back while nature and the promoter took their courses." *O'Quinn*, 272 S.C. at 106, 249 S.E. 2d at 739.

Factor 2: Do the investors in the SOLT Entities and SOE have the sophistication and wherewithal to exercise their retained powers such that the powers are not illusory?

The facts here are similar to what the South Carolina Court of Appeals recognized in *Snedigar*. Various members of the SOLT Entities and SOE were business people and included attorneys. Summaries of the backgrounds of the principals of SOE are attached to the SOE Business plan (R. Exhibit 5). Note that certain of these individuals are also members of various of the SOLT Entities as well as SOE:

Richard A. Silver: Financial Advisor. Silver was Treasurer of the Fidelity funds and was an employee of Fidelity Management Research (1997). Currently, he serves on their Board of Directors of The Korea Fund, Inc. and also serves as the Chairman of the Audit Committee of that Board. Before joining FMR, Mr. Silver served as Executive Vice President, Fund Accounting & Administration at First Data Investor Services Group, Inc. (1996-1997). Prior to 1996, Mr. Silver was Senior Vice President and Chief Financial Officer at The Colonial Group, Inc. Mr. Silver also served as Chairman of the Accounting/Treasurer's Committee of the Investment Company Institute (1987-1993).

Mr. Silver is a member, either directly or through his IRAs, in SOLT IV, SOLT V, SOLT VII, and SOE.

Paul Finn, JD: Legal Advisor. Finn is Chief Executive Officer of Commonwealth Mediation and Conciliation, Inc. of Brockton, Massachusetts. Finn has mediated and/or arbitrated more than 5,000 claims. He also serves as the chief administrator and marketing executive for the company. Finn graduated from Stonehill in 1971 with a bachelor's degree in history. He received a J.D. from New England School of Law in 1976 and a master's degree in government from Harvard University in 1990.

Mr. Finn is a member in SOLT IV, SOLT VII, and SOE.

James R. Paris: Real Estate Advisor. Paris owns and operates Hilton Head Real Estate.com. His many accomplishments include: Former National Membership Director of Sales, Sea Island, GA; Former Director of Sales Greenbrier Sporting Club; Member Gold Level Prudential Chairmen's Circle; International Presidents Premier Club Member 2001 (awarded to

33 only the top 1% of Coldwell Banker agents worldwide); Accredited Buyers Representative (ABR); Life Member Distinguished Sales Award Winner; Former State Director SC Association of Realtors; Former Board of Directors Hilton Head Area Association of Realtors; Former Board of Trustees Hilton Head MLS.

Mr. Paris, either directly or through Bourbon Place Partners, LLC is a member of SOLT I, SOLT II, SOLT III, SOLET IV, and SOE

Brian Mone. JD: President of Commonwealth Mediation and Conciliation, Inc. of Brockton, Massachusetts. University of Massachusetts-Amherst, B.A. 1978 Suffolk University School of Law, J.D. 1982. Mone is a practicing attorney for 29 years and guest lecturer on mediation and arbitration.

Mr. Mone is a member of SOE.

David Short: Ritz-Carlton Club regional vice president of sales operations for the East Region. Short holds a Bachelor of Arts degree from Washington and Lee University in Lexington, Va

Mr. Short is a member of SOE.

Susan B. Vitek. DDS: Science Advisor. Vitek conducts research and does grant writing on biomass production. She operates a chemistry and biology tutoring service. She was President and sole owner of her dental practice from 1979-1994 in Illinois. Vitek graduated from University of Northern Iowa with a degree in chemistry in 1976 and received a D.D.S. from Northwestern University Dental School in 1979.

Dr. Vitek, through Dave Jeff LLC, is a member of SOLT I, SOLT II, SOLT III, SOLT IV, and SOLT VII and has an interest in SOE through her interest in SOLM.

Mr. Hartman, a member of SOLT IV, testified that he had experience in tree farming, having owned a Christmas tree farm and harvesting hardwood trees. Tr2,p.11, l. 25 – p.12, l. 7.

Mr. McIntyre testified that Jim Paris “brought the local market expertise in real estate to the table” (Tr2, p. 543, ll. 12-13) and that “Murray Reed had sold, managed a marketing company in real estate for 25, 30 years.” Tr2, p. 543, ll. 13-15.

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I recommend that the Securities Commissioner find, by the preponderance ³⁴ of the evidence and incorporating the findings for Factor 1 in addition to the business acumen and backgrounds set forth in this section, that the investors in the SOLT Entities and SOE have the sophistication and wherewithal to exercise their retained powers such that the powers are not illusory.

Factor 3: Are the investors in the Silver Oak Entities and SOE so dependent on some unique entrepreneurial or managerial ability of the promoter or manager that they cannot replace the manager of the enterprise or otherwise exercise meaningful partnership or venture powers?

The earlier findings for Factor 1 and Factor 2 are incorporated into this section. There were at least two investors with real estate expertise (Paris and Reed), at least two attorneys (Mone and Finn), a fund treasurer and also chairman of a fund's audit committee of the board of directors of the fund (Silver), a person with a science background (Vitek), a person with at least some tree farming experience (Hartman) as well as other sophisticated business persons.

Testifying about SOE, McIntyre testified that Mr. Paris "did everything," "he helped at the greenhouse," and "Jimbo, being a native Carolinian, was helpful in getting me some of the appointments" with meetings with government officials. Tr1, p.149, ll. 2-22. Mr. McIntyre testified with respect to Brian Mone that "He was several things. He was trying to raise money, like we all were. He was bringing in trying to bring in capital." and that "He also accompanied Paul [Finn] and I on a trip to England to meet with Drax. We had a meeting with, at the time, the largest energy producer in the United Kingdom, and we met with their renewable energy guy." Tr1, p. 176, ll. 7-23.

35 Paul Finn testified “No” in response to the question: “At the time that you invested [in SOE], did you think that this was going to be another passive investment?”
Tr2, p. 203, ll. 1-3

As to additional expertise, *see infra* with regard to Mr. Parish and Mr. Reed’s real estate experience and Dr. Vitek’s role as “scientist.”

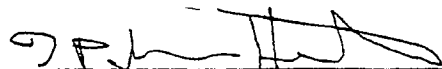
Investors were sophisticated business people with a wide range of experience.

I recommend that the Securities Commissioner find by the preponderance of the evidence that given the business acumen of the various members, the legal backgrounds of certain members, and the real estate and science backgrounds of certain of the members that the members are not dependent upon unique entrepreneurial or managerial ability of the manager such that the manager cannot be replaced in the exercise of meaningful venture powers.

CONCLUSION

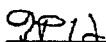
Based on the analysis set forth within along the lines of *Williamson*, I recommend that the Securities Commissioner find by the preponderance of the evidence that the limited liability company interests which constitute the investments at issue in this matter are not securities because they are not investment contracts under the facts of this case and South Carolina law.

NOW THEREFORE, for the reasons set forth herein, I recommend to the Securities Commissioner that the Cease and Desist Order be dismissed.



T. Parkin Hunter
Hearing Officer

May 6, 2014


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**ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF SOUTH CAROLINA**

IN THE MATTER OF:)	File No: 12059
)	
John M. McIntyre and)	
Silver Oak Land Management, LLC,)	ORDER
)	
Respondents.)	
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BACKGROUND

On April 19, 2013, the Securities Division of the Office of the Attorney General of the State of South Carolina (the "Division") issued an Order to Cease and Desist naming John M. McIntyre and Silver Oak Land Management, LLC ("SOLM") as Respondents.¹ The Order to Cease and Desist alleged that on at least 39 occasions, the Respondents, jointly and severally, committed violations of section 501 of the South Carolina Uniform Securities Act (the "Act"), S.C. Code Ann. § 35-1-501. Order ¶ 43 at p. 7. The Division contended that the Respondent LLC managers had violated state law in their dealings with persons who invested in the manager-managed LLCs they controlled. The Respondents filed a timely Answer and Request for Hearing on June 3, 2013.

I appointed a Hearing Officer, and a four-day hearing was held where witnesses were heard and evidence was presented. The hearing concluded on October 3, 2013. On May 6,

¹ SOLM is the manager for each of the manager-managed LLCs; Dave Jeff, LLC and John M. McIntyre are the members of SOLM. Dave Jeff, LLC is a single-member LLC whose member is Susan Vitek. [7/30/13 Transcript, pp. 47-48].

2014, the Hearing Officer issued his Report and Recommendations. He recommended that I “find that the limited liability company interests which constitute the investments at issue in this matter are not securities” and accordingly dismiss the Cease and Desist Order. *Report and Recommendations* p. 1.

SUMMARY OF FINDINGS

Having independently reviewed the underlying facts and pertinent legal authorities, I disagree with and decline to follow the Hearing Officer’s recommendation. For reasons discussed below, I conclude that the Hearing Officer erred in holding that the investments at issue in this matter are not securities. In so holding, the Hearing Officer analyzed the investments in question as if they had been issued by an entity doing business as a general partnership. I conclude this analysis was incorrect.

The investment units in question were LLC membership interests issued by manager-managed LLCs. As discussed below, a manager-managed LLC is an entity that is, in key respects, very different from a general partnership. Among the major differentiating attributes are limited liability protection for the owners and decision-making by use of a centralized management structure. Hence, in terms of its key attributes, a manager-managed LLC is set up much like a corporation or a limited partnership. The non-manager members of a manager-managed LLC are closely akin to corporate shareholders or limited partners in a limited partnership.

Investments offered and sold to corporate shareholders or limited partners traditionally have been viewed as securities, whereas investments offered and sold to partners in a general partnership have not. Thus, while investment offerings to limited partners have been presumptively viewed as covered by the securities laws, the opposite presumption has applied

to partners is a general partnership. When the appropriate presumption is applied to the investments offered and sold in this case, which were issued by entities that are limited partnership-like in nature, it is clear that the investments at issue are most appropriately classified and regulated as securities. A review of the facts discussed below confirms the validity of this conclusion.

Accordingly, I conclude that dismissal of this matter at this juncture is inappropriate. The Hearing Officer is directed to make a Report and Recommendation as to whether any violation of S.C. Code Ann. § 35-1-501 has occurred.

ANALYSIS OF MANAGER-MANAGED LLC UNITS

INTRODUCTION

There is nothing novel in the view articulated here that investment units issued to members of manager-managed LLCs should presumptively be viewed as falling within the purview of the securities laws. "For LLC memberships, the generally held presumption is that memberships in member-managed LLCs are not securities (by analogy to general partnerships) but those in manager-managed LLCs are." Scott Y. Barnes *et al.*, *South Carolina Limited Liability Companies and Limited Partnerships* 97 (South Carolina Bar Cont. Legal Education eds., 4th ed. 2012). Indeed, it has long been the position of the South Carolina Securities Commissioner that interests in manager-managed limited liability companies constitute securities absent strong evidence demonstrating the investment purchaser's retention of rights of control. See *Limited Liability Company Membership Interests as Securities*, Office of the South Carolina Secretary of State Statement of Policy 95-2 dated June 16, 1995.

The 1995 Policy Statement put forward two rebuttable presumptions, each of which accords with the weight of authority: (1) for member-managed LLCs, the Policy Statement presumed that membership interests are not securities; (2) for manager-managed LLCs, the Policy Statement presumed the opposite, that the interests are securities. Under the Policy Statement, to be classified as a member-managed LLC, each member must have “practical and meaningful participation in and control over the managerial decisions” of the LLC. The Policy Statement also envisioned member-managed LLCs as entities where neither the articles of organization nor the operating agreement appoint managers or limit the ability of members to manage the LLC. I conclude the reasoning and analysis in the Policy Statement was sound. In the case of the instant LLCs, it is undisputed that each of the LLCs’ operating agreements specified they were manager-managed. As discussed below, facts in the record confirm that the LLCs actually were managed in that fashion by Respondents. Thus, presumptively, the memberships sold by the manager-managed LLCs were securities.

THE SUBJECT LLCs WERE RUN LIKE LIMITED PARTNERSHIPS

“Unlike general partnership interests, the interest of a limited partner will almost always be a security.” Mary Ann Frantz, 1 ADVISING SMALL BUSINESSES § 16:24 (2014). In general partnerships, the partners must shoulder the risk of open-ended personal liability for any wrong committed by their partnership or by a partner engaged in conduct that was either authorized or at least was for “apparently carrying on in the usual way the business of the partnership.”² This risk of personal liability exposure gives the partners in a general partnership a strong incentive, for their own protection, to participate in management and to

² See S.C. Code Ann. § 33-41-310(1).

monitor business activities on an ongoing basis. In contrast, limited partners are more entitled to be passive investors because they do not face unlimited personal liability for entity-related misconduct in which they are not personally involved.

Limited partnerships feature centralization of control in the hands of a manager, the general partner, with the limited partners playing the role of generally passive investors. Under the limited partnership statute, however, even in a limited partnership the limited partners are entitled to exercise a measure of control in numerous ways without participating in the "control of the business" and thereby sacrificing their status as limited partners.³

³ Thus, under S.C. Code Ann. § 33-42-430(b), limited partners are given the right to take numerous actions to protect their interests or further the partnership's interests, including advising the general partner about business matters, proposing and voting for the general partner's removal, and many other actions. The full test of §33-42-430(b) follows:

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one or more of the following:

(1) being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director, or shareholder of a general partner that is a corporation;

(2) consulting with and advising a general partner with respect to the business of the limited partnership;

(3) acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;

(4) taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;

(5) requesting or attending a meeting of partners;

(6) proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:

(i) the dissolution and winding up of the limited partnership;

(ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership;

(iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) a change in the nature of the business;

(v) the admission or removal of a general partner;

(vi) the admission or removal of a limited partner;

(vii) a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;

(viii) an amendment to the partnership agreement or certificate of limited partnership;

(7) winding up the limited partnership pursuant to Section 33 42 1430; or

The management scheme used by the LLCs managed by Respondents fits the limited partnership mold. The investor-members tended to be passive investors, and control was claimed and exercised by the designated managers, as it would be a general partner in a limited partnership. One of the Respondents, Mr. McIntyre, served as the promoter for the subject LLCs. The management company he operated, SOLM, was the appointed manager of each manager-managed limited liability company involved in this matter. In other words, SOLM, under Mr. McIntyre's leadership, performed basically the same management functions for the LLCs as a general partner would perform for a general partnership.

As discussed above, in a member-managed limited liability company each member has equal rights in the management and conduct of the company's business, whereas in a manager-managed company it is only the managers (in this case, the Respondents) with equal rights in the management and conduct of the business. S.C. Code Ann. § 33-44-404(a) & (b). Furthermore, except for conduct falling in a narrow band of exceptions set forth in S.C. Code Ann. 33-44-404(c), the statute decrees that "any matter relating to the business of the company may be exclusively decided by the manager." S.C. Code Ann. § 33-44-404(b)(2) (emphasis added). The Reporter's Comment to South Carolina's LLC law provides that the members of a manager-managed limited liability company "have no rights in the management and conduct of the company's business unless otherwise provided in an operating agreement." S.C. Code Ann. § 33-44-404 cmt.

(8) exercising any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection (b).

(c) The enumeration in subsection (b) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the control of the business of the limited partnership.

The LLC Documentation Vests the Respondents with Control

For the limited liability companies at issue in this case, the non-manager members are given no appointment of managerial authority to act on behalf entities under their operating agreements. On the contrary, the LLC operating agreements uniformly state at paragraph 6.1, “[e]xcept as otherwise set forth herein, all decisions effecting [sic] the operations of the Company shall be decided by consent of the Manager.” See, e.g., State’s Exhibit 4, p. 5, (Silver Oak Land Trust IV, LLC Operating Agreement); State’s Exhibit 10, p. 4 (Silver Oak Land Trust LLC, a/k/a SOLT I, Operating Agreement) (emphasis added). The Respondent-managers’ authority was very broad. Under the operating agreements, the manager had the authority to “[e]ngage 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” LLCs. See, e.g., State’s Exhibit 4, p. 5; State’s Exhibit 10, p. 4.

The term “Manager” is defined in each operating agreement as being one of the Respondents. See, e.g., State’s Exhibit 4, p. 1, State’s Exhibit 10, p. 1. The LLC’s operating agreement explicitly curbs the ability of members to participate meaningfully in the management of the company. Through the documentation they originated, the manager(s) in this case had the sole ability to manage each company. It is reasonable to conclude that under the management scheme Respondents established and used, the Respondent-managers’ efforts were performe the “undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.” *S.E.C. v. Glenn W. Turner Enterprises, Inc.*, 474 F.2d 476, 482 (9th Cir. 1973). Respondents’ control power was all-encompassing.

The LLCs Were Managed Consistent with the Operating Agreements

Respondents, through Mr. McIntyre, exercised control in forming and operating the LLCs. In setting up the LLCs, Respondents functioned as promoters for the LLCs. When inviting investment subscriptions, Mr. McIntyre reserved the right in his "sole discretion" to decide whether "to accept or reject any offer [or 'membership'], in whole or in part." *See, e.g.,* State's Exhibit 3, p. 2; Exhibit 5, p. 4; Exhibit 7, p. 8. From day one, one of the Respondents was the appointed manager of each manager-managed limited liability company involved in this matter. By definition, from each one of the LLCs' inception, Respondents furnished the essential managerial efforts which affect and determine the failure or success of the enterprise.

The record reflects that the LLCs actually were managed in accordance with the documentation, i.e., by the designated manager, SOLM, which was headed by Mr. McIntyre. Mr. McIntyre promoted the LLCs and controlled SOLM, the LLCs' manager. He testified that he was the one who would negotiate purchase price on the properties that he, himself, researched and identified. [7/30/13 Transcript, pp. 63, 65, 81]. Further, he testified that he was the only one with use of debit cards associated with the company accounts. [7/30/13 Transcript, pp. 82, 103]. Under the applicable operating agreements, the crucial management decision-making that determined the financial viability and profitability of the LLCs was plainly delegated to SOLM, which operated under Mr. McIntyre's guidance.

It is evident that the reality of the LLC's management structure and procedures followed the limited partnership model where control is concentrated in the hands of a

manager who plays the key role in making policy and operating decisions. Copies of the membership unit offering documents that the Respondents sent out while attempting to raise money from investors were introduced into the record. [State's Exhibits 3, 5, 6, 7]. None of those offering documents indicate that any member-investors being solicited were expected to shoulder any managerial duties after investing. [State's Exhibits 3, 5, 6, 7]. Any potential investors having questions about the offerings were told to call Mr. McIntyre for answers—no one else. [State's Exhibits 3, 5, 6, 7].

None of the offering documents mention or even suggest the requirement or need for any member-investor other than the manager-member to supply management services to the LLC. In fact, the offering documents either state or suggest the contrary. For example, Silver Oak Land Trust ("SOLT") V's offering materials explicitly state that "Silver Oak Land Management, LLC [the managing member], will generate income for Silver Oak Land Trust V, LLC." [State's Exhibit 6]. Respondent McIntyre further testified that when "soliciting interest in participation" in the LLCs he did not vary from the assertions found in the membership unit offering documents and that it was the standard offering. [7/30/13 Transcript, pp. 144-45].

At the Hearing, the Respondents offered James Russell Paris to show that the members played a role in the management of the company. [10/01/13 Transcript, Testimony of James Russell Paris]. However, Mr. Paris's testimony was not helpful in this regard. Mr. Paris testified that McIntyre had carte blanche with his money, as was consistent with prior financial transactions they had entered into together. [10/01/13 Transcript, p. 430]. Further, Mr. Paris testified that he had zero knowledge of the tree farming business and played no

role in making any managerial decisions dealing with SOLT I tree farming or land improvement. [10/01/13 Transcript, p. 430]. He testified he did not “participate directly in the management of the other SOLT entities in which [he] had an ownership interest. [10/01/13 Transcript, p. 424].

In describing his dealings with the Respondents, Mr. Paris did testify that he listed property for sale. The listing “was in the scope of [his] employment as a real estate broker . . . as opposed to anything relevant to SOLT I.” [10/01/13 Transcript, p. 431]. Mr. Paris’s role in such a brokerage transaction was to be in his capacity as a licensed real estate broker, and he would have received a commission if property had been successfully sold. [10/01/13 Transcript, p. 430-31]. As of the Hearing date, the property had not been sold. [10/01/13 Transcript, p. 418]. There is no proof that Mr. Paris offered any unique or essential managerial skills to SOLM or the LLC as a real estate broker that could not have been provided by some other licensed broker. In fact, Mr. Paris testified he was the third or fourth broker who listed the property. [10/01/13 Transcript, p. 418]. The record simply establishes that Mr. Paris acted as an agent of the company for the purposes of listing property for sale.

Mr. Paris denied participating directly in the management of SOLT entities. [10/01/13 Transcript, p. 424]. He denied being involved in any decisions about tree farming or improving the land. [10/01/13 Transcript, p. 430]. If Mr. Paris had been a limited partner his actions would not have disqualified him from limited partner status on the ground that he participated in control. This is because by law limited partners properly may participate in the conduct of the limited partnership’s affairs by being an agent or employee or contractor for the limited partnership or by advising or consulting with the general partner-manager. S.C. Code Ann. § 33-42-430(b)(1) & (2). Accordingly, I find that through his real estate brokerage

activities Mr. Paris did not act as a manager or participate in the control of any LLC. I further find that his limited efforts were not essential managerial efforts which affected the failure or success of any of the subject LLC enterprises.

Phil Hartman, an investor in SOLT IV, likewise had little or no involvement of a managerial nature. He testified that at the time he invested he did not contemplate having an active role in the company. Further, while he offered Mr. McIntyre assistance related to possibly obtaining grants through the Department of Agriculture, his offer was never accepted and he never did participate in the management or business of the company. [10/01/13 Transcript, pp. 13-14, 28]. So far as Mr. Hartman was initially aware, Jack McIntyre was solely responsible for the management of SOLT IV. [10/01/13 Transcript, p. 13, 14].

As a non-manager, Mr. Hartman was an outsider, and he was treated as such. When he became concerned about Mr. McIntyre's management behavior, Mr. Hartman sought and was denied access to information concerning his investment. He testified, "When we started hearing that there may be problems with the SOLT IV I called Jack [McIntyre] asking him for a list of all the financial records, including contracts for selling timber cuttings, as well as information on rentals for hunting land. He said he would give that to me. It did not come. I ended up writing a letter, sending him an email asking for it again, and I still have not received that information." [10/01/13 Transcript, p. 28].

Rich Silver is another investor in the SOLT LLCs who appeared at the Hearing. Mr. Silver testified that in connection with each of his investments related to this matter, namely investments in SOLT IV, V, VII, Silver Oak Energy, and SOLT I, that he had no intention to play an active role in the company and never did. [10/01/13 Transcript, p. 93-94, p. 102-03, p. 107-108, 113-114, 121]. Mr. McIntyre was identified by Mr. Silver as the man who provided

the essential services needed by the LLCs.⁴ Based on how the SOLT offering had been sold to him, Mr. Silver's impression was that Mr. McIntyre was the key and in fact sole service provider. "He was going to do all the work. I didn't want to do any of the work." [10/01/13 Transcript, p. 101]. Further, Mr. Silver did not know anyone else who played a major management role in any company except for Susan Vitek. [10/01/13 Transcript, p. 93-94, 102-103, 108]. Ms. Vitek was associated with SOLM through another limited liability company. [07/30/13 Transcript, p. 47-48].

As was the case with Mr. Hartman, Mr. Silver recounted at the hearing having trouble getting information concerning his investment from Mr. McIntyre. "[T]he investors in Silver Oak Energy ("SOE") uncovered some financial irregularities that have occurred since SOE's creation. When the first of these irregularities came to light, information and documentation was requested of JM. These requests were initially ignored, but instead various and conflicting explanations were provided by JM as to what actually had transpired, much of which were later proven false." [10/01/13 Transcript, p. 141].

Another investor, Paul Finn, testified that in connection with his investments in SOLT IV and VII, he had no intention to play an active role in the company and never did. [10/01/13 Transcript, p. 196, 200]. In regards to Silver Oak Energy, Mr. Finn testified that he did contribute some services, but he had no access to information about the company, did

⁴ "In learning about how these timber LLCs worked that Jack had put together, my understanding was that he created these. He researched and found property and that each LLC, as he formed each one, would own a single tract of timberland. And that the purpose would be to manage the timber over time for cutting and harvesting and that that would produce a current return. . . . The only name that appeared on the offering document for SOLT IV, to my knowledge, was Jack McIntyre's. There was no reference to Silver Oak Land Management in the SOLT IV offering. I never knew of or heard of Silver Oak Land Management at the time. And so in my understanding from conversations with Jack, is these were his companies that he created and that he managed by himself." [10/01/13 Transcript, p. 92-93].

not have access to the financial records of the company, and visited the farm only once. [10/01/13 Transcript, p. 204-206]. Further, he was located in Massachusetts working as a mediator. Finn was not located near the farm. [10/01/13 Transcript, p. 205]. When it came to whose efforts were essential to realizing a profit, Mr. Finn testified that he was dependent on the Respondents to grow, cultivate, and sell for profit Miscanthus grass. [10/01/13 Transcript, p. 277]. He testified that SOLM and Mr. McIntyre received thirty-five percent of the Silver Oak Energy business for "professional services," whereas he received no share for any services he contributed. [10/01/13 Transcript, p. 207-08]. Obviously the services contributed to Silver Oak Energy by Respondents were the essential managerial efforts which affect the failure or success of the enterprise.

With the lone exceptions of SOLM, McIntyre, and Susan Vitek, who functioned as a manager through her ownership of Dave Jeff LLC,⁵ none of the members of the companies intended to play an essential control or management role in the companies in which they invested. Nor is there evidence they were invited to play such a role when they were offered or sold their investments. Nor does the record disclose competent, credible evidence that they invested having had the inclination, desire, and ability to play a lead role in the management decision-making of the LLCs in which they invested. Likewise missing from the record is evidence proving that they ever took part in rendering any crucial services as part of the LLCs' management; on the contrary, the record reflects by a clear preponderance of the evidence that they looked to Respondents for such services. In the case of each LLC, it is evident that the

⁵ Dave Jeff, LLC was solely owned by Ms. Vitek and was a co-manager or SOLM with Respondent McIntyre. Thus, through Dave Jeff, Ms. Vitek had control power over the LLCs in question.

investors' profits, which they expected to gain from the LLCs in which they invested, were to be derived primarily from the efforts of persons other than the investor, namely Respondents.

Respondents Had and Exercised the Dominant Control Power

Central to the Hearing Officer's recommendation that I find the LLC members units not to be securities was a list of nine factors which, he concluded, "show that the members have retained enough powers to protect their interests, to replace the management should they so elect, and to confer with each other to do so should they so elect." *Hearing Officer's Report and Recommendations*, p. 18. I decline to accept the Hearing Officer's analysis. I find that those factors provide an inadequate foundation for holding that the non-manager LLC members of the manager-managed LLCs in this case were not offered and sold securities.

Most of the factors cited by the Hearing Officer consist of rights or powers that limited partners in limited partnerships may exercise under the South Carolina Uniform Partnership Act, or which are expressly granted to members of South Carolina LLCs by statute. These facts are important. Nobody can seriously contend that limited partnership interests are not presumptively securities. Thus, the fact that a member of one of the LLCs had the same rights that a limited partner can lawfully exercise is not a valid reason for finding the securities laws should not apply. Stated differently, if the existence of a specific right in the hands of a limited partner does not disqualify the limited partnership interest held from being a security, it should not be disqualifying if the same right is in the hands of an LLC member.

The first factor cited by the Hearing Officer was the requirement of a majority vote to replace the manager. South Carolina law allows limited partners to vote on the removal of a general partners, *see* S.C. Code Ann. § 33-42-430(b)(6)(v), and members in every South

Carolina LLC can remove managers by majority vote. S.C. Code Ann. § 33-44-404(3). That the LLC members held a right held by every South Carolina limited partner (who is presumed to have purchased a security) does not furnish any justification for holding that the LLC members were not offered and sold securities.

Nor does the fact that the LLC members enjoyed rights held by every other member or a South Carolina LLC furnish grounds for holding that the subject LLC members' investments should not be classified as securities. After all, the South Carolina Securities Act specifies that LLC memberships may be classified as securities. *See* S.C. Code Ann. § 35-1-102(29)(E) (stating that securities in the form of an "[i]nvestment contract" may include, among other contracts, an interest in a limited partnership and a limited liability company"). Thus, the existence of a right held by all South Carolina LLC members cannot provide a valid justification for picking and choosing between those LLC offerings that involve securities and those that do not.

The Hearing Officer also cited as a basis for his decision "the small number of votes required to replace the manager due to sizes of the memberships and the per capital [sic] majority rule." Yet per capita voting in manager-removal decisions is the rule in every South Carolina LLC. *See* S.C. Code Ann. § 33-44-40(3). ("[A] manager . . . must be . . . removed, or replaced by a vote, approval, or consent of a majority of the members." Again, a right held by all South Carolina LLC members cannot provide a valid justification for picking and choosing between those LLC offerings that involve securities and those that do not.

The Hearing Officer's suggestion that the existence of a relatively small number of members is an important factor influencing whether the securities laws should apply is noted

but is not accepted as a valid consideration. The Uniform Securities Act exists to provide protection to investors in need of the Act's protections. Therefore, the focus must be on the investors' need for protection, and that crucial central issue is not addressed or resolved by counting how many units are being offered or sold. Stated differently, if an LLC is manager-managed, the investments it issues presumptively are securities whether the number of member-buyers is few or many. I note that one of South Carolina's leading securities cases is *McGaha v. Moseley*, 283 S.C. 268, 322 S.E.2d 461 (Ct. App. 1984). That case involved a successful suit by a single investor in the face of a claim that the investment sold her was not a security. She recovered although she worked for the issuer and apparently was the only offeree and purchaser of the security in question. In *McGaha*, our Court of Appeals declared, "Since the securities laws are remedial in nature, courts have uniformly held they should be liberally construed to protect investors." *McGaha*, 283 S.C. at 273, 322 S.E.2d at 464.

Among the other factors cited by the Hearing Officer in support of his view that the LLC members had not purchased securities were the inability to amend the operating agreements without unanimous consent and the requirement that new members be admitted only upon unanimous consent. Yet again, both of those factors stem from statutory requirements applicable to every single South Carolina LLC. *See* S.C. Code Ann. § 33-44-404(c)(1) & (7). Because they are universal, they cannot properly provide a basis for distinguishing between LLCs when it comes to applying the securities laws. The same can be said of the Hearing Officer's reliance on the LLC Act's provisions guaranteeing LLC members access to information. *See* S.C. Code Ann. § 33-44-408. Limited partners also have

broad information rights, *see* S.C. Code Ann. § 33-42-60, but that does not provide a basis for disqualifying the partnership units from being classified as securities.

Also cited by the Hearing Officer as factors supporting a finding that the LLC members could protect their own interests were “the requirement that a majority approve any additional capital contributions [and] the protections afforded the members by requiring unanimous consent for any member to make loans to the entities.” It is not clear why these rights are significant. To the extent they protect against self-dealing transactions, they are not very important because breaches of fiduciary duty are expressly policed under the LLC statute. *See* S. C. Code Ann. § 33-44-409(b). In any event, the existence of a right to vote against the LLC raising capital or receiving a loan from a member are not considerations weighty enough to tip the scale in favor of depriving LLC members of the protections of the securities laws.

In further support of his position that the securities laws should not apply, the Hearing Officer also referred to “the interrelatedness of the various entities, and . . . the relationships between the members.” These factors are entitled to little weight as evidence in favor of the Hearing Officer’s conclusion. Indeed, the first factor actually cuts in the opposite direction, in that “the interrelatedness of the various entities” suggests the need for investors to receive full and fair disclosure about the consequences of that “interrelatedness” which could be subject to abuse and overreaching. In this case, it is clear Respondents controlled various interrelated LLCs. Because the entities were interrelated, the chances for conflicts of interest, self-dealing transactions, confusion of financial records, commingling of funds, misapplication of funds, and wrongful diversion of assets were increased, not decreased. Mr. McIntyre’s testimony

indicated that his disclosures when offering LLC unites to investors did not fully describe potential problems that might arise due to conflicts and self-dealing opportunities. For example:

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

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

Q When you were raising money for Silver Oak IV, did you . . . tell investors that you would use the money . . . to loan to yourself?

A I don't believe that ever came up.

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

A I don't believe that came up. [7/30/13 Transcript, p. 71.]

Due to the conflicts of interest that were lurking within the LLCs Respondents managed, the need for careful and complete factual disclosure via detailed offering documents was increased, not lessened. Likewise increased was the justification for providing greater fraud protection for investors, which is a key benefit the securities laws offer to the public. In truth, the interrelatedness of the various SOLT LLCs was more an invitation to mischief than a blessing. This is confirmed by a report in the record sent by one LLC member to others in October of 2012:

From the startup of SOE through this year there were many intercompany loans to and from the various SOLT entities. These are all improper and unexplained. In addition there were intercompany loans between and among the various SOLT entities, and probably many more - so far I have some records for SOLT I and no records for any of the other SOLTs. But, as of the end of 2011, per SOLT I's tax return, SOLT I has receivables from SOLT II of \$15,098, from SOLT IV of \$5,240, from SOLT V of \$1,850, and from SOLT VI (which doesn't even exist) of \$6,661. Also, SOLT I as of the same date has payables to SOLT III of \$407, SOLT VII of \$3,606 and SOE of \$37,500.

. . . . In the meantime, each SOLT entity is apparently totally out of money, and, in fact, each apparently owes the CPA firm that does the annual tax work the payment for last year-end's tax return preparation. Also, as

indicated above, several of the SOLT entities owe money to SOLT I, and SOLT I and SOLT V owe money to SOE. [Exhibit 18, p. 2]

As for the “relationships between the members,” the Hearing Officer suggests that all of the members of the LLCs were in contact on a regular basis and that this furthered their ability to protect their interests. In fact, the members were geographically dispersed and communications between them were not easy. Email communication to Mr. McIntyre exists in the record showing that members had to demand other LLC members’ contact information from the Respondents. [State’s Exhibit 16]. Requests for information were met with stonewalling. [State’s Exhibit 17, p. 2]. Further reflecting the investors’ distant relationships, once the Respondents provided the contact information, an email was sent starting with, “My name is Rich Silver - most of you do not know me, but we are all investors (Members) in one or more of the Silver Oak Land Trust (SOLT) entities” [State’s Exhibit 17] (emphasis added).

It appears that even the ability to communicate with the other investors was dependent on the cooperation of the manager in supplying contact information. [State’s Exhibit 16]. There was substantial evidence that the members had little personal acquaintance with each other. See [State’s Exhibit 18] (consisting of an email written to various LLC investors by Mr. Silver stating, “most of you know nothing about me.”). In any event, the record reflects overwhelming evidence that the LLC members such as Mr. Silver relied on the manager-members to produce the profit-making efforts that were the “undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.” *S.E.C. v. Glenn W. Turner Enterprises, Inc.*, 474 F.2d 476, 482 (9th Cir. 1973).

In summary, I decline to accept the Hearing Officer's analysis at p. 18 of his *Report and Recommendations*. I find that the LLC members were offered investments by Respondents in entities controlled by Respondents, that the entities were intended to be managed by Respondents, and that, upon investing, the non-manager LLC members tended to acquiesce in control over the operation of the LLCs being in the hands of the Respondent manager-members. Thus, I find that the LLC memberships were offered and sold securities within the coverage of the South Carolina Uniform Securities Act.

Below I consider some additional specific areas in which my analysis differs from that of the Hearing Officer.

THE WILLIAMSON CASE IS NOT CONTROLLING

In making his determination, the Hearing Officer basically got the applicable legal presumption reversed, treating the investments at issue as if they had been issued by a general partnership instead of by an entity much more akin to a limited partnership. He thus incorrectly relied primarily on *Williamson v. Tucker*, 645 F.2d 404 (5th Cir. 1981), *cert. denied*, 454 U.S. 897 (1981). The *Williamson* test, as stated by the Hearing Officer, holds that for an investment in a general partnership to qualify as an investment contract one of three factors must be met:

- (1) An agreement among the parties leaves so little power in the hands of the partner or venturer that the arrangement in fact distributes power as would a limited partnership,
- (2) The partner or venturer is so inexperienced and unknowledgeable in business affairs that he is incapable of intelligently exercising his partnership or venture powers, or
- (3) The partner or venturer is so dependent on some unique entrepreneurial or managerial ability of the promoter or manager that he cannot replace the manager of the enterprise or otherwise exercise meaningful partnership or venture powers.

Hearing Officer's Report and Recommendations, pp. 11-12 (quoting *Securities and Exchange Commission v. Merchant Capital, LLC*, 483 F.3d 747, 755 (11th Cir. 2007)).

In my opinion, *Williamson* offers little usable guidance when analyzing a manger-managed LLC. The case and its demanding three-part test apply to factual settings where investments have been sold to buyers who are general partners or joint venturers and who consequently have: (1) no limited liability protection,⁶ (2) a right to a say-so over management decisions,⁷ and (3) inherent power to bind the entity in the course of normal business dealings.⁸ As has been discussed, investments sold to buyers who are general partners or joint venturers presumptively are not securities. The investments in this case are different.

Specifically, like corporate shareholders and limited partners, members of a manager-managed LLC are different from general partners and joint venturers in each of these three key respects, in that they: (1) enjoy limited liability protection, (2) cede control over management decision-making to a central manager, and (3) typically have no authority by virtue of their ownership interest to conduct business on behalf of the entity. The Hearing Officer's reliance on *Williamson* accordingly was misplaced.

The *Williamson* test arguably provides some guidance in helping determine whether investments that facially would not be viewed as securities (like general partnerships or joint venture investments) might nevertheless qualify due to special circumstances. But it is of no

⁶ General partners are liable for the debts of the partnership. S.C. Code Ann. 33-41-370(A).

⁷ General partners all have equal rights in the management and conduct of the partnership business. S.C. Code Ann. § 33-41-510(5).

⁸ Each general partner has the authority to bind the partnership in the normal course of business S.C. Code Ann. 33-41-310(1).

use in evaluating whether investments that presumptively qualify as securities should be so treated. In truth, *Williamson* imposes an “extremely difficult factual burden” on claims that general partnerships are securities. *Williamson*, 645 F.2d. at 425. The Fourth Circuit stated that *Williamson* “identified a narrow exception to the strong presumption that a general partnership is not a security.” *Rivanna Trawlers Unlimited v. Thompson Trawlers, Inc.*, 840 F.2d 236, 240 (1988) (emphasis added). This case does not involve general partnerships or entities resembling general partnerships. There is no justification for placing an “extremely difficult factual burden” on the Division in a case such as this.

In applying the *Williamson* line of cases, the Fourth Circuit has acknowledged that “[g]eneral partnerships ordinarily are not considered investment contracts because they grant partners – the investors – control over significant decisions of the enterprise.” *Rivanna Trawlers Unlimited*, 840 F.2d at 240. As the federal district court explained in *Ak’s Daks Communications Inc., v. Maryland Securities Division*, 138 Md. App. 314, 331, 771 A.2d 487, 496-97 (2001):

The rationale for the *Williamson* presumption is that general partners have a legal right to participate in the management and control of the partnership and can promote its success through their efforts, and that even if they delegate their actual authority, they retain the apparent authority to bind the partnership. In addition, general partners remain liable for the acts of the partnership; therefore, they cannot expect to be passive investors who derive profits solely from the efforts of others.

The rationale for applying *Williamson* disappears when the unique setting applicable to joint ventures or general partnerships is not present. And, as has been noted, the instant case at issue does not involve a general partnership. Instead, as the Hearing Officer found at p. 6 of his *Report and Recommendations*, each of the limited liability companies in question is manager-managed. This is an important distinction.

Unlike the case with general partnerships, under South Carolina statutory law, “in a manager-managed [limited liability] company, a member is not an agent of the company for the purpose of its business solely by reason of being a member.” S.C. Code Ann. § 33-44-301(b). Further, unlike the case with partnerships, neither the members nor the manager are personally liable for a debt or liability of the company solely by reason of being or acting as a member or manager. S.C. Code Ann. § 33-44-303(a). Moreover, where the default setting in a general partnership is shared control, in a manager-managed limited liability company, with only very limited exceptions, “any matter relating to the business of the company may be exclusively decided by the manager . . .” S.C. Code Ann. § 33-44-404(b)(2). Therefore, none of the reasons for applying the *Williamson* presumption against finding an investment contract apply to this matter.

Likewise, wide of the mark were the Hearing Officer’s repeated citation to and reliance on *SEC v. Merchant Capital, LLC*, 483 F.3d 747 (11th Cir. 2007). In that case, the SEC alleged and proved that the registered limited liability partnership interests involved were securities. Registered limited liability partnership interests are a special category of investment in a partnership-style entity falling between general partnership and limited partnership memberships. In fact, in *Merchant Capital*, the SEC argued that investment contracts existed in the case because the “RLLP interests are more akin to limited partnership interests, which are routinely treated as investment contracts.” *Id.* at 755. Indeed, in holding the investments to be securities the court in *Merchant Capital* found it “significant” that the RLLP’s manager represented to third parties that the investments actually *were* limited partnership interests. *Id.* at 762. Although no such representation was made in this case, the

record reflects that there are compelling similarities between the manager-managed LLCs run by Respondents and limited partnerships.

**THE LIMITED PARTNERSHIP ANALOGY IS VALID –
THE LLC MEMBERSHIPS WERE SOLD AS INVESTMENT CONTRACTS**

Interests in manager-managed limited liability companies are more closely related to limited partnership interests than to general partnership interests. Limited partnerships involve a general partner or a group of general partners that retain the rights and powers associated with a partner in a general partnership. S.C. Code Ann. § 33-42-630(a). Likewise, in a limited partnership, the general partner(s), not the limited partners, have open-ended liability for the partnerships debts and obligations. *Id.* §33-42-630(b).

In exchange for getting protection from devastating personal liability, a limited partner in a limited partnership gives up many incidents of control to the general partner, just as corporate shareholders typically relinquish control to the corporation's board of directors. Similarly, in a manager-managed limited liability company, "any matter relating to the business of the company may be exclusively decided by the manager . . ." S.C. Code Ann. § 33-44-404(b)(2) (emphasis added). The members of a manager-managed limited liability company "have no rights in the management and conduct of the company's business unless otherwise provided in an operating agreement." S.C. Code Ann. § 34-44-404 cmt.

As we have seen, limited partnership interests generally are presumed to constitute securities and just as the threshold is high before general partnership interests are considered securities, the presumption that limited partnership interests are securities is equally high. *See Garrett v. Snedigar*, 293 S.C. 176, 181, 359 S.E.2d 283, 286 (Ct. App. 1987); *Williamson v. Tucker*, 645 F.2d 404, 423 (5th Cir. 1981).

In summary, I conclude it was error for the Hearing Officer to apply the *Williamson* test to analyze the manager-managed limited liability interests in the present case. The proper presumption to apply is that the manager-managed limited liability membership interests constitute securities. Absent strong evidence of legal and actual control by investors, this presumption governs. I find no compelling evidence of actual or intended control by the non-manager investors in the record. On the contrary, my review of the record reflects that in purchasing their LLC memberships the LLC investors made investments in a common enterprise with the expectation of profits to be derived primarily from the efforts of persons other than the investor, with those persons being Respondents.

I accordingly find the investment interests sold to them to be securities within the purview of S.C. Code Ann. § 35-1-102(29)(D) (defining a security to include “an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor.”). This conclusion is further amplified below.

THE LLC MEMBERSHIP INTERESTS SATISFY THE *HOWEY* TEST

Because this is a case of first impression before the Commission, I will explain why the LLC membership interests in this case qualify as investment contracts under the *Howey* line of cases and the South Carolina Uniform Securities Act.

When interpreting the Act, the courts may look for guidance in the interpretation of the federal securities laws. *Majors v. South Carolina Securities Commission*, 373 S.C. 153, 163, 644 S.E.2d 710, 716 (2007). The securities law must be applied flexibly. The need for flexibility is important because the securities laws were enacted to regulate the “countless and variable schemes devised by those who seek the use of the money of others on the promise

of profits.” *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 299 (1946). The securities laws serve the purpose of regulating “investments, in whatever form they are made and by whatever name they are called” and thus they contain broad definitions designed “to encompass virtually any instrument that might be sold as an investment.” *S.E.C. v. Edwards*, 540 U.S. 389, 393 (2004) (citations omitted). When determining whether an instrument fits within the Act’s definition of a security, that definition “should be liberally construed to protect investors.” *Gordon v. Drews*, 358 S.C. 598, 606, 595 S.E.2d 864, 868 (Ct. App. 2004) (citing *McGaha v. Mosley*, *supra*).

The Act defines a security by listing various items which qualify as securities, including an “investment contract.” According to the Act, the term “security” includes:

an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a “common enterprise” means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors.

S.C Code-Ann. 35-1-102(29)(D). As was noted at p. 15, *supra*, the Securities Act goes on to state that an “investment contract may include, among other contracts, an interest in a limited partnership, and a limited liability company . . .” S.C. Code Ann. 35-1-102(29)(E).

An investment contract has been defined at the federal level as a “contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party . . .” *W.J. Howey Co.*, 328 U.S. at 298-99. In fact, South Carolina’s Supreme Court has applied the “*Howey test*” in defining an investment contract. *Majors*, 373 S.C. at 162-67.

Since the *Howey* decision, federal decisions and the Act have eliminated the word “solely” or have lessened the requirement that the profits come “solely” from the efforts of others to “primarily” from the efforts of others or from the essential efforts of others. See *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 852 (eliminating the word “solely” from the recitation of the *Howey* test); S.C. Code Ann. § 35-1-102(29)(D) (“primarily from the efforts of a person other than the investor.”); *Majors*, 373 S.C. at 167 (“The key determination is whether the promoters’ efforts, not that of the investors, form the ‘essential managerial efforts which affect the failure or success of the enterprise.’”); *S.E.C. v. Glenn W. Turner Enterprises, Inc.*, 474 F.2d 476, 482 (9th Cir. 1973). (“[W]e adopt a more realistic test, whether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.”); *Bailey v. J.W.K. Properties, Inc.*, 904 F.2d 918, 920 (4th Cir. 1990) (“[T]he most essential functions or duties must be performed by others and not the investor.”).

As was shown above in discussing the factual record, there is no doubt that the profits, if any, generated by the investors’ LLCs in this case were destined to come “primarily” from the efforts of Respondents and not from the efforts of the investors. Applying the appropriate construction to the “investment contract” definition mandates that the investments in issue here be classified as securities.

The *Howey* test’s applicability in this matter turns on the last prong: “whether the promoters’ efforts, not that of the investors, form the essential managerial efforts which affect the failure or success of the enterprise.” *Majors*, 373 S.C. at 167, 644 S.E.2d at 718 (internal quotations omitted) (citing *Unique Financial Concepts*, 196 F.3d 1195, 1201 (1999))

(11th Cir. Fla.1999)). The higher factual burden of meeting one of the *Williamson* factors does not apply in this case. In my review of the Hearing Officer's *Report and Recommendation* and the accompanying record, it is clear that this test is satisfied.

Even using the *Williamson* test as guidance in determining whether the "efforts of others" prong of *Howey* is satisfied, the operating agreement, the facts in the record, and the inferences reasonably drawn all combine to prove that the manager-managed limited liability companies at issue distributed power as would a limited partnership. Thus, the first prong of *Williamson* is met with respect to each company.

As discussed above, the Hearing Officer listed nine factors that he viewed as supporting his finding that the first of the three *Williamson* tests had not been met. As has been noted, however, these factors listed by the Hearing Officer are either irrelevant or are entitled to little weight in a case such as this. The crucial question under *Howey* is whether the investors were induced to rely on a promoter or manager (which they unquestionably were) and whether the efforts extended by the party relied upon were the "undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise." *S.E.C. v. Glenn W. Turner Enterprises, Inc.*, 474 F.2d 476, 482 (9th Cir. 1973). In this case, the primary and undeniably significant efforts were being supplied by Respondents, particularly those coming from Mr. McIntyre. The crucial questions surrounding status of the investments as securities must therefore be answered, "Yes." Unquestionably, Respondents offered to provide and did provide the essential managerial efforts that the investors justifiably relied on to make a financial return on their investments.

Again, the members in the manager-managed limited liability companies at issue lack the authority to perform key management actions for the companies. In each of the companies at issue, the operating agreements provided the manager with the primary, if not the sole, authority and power to discharge the business of the company. The South Carolina Uniform Limited Liability Company Act and the language of the operating agreements neutered any ability of the members to play a major role in the management of the companies in which they invested. No grant of authority to act for the company exists in the operating agreements; therefore, according to the law, no authority exists. In this case, reality followed the form announced in the documents: the members never intended to play a role in the companies and never did play a leading role in the management of the companies. Plainly, the power distributed to the members was analogous to that found in a limited partnership.

SUMMARY

To summarize, I find and conclude that, (i) a membership interest in a manager-managed limited liability company is presumed to be an investment contract and that no competent, credible evidence sufficient to rebut the presumption has been presented; the membership interests are properly classified as investment contracts under S.C. Code Ann. § 35-1-102(29)(E), (ii) the *Howey* test is satisfied, and (iii) the record provides compelling evidence that at least one of the three *Williamson* factors is satisfied, which is sufficient to satisfy even the rigorous *Williamson* test. I thus hold that the manager-managed limited liability company interests at issue in this matter are securities.

ORDER

It is hereby ordered that the Hearing Officer is to make a Report and Recommendation to me within sixty (60) days of this Order consistent with this ruling regarding whether or not a violation or violations of S.C. Code Ann. § 35-1-501 occurred as it relates to an offer or sale of the securities at issue.

IT IS SO ORDERED this 12 day of September 2014.

By: Alan Wilson
The Honorable Alan M. Wilson
Securities Commissioner State of South Carolina

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:

John M. McIntyre and
Silver Oak Land Management, LLC,

Respondents.

RECOMMENDATION
(File No. 12058)

RECOMMENDATION

I recommend to the Securities Commissioner (the "Commissioner") that the following remedies be ordered:

- a. The Respondents immediately cease and desist from transacting business in this State in violation of the South Carolina Uniform Securities Act of 2005, S.C. Code Ann. § 35-1-101 *et seq.* (the "Act"), and, in particular, Section 35-1-501 thereof;
- b. Any exemption available to the Respondents under the Act be permanently revoked prospectively; and
- c. The Commissioner levy appropriate Civil Penalties in accordance with § 35-1-604 against Respondents in accordance with a maximum number of violations of 78.
- d. The Respondents pay the actual cost of the investigation and proceedings.

REMAND BACKGROUND

This matter came before me by hearing commenced on July 30, 2013, which continued on October 1 through October 3, 2013, in the offices of the Commissioner. Testimony

was taken and evidence was presented.¹ I issued my May 6, 2014, Report and Recommendations (the "Initial Report") to the Commissioner. My recommendation pursuant to the Initial Report was to "find that the limited liability company interests which constitute the investments at issue in this matter are not securities" and accordingly dismiss the Cease and Desist Order (the "Cease and Desist Order") issued April 19, 2013. The Commissioner issued an Order dated September 12, 2014 (the "Commissioner's Order"), wherein he found that the investments were securities and remanded this matter to me to make further findings in accordance with the Commissioner's Order. **THEREFORE**, I proceed in accordance with the Commissioner's Order from the conclusions of the Commissioner that the investments are securities. The issues that remain in this matter and are addressed in this subsequent order are whether or not the sales of the securities were in violation of § 35-1-501.

HEARING

Witnesses that appeared on behalf of the Securities Division of the State of South Carolina (the "Division") were Mr. Phil W. Hartman, Mr. Richard A. Silver, Mr. Paul Fin, Mr. James Russell Paris, and Ms. Sandra Matthews.

Mr. John M. McIntyre was called by the Division and by Respondent.

JURISDICTION

This matter was heard pursuant to Order Designating Hearing Officer (the "Order of Appointment") dated June 14, 2013, issued by the Commissioner in accordance with the Act.

The Order of Appointment grants the hearing officer the authority to hear the case and to take all actions he deems relevant or material to his recommending findings as to the matters alleged in the Cease and Desist Order.

¹ The hearing on July 30, 2013, was transcribed (Tr.1) by Sandra M. Snead. The hearing on October 1, 2013, through October 3, 2013, was transcribed (Tr.2) by Jennifer L. Thompson, CVR-M, Nationally Certified Verbatim Court Reporter.

BURDEN OF PROOF

The Act does not set forth the burden of proof the Commissioner must meet to prove that the remedies recommended should be implemented. The remedies are penalties and bars. This proceeding is not subject to the requirements of the South Carolina Administrative Procedure Act., § 35-1-604(c), South Carolina Reporter's Comment 3.

The South Carolina Supreme Court has looked to federal law for guidance for interpreting the Act. “[C]ases interpreting Section 12(2) of the Securities Act of 1933, while not binding authority on this Court [South Carolina Supreme Court], are looked to for guidance in interpreting the corresponding South Carolina Code provision with which we are dealing.” Bradley v. Hullander, 272 S.C. 6, 21, 249 S.E.2d 486, 494 (1978). In Bradley, the Court noted that the statute under consideration was taken almost verbatim from Section 12(2) of the Securities Act of 1933. 15 U.S.C.A. § 77L (2). I note that S.C. Code Ann. § 35-1-501 is not identical to Section 17A of the Securities Act of 1933, but for the purposes of this litigation, there is no reason to treat it as significantly different for purposes of using federal cases to provide guidance for interpreting the Act. With this in mind, the decisions of the U.S. Supreme Court and South Carolina courts show that the appropriate burden of proof to be applied in administrative securities actions is a preponderance of the evidence standard. The United States Supreme Court, *citing* Steadman v. SEC, 450 U.S. 91, 101 S. Ct. 999 (1981), stated “we upheld use of the preponderance standard in SEC administrative proceedings concerning alleged violations of the anti-fraud provisions.” Herman & MacLean v. Huddleston, 459 U.S. 375, 390, 103 S. Ct. 683, 691 (1983).

The United States Supreme Court has not required the higher standard of clear and convincing evidence in securities cases and no case in South Carolina has done so. Therefore, the preponderance of the evidence standard is the applicable standard.

CEASE AND DESIST ORDER

The Commissioner found in the Cease and Desist Order that:

43. On at least 39 occasions, the Respondents, jointly and severally, in connection with the offer, sale, or purchase of a security, directly or indirectly,
- a. Employed a device, scheme, or artifice to defraud;
 - b. Made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
 - c. Engaged in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

The Commissioner ordered the following relief pursuant to the Cease and Desist Order:

NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a), IT IS HEREBY ORDERED that:

- a. The Respondents immediately cease and desist from transacting business in this State in violation of the Act and, in particular, Section 35-1-501 thereof;
- b. Any exemption available to the Respondents under the Act is hereby permanently revoked prospectively; and
- c. The Respondents each pay a civil penalty in an amount not to exceed \$10,000 for each violation of the Act committed by that Respondent, and the actual cost of the investigation and proceedings. In the alternative, if a Respondent chooses to let this Order become effective by operation of law, that Respondent shall pay a civil penalty of \$50,000 for violating the Act as detailed in this Order.

NATURE OF RELIEF

This matter requires me to make determinations of whether the Respondents have violated § 35-1-501 in connection with the "offer, sale, or purchase of a security." Pursuant to § 35-1-604, the Commissioner may issue a cease and desist order and may impose a civil penalty in an amount not to exceed ten thousand dollars for each violation. Administrative enforcement actions under § 35-1-604 do not require culpability to be pled or proven. Official Comment number 6. I have not delineated every possible incident that contributes to a violation of § 35-1-501 in this recommendation and do not intend for the matters set forth herein to be considered an exhaustive list of possible impermissible actions by Respondents. The number of violations for purposes of this recommendation is the number of securities constituting interests in various limited liability companies sold and not each act of misappropriation of funds or other violations. My recommended finding as to the number of violations is seventy-eight.

FINDINGS OF FACT

As to matters delineated as "recommended findings," they should be construed as findings of fact or conclusions of law as appropriate. For factual matters that are not referenced to the record in the body of this report, see the transcripts of record and the exhibits which are incorporated into this report.

Respondent John M. McIntyre ("McIntyre"), individually or through Silver Oak Land Management, LLC ("SOLM") as Manager formed seven limited liability companies (collectively, the "SOLT Entities") pursuant to the South Carolina Uniform Limited Liability Company Act of 1996.² S.C. Code Ann. § 33-44-101, *et seq.* Six of the SOLT Entities (SOLT I,

² The various operating agreements are in the record as follows: SOLT I at Exhibit 10, SOLT II at Exhibit 2, SOLT IV at Exhibit 4, SOLT V at State Exhibit #14, SOLT VII at R Exhibit 3, and SOE at Exhibit 8. There is not an operating agreement for SOLT III in the record and there was not a SOLT VI. However, as regards SOLT III, it was formed on the basis of SOLT I. Note that there were two court reporters and exhibit numbering is not consistent.

SOLT II, SOLT III, SOLT IV, SOLT V, and SOLT VII) were formed for the purpose of purchasing and managing tracks of timberland.³ State's Exhibits 2, 4, 8, 10, 14, and Respondent's Exhibit 3. Silver Oak Energy ("SOE") was formed for the purpose of growing miscanthus grass as a renewable fuel source. Tr.1, p. 95, Respondents' Exhibit 5. The SOLT Entities owned land and had operations in various locations in North Carolina and in South Carolina. SOLT I made a secondary offering and brought in three new members after SOLT I was formed.

Each company is manager managed. John McIntyre is the manager of SOLT I, SOLT II, and SOLT III.⁴ SOLM is the manager of SOLT IV, SOLT V, SOLT VII, and SOE.

The number of interests sold in the SOLT Entities is as follows, excluding interests sold to Respondents McIntyre and SOLM:

Entity	Number of Members ⁵ excluding McIntyre and SOLM	Source
SOLT I	4	Ex. A, Operating Agreement for SOLT I, Exhibit 10
SOLT II	12	Ex. A, Operating Agreement for SOLT II, Exhibit 2 prior to death of M. Fauerby.
SOLT III	4	Tr.1, p. 119, ll. 16-20 ⁶
SOLT IV	22	Ex. A, Operating Agreement for SOLT IV, Exhibit 4
SOLT V	11	Ex. A, Operating Agreement for SOLT V, State's Exhibit 14
SOLT VII	13	Ex. A, Operating Agreement for SOLT VII, R Exhibit 3
SOE	5	Ex. A, Operating Agreement for SOE, Exhibit 8
Second Offering	78 ⁷	Tr1, p. 123, ll. 17-24
TOTAL	78	

I note that 39 violations were found by the Commissioner in the Cease and Desist Order.

Violations and penalties must be determined by the Commissioner as a matter of public policy.

³ There is not a SOLT VI.

⁴ The interests in SOLT III were distributed to the members of SOLT I. There is no evidence in the record that SOLT III was managed differently than SOLT I.

⁵ I have counted each interest that is uniquely titled other than the interests held by McIntyre and SOLM, as one interest so far as I could delineate in the various parts of the record.

⁶ SOLT III's operating agreement is not in evidence.

⁷ These include all members of SOLT I plus three additional investor interests.

The SOLT Entities and their dates of formation are:

SOLT I: December 13, 2005. Operating Agreement, Exhibit 10.

SOLT II: June 1, 2006. Operating Agreement, Exhibit 2.

SOLT III: SOLT III was formed by the distribution of interests to members of SOLT I.⁸ Interests were distributed to the members of SOLT I in accordance with their capital percentages in SOLT I. Tr.1, p. 119, l. 21 - p. 120, l. 8.

SOLT IV: October 30, 2007. Operating Agreement, Exhibit 4.

SOLT V: January 30, 2008. Operating Agreement, Exhibit 14.

SOLT VII: March 6, 2009. Operating Agreement, R Exhibit 3.

SOE: November 2, 2009; Operating Agreement, Exhibit 8.

SOLT I Secondary Offering: December/January, 2010/2011. Tr.2, p. 125, ll. 5-9.

The SOLT Entities and the locations of their investments and operations are:

SOLT I: Timberland investments on Route 278, Hilton Head, South Carolina. Tr1, p.44-46.

SOLT II: Timberland in Fairfield County, South Carolina. Tr.1, p. 47, ll. 6-8.

SOLT III: Timberland in Newberry County, South Carolina. Tr.1, p. 53.

SOLT IV: Timberland in or around Edenton, North Carolina. Tr.1, p. 54-55, Exhibit 4.

SOLT V: Tract of land in the Chowan River Forest, North Carolina [Judicial Notice]. Exhibits 6 and 14.

SOLT VII: Fairfield County, South Carolina, Tr1, p. 50, ll. 9-12.

SOE: Various places around the low country of South Carolina, with the main farm being located in Clio, Marlboro County [Judicial Notice] South Carolina. Tr.1, p. 163.

⁸ The SOLT III Management Agreement is not in evidence.

ACTS IN VIOLATION OF § 35-1-501

SOLT I

The various land trusts were tree farms. There are no other stated purposes for the investments. Tr.1, pp. 47-50. The State put in evidence of specific personal expenditures charged to the SOLT I debit card on behalf of Respondents that constituted charges for Island Chiropractic, Victoria's Secret, Barnes and Noble, J. Crew Factory Store, Evergreen Pet Lodge, Plantation Animal Hospital, and Dr. Elizabeth Galloway (dentist). These charges are set forth in the SOLT I bank statement at Exhibit 19.

Lending credibility to the State's position that these were personal expenditures is Mr. McIntyre's admission that "some of it could be considered personal" when asked whether he paid personal expenses out of SOLT I funds. Tr.1, p. 73, l. 25 – p. 74, l. 5.

The SOLT I accounting records, kept in the ordinary course of business by McIntyre, indicate that \$65,025.00 was transferred to SOLM in 31 transactions labeled as loans starting in 2009. Exhibit 26. Other loans shown in Exhibit 26 include 25 transactions labeled as loans to officer of \$68,533.50 that commenced in July of 2007. Of these, \$54,505.00 specifically named McIntyre or SOLM as the beneficiary. The accounting report also shows loans to SOLT V and SOE.

Rich Silver, an investor and current manager of the Silver Oak Land Trusts, ("Rich Silver") identified 600 transactions made by the Respondents at eating establishments out of the SOLT I bank account totaling \$39,000.00. Tr.2, p. 158. Mr. Silver further testified that SOLT I revenue was not distributed to owners properly, but rather diverted to the benefit of the Respondents and loans to McIntyre and/or SOLM. Tr.2, p. 163. SOLT I monies were also transferred and intermingled with other Silver Oak entities in amounts totaling approximately \$53,000.00 Tr.2, p. 165.

Sandra Matthews, an auditor with the Division, testified that the total transfers to McIntyre or SOLM totaled approximately \$217,110.37. Tr.2, p. 448.

SOLT II

McIntyre testified SOLT II was formed in 2006 for the purpose of purchasing a parcel of timber land in Fairfield County, South Carolina. Tr.1, p. 51. To finance the operation, McIntyre solicited investments from individuals and was able to obtain twelve investors.

In connection with the offer and sale of SOLT II membership units, McIntyre omitted telling investors that he would be loaning himself investor money, paying himself consulting fees, or loaning other SOLT entities SOLT II money. Tr.1, pp. 84-85, 89. The operating agreement provided the "Manager" a management fee of fifteen percent of revenues. State's Exhibit 2. However, McIntyre testified that fees taken in excess of that fifteen percent would be wrongful. Tr.1, p. 84.

McIntyre testified that although he did not tell investors that he would be paying himself consulting fees from the investor's money, he did ultimately do so. Tr.1, p. 84. McIntyre stated that the reason for doing so was that the management required more work and time than he envisioned when entering into the original agreement. Tr.1, p. 85. According to the accounting records, kept by the Respondents in the ordinary course of the business, consulting fees paid to the Respondents totaled over \$19,000.00. State's Exhibit 27. In addition, the Respondents also received distributions of the timber revenues of approximately \$8,700.00 while all other investors received a total of approximately \$17,200.00. State's Exhibit 27. There are no expenses listed as management fees in the accounting records kept in the ordinary course of business by the Respondents. State's Exhibit 27.

SOLT III

The existing SOLT I investors reduced the values of their SOLT I investments to make the SOLT III investment. SOLT III money was transferred to the Respondents and to other SOLT entities. Tr.2, p. 167-168.

SOLT IV

Respondents told investors in SOLT IV in connection with the offering of the membership units that their compensation for their efforts would be a percentage of the company without the requirement of capital contribution. Tr.2, pp. 21-22, 100-101. One investor testified and supplied notes taken contemporaneous with a conversation with McIntyre explaining that the 20% of the company provided to the Respondents for management services was to cover planning, consulting fees, legal work, phase study, wetland study, title insurance, timber insurance, land planning, and listing the property, among other things. Tr.2, p. 21-22, State's Exhibit 13. Contrary to the representations made to investors in connection with the offer and sale of the SOLT IV membership units, investor and company monies were transferred to other SOLT entities and the Respondents. Sandra Matthews testified that \$49,124.98 of investor and SOLT IV money went to the Respondents. Tr.2, p. 453. The SOLT IV accounting records, kept by the Respondents in the ordinary course of business, indicate that approximately \$23,746.00 of that amount went to the Respondents listed as a loan. State's Exhibit 29. Silver testified that he discovered \$28,796.00 in transfers to the Respondents. Tr.2, p.171-72. Additionally, McIntyre admitted to paying personal property taxes of \$12,834.16 with SOLT IV money. Tr.1, pg. 106. That payment was listed in the accounting records kept in the ordinary course of business by the Respondents, as a consulting expense paid to Milliken Forestry. Tr.2, p. 171.

SOLT V

The investors were told by the Respondents that their investment would go to purchase the land that SOLM had identified. State's Exhibit 6, Tr.2 p. 106. Contrary to the representations made by the Respondents in connection with the offer and sale of the membership units, the SOLT V financial statements show various loans from other SOLT entities. State's Exhibit 30.

SOLT VII

The Respondents were successful in raising a total of approximately \$574,000.00. Tr.2, p.111. SOLM was the manager of SOLT VII and received 20% of SOLT VII for management services with no capital contribution. Respondents Exhibit 3, Tr.2 p. 111. In connection with the offer and sale of the membership interest, the investors were only told that their money would be used for the purchase of the plot of land. They were not told that money would be diverted to personal expenses, loaned to the manager, loaned to McIntyre, and loaned to other SOLT entities. Tr. 1, p. 89, Tr.2 pp. 111-112, 200-202.

As evidenced by bank records, accounting records kept by the Respondents, and analysis of those records performed by Rich Silver and Securities Division staff, money was diverted away from the stated purpose of that money and spent on personal expenses of SOLM and McIntyre, loaned to SOLM and McIntyre, and loaned to other SOLT entities to pay their expenses. Sandra Matthews testified that over \$70,000.00 was transferred to the Respondents. Tr.2, p. 455. The accounting records from August, 2010 to July, 2011, indicate that the Respondents received over \$11,000.00 in transfers labeled as consulting expenses. State's Exhibit 31. Further, the accounting records indicate that the Respondents received commissions of over \$27,000.00, and loans of approximately \$11,800.00. State's Exhibit 31. Further, there were several loans listed on the accounting records to other Silver Oak entities. Rich Silver identified transfers to the Respondents, cash withdrawals, and wrongful distributions. Tr.2, p. 175.

SOE

Investors were told in connection with the offer and sale of the membership units that their money would go to purchasing a plot of land and financing the operation of the Miscanthus farm. Tr.1, p. 97-98, Tr.2, p. 206, Respondents' Exhibit 5. However, investor monies were used for various and numerous personal expenses. These personal expenses include charges at a dentist office, SteveMadden.com, college application fees for McIntyre's daughter, and a jewelry store. Tr.1, pp. 99-105.

Paul Finn, an investor in SOE, examined bank records indicating exactly how his investment was spent. These expenses include, among others, multiple transfers to SOLM, college application fees, a

jewelry store, a movie theater, Macy's, and SteveMadden.com. State's Exhibits 20, 33. Mr. Finn specifically testified he was not told his money was going to be used in this manner and that he would not have invested if he had known. Tr.2 p. 213-218.

SOLT I Secondary Offering

The Respondents were successful in obtaining three additional investors. Tr1, p. 123.

Rich Silver, an investor in the SOLT I Secondary Offering, testified that he was told that his investment in the secondary offering of SOLT I membership units would be used to pay down the debt of SOLT I and that he was not told that his money would be transferred to the Respondents. Tr.2, pp. 124, 128-9. However, contrary to the representations made to the investors, the SOLT I financial records, kept in the ordinary course of business by the Respondents, indicate that in less than four months, \$42,750.00 from the investment of Rich Silver and another investor, were transferred to the bank account of SOLM. State's Exhibit 26, "SOLT I Profit and Loss Detail," p. 24.

CIVIL PENALTY

Pursuant to § 35-1-604, the Securities Commissioner may impose a civil penalty in an amount not to exceed ten thousand dollars for each violation. I find that the record in this proceeding supports 78 violation of § 35-1-501 as measured by the number of uniquely titled limited liability company interests less those owned by McIntyre and SOLM.

CONCLUSIONS AND RECOMMENDATIONS

1. I find that the testimony of Mr. Phil W. Hartman, Mr. Richard A. Silver, Mr. Paul Fin, Mr. James Russell Paris, and Ms. Sandra Matthews is credible.

2. I find based on the testimony of Mr. Phil W. Hartman, Mr. Richard A. Silver, Mr. Paul Fin, Mr. James Russell Paris, and Ms. Sandra Matthews in the hearings and the exhibits that there were violations of § 35-1-501 with regard to each of the SOLT Entities.

3. I find, based on the number of uniquely titled membership interests sold from each of the SOLT Entities that the Commissioner could levy penalties based on 78 violations.

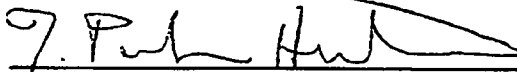
4. I find based on his admissions in his testimony in this case of improper transactions that Mr. McIntyre's testimony is less credible than that of the other witnesses.

5. The Cease and Desist Order required Respondents to pay the actual cost of the investigation and proceedings. No evidence was placed in this record of the costs and therefore I make no recommendations as to the costs of the investigation.

NOW THEREFORE, I recommend to the Commissioner that the following remedies be ordered:

- a. The Respondents immediately cease and desist from transacting business in this State in violation of the South Carolina Uniform Securities Act of 2005, S.C. Code Ann. § 35-1-101 *et seq.* (the "Act"), and, in particular, Section 35-1-501 thereof;
- b. Any exemption available to the Respondents under the Act be permanently revoked prospectively; and
- c. The Commissioner levy appropriate Civil Penalties in accordance with § 35-1-604 against Respondents in accordance with a maximum number of violations of 78.
- d. The Respondents pay the actual cost of the investigation and proceedings.

AND I SO RECOMMEND.



T. Parkin Hunter, Appointed Hearing Officer

October 22, 2014

Columbia, 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,)	ORDER
)	
Respondents.)	
_____)	

BACKGROUND

On September 12, 2014, I issued an Order in this proceeding, remanding the case to the Hearing Officer and directing him to make a Report and Recommendation to me whether or not Respondents had violated S.C. Code Ann. § 35-1-501 in offering and selling the securities at issue. After review, the Hearing Officer subsequently recommended that I find numerous violations of section 501 and that the following remedies be ordered:

- a. The Respondents immediately cease and desist from transacting business in this State in violation of the South Carolina Uniform Securities Act of 2005, S.C. Code Ann. § 35-1-101 *et seq.* (the "Act"), and, in particular, § 35-1-501 thereof;
- b. Any exemption available to the Respondents under the Act be permanently revoked prospectively;
- c. The Commissioner levy appropriate civil penalties in accordance with § 35-1-604 against Respondents in accordance with a maximum number of violations of 78; and
- d. The Respondents pay the actual cost of the investigation and proceedings.

Based on my independent review of the record and applying a preponderance of the evidence standard, for the reasons set forth below, I concur in the Hearing Officer's Recommendation, except with respect to the number of violations.

FINDINGS OF FACT

I specifically concur in and accept the Hearing Officer's factual findings set forth at pp. 5-12 of his Recommendation. Those findings are incorporated by reference except as otherwise stated herein. I further accept his findings concerning the credibility of the witnesses he heard as set forth at pp. 12-13 of his Recommendation. I also reiterate and incorporate by reference my findings and rulings concerning the formation and operation of the SOLT Entities (as defined below) by Respondents and the issuance of securities by those entities as set forth in my Order of September 12, 2014. I provide additional factual findings below.

Respondent John M. McIntyre ("McIntyre"), individually or through Respondent Silver Oak Land Management, LLC ("SOLM"), formed and managed seven South Carolina limited liability companies¹ (collectively, the "SOLT Entities"; individually, a "SOLT Entity"). Six of the SOLT Entities, all save Silver Oak Energy ("SOE"), were formed for the purpose of purchasing and managing tracts of timberland. State's Exhibits 2, 4, 8, 10, and 14 and Respondent's Exhibit 3. These six entities are referred to as the "Land Trusts." SOE was formed for the purpose of growing Miscanthus grass as a renewable fuel source.

Respondents represented, stated, and implied, in connection with the offer and sale of the SOLT Entities' securities offerings at issue, that investors in the SOLT Entities would profit from the managerial efforts of the Respondents. In connection with offering and selling to members

¹ SOLT I, SOLT II, SOLT III, SOLT IV, SOLT V, SOLT VII and Silver Oak Energy.

interests in the Land Trusts that were securities, the Respondents represented, stated, and implied that the Land Trusts were being formed for the purpose of purchasing a parcel or parcels of land identified by the Respondents and that investors in the Land Trusts would profit from the managerial efforts of the Respondents to lease the land, sell timber, and put the land to higher and better use. Likewise, Respondents represented, stated, and implied, in connection with the offer and sale of the SOE securities at issue, that SOE was being formed to purchase land for farming and the cultivation of Miscanthus grass and that investors in SOE would profit from the managerial efforts of the Respondents to cultivate, harvest, and sell the grass as a renewable source of energy.

The Hearing Officer determined, at p. 6 of his most recent Report, that a total of at least 78 member interests in the SOLT Entities were offered and sold by Respondents apart from interests allocated to Respondents. In offering and selling those interests, Respondents were offering and selling securities and needed to comply with the South Carolina Uniform Securities Act of 2005. They did not do so.

A central problem with the way memberships in the SOLT Entities were offered and sold relates to what investors were not told. For most of the SOLT Entities, the operative documentation does not provide for the payment of the manager, whether the manager was McIntyre or SOLM. Respondents typically represented to investors that their compensation for the managerial services provided was only a stated and defined percent interest in the company. For Land Trust II and Land Trust III, the representation was different: it provided that the "Manager shall receive as a management fee fifteen percent (15%) of all revenue received by the Company."

None of the disclosures given to investors by any SOLT Entity represented or warned that Respondents intended or reserved the right to use investor funds or entity assets to pay themselves substantial undisclosed, unauthorized compensation or management fees, much less to pay for

personal expenses of Mr. McIntyre and Mr. McIntyre's family (such as groceries, online retailers, college application fees, clothing, wine and spirits, and pet hospital and kennel visits). Nor were offerees or purchasers advised that in practice, Respondents preferred an opaque rather than transparent management style, with investors' requests for information being unwelcome and destined to be ignored.

These nondisclosures were material omissions which made the representations made by Respondents incomplete and materially misleading. Further, even though documentation for Land Trust II and Land Trust III allowed Respondents to take a management fee, Respondents went beyond the permission granted by paying themselves significant consulting fees on top of taking the permitted distributions allowed by the Land Trust II and III operating agreements.

Another similar material omission relates to Respondents' practice of using the assets of one SOLT Entity to financially support a different entity or entities. For example, Respondents never disclosed to investors that the assets of Land Trust VII could be diverted to Land Trust I to enable that entity to make its mortgage payments, though this was done. The problem with diverting assets in this way is that it exposes investment money entrusted by Land Trust VII investors to the financial risks faced by a completely different business. The practice operates as a fraud on Land Trust VII investors.

Likewise, Respondents misappropriated Land Trust III investor funds by transferring thousands of dollars to SOLM from August, 2011, to December, 2011. Further, during this same time period, the Respondents caused thousands of dollars of Land Trust III investor funds to be transferred to Land Trust I. Thus, whereas Respondents represented to investors in connection with the offer and sale of the securities of the various entities that the investors' money would be used in furtherance of the entity in which they invested, as a common business practice Respondents

nonetheless diverted entity funds for personal use or enrichment and made multiple transfers and so-called loans between the various entities, resulting in a commingling of funds among the various Land Trusts and SOE.

Obviously, Respondents never disclosed the intention when soliciting investments from the public to siphon off or commingle the funds raised with other SOLT Entities. Nor were investors warned about any possibility or likelihood that Respondents would see fit to divert the investor funds raised for personal purposes. The diversion of assets in this way was testified to at the hearing by investor Richard Silver as follows:

Q As to SOLT I, did you find transfers of money to Jack McIntyre himself?

A I found many transactions that were recorded as loans to Jack McIntyre and many more that were recorded as loans to Silver Oak Land Management and some transactions that were payments not labeled as loans but as consulting fees or other types of payments to Jack McIntyre or Silver Oak Land Management.

Q Who was the manager of SOLT I?

A Jack McIntyre.

Q Did Silver Oak Land Management have a relationship with SOLT I?

A None whatsoever.

Q According to your financial analysis, what amount of transfers did you see to Mr. McIntyre and then Silver Oak Land Management?

A In the aggregate, I accounted based on information in the documents approximately \$133,000 worth of loans to either Jack McIntyre or Silver Oak Land Management which were recorded as such by Jack McIntyre in doing the books. In addition to that,

I discovered 50-something thousand dollars worth of consulting or management fees that were paid to him that were labeled as such either on the books or on the tax records. So those were the direct payments that I would say that went from Silver Oak Land Trust I only to either Jack McIntyre or Silver Oak Land Management. . . .

I did notice a number of transactions that would be to all appearances personal in nature, not even counting the tens of thousands of dollars that were spent at restaurants which are a different matter entirely. But there were many other transactions that clearly appear to be purely personal in nature.

Q Do you have examples of those expenses?

A I do. And we're talking Silver Oak I only. There were purchases at liquor stores. There were payments for college board SAT fees. There were payments to car services other than for the vehicle that was operated by Jack McIntyre which the original five members of Silver Oak I allowed him to purchase and service at company expense. There were payments to the Evergreen Pet Lodge for kenneling somebody's dog. There were payments to a tire company, again, not related to the truck that Jack drove. There were payments to Sea Turtle Cinemas. There was payment to a chiropractor. There was a transfer of money to his wife's business account. There was another transfer to his wife's business account. There were [sic] a purchase at Victoria's Secret. There were payments to Plantation Animal Hospital. There was a payment to a photographer whose work I had purchased at Jack's wife's art gallery. There was a payment -multiple payments to a dentist or Dr. Galloway. I think that's a dentist. And those are just the ones that were altered when they were entered into the Quicken records. In other words, the payee as it's clearly shown on the bank records using a debit card was totally changed when the transactions were entered into the Quicken records. . . .

In addition to that, in July 2007 there was a cash withdrawal taken from Silver Oak I's bank account in the amount of \$4,366, and the paperwork from the bank explains and shows clearly that the check that was requested was a bank check, based on the withdrawal slip, payable to the Beaufort County Treasurer for property taxes. None of these companies owns property in Beaufort County except, I think, for one acre of Silver Oak Land Trust I's 159 acres. I think one acre of it may overlap into Beaufort County. So that was not for company taxes of any kind. There were 40 different payments to dry cleaners amounting to over -- almost \$1100. Another chiropractor. Seven payments over time for 400-and-something dollars to a home coffee service. Eighty-two payments to car washes. A payment to the Medical University of South Carolina. Fifty-two payments to super markets aggregating almost three-and-a-half thousand dollars and 54 payments to Starbucks aggregating \$3,218. Those are just some of what appear to be what I would call purely personal unrelated to what could be argued to be travel and entertainment expenses like a restaurant. That's a different matter in terms of the volume of that that was done. And, just for the record, the volume of that that was done in Silver Oak I alone \$39,000 was spent at eating establishments in 600 separate transactions.

Tr. 10/1/13, 153:3 to 158:24.

Evidence was also adduced at the hearing concerning discrepancies between how disbursements were recorded on SOLT Entity books versus bank records. Tr. 10/3/2013, 460:23 to 464:14. The changes in reporting appeared to reflect efforts to disguise personal charges as business-related charges, such as by recording Home Depot as the vendor, when payments really went to a jeweler and to Vanderbilt University and Wake Forest University for application fees.

A central complaint of investors in SOLT Entities was "[t]hat the money that they had invested had not been spent in the way they had been told it would be spent." Tr. 10/3/2013,

472:17-20. The record reflects that the investors in the SOLT Entities had good grounds for this fundamental grievance. Due to material nondisclosures, they were induced to entrust their funds to Respondents without any inkling that Mr. McIntyre reserved the right to use the SOLT Entities as a sort of personal piggy bank. In essence, because of the cavalier, self-serving way the SOLT Entities were managed and operated, the ability of investors to earn a positive return on their investments in the SOLT Entities was dependent upon Respondents' whim, meaning that investments in the SOLT Entities were highly risky. Missing from disclosures given to investors in the various SOLT Entities was any warning that Respondents reserved the right to do with investor money whatever they chose to do. Nor were investors told that Respondents reserved the right to withhold important financial information from them.² These were material failings.

CONCLUSIONS OF LAW

S.C. Code Ann. § 35-1-501 is captioned, "General fraud." It reads:

² Mr. McIntyre's reluctance to share important information was criticized by one investor in a letter read into the record at the Hearing, Tr: 10/3/13 602:2 to 603:12.

Jack, it is interesting that you are defending your tree farming expertise. To my knowledge, no one has questioned that. What is in your question is your refusal to share company records with the investors. Martin Rehder and I had countless conference calls with you demanding to know such things as how much money is in our company accounts, the amount of money paid for harvests, our expenses for forester and taxes and accounting of where a loan of \$500,000 got spent, many more questions on the additional 250,000 that was somehow added to the original loan. We have many, many more requests for written information. Apparently you borrowed money from this loan that we are all paying interest on without telling us. . . . We have been friends a very long time. For that reason I have sent you private emails imploring you to do the right thing. . . . Yes, you have turned over many files, but not the ones specifically asked for by Rich. The other requests he made need to be addressed as well. Please comply immediately.

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- (1) to employ a device, scheme, or artifice to defraud;
- (2) to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

An early Securities and Exchange Commission ("SEC") case focusing on the importance of managerial integrity to investors involved the offering of securities by a real estate syndication specialist who was prone to engage in risky self-dealing transactions. In re Franchard Corp., 42 S.E.C. 163 (1964). Glickman, the syndicator-promoter in question, had a history of financial misbehavior (such as a tendency to divert entity funds for self-serving purposes) that had been undisclosed to investors at the time securities were offered and sold. The SEC in Franchard found these concealments were material, reasoning:

Of cardinal importance in any business is the quality of its management. Disclosures relevant to an evaluation of management are particularly pertinent where, as in this case, securities are sold largely on the personal reputation of a company's controlling person. . . .

. . . . In many respects, the development of disclosure standards adequate for informed appraisal of management's ability and integrity is a difficult task. . . . Managerial talent consists of personal attributes, essentially subjective in nature, that frequently defy meaningful analysis through the impersonal medium of a prospectus. . . . The integrity of management—its willingness to place its duty to public shareholders over personal interest—is an equally elusive factor for the application of disclosure standards.

Evaluation of the quality of management—to whatever extent it is possible—is an essential ingredient of informed investment decision. A need so important cannot be ignored. . . .

Id. at 169-70 (footnotes omitted). Respondent McIntyre's practices of diverting and siphoning assets exposed investors to great risks and cast great doubt on the quality of the SOLT Entities'

management. To cover up those facts while continuing to solicit public money was a flagrant violation of the South Carolina Uniform Securities Act.

Rather than disclose, Respondents resorted to concealments. Respondents were unwilling to explain to trusting investors the material risks that awaited investors once they purchased memberships in the SOLT Entities. Consequently, in making disclosures to offerees and purchasers, Respondents omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. They likewise employed their SOLT Entity capital-raising operation as a device, scheme, or artifice to defraud innocent investors. They further engaged in acts, practices, and a course of business that operated or would operate as a fraud or deceit upon other persons, namely innocent, trusting SOLT Entity investment offerees and members.

The Cease and Desist Order dated April 19, 2013, identifies "at least 39 occasions" on which the Respondents violated Section 501. The Hearing Officer's Recommendation doubles that number to 78, with that number reflecting the number of investors in the SOLT Entities, not counting Respondents.

The record reflects that Respondents began to misappropriate investor money by at least mid-2007. Clearly, at that point, if not before, risk factors existed that called for explicit, detailed disclosure, which was never forthcoming. Among those risk factors were the possibility of financial harm resulting from Respondents' failure to implement and adhere to proper internal controls, as well as the dangers posed by Respondents' greed and their willingness to self-deal with and commingle investor-provided entity funds. Clearly, by the middle of 2007 if not before, Section 501 was being violated on a regular basis when investor funds were being sought.

Units in all SOLT Entities except SOLT I, SOLT II, and SOLT III were issued from mid-2007 onward. Investors in each of the four SOLT Entities capitalized after the beginning of 2007, plus the three additional investors added in the SOLT I second offering, needed disclosure protection of the type offered by Section 501 at the time SOLT Entity investments were offered to them and issued. No such disclosures were forthcoming. Using a mid-2007 cut-off date means the number of investors in question totals 54, consisting of 22 investors from SOLT IV, 11 from SOLT V, 13 from SOLT VII, 5 from SOE, and 3 new investors from the second SOLT I solicitation in or around 2010 and 2011. I find that section 501 was violated due to material nondisclosures of facts as to each of the 54 foregoing securities offerings and sales.

CIVIL PENALTY

Pursuant to § 35-1-604, the Securities Commissioner may impose a civil penalty in an amount not to exceed ten thousand dollars for each violation. I find that the record in this proceeding supports no fewer than 54 violations of § 35-1-501 as measured by the number of uniquely titled limited liability company interests, less those owned by McIntyre and SOLM, sold subsequent to mid-2007. I find that a civil penalty of \$10,000 is appropriate for each violation.

REMEDIES ORDERED

Based on the foregoing, it is hereby ORDERED:

- a. The Respondents shall immediately cease and desist from transacting business in this State in violation of the South Carolina Uniform Securities Act of 2005, S.C. Code Ann. § 35-1-101 *et seq.* (the "Act"), and, in particular, § 35-1-501 thereof;
- b. Any exemption available to the Respondents under the Act is permanently revoked prospectively;

c. Civil Penalties in accordance with § 35-1-604 are levied against Respondents, jointly and severally, in the total sum of \$540,000, based on no fewer than 54 violations, with a penalty of \$10,000 imposed for each violation; and

d. The Respondents shall pay the actual cost of the investigation and proceedings. An authorized Representative of the Securities Division shall serve Respondents with a statement of the actual cost of the investigation and proceedings and an affidavit attesting to the accuracy of same within ten (10) days of the date of this Order. The costs so itemized and verified shall be paid by Respondents within fifteen (15) days of service of the statement.

IT IS SO ORDERED this 20 day of November, 2014

By:

Alan Wilson

The Honorable Alan M. Wilson
Securities Commissioner
State of South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO: 2014-CP-40-07917

John M. McIntyre and Silver Oak Land Management, LLC,

Appellants,

-v-

ORDER AFFIRMING THE DECISION OF THE SECURITIES COMMISSIONER

Securities Commissioner of South Carolina,

Respondent.

RICHLAND COURT / FILED / 2015 / 11-7 AM 11:50 / JESSIE M. MCGRIDE / P. 215.

This is an appeal from a decision of the Securities Commissioner, finding that Appellants John M. McIntyre and Silver Oak Land Management, LLC, had committed 54 violations of the South Carolina Uniform Securities Act ("the Act"). As a result of these violations, the Securities Commissioner ordered McIntyre and Silver Oak to cease and desist from transacting business in South Carolina, permanently revoked any exemption available to them under the Act, levied \$540,000 in civil penalties against them, and required them to pay for the actual cost of the investigation and proceedings. On appeal, McIntyre and Silver Oak Land Management argue (1) that the administrative proceedings violated their due process and equal protection rights (Complaint ¶¶ 14 & 15); (2) that the Act is not applicable because their limited liability companies are not securities (Complaint ¶¶ 16-18); and (3) that even if the LLCs were securities, substantial evidence does not support the Commissioner's findings that McIntyre and Silver Oak violated the Act (Complaint ¶¶ 14, 19, 20, 21, 22, 23, & 24). After careful considerations of counsel's written submissions, their arguments, and the transcript from the hearings below, I affirm.

JMG

FACTUAL BACKGROUND

At the heart of this dispute are seven limited liability companies managed by either John McIntyre individually or by McIntyre's management company, Silver Oak Land Management, LLC.¹ According to McIntyre, these seven companies were formed as follows.

McIntyre and a business partner, Jim Paris, co-owned a rental company on Hilton Head, and in the early to mid-2000s, they began actively looking for another investment opportunity. McIntyre began looking into the timber industry, and he identified a 349-acre tract of land in Hilton Head that he believed could be harvested for timber and then developed. In order to purchase the property, McIntyre, Paris, and three other friends (Murray Reed, Martin Rehder, and Susan Vitek²) pooled their money to form Silver Oak Land Trust, LLC (SOLT I). From there, McIntyre formed five other SOLT LLCs, and each entity purchased a different tract of land.

SOLT II purchased property in Fairfield County, and its members included the original five investors along with eight other members. SOLT III purchased approximately 70 acres in Prosperity, South Carolina, and the five original investors were its only members. SOLT IV purchased 420 acres in Edenton, North Carolina, and it had 24 members. SOLT V purchased 131 acres in Winton, North Carolina, and it had 13 members. SOLT VII purchased 258 acres with direct access to Lake Wateree in Ridgeland, South Carolina, and it had 13 members.³

¹ Silver Oak Land Management, LLC has two members: (1) McIntyre and (2) Dave Jeff, LLC. Dave Jeff, LLC is a single member LLC, whose member is Susan Vitek. Both Appellant McIntyre and Dr. Vitek were present at the hearing before this Court.

² Susan Vitek invested her money via Dave Jeff, LLC.

³ There is no SOLT VI, LLC.

The primary intention for all of these LLCs was "tree farming coupled with potential opportunities of long-term real estate holdings." The offerings stated that timber has shown an average annual compounded return of over 11 percent for the past 30 years.

In the late 2000s, when the banking industry and real estate markets crashed, the timber market also declined. As a result, McIntyre sought a new way to generate income and decided to invest in the biomass renewable energy industry. He and five other investors became members of Silver Oak Energy, LLC, which purchased land to cultivate Miscanthus grass and other biofuels.

In all, seven LLCs were formed from 2005 to 2010, and eight investment offerings were made (two offerings for SOLT I and one offering for each of the remaining six LLCs). All of the LLCs are manager-managed, as stated in paragraph 6.1 of their operating agreements. McIntyre is the manager of SOLT I, II, and III. Silver Oak Land Management is the manager of Silver Oak Energy and SOLT IV, V, and VII.

On April 19, 2013, the Attorney General, acting as the South Carolina Securities Exchange Commissioner (the Commissioner) issued a Cease and Desist Order to McIntyre and Silver Oak Land Management, alleging that they committed at least 39 violations of section 501 of the South Carolina Uniform Securities Act. Thereafter, the Commissioner appointed a hearing officer to take testimony and to recommend findings as to the matters alleged in the Cease and Desist Order. After a four-day trial, the hearing officer recommended that the Commissioner dismiss the Cease and Desist Order because the membership interests in the LLCs at issue were not securities. Upon review of the hearing transcript, the Securities Commissioner rejected this recommendation and issued a lengthy order finding the membership interests were

securities. The Commissioner then remanded the matter back to the hearing officer to determine whether violations of the Act occurred.

On remand, the hearing officer found violations had occurred in the offerings of each membership and that 78 unique memberships existed. Specifically, the hearing officer found that, among other violations, McIntyre paid for personal expenses out of LLC funds, transferred hundreds of thousands of dollars from the LLC accounts to either himself or his land management company, paid himself consulting fees, transferred money between SOLT entities indiscriminately, and that all of this was done without the members' knowledge or permission.

The Securities Commissioner accepted the recommendation, but modified the number of violations. The Commissioner found that McIntyre and Silver Oak Land Management began to misappropriate investor money by mid-2007, if not before. Using mid-2007 as the cut-off date, the Commissioner found the number of investors to be 54. Accordingly, the Commissioner imposed a fine of \$540,000, ordered McIntyre and Silver Oak Land Management to cease and desist from transacting business in South Carolina, permanently revoked any of the Act's exemptions that were available to them, and required them to pay for the cost of the investigation and proceedings. This appeal followed.

ISSUES

1. Were the Appellants' due process and equal protection rights violated in the underlying administrative proceeding?
2. Are membership interests in the LLCs securities?
3. If the LLC membership interests are securities, does substantial evidence support the Commissioner's findings that violations of the Securities Act occurred?

STANDARD OF REVIEW

"[T]he findings of the Securities Commissioner as to the facts, if supported by competent, material, and substantial evidence, are conclusive." S.C. Code Ann. § 35-1-609. Accordingly, this Court's appellate jurisdiction is limited to the correction of errors of law, and the factual findings of the Commissioner will not be disturbed unless unsupported by "competent, material, and substantial evidence."

LAW/ANALYSIS

I. South Carolina Uniform Securities Act

Beginning in the early 1900s, states began enacting laws to regulate securities in an effort to protect investors. These regulations are often referred to as "Blue Sky Laws," because they are meant to protect investors from promoters who might otherwise "sell building lots in the blue sky." See Louis Loss & Joel Seligman, *Fundamentals of Securities Regulation*, § 1, at 9 (3d ed. 1995) (quoting Mulvey, *Blue Sky Law*, 36 Can. L.T. 37 (1916)). South Carolina's current blue sky laws, codified at S.C. Code Ann. §§ 35-1-101 to -703 and enacted in 2005, are modeled after the Uniform Securities Act of 2002. See S.C. Code Ann. § 35-1-101.

As with all securities regulations, the purpose of South Carolina's Securities Act is to prevent fraud in the sale and disposition of securities. Section 35-1-501 is the "general fraud" provision, and states:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- (1) to employ a device, scheme, or artifice to defraud;
- (2) to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

This provision can be enforced in an administrative proceeding brought by the Securities Commissioner directly against the person or entity violating the Act. S.C. Code Ann. § 35-1-604. Pursuant to the "definitions" section of the statute, "Securities Commissioner" means the Attorney General," and a "security" means, among other things, an investment contract. S.C. Code Ann. § 35-1-102 (28) & (29). "Investment contract" may include . . . an interest in . . . a limited liability company . . ." S.C. Code Ann. § 35-1-102 (29)(E). The Official Comments to the Securities Act explain that the language of section 102(29)(E) is consistent with state and federal laws which, in some circumstances, have recognized interests in limited liability companies as investment contracts.

With that basic background, I now turn to the specific issues raised in this appeal.

II. Due Process and Equal Protection Arguments

The Appellants first argue their due process and equal protection rights were violated because (1) the Attorney General's Office functioned as the investigator, prosecutor, and adjudicator in the administrative proceeding; and (2) the Attorney General failed to adopt or promulgate any rules of procedure or evidence with regard to the administrative proceeding. I find these arguments to be unavailing.

A. Conflict of Interest

Appellants' argument regarding the dual roles of the Attorney General's Office has already been addressed and rejected by our Supreme Court. In *Garris v. Governing Board of S.C. Reinsurance Facility*, 333 S.C. 432, 443, 511 S.E.2d 48, 54 (1998), the Court stated, "[t]he fact that investigative, prosecutorial, and adjudicative functions are performed within the same agency, or even performed by the same persons within an agency, does not, without more,

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constitute a violation of due process." Nearly ten years later, in *Majors v. South Carolina Securities Commission*, 373 S.C. 153, 162, 644 S.E.2d 710, 715 (2009), the Court considered a similar due process argument in the context of the Attorney General acting as the Securities Commissioner and found that "the power of the SEC Commissioner is akin to [the Supreme] Court's power to issue an order of interim suspension of an attorney, and then, after an investigation by the Commission on Lawyer Conduct and a Report and Recommendation, issue the ultimate sanction."

Here, Appellants have not identified specific examples of how the Attorney General was impartial beyond the "per se" argument that he had a conflict of interest based on the various roles played by members of his staff. Without more, this is not enough to constitute a violation of due process. *See Garris*, 333 S.C. at 443, 511 S.E.2d at 54. *See also In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 135, 568 S.E.2d 338, 344 (2002) ("A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt." (internal quotations omitted)).

B. Lack of Promulgated Rules

Appellants further contend that their due process and equal protection rights were violated because the Attorney General did not promulgate any rules "as was expressly required by S.C. Code Ann. § 3[5]-1-605." (Petition for Review ¶¶ 4&14). However, the plain language of section 35-1-605 states the Securities Commissioner "may" promulgate rules. Despite Appellants' assertion to the contrary, the statute does not *require* the Attorney General to promulgate rules. *See State v. Wilson*, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980) ("The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary.").

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Appellants also argue that without promulgated rules, they did not know the burden of proof, were unsure about the standards for admitting evidence, and had no established method for engaging in discovery or subpoenaing witnesses. However, they do not argue that the Commissioner erred in applying the "preponderance of evidence" burden of proof, they do not specify what evidence should or should not have been admitted, and the record reflects they were, in fact, allowed to subpoena witnesses. Thus, they assert error but not prejudice and therefore have failed to carry their burden of proving reversible error. *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (explaining that appellant has the burden of proving reversible error and that "mere allegations of error are not sufficient" to carry this burden). Moreover, Appellants fail to cite to any authority for their argument and instead rely solely on bald conclusions. Accordingly, I find the Appellants have abandoned this issue on appeal. See *Solomon v. City Realty Co.*, 262 S.C. 198, 201, 203 S.E.2d 435, 436 (1974) (finding an exception was effectively abandoned where the argument relating to the exception consisted solely of a "bald conclusion").

III. LLCs as Investment Contracts

In addition to their constitutional arguments, Appellants further argue that the offerings of memberships in their LLCs did not involve the sale of a security and therefore the Securities Act does not apply. I disagree.

The Act itself provides that the interest in a limited liability company "may" be an investment contract, which is included in the definition of a security. S.C. Code Ann. § 35-1-102(29)(E). In order to determine whether an investment contract exists, our state supreme court and court of appeals have adopted a relaxed version of the test set forth in *Securities & Exchange Commission v. W.J. Howey Co.*, 328 U.S. 293 (1946). See *Majors v. S.C. Securities Com'n*, 373

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S.C. 153, 163-67, 644 S.E.2d 710, 716-18 (2007); *Garrett v. Snedigar*, 293 S.C. 176, 180, 359 S.E.2d 283, 285 (Ct. App. 1987), *overruled on other grounds*, *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 580 S.E.2d 440 (2003). Under this test, an investment contract exists (and the Securities Act will apply) where there has been (1) an investment of money, (2) in a common enterprise, (3) with an expectation of profits to be derived primarily from the efforts of a person other than the investor. *Majors v. S.C. Securities Com'n*, 373 S.C. 153, 163-67, 644 S.E.2d 710, 716-18 (2007). See also S.C. Code Ann. § 35-1-102(29)(D) (including in the definition of "security" an "investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor").

The parties disagree over the third element of the *Howey* test: whether the success or failure of the LLCs largely rested in the hands of Appellants, as managers. In determining whether the third factor of the *Howey* test was met, the hearing officer relied on *Williamson v. Tucker*, 645 F.2d 404 (5th Cir. 1981). In that case, the United States Court of Appeals for the Fifth Circuit held that, in analyzing the third factor of the *Howey* test *in the context of a general partnership*, there is a strong, yet rebuttable, presumption that general partners do not rely solely on the efforts of others for profit. *Id.* at 422-23. This presumption (that general partners are not passive investors) is based on the following characteristics accompanying general partnerships:

- General partners have a legal right to participate in the management and control of the partnership.
- General partners can promote the partnership's success through their efforts, and even if they delegate their actual authority, they retain the apparent authority to bind the partnership.
- General partners remain liable for the acts of the partnership.

Id. at 421-22 ("These factors critically distinguish the status of a general partner from that of the purchaser of an investment contract who in law as well as in fact is a 'passive' investor.").

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Having explained this presumption, the *Williamson* Court then set forth a three-part test for determining when the presumption has been overcome. This test provides that if "the partner has irrevocably delegated his powers, or is incapable of exercising them, or is so dependent on the particular expertise of the promoter or manager that he has no reasonable alternative to reliance on that person, then [the] partnership powers may be inadequate to protect [the partner] from the dependence on others which is implicit in an investment contract." *Id.* at 422-23.

Applying those factors from *Williamson*, the hearing officer recommended that the Securities Commissioner find that the sale of LLC memberships were not investment contracts and therefore not securities. The Commissioner rejected this recommendation, found the *Howey* test was satisfied, and explained that the *Williamson* analysis was not appropriate in determining whether a membership in a manager-managed LLC was an investment contract. The Commissioner then went on to find that even if the *Williamson* analysis was appropriate, the record provided compelling evidence that at least one of the three *Williamson*-factors was satisfied.

On appeal, Appellants argue that once the Securities Commissioner delegated its authority to take testimony to a hearing officer, the Commissioner was required to adopt the hearing officer's recommendation. However, they cite no authority in support of this argument, and therefore, it is deemed abandoned. See *Solomon v. City Realty Co.*, 262 S.C. at 201, 203 S.E.2d at 436. Furthermore, our Supreme Court has recognized that administrative proceedings before the Securities Commissioner are similar to attorney disciplinary proceedings. See *Majors*, 373 S.C. at 162, 644 S.E.2d at 715. In attorney disciplinary proceedings, members of the Board of Grievance (who are officers of the Supreme Court) are charged with the duty of investigating allegations of professional misconduct and of reporting to the Court their findings and

recommendations. *Id.* However, the Supreme Court is not required to adopt the Board's recommendation because it is the Court, and not the members of the Board of Grievances, that holds ultimate authority to sanction attorneys. *Id.* See also *Matter of Yarborough*, 327 S.C. 161, 165, 488 S.E.2d 871, 873 (1997) ("The Supreme Court has the ultimate authority to discipline attorneys, and the findings of the panel and [interim review committee of the Board of Grievances] are not binding."). Similarly, the Securities Commissioner has the ultimate authority to enforce the securities regulations, and the recommendation of the hearing officer is not binding.

Appellants further argue that "[t]he evidence redounds to the effect that the complaining witnesses were heavily involved in the limited liability companies in question, and no credible witness exists to prove that he or she reasonably expected to profit solely from the efforts of others." (Petition at ¶ 17) However, as noted above, the question is not whether investors expected to profit *solely* from the efforts of others, but "whether the promoters' efforts, not that of the investors, form the essential managerial efforts which affect the failure or success of the enterprise." *Majors*, 373 S.C. at 167, 644 S.E.2d at 718.

Here, substantial evidence supports the Commissioner's finding that members expected that profits would be derived primarily from the efforts of McIntyre or his management company.⁴ Each of the LLC's operating agreements stated that all decisions affecting the

⁴ Appellants close their petition with this "catch-all" statement: "The pertinent content of the Initial Report of the Hearing Officer is hereby adopted and expressly incorporated into this Petition as additional grounds to set aside the decision of the Respondent." It is unclear what precise point Appellants intend to raise with this broad statement, and it is not the role of an appellate tribunal to "grope in the dark" to ascertain the issues raised on appeal. See, e.g., *Winter v. U. S. Fid. & Guar. Co.*, 240 S.C. 561, 568, 126 S.E.2d 724, 727-28 (1962). However, assuming Appellants intended to argue that the Commissioner erred in rejecting the *Williamson* analysis, I disagree. The *Williamson* analysis is appropriate when determining whether an interest in a business entity that is presumed *not to be* a security is, in fact, a security. Such an analysis is

operations of the company would be decided by consent of the manager, and the manager had the authority to "[e]ngage 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 [LLCs]." McIntyre identified the property to be purchased and negotiated the purchase price. He was the only member who had the authority to use the LLCs' debit cards. In the marketing documents, potential investors were told to call McIntyre if they had any questions about the offerings and none of those documents indicated that potential investors were expected to engage in any managerial duties after investing. In fact, some marketing materials explicitly state that Appellant Silver Oak Land Management would generate income for the LLC.

Furthermore, the testimony of investors Phil Hartman, Rich Silver, James Paris, and Paul Finn support the finding that the members relied on Appellants' managerial efforts and expected that the success or failure of their investment would be derived primarily from the efforts of the Appellants. Hartman testified that he did not participate in the management of the company and that McIntyre was solely responsible for management. Silver testified that he did not play an active role in the LLCs and that McIntyre was "going to do all the work." Paris denied participating directly in the management of the LLCs or being involved in any decisions regarding tree farming or improving the land. Finn testified that he never played an active role in tree farming LLCs and that, although he provided some services to Silver Oak Energy, he relied on Appellants to grow, cultivate, and sell *Miscanthus* grass. Accordingly substantial evidence

not applicable here because manager-managed LLCs carry the opposite presumption: they are presumed *to be* securities. 1995 South Carolina Policy Statement, 2A Blue Sky L. Rep. (CCH) P 51, 580. *Cf. McGaha v. Mosley*, 283 S.C. 268, 273, 322 S.E.2d 461, 464 (Cl. App. 1984) ("Since the securities laws are remedial in nature, courts have uniformly held they should be liberally construed to protect investors."). Accordingly, the Commissioner applied the proper legal standard for determining whether the interests in the LLCs in this case were securities.

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supports the finding of the Securities Commissioner that the investors expected that their profits, if any, would derive primarily from the efforts of Appellants.

IV. Violations of Section 35-1-501

Finally, Appellants argue that substantial evidence does not support the Commissioner's finding that they violated section 35-1-501 because (1) no misrepresentations, concealments, or false statements were made during the solicitation of members; (2) the operating agreements expressly authorize the acts about which the members complained; and (3) the complaining witnesses did not have a right to rely nor did they actually rely on any statement made by the Appellants. I disagree.

After carefully reviewing the record, I find that competent, material, and substantial evidence – namely the operating agreements, bank records, and testimony from Sandra Matthews, Phil Hartman, Richard Silver, Paul Finn, and James Russell Paris – supports the Commissioner's finding that Appellants violated section 35-1-501(2) in the following ways:

- Appellants paid themselves management and consulting fees in excess of what was allowed in the operating agreements and disclosed to investors.
- McIntyre used investor funds to pay for personal items (such as groceries, college application fees, alcohol, and pet care) all without the investors' knowledge or permission. When asked during the hearing about these expenditures, McIntyre himself testified that "some of it could be considered personal." Evidence also revealed that McIntyre tried to conceal these personal expenses by mislabeling them in the LLCs' financial records.
- Appellants failed to disclose to investors that their money would be used to financially support different entities. The accounting records and testimony at trial showed that Appellants commingled the LLCs' money without the investors' knowledge by using money from one LLC to pay obligations of a different LLC.

In the face of not merely substantial but overwhelming evidence in the record supporting the Commissioner's decision, Appellants do not cite to contrary testimony but argue that sections 6.1 to 6.4 of the operating agreements allowed Appellants to take all the actions they took,

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including paying themselves consulting fees, using investor money to pay for personal expenses, and commingling LLC funds. These sections state:

6. Management of the Company.

6.1 Decisions of the Company. Except as otherwise set forth herein, all decisions effecting [sic] the operation 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 noninterest 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.

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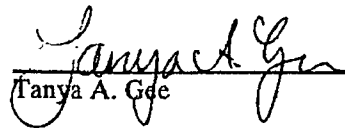
6.3 Liability of the Members and the Manager. The Members and the Manager shall not be liable to the Company or to any Member for any debts owed by the Company, or for any actions taken or omissions made in good faith and reasonably believed by the Member or Manager to be in the best interest of the 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.

Although these sections grant broad discretion to the Manager (and reinforce this Court's finding that investors expected that the success or failure of the LLC would derive primarily from the efforts of Appellants), that discretion is not so broad as to allow McIntyre to use investors' money as his personal piggy bank or as a source of funds for other business entities.

CONCLUSION

For the foregoing reasons, the order of the Securities Commissioner is **AFFIRMED**.


Tanya A. Gede

May 7, 2015

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS
John M. McIntyre, et al., Appellants

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014-CP-⁴⁰~~04~~-07917
Securities Commissioner of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other Dismissed without prejudice
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : After careful consideration of Appellant's Motion for Reconsider and Respondent's return, Appellant's Motion for Reconsideration is respectfully denied.

JANETTE W. MORRIS
C.P. & G.
2015 JUN 21 AM 10:52
FILED
RICHLAND CO. CLERK

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge *Joyce L. G...* Judge Code 2756 Date 7/21/2015

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JOHN M. McIntire, et al.
Plaintiff(s)

vs.

SOUTH CAROLINA
SECURITIES COMMISSION
Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP-40-7917

(Please Print)

Submitted By: Robert V. Mathison, Jr

Address: Post office Box 5271
Hilton Head Island, SC
29938

SC Bar #: 3685

Telephone #: 843-785-6503

Fax #:

Other:

E-mail: rmathlaw@aol.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | | | |
|--|--|---|--|---|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20__-CP-____ <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) | | |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Driver's License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Comm (991) <input checked="" type="checkbox"/> Other (999) | | |
| <p>Special/Complex /Other</p> <table border="0"> <tr> <td style="vertical-align: top;"> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) </td> <td style="vertical-align: top;"> <ul style="list-style-type: none"> <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of-State Depositions (660) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) </td> </tr> </table> | | | | <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) | <ul style="list-style-type: none"> <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of-State Depositions (660) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) |
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Submitting Party Signature:

Date: 12/19/14

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

2014 DEC 19 PM 4:11
RICHLAND COUNTY

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

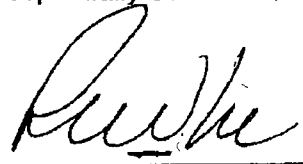
SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

Respectfully Submitted,

By: 

Robert V. Mathison, Jr.
Attorney for the Petitioners and
Plaintiffs, John M. McIntyre and
Silver Oak Land Management, LLC

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

December 19, 2014

Hilton Head Island, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

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

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

Petitioners and Plaintiffs,)

v.)

SECURITIES COMMISSIONER OF)
SOUTH CAROLINA,)

Respondent and Defendant.)

PETITION FOR REVIEW
(S.C. Code Ann. § 35-1-609)

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APPROVED FOR FILING
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SOUTH CAROLINA

The Petitioners and Plaintiffs, John M. McIntyre and Silver Oak Land Management, LLC (herein collectively "the Petitioners"), complaining of the Respondent and Defendant, the Securities Commissioner of South Carolina (herein "the Respondent"), respectfully request that the Court of Common Pleas review the Order of the Respondent dated November 20, 2014, and set that order aside, in whole or in part, based upon the following grounds:

PROLOGUE

1. The Attorney General of South Carolina also serves as the Securities Commissioner of South Carolina, namely, the Respondent herein, and in his capacity as Securities Commissioner, on or about April 19, 2013, the Respondent, who was acting by and through the Securities Division of the Attorney General's Office, issued an Order to Cease and Desist to the Petitioners herein in which the Respondent alleged that the Petitioners had committed 39 violations of S.C. Code Ann. § 35-1-501, which is a codified portion of the South Carolina Securities Act of 2005 (herein sometimes "the Act"). S.C. Code Ann. §§ 35-1-101 *et seq.*

2. Electing initially to pursue neither criminal nor civil enforcement against the Petitioners, both of which were available alternatives under the Act, the Respondent instead commenced an administrative proceeding under S.C. Code-Ann. § 35-1-604, which the Respondent has interpreted to allow the Respondent both to prosecute and to judge the merits of the case.

3. When the Petitioners herein answered the allegations in the Cease and Desist Order and timely requested a hearing, actions that both were authorized by the Act, the Respondent appointed as the Hearing Officer, with the apparent power and authority to decide the administrative case, a distinguished attorney who nevertheless was also an employee of the Attorney General's Office, namely, T. Parkin Hunter, Esquire.

4. Thereafter, at great cost to the Petitioners and the taxpayers of South Carolina, commencing on July 30, 2013, and continuing from October 1 through October 3, 2013, a full blown contested hearing was conducted at the Attorney General's Office that was characterized by the following irregular details: (a) The Attorney General's Office, by and through multiple attorneys and investigators, was putting on the case for the Respondent, while the Respondent's other employee, the Hearing Officer, was deciding the case; (b) the Attorney General's Office, prior to the commencement of the hearing, purported to open a criminal investigation against the Petitioners and thereafter called, as its first witness at the hearing, the individual Petitioner, John M. McIntyre, in an effort to have him assert his Fifth and Fourteenth Amendment privilege against self-incrimination, thereby raising a presumption against him in the administrative proceeding; (c) because the Attorney General's Office never had prepared, issued, published or disseminated any rules, forms, orders or interpretive opinions, as was

expressly required by S.C. Code Ann. § 36-1-605, the hearing was conducted with no procedural safeguards, including, without limitation, (i) no ascertainable burden of proof, (ii) no ascertainable standards for the admission of evidence, for example, with respect to the authentication of documents and the admission of hearsay, (iii) no established method by which the Petitioners could discover evidence in the possession of the Respondent and others and (iv) no established method for the Petitioners to subpoena witnesses.

5. Despite the irregularities described in paragraph 4, after the transcript of the proceedings had been prepared and paid for, and after proposed orders had been submitted by both sides, on or about May 6, 2014, the Hearing Officer completed his Report and Recommendation (herein "the Initial Report"), which was thereafter mailed to the Petitioners on May 16, 2014, and, in the Initial Report, the Hearing Officer exonerated both of the Petitioners based upon exhaustive findings of fact and conclusions of law.

6. In fact, the Initial Report of the Hearing Officer found and concluded "that the limited liability company interests which constitute the investments at issue in this matter **are not securities.**" Initial Report of Hearing Officer at 1 (emphasis added). Thus, the Respondent had never had any jurisdiction to entertain this matter in the first place.

7. However, instead of accepting and adopting the Initial Report of the Hearing Officer, who he had appointed and who he employed, the Respondent determined, in apparent violation of S.C. Code Ann. § 35-1-604, that he, the Respondent, had the authority either to accept or reject the Initial Report, and he thereupon solicited proposed orders from both sides to that effect.

8. Both before and after the Respondent solicited the proposed orders, an investigator and then an attorney from the criminal branch of the Securities Division of the Attorney General's Office, both of whom purported to know nothing about the Initial Report issued by the Hearing Officer, sought to question the individual Petitioner McIntyre.

9. Subsequently, in a 30 page Order dated September 12, 2014, the Respondent rejected virtually every word in the Initial Report of his Hearing Officer, and the Respondent instructed the Hearing Officer to make findings and conclusions in more or less exact compliance with those sought by the Securities Division of the Attorney General's Office at the conclusion of the hearing, thereby making a mockery of the supposed independence and/or objectivity of the Hearing Officer and, as a consequence, of the entire proceedings.

10. The Hearing Officer thereafter prepared a revised report (herein "the Revised Report") which incorporated most of the changes demanded by the Respondent.

11. Having directed the preparation of the Revised Report that confirmed the rectitude of the arguments of his Securities Division, the Respondent then signed on November 20, 2014, a more modest 12 page Order in which he purported to base his findings and conclusions on the same recommendations of the Hearing Officer that the Respondent had instructed that officer to make.

12. Review is sought under S.C. Code Ann. §§ 35-1-604 and 35-1-609 of the Order dated November 20, 2014, which was mailed to the parties on that date, together with the Revised Report that was mailed at the same time, as well as all orders and reports which either preceded or followed them.

13. By the expedients described in paragraphs 2 through 12 above, the Respondent rendered meaningless any participation by a detached, neutral and/or objective Hearing Officer, and, as a consequence, the Respondent rendered utterly meaningless a lengthy and costly hearing.

14. Upon information and belief, for the reasons specified in paragraphs 2 through 13 above, including, without limitation, the failure by the Respondent to adopt or promulgate any rules, as well as his manifest conflict of interest, the Act on its face, and as applied to the Petitioners, is in violation of the Due Process and Equal Protection Clauses of the United States Constitution because, *inter alia*, the Petitioners have been deprived of life, liberty or property without any meaningful opportunity to be heard.

15. Upon information and belief, for the reasons specified in paragraphs 2 through 13 above, including, without limitation, the failure by the Respondent to adopt and promulgate any rules, as well as his manifest conflict of interest, the Act on its face, and as applied to the Petitioners, is in violation of the Due Process and Equal Protection Clauses of the South Carolina Constitution because, *inter alia*, the Petitioners have been deprived of life, liberty or property without any meaningful opportunity to be heard.

16. Upon information and belief, competent, material and substantial evidence to support the decision of the Respondent does not exist. S.C. Code Ann. § 35-1-609.

17. The evidence redounds to the effect that the complaining witnesses were heavily involved in the management of the limited liability companies in question, and no credible witness exists to prove that he or she reasonably expected to profit solely from the efforts of others.

18. The evidence redounds to the effect that the complaining witnesses were heavily involved in the management of the limited liability companies in question, and no credible witness exists to prove that he or she reasonably expected to profit even primarily from the efforts of others.

19. No misrepresentation or concealment of a material fact attended the solicitation of interest or investment in any of the limited liability companies.

20. No statement was made by the Petitioners in connection with the sale of a limited liability interest, except those that were true, such as facts about the timber industry that were disseminated by and attributed by the Petitioners to the South Carolina Forestry Commission.

21. No false statement was made by the Petitioners in connection with the sale of a limited liability interest with respect to any presently existing fact that related to the limited liability company in question.

22. The clear language of the limited liability operating agreements admitted into evidence, all of which were signed by all members of each company, expressly authorizes the acts and omissions complained of, including, without limitation, Sections 6.1 through 6.5 of each agreement.

23. Testimony by professionals and other sophisticated investors that they failed to read the operating agreements, from which they may have been allowed to infer that they were not bound by them, should be disregarded, except to establish that the persons so testifying were incapable of reliance by virtue of their own negligence.

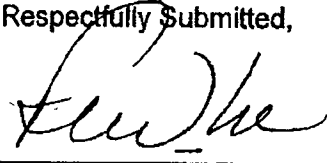
24. No credible evidence exists that any complaining witness had either a right to rely or any actual reliance in fact with respect to any statement made by the Petitioners in connection with the sale of a limited liability interest.

25. The pertinent content of the Initial Report of the Hearing Officer is hereby adopted and expressly incorporated into this Petition as additional grounds to set aside the decision of the Respondent.

WHEREFORE, the Petitioners, having fully set forth the facts and matters alleged herein, pray that the Court:

- (a) Exercise its exclusive jurisdiction over these matters;
- (b) Reverse and set aside the decision of the Respondent;
- (c) Declare unlawful and/or unconstitutional the *ad hoc* procedures utilized by the Respondent in reaching his decision; and
- (d) Tax all costs of this action, as well as of the administrative proceeding, against the Respondent.

Respectfully Submitted,

By: 

Robert V. Mathison, Jr.
Attorney for the Petitioners and
Plaintiffs, John M. McIntyre and
Silver Oak Land Management, LLC

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

December 19, 2014

Hilton Head Island, South Carolina.

NOTICE REGARDING PAGE NUMBERS IN THE RECORD ON APPEAL

Pages ROA_0114 through ROA_0160 are intentionally not included. The materials can be located at ROA_1017.

Administrative Proceeding
Before the Securities Commissioner
for the State of South Carolina

)	File No: 12058
In the Matter of:)	
)	
John M. McIntyre and)	
Silver Oak Land)	
)	TRANSCRIPT
Management, LLC,)	
)	OF
Respondents,)	PROCEEDINGS
)	

The within hearing was taken before Jennifer L. Thompson, CVR-M, Nationally Certified Verbatim Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 10:00 a.m., Tuesday, October 1, 2013 and concluding Thursday, October 3, 2013 at 5:30 p.m., at the Office of the Attorney General, Columbia, South Carolina.

Reported by:
Jennifer L. Thompson, CVR-M

Appearances

Presiding Judge:
 T. Parkin Hunter, Esquire
 Office of the Attorney General
 1000 Assembly Street
 Columbia, SC 29201

For the SC Attorney General:
 Jordan Crapps, Esquire
 Tracy Meyers, Esquire
 Andrew McLeod, Esquire
 Office of the Attorney General
 1000 Assembly Street
 Columbia, SC 29201

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

For the Witness Richard A. Silver:
 Betsy Gray, Esquire
 Sowell Gray Stepp & Laffitte, LLC
 1310 Gadsden Street
 Columbia, SC 29201

Also Present:
 John M. McIntyre (Witness)
 Dr. Susan Vitek
 Phil Hartman (Witness)
 Dena Hartman
 Richard A. Silver (Witness)
 Paul Finn (Witness)
 Jim Paris (Witness)
 Sandra Matthews (Witness)

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Exhibits

Exhibits No. 3, 5 & 6 from hearing 7/30/13 were admitted and received into evidence

State's Exhibit No. 13	Notes of Phil Hartman
State's Exhibit No. 14	Operating Agreement SOLT V
State's Exhibit No. 15	Membership Offer SOLT I
State's Exhibit No. 16	Email 9/23/12
State's Exhibit No. 17	Email 9/24/12
State's Exhibit No. 18	Email 10/1/12
State's Exhibit No. 19	Bank Records Centura
State's Exhibit No. 20	Bank Records Bank Meridian
State's Exhibit No. 21	Binder/Notes Rich Silver
State's Exhibit No. 22	Speedling Invoice
State's Exhibit No. 23	Employment Contract
State's Exhibit No. 24	Bank Records
State's Exhibit No. 25	Investor Questionnaires
State's Exhibit No. 26	QuickBook P&L SOLT
State's Exhibit No. 27	QuickBook P&L SOLT II
State's Exhibit No. 28	QuickBook P&L SOLT III
State's Exhibit No. 29	QuickBook P&L SOLT IV
State's Exhibit No. 30	QuickBook P&L SOLT V
State's Exhibit No. 31	QuickBook P&L SOLT VII
State's Exhibit No. 32	QuickBook P&L Silver Oak Energy
State's Exhibit No. 33	Bank Records SCBT
State's Exhibit No. 34	Email 10/3/12

Respondents' Exhibit No. 9	Letter 9/28/12
Respondents' Exhibit No. 10	Deed
Respondents' Exhibit No. 11	Email 10/31/11
Respondents' Exhibit No. 12	Emails
Respondents' Exhibit No. 13	Emails
Respondents' Exhibit No. 14	Redacted Email
Respondents' Exhibit No. 15	Email 12/13/2012
Respondents' Exhibit No. 16	Emails
Respondents' Exhibit No. 17	Emails
Respondents' Exhibit No. 18	Email 9/25/12
Respondents' Exhibit No. 19	Letter 12/17/12
Respondents' Exhibit No. 20	Email 12/18/12
Respondents' Exhibit No. 21	Email 11/8/12 (ID Only)
Respondents' Exhibit No. 22	Ledgers
Respondents' Exhibit No. 23	Website
Respondents' Exhibit No. 24	Email 11/19/11

1 P R O C E E D I N G S

2 Day One - October 1, 2013

3 - - - - -

4 THE COURT: I'm Parkin Hunter, I'm the appointed
5 hearing officer in this matter by the South
6 Carolina Securities Commission, Commissioner
7 Alan Wilson. And this is the case of In the
8 Matter of John M. McIntyre and Silver Oak Land
9 Management, LLC, file number 12058. And the
10 hearing today is a continuation of the hearing
11 in this matter from July 30th of this year.
12 And I'd like to go around the room and have
13 everybody introduce themselves and have all
14 the attorneys indicate for the record who they
15 are representing. We're going to start with
16 Mr. Crapps.

17 MR. CRAPPS: Jordan Crapps. I'm with the Securities
18 Division, South Carolina Attorney General's
19 office.

20 MR. MATHISON: I'm Robert Mathison. You have my
21 card. I represent the respondents John
22 McIntyre and Silver Oak Land Management, LLC.

23 MR. MCINTYRE: John McIntyre.

24 DR. VITEK: Susan Vitek.

25 MS. GRAY: I'm Betsy Gray representing the witness,

1 Mr. Silver.

2 MR. SILVER: Richard Silver, one of the investors
3 and representative of all the investors in all
4 of the affected companies.

5 MR. HARTMAN: Phil Hartman, investor in Silver Oaks
6 IV.

7 MS. HARTMAN: Deanna Hartman.

8 MS. MATTHEWS: Sandra Matthews. I'm with the
9 Securities Division.

10 THE COURT: Okay. This is set for the next three
11 days. I don't know if it will last that long.
12 But what I'd like to do is have us try to plan
13 that we can end today around five without
14 having a witness on the stand overnight. And
15 so if y'all can try to plan -- I mean, I
16 realize that may or may not work. But my
17 preference would be to end around five o'clock
18 without a witness sitting on the stand to
19 proceed the next day.

20 And, with that, if there are matters
21 anybody wants to take up. Mr. Crapps?

22 MR. CRAPPS: We have a new court reporter. Do we
23 have the exhibits presented at the last
24 session?

25 THE COURT: I have received the transcripts.

1 to be taken up. I received by email yesterday
2 a series of letters from Mr. Crapps that came
3 unsolicited. As the hearing officer may be
4 aware, I was given access to the files of the
5 attorney general's office before the hearing
6 that we had on July 30th. None of these
7 letters were in the files because all the
8 letters had been solicited since that hearing.
9 Everything that was sent to me would be the
10 rankest form of hearsay if it was authored
11 without authentication. At least one of those
12 individuals has shown up today to give
13 testimony. Whereas, several of the people who
14 were here before with the objective of
15 testifying are not here at present. And I'm
16 wondering whether the people that signed those
17 letters that are planning on testifying
18 whether I should prepare for it or not.
19 Because if they're just letters, I don't plan
20 on preparing at all because they're hearsay
21 and they're inadmissible.

22 THE COURT: Who are the names and we'll find out if
23 anybody's planning to call them.

24 MR. MATHISON: Well, Mr. Crapps is the one that sent
25 me the letters. They're not sent with any

1 explanation at all except here are the
2 letters.

3 THE COURT: Who do you think might testify based on
4 what's in the letters?

5 MR. MATHISON: I didn't think anyone was going to
6 testify, to be honest with you, because the
7 letters are riddled with hearsay themselves.
8 They look like they were prepared under the
9 supervision of Mr. Silver, not under the
10 supervision of a lawyer, and certainly not Mr.
11 Crapps or Ms. Meyers.

12 THE COURT: Who's the signator?

13 MR. MATHISON: Different ones. There are, I
14 believe, seven different signatories. But at
15 least one of those signatories is here today.

16 THE COURT: Does anybody anticipate calling the
17 signatories to these letters to testify today?

18 MR. CRAPPS: We will call Mr. Hartman. Phil
19 Hartman.

20 MR. MATHISON: Well, to the extent he's being --

21 MR. CRAPPS: I think that's the only signatory to a
22 letter that I was going to call, if I remember
23 correctly.

24 THE COURT: It seems to me we should wait and if Mr.
25 Crapps calls him, then if you have any

1 objections we can hear them at that time.

2 MR. MATHISON: What I am asking, Your Honor, is that
3 until such time if one of these letters may be
4 submitted for introduction as evidence and
5 properly authenticated that references to them
6 not be permitted.

7 THE COURT: That sounds reasonable. We'll see what
8 happens.

9 MR. MATHISON: Thank you, Your Honor.

10 THE COURT: Are you through with your case, Mr.
11 Mathison? I see you're not sitting at . . .

12 MR. MATHISON: My understanding is that that table
13 is to be used by people who are examining the
14 witness. It was not my case to start. My
15 witness was called as part of their case.

16 THE COURT: My error, that's right. If you'll
17 proceed, Mr. Crapps.

18 MR. CRAPPS: We'll call Phil Hartman.

19
20 Whereupon,

21 Phil W. Hartman, being duly sworn and
22 cautioned to speak the truth, the whole truth,
23 and nothing but the truth, testified as
24 follows:

25 Court Reporter: State your full name for the

1 record, please.

2 Witness: Phil W. Hartman

3

4

DIRECT EXAMINATION

5 BY MR. CRAPPS:

6 Q Mr. Hartman, where do you currently live?

7 A 10 Long Marsh Lane, Hilton Head Island.

8 Q Are you a South Carolina resident?

9 A As of two years ago, yes. Formerly a resident of
10 Michigan.

11 Q Can you give us a brief explanation of your
12 educational background?

13 A Actually, I struggled from high school to my
14 doctorate degree, but finally had the persistence
15 to get that, so. University of Michigan, if it
16 makes any difference.

17 Q Thank you. And your professional history?

18 A Thirty-one years in public education. And left
19 public education in 1998. And the last fifteen
20 years have been spent working with a company that
21 builds and remodels schools.

22 Q And what are you doing currently?

23 A I'm working for that company that's building and
24 remodeling schools, Wolgast Corporation.

25 Q Prior to your involvement in these entities, did

1 you ever have any prior experience in tree farming,
2 the tree industry?

3 **A** **Yes. I've had a Christmas tree farm since late**
4 **'70s. And also on that farm there's some hardwood**
5 **trees that we've harvested at various times. Also**
6 **worked with the US Department of Agriculture in**
7 **replanting and harvesting of those trees.**

8 **Q** **And how did you come to learn about the Silver Oak**
9 **Land operations and Mr. McIntyre?**

10 **A** **Through Sue Vitek.**

11 **Q** **And when about was that?**

12 **A** **We've been hearing about that probably since**
13 **2005/2006.**

14 **Q** **And when were you introduced to SOLT IV?**

15 **A** **2007.**

16 **Q** **And when did you invest in SOLT IV?**

17 **A** **Fall of 2007, I believe. You need that specific**
18 **date?**

19 **Q** **No, that's fine. Did you actually invest in SOLT**
20 **IV?**

21 **A** **Yes.**

22 **Q** **And how much did you invest?**

23 **A** **\$49,000 and some change. I think maybe \$700.**
24 **49,7.**

25 **Q** **What was the stated purpose of SOLT IV?**

1 **A** In terms of what? What the purpose of the
2 investment was?

3 **Q** What was the company going to do?

4 **A** The company was going to be managed to harvest
5 timber, replant timber and eventually sell the
6 land.

7 **Q** And who was the managing member of the SOLT IV?

8 **A** It was my understanding it was Jack McIntyre.

9 **Q** So prior to your investment, did you know that
10 Silver Land Management was the managing member?

11 **A** My understanding that was Jack McIntyre.

12 **Q** Did you know Sue Vitek had an interest in Silver
13 Oak Land Management in SOLT IV?

14 **A** No.

15 **Q** And at the time you were offered the security and
16 prior to your investment, did you contemplate
17 having an active role in SOLT IV?

18 **A** No.

19 **Q** In fact, did you ever play a role in the company?

20 **A** Only conversation I had about playing a role was I
21 had some conversations on the phone with Jack and
22 indicated to him that I had some knowledge about
23 the grants available through the Department of
24 Agriculture and that I had experience with that,
25 and that if he needed any help with that I'd be

1 glad to assist him.

2 Q Did you ever assist him?

3 A No.

4 Q Do you know of any other individual other than Jack
5 McIntyre who did play an active role in SOLT IV?

6 A No. You mean, today?

7 Q Yes.

8 A Well, I'm assuming that Sue Vitek --

9

10 MR. MATHISON: Objection. He asked him if he knew.

11 THE COURT: Overruled. I'll let it in.

12

13 A I'm sorry?

14

15 THE COURT: You may answer the question. I'll let
16 it in.

17

18 A Okay. It was my understanding initially that Jack
19 McIntyre was solely responsible for the management
20 of SOLT IV, but it's been brought to my attention
21 sometime last fall that Sue Vitek was involved in
22 that also.

23

24 MR. MATHISON: Objection. Now he's talking about
25 hearsay. Brought to his attention, that's

1 just a hedge for hearsay.

2 THE COURT: Sustained.

3

4. Q Who sold you the investment in SOLT IV?

5 A Sue Vitek was the one responsible for getting us
6 involved in the purchase of the contract for SOLT
7 IV.

8 Q Did you speak with anyone else about possibly
9 investing?

10 A When we received the information from Sue I wanted
11 a copy of the operating agreement and I asked the -
12 - she told me to call Jack, which I did. Operating
13 agreement was not available. He sent me an
14 operating agreement sample for SOLT II and said
15 this would be the same agreement that he would have
16 for SOLT IV.

17 Q Did you have any other conversations with Jack
18 McIntyre?

19 A Yes, I did. Once I received the operating
20 agreement, I called Jack back with several
21 questions I had regarding the role of the manager.
22 And there were some questions regarding the
23 distribution of shares, I guess you might say.

24 Q Did you take notes of that conversation?

25 A Yes, I did.

1 Q Are these those notes?

2 A Yes, sir.

3

4 MR. CRAPPS: Your Honor, we'd admit these notes into
5 evidence. If there's no objection, I would
6 like to enter these color copies of the
7 original. (To Mr. Mathison) If you want to
8 compare?

9 MR. MATHISON: Compare with what?

10 MR. CRAPPS: This is the original. This is a copy.
11 I would like to just submit a copy so Mr.
12 Hartman can hold onto his original.

13 MR. MATHISON: Well, I have several objections. And
14 the first is it hasn't been furnished. It
15 wasn't in the file when I was asked to go
16 through it, right? And, consequently, it's
17 being presented here for the first time. So
18 I'd like to have an opportunity to see if I
19 can ascertain what's actually in this
20 document.

21 THE COURT: Well, you want to take time to look at
22 it?

23 MR. MATHISON: It was not sent to me with the
24 materials, the letter, which I received
25 yesterday. I realize that there's an absence

1 of procedural niceties in the statute that I
2 submit to you that to put this document in
3 without serving it on me in advance is
4 probably inappropriate. It should be under
5 any reasonable interpretation of due process
6 of the Eighth Amendment which allows me to
7 confront this witness who didn't exist when
8 this hearing started as of July 30th. So I
9 would like to have an opportunity, if
10 possible, to see if I can figure out what this
11 all means, if the Court wouldn't mind.

12 THE COURT: I will be glad to give you the
13 opportunity to do it. I assume there is no
14 issue about its authenticity?

15 MR. MATHISON: I have no way of knowing whether it's
16 authentic because I got it right now.

17 MR. CRAPPS: Mr. McIntyre asked to view our file the
18 day before the beginning of the hearing. We
19 offered him the opportunity to do that. He's
20 made no other request to do so.

21 THE COURT: Was this document in the file when he
22 reviewed it?

23 MR. CRAPPS: It has been obtained since that time.

24 THE COURT: I didn't understand.

25 MR. CRAPPS: It's been obtained since that time.

1 MR. MATHISON: May it please the Court, a number of
2 the witnesses that were here and prepared to
3 testify when we were here on July 30th were
4 compromised badly when it was revealed that
5 they participated in management. We
6 introduced a number of exhibits that showed
7 one of the gentleman who hasn't bothered to
8 return, a Mr. Finn, was signing documents on
9 behalf of the various SOLT entities as vice
10 president. No one, in my opinion, has
11 standing to bring an investor lawsuit who's
12 participating in management. This gentleman
13 has been rounded up since those adverse
14 disclosures at the last hearing because he is
15 apparently not a participant in management.
16 That's the sole reason that he's here.

17 MR. CRAPPS: Mr. Finn is unable to be here today.
18 He will be here, and we will call him to
19 testify first thing tomorrow morning. So he
20 will testify.

21 THE COURT: Well, I'll let the notes in. And, Mr.
22 Mathison, you can cross examine him about the
23 notes and you can have time to review it. And
24 we will proceed.

25 MR. MATHISON: Thank you, Your Honor.

1 MR. CRAPPS: Is there any objection to the copy?

2 MR. MATHISON: No, it looks like they're identical.

3 MR. CRAPPS: We'll admit this document into
4 evidence.

5 THE COURT: Let's go off the record a second.

6

7 (Off the Record)

8

9 THE COURT: A question has come up about the
10 exhibits that were introduced in the last
11 hearing. I have the original exhibits sealed.
12 I'm going to open those and we will proceed to
13 use them, and I understand there's no
14 objection of anybody to unsealing these
15 exhibits. We'll still be able to use them.
16 It looks like the last exhibit number was
17 Exhibit No. 8.

18 MR. CRAPPS: My understanding is our last exhibit
19 was Exhibit No. 12 here. So we'll start again
20 with 13.

21 THE COURT: We looked at the exhibits and we're
22 starting with Exhibit No. 13 in this number
23 sequence.

24

25 (Whereupon, State's Exhibit No. 13 was

1 marked and received into evidence.)

2

3 Q Mr. Hartman, can you explain the context of the
4 notes there in Exhibit No. 13?

5 A Well, I had a question of the operating agreement
6 when it was available. And you want the questions
7 or . . .

8 Q Just what was this conversation surrounding these
9 notes?

10 A Well, when I got the sample operating agreement
11 regarding SOLT II it was very unclear in that the
12 operating agreement as to the role of the manager
13 in the project. So when I was looking at the -- or
14 talking to Jack he indicated that the 20 percent
15 would be going to the manager. In addition, he
16 would be -- his company would be purchasing an
17 extra four percent. So he would own actually a
18 total of 24 percent of this company of which he
19 only paid four percent for. So my concern was how
20 we would pay for the management operation side of
21 the company. So this was the essence of my
22 questions in terms of getting at the manager's role
23 and who would pay for those managing
24 responsibilities.

25 Q And so these black comments here, what are those?

1 **A** The black comments are my notes prior to the phone
2 call of the areas that I wanted to talk to Jack
3 about. The dark blue are the responses that I took
4 notes on regarding that conversation.

5 **Q** And what was the first question?

6 **A** Just when the operating agreement would be
7 available. And he said that would be coming
8 shortly, basically. In fact, we received it
9 approximately about the time we -- you know,
10 actually I can't remember if I received it before I
11 sent the check in or not, but it was pretty much
12 around the same time. And there's also a signature
13 page that was sent for our signatures for the
14 purchase of the property.

15 The second question was I was concerned that
16 the management fee of 24 percent was very high.
17 And he indicated to me that, of course, four
18 percent of that was his investment in the company
19 and would be treated like any other investor. And
20 if you read down below, I've listed the items that
21 he indicated that would be covered by the 20
22 percent. Basically, everything in relationship to
23 the operation and purchasing the property would be
24 coming out of his 20 percent as indicated in his
25 comments. Planning, consulting fees, legal work,

1 phase study, wetland study, title insurance, timber
2 insurance, land planning, listing the property,
3 etcetera.

4 Q So you asked Mr. McIntyre directly what all would
5 be covered within his 20 percent of the company?

6 A Yes, sir.

7 Q And these starred items toward the bottom are his
8 answer to that question?

9 A Yes.

10 Q Did you expect Mr. McIntyre to take consulting fees
11 and management fees?

12 A No.

13 Q Did you expect Mr. McIntyre to take personal
14 expenses?

15 A No.

16 Q Did you ask Mr. McIntyre what your 49,000 and some
17 change --

18

19 MR. MATHISON: Objection. Leading.

20 THE COURT: Restate it.

21

22 Q Did you ask Mr. McIntyre what your investment was
23 to be used for?

24 A Yes. He basically said it would be for the
25 purchase of the land and to cover the closing

1 costs.

2 Q Were you given offering or sales material prior to
3 your investment?

4 A Yes.

5 Q And who gave you that material?

6 A Sue Vitek.

7

8 MR. CRAPPS: Can we go off the record?

9

10 (Off the Record)

11

12 THE COURT: We've been reviewing exhibits. It
13 looks like from the sealed exhibits that I
14 opened Exhibit No. 3, which is the Silver Oak
15 Land Trust IV, LLC Agreement is for whatever
16 reason is not in those exhibits. Mr. Mathison
17 has produced his document called Exhibit
18 Copies and it is contained in this. I think
19 we all agree that this was admitted into
20 evidence at the prior hearing. Is there any
21 objection to that?

22 MR. MATHISON: I don't have any objection to his
23 using it. I don't recall whether it was
24 admitted or simply marked for identification.
25 If he wants to use it, he can.

1 THE COURT: Why don't we, when this is over, we'll
2 make another copy of this exhibit and give it
3 to the court reporter to incorporate it.

4 MR. MATHISON: I think Jordan has it. I think
5 you're the only one that doesn't, Your Honor.

6 THE COURT: Right. I'd like it incorporated in the
7 official record. For whatever reason, it
8 seems to be missing here. So are we all in
9 agreement there?

10 MR. CRAPPS: Do I need to reintroduce it?

11 THE COURT: Yes, why don't you reintroduce it. I
12 think we put everything in evidence last time.

13 MR. CRAPPS: According to my notes, we did.

14 MR. MATHISON: If I recall correctly, some things
15 were introduced for identification only
16 subject to being tied up. And I believe they
17 all were tied up, but I can't be certain.

18 THE COURT: Well, do you have any objection to
19 having it --

20 MR. MATHISON: I don't have any objection to his
21 using it again.

22 THE COURT: I consider it in evidence, we'll
23 proceed and make a copy to give to the court
24 reporter so that her official set of exhibits
25 will have it since it seems to be, for some

1 reason, missing.

2

3 MR. CRAPPS (Resuming)

4 Q Mr. Hartman, I'm going to show you a copy of a
5 document entitled Silver Oak Land Trust IV, marked
6 as I have it here as Exhibit No. 3. Is this an
7 accurate copy of the materials that you received?

8 A Other than this, you're saying?

9

10 MR. MATHISON: Your Honor, may it please the Court -

11

12 THE COURT: He's looking through his own material.

13 Why don't we just use his materials?

14

15 A It's not the same, but we are missing this page.

16 All the rest of them look pretty close.

17

18 THE COURT: And I hear from Mr. Mathison the witness
19 is trying to determine whether it's the same
20 document or not.

21

22 A Yes.

23

24 THE COURT: Your review is the same document?

25

1 **A** Right.

2 **Q** Did you receive or see the operating agreement,
3 which was to govern SOLT IV prior to your
4 investment?

5 **A** I can't remember when I actually received SOLT IV
6 agreement. I guess I would say -- That's my
7 answer. I do not know when I received SOLT IV
8 agreement.

9 **Q** Were any representations made to you about an
10 expected return on investment?

11 **A** As a matter of fact, in my notes there you can see
12 where I wrote eleven percent. And I think, you
13 know, I kept hearing eleven, twelve percent on a
14 return, but I can't recall specifically. But
15 that's the number I wrote down as I'm talking to
16 Jack. And one of my questions on the questionnaire
17 was, you know, what are the upside, what are the
18 downside. And, as you could see, the downside is
19 timber pricing, major recession, our exit strategy.
20 And you see I wrote eleven percent above that. But
21 the upside is the value back in timber sales,
22 owning the land on fresh water, making it
23 desirable. So, I guess, I'm always thinking that's
24 the return that I heard is eleven percent, twelve
25 percent. Those are the two numbers that keep

1 floating around.

2 Q And who made those representations to you?

3 A Again, any information on this sheet came from Jack
4 McIntyre.

5 Q What was your understanding as to how timber income
6 was to be distributed?

7 A Would be distributed equally according to -- well,
8 not equally, but according to the number of shares
9 a person held.

10 Q Was that understanding important to your decision?

11 A Yeah, two things were very important to my
12 decision. One, the distribution of the income.
13 And more importantly how the project would be
14 managed and who would pay for that.

15 Q And you may have answered this before, but what
16 were you told your money would be used for?

17 A Purchase the property and all the costs related to
18 purchasing the property, the closing costs.

19 Q And during the course of the operation of the
20 business, did you have regular access to financial
21 information about the company?

22 A None.

23 Q Did you ever ask for financial information?

24 A We received an annual K1. And I'm assuming from my
25 standpoint at that point in time that because there

1 was no other expenses that everything related to
2 what we were doing is on that K1. When we started
3 hearing that there may be problems with the SOLT IV
4 I called Jack asking him for a list of all the
5 financial records, including contracts for selling
6 timber cuttings, as well as information on rentals
7 for hunting land. He said he would give that to
8 me. It did not come. I ended up writing a letter,
9 sending him an email asking for it again, and I
10 still have not received that information.

11 Q During the course and operation of the business,
12 did you ever contribute to making any decisions
13 with the company?

14 A No.

15 Q Since the recent events that led to Rich Silver
16 replacing Mr. McIntyre as the managing member,
17 since that time, have you talked with a forester
18 about the operation of SOLT IV?

19 A As a matter of fact I did.

20

21 MR. MATHISON: I'm going to object if he's going to
22 put words in the mouth of the forester.

23 THE COURT: I'm going to let it in, and I'll
24 consider . . .

25 MR. MATHISON: That's the rankest form of hearsay.

1 If they know that there is a forester, they
2 can subpoena him, just like I subpoenaed my
3 witness.

4 THE COURT: Well, let's hear the question.

5
6 Q What was that forester's name?

7 A Can I get my notes back, please.

8
9 MR. MATHISON: I'd like the record to reflect that
10 he doesn't know the forester's name.

11
12 A I never met the forester. His name was given to me
13 by Rich Silver. His name is Wes Davis.

14 Q And did you have a conversation with him?

15 A Yes, I did.

16 Q And what is that document I just handed you?

17 A It's a note that I sent to Rich Silver regarding my
18 conversation with the forester, Wes Davis.

19
20 MR. MATHISON: I'm going to renew my objection.

21 This is so highly irregular from an
22 evidentiary standpoint. This is an effort
23 enter in double hearsay. And there's no way I
24 can get the stain off the record after he puts
25 in whatever it is that he wants to say from a

1 person who's not here to testify himself.

2 MR. CRAPPS: Your Honor, these notes here are
3 refreshing his recollection of a conversation
4 he had.

5 THE COURT: I'll let it in, and I'll look accord
6 what it's worth when my review of the record.
7 It's not a jury trial.

8 MR. MATHISON: May it please the Court, does that
9 mean that you're reserving a ruling on my
10 objection or you're admitting it?

11 THE COURT: I'm admitting it.

12

13 Q What is the context of the conversation that took
14 place between you and Mr. Davis?

15 A I was asking about his involvement with Jack
16 McIntyre as related to SOLT IV and wanted to get a
17 chronological idea of what was happening, how it
18 was done and when it was done. And this kind of
19 outlines the process that he described to me over
20 the phone. He indicated in 2008 that 150 acres
21 were thinned, and he indicated in 2010 sixty acres
22 were clear cut. And Jack had referred -- Wes Davis
23 advised Jack that he should have thinned that
24 clearing -- that cutting should have been thinned
25 and not clear cut. He went ahead and clear cut it

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MR. MATHISON: This is profoundly ridiculous. He's testifying as to someone else's opinion who's not here. This violates the Eighth Amendment. I got the right to confront the witness that he's purporting to put in the record on the record. They're not bringing him here. He doesn't have any knowledge of this. He didn't even know the man's name. He's been brought here effectively to put in testimony for someone who they don't want to bring here. There's no reason they can't serve a subpoena and bring Mr. Davis in here. This is the state of South Carolina. The State has the ability to do that. There's no conceivable good reason to allow this man to summarize someone else's opinion. It's just profoundly objectionable. Constitutionally objectionable.

MR. CRAPPS: Again, we feel that Mr. Hartman is testifying as to his personal knowledge of a conversation that took place that he was a party to.

THE COURT: Well, I'll let it in for his state of

1 mind, it tells him what he believed and not
2 necessarily for the truth of what the forester
3 said.

4
5 **A** So, getting back to 2010. Sixty acres were clear
6 cut. Jack was advised not to clear cut, just to
7 thin the property. Went ahead and clear cut it.
8 And then he was advised to replant and he did not
9 replant. 2011, thirty-three acres were clear cut.
10 Jack was advised again to replant. Again, no
11 replanting. 2012, a contract was let to --

12

13 MR. MATHISON: I'm renewing my objection. I'm going
14 to make a continuing objection. This is, in
15 my opinion, meretricious testimony by someone
16 who doesn't know whether or not this was said
17 or not.

18 MR. CRAPPS: In our mind, it's a present sense
19 impression of the conversation he had.

20 MR. MATHISON: It's a conversation with someone he
21 had out of this courtroom who's not here to
22 testify, who they don't propose to bring in to
23 testify. Now, they're going to represent to
24 the court that they're going to make this man
25 available for me to cross examine him, I'll

1 withdraw the objection. They don't have any
2 plan to do that. They don't want him cross
3 examined. They want this testimony to stand
4 on its own unadorned except as this man may
5 have editorialize whatever Mr. Davis said, if
6 he said anything.

7 MR. CRAPPS: Again, we're not saying Mr. Davis is
8 correct or not, and we're not admitting this
9 for the fact. We're admitting it to prove Mr.
10 Hartman's present sense impression of the
11 conversation.

12 MR. MATHISON: Then that's irrelevant. His state of
13 mind is completely irrelevant to anything at
14 issue in this case.

15 THE COURT: Your objections are noted. I'm going to
16 allow the testimony to continue and subject to
17 your -- I note your hearsay exception --

18 MR. MATHISON: And my constitutional exception.

19 THE COURT: And your constitutional exception. And
20 I'll consider it a continuing objection.

21

22 **A The other item, 2012 --**

23

24 MR. MATHISON: Forgive me, but I'm going to object
25 now, because the procedure is to have the

1 lawyer ask the questions and the witness
2 answers the lawyer.

3 MR. CRAPPS: One second, Mr. Hartman.

4 THE COURT: If you'll wait until Mr. Crapps asks you
5 a question.

6

7 Q Can you read your note here number four?

8 A Yeah. In 2012 a contract was led to thin 150 acres
9 that was thinned in 2008. Jack wanted to clear cut
10 the 150 acres, but Wes Davis talked him out of it.
11 And Wes told Jack that the property should not be
12 thinned at this time, but he did go ahead with a
13 contract. That contract is presently on hold and
14 we're -- as far as I know.

15 Q Thank you. Mr. Hartman, were you offered
16 investments in other SOLT entities?

17 A We were given information for SOLT V. And there
18 was a reissue or refunding or re-offering for
19 additional SOLT I, I believe.

20 Q And did you invest in those entities?

21 A No.

22 Q Were you told at the time you invested that your
23 money would be transferred to other SOLT entities?

24 A No.

25 Q Would you have invested if you knew that investor

1 funds would be transferred to other SOLT entities?

2 **A** No.

3 **Q** Were you told at the time you invested, or prior to
4 it, that investor money would be transferred to
5 Jack McIntyre and his management company?

6 **A** No.

7 **Q** Would you have invested if you had known?

8 **A** No.

9 **Q** Now, were you told at the time you invested, or
10 prior to it, that investor money would be used for
11 personal expenses of the manager?

12 **A** No.

13 **Q** Would you have invested if you had known?

14 **A** No.

15

16 **MR. CRAPPS:** That's all the questions we have.

17 **THE COURT:** Do you have any questions, Mr. Mathison?

18 **MR. MATHISON:** Yes, sir, I do. But may it please
19 the Court, I'd like to take a couple of
20 moments and see if I can't evaluate what this
21 document is that was just presented to me
22 before the witness testified, that is his
23 ostensible notes.

24 **THE COURT:** Should we take a break?

25 **MR. MATHISON:** It shouldn't take longer than ten

1 minutes.

2 THE COURT: Let's come back at 11:15.

3

4 (Off the Record)

5

6 CROSS EXAMINATION

7 BY MR. MATHISON:

8 Q Mr. Hartman, my name is Rob Mathison and I
9 represent Mr. McIntyre and Silver Oak Land
10 Management. First of all, I have a couple of
11 questions about your notes, if you don't mind.
12 When did you furnish these notes to Mr. Crapps?

13 A Yesterday.

14

15 MR. CRAPPS: I object to the relevance of that.

16 THE COURT: I'll let him answer the question.

17

18 Q You furnished them yesterday?

19 A Yeah.

20 Q And had you made him aware of their existence
21 before yesterday or is this something you just
22 showed up with yesterday?

23 A No. I wrote a letter to Mr. Crapps and indicated
24 that some of the information I was relaying to him
25 was from my notes.

1 Q And how did Mr. Crapps come into possession of your
2 notes yesterday? How did you get them to him?

3 A I handed them to him.

4 Q So you've been here since yesterday? Is that
5 right?

6 A Yes.

7 Q Was there a reason that these notes couldn't have
8 been sent to me yesterday?

9 A Well, it was late in the afternoon, so I'm assuming
10 that -- you'll have to ask Mr. Crapps that
11 question.

12 Q I see. Well, given the way the procedure has
13 unfolded, sir, perhaps I'll have that opportunity.
14 Did anyone notify you of the hearing that was held
15 in this case on July 30th?

16 A Did I know about the hearing?

17 Q Did anyone notify you of the hearing?

18 A Before?

19 Q Yes.

20 A No.

21 Q Were you asked to come here on July 30th?

22 A No.

23 Q When were you notified that someone wanted you to
24 come here?

25 A I wrote a letter to Mr. Crapps after the hearing

1 indicating some information I had and concerns,
2 about the case --

3 Q What induced you to write the letter, sir?

4 A I beg your pardon?

5 Q What induced you to write the letter?

6 A It was my understanding that there was some
7 comments made that the only people concerned about
8 the allegations against Jack and Sue were Rich
9 Silver.

10 Q Who gave you that understanding, sir?

11 A I believe Rich Silver told me that.

12 Q So Mr. Silver, after the hearing on July 30th,
13 contacted you and asked you to write a letter? Is
14 that right?

15 A No. He indicated to me that the only people that
16 are concerned about this, or that have an issue
17 with this, is Rich Silver, and if you wanted to
18 contact them and let people know that I could do
19 that. And so I did.

20 Q When did Mr. Silver contact you to tell you that?

21 A It was after the hearing. I'm not sure.

22 Q Well, sometime before you wrote a letter dated
23 August 18, 2013?

24 A Right.

25 Q And the reason that you wrote that letter is Mr.

1 Silver asked you to?

2 **A Mr. Silver did not ask me to write a letter.**

3 Q What did he ask you to do?

4 **A He did not ask me to write a letter.**

5 Q What did he ask you to do?

6 **A He didn't ask me to do anything.**

7 Q So he just contacted you and said that there was a
8 problem. Is that right?

9 **A Mr. Silver indicated that as far as Jack and Sue
10 are concerned he's the only one that has an issue,
11 or he's the only that has an issue with what
12 happened with the SOLT.**

13 Q Did Mr. Silver tell you that evidence came in at
14 the hearing on July 30th that he and Mr. Finn
15 participated in the management of these entities?

16 **A I don't recall.**

17 Q You don't recall?

18 **A No.**

19 Q Do you know whether he did or not, Mr. Silver
20 participate in the management of these entities?

21 **A I do not know.**

22 Q Do you know whether an investor is entitled to
23 complain about his own management in a securities
24 context, sir?

25 **A Under the law, you're saying?**

- 1 Q Yes, sir.
- 2 A I do not know.
- 3 Q But you were not a manager. Is that right?
- 4 A Correct.
- 5 Q And all of a sudden you're here. Is that right?
- 6 A Yes.
- 7 Q And that's because you had a telephone conversation
8 with Mr. Silver. Is that right?
- 9 A It was a telephone conversation, correct.
- 10 Q And but for that conversation you wouldn't be here
11 at all. Isn't that right?
- 12 A I don't know.
- 13 Q When was your first telephone conversation, if you
14 had one, with Mr. Crapps?
- 15 A After I sent the letter.
- 16 Q When?
- 17 A After August 30th.
- 18 Q And I ask you was it August 30th or August 18th,
19 sir?
- 20 A I don't recall.
- 21 Q Well, may I ask you this, if it was August 30th, do
22 you have an explanation of why no one informed the
23 respondents in this case that you were going to
24 participate for the last month?
- 25 A That's a good question for Mr. Crapps.

- 1 Q I see. Well, do you have a copy of your notes in
2 front of you?
- 3 A Sure.
- 4 Q Looking at the bottom, I'm trying to make heads or
5 tails of this. Does the first thing where there's
6 a little arrow point say consultant forester? Is
7 that what that says?
- 8 A Uh-huh.
- 9 Q And then the next thing, is that legal work?
- 10 A Uh-huh.
- 11 Q The next is phase study?
- 12 A Uh-huh.
- 13 Q You know what that is?
- 14 A That's, I'm assuming, what he was talking about as
15 looking at how the planning of the cutting of the
16 timber and replanting.
- 17 Q The next is wetland?
- 18 A Yes, sir.
- 19 Q The next is title insurance?
- 20 A Right.
- 21 Q The next is timber insurance?
- 22 A Right.
- 23 Q Do you know what timber insurance is, sir?
- 24 A Right.
- 25 Q Do you know what it is?

1 **A** I think so.

2 **Q** What is it?

3 **A** To insure the timber if something would happen,
4 fire, whatever, would be insured.

5 **Q** The next is land planner.

6 **A** Yeah.

7 **Q** The next is lost property. Is that what that says?

8 **A** Listing property.

9 **Q** Would it be your understanding that those are
10 typical tasks or expenses that are undertaken by an
11 entity that holds land or holds trees on land?

12 **A** No.

13 **Q** Which one would not be typical?

14 **A** Perhaps the legal work, the wetland study.

15 **Q** I think you testified, didn't you, that your belief
16 was that the money you invested would be used for
17 the acquisition of the land.

18 **A** Right.

19 **Q** Isn't that correct?

20 **A** Right.

21 **Q** Do you know what the land cost was?

22 **A** Do you need to know that? I can find it.

23 **Q** Do you know without looking it up, sir?

24 **A** No.

25 **Q** I'm handing you a document which is designated

1 Special Warranty Deed. Do you know whether or not
2 that special warranty deed is, in fact, the deed
3 for the property in question that was acquired by
4 SOLT IV?

5 **A. It says it is.**

6

7 THE COURT: And did -- can Mr. Crapps have a copy?

8 MS. MEYERS: Your Honor, we would object that we
9 haven't seen it. And it needs to be
10 identified, that this witness needs to be able
11 to identify IT before it can even come in. I
12 mean, he's welcome to show it to him for the
13 purposes of identification and then, of
14 course, if he can identify it that's one
15 thing. But if he's handing it to him to say
16 have you seen this before, or whatever the
17 question starts with, you know, we're going to
18 have to object to that because then this
19 wouldn't be the proper witness for it to come
20 in through.

21 MR. MATHISON: He just took the deed out of his file
22 and he was looking at it. He's got his own
23 copy. I'll use his copy.

24 THE COURT: But, as a matter of the formality of the
25 proceeding, I prefer that there be one lawyer

1 for each side.

2

3 Q Would you take the deed back out now that you just
4 put away, Mr. Hartman.

5

6 MR. MATHISON: I'd like the record to reflect that
7 when the lady objected, Ms. Meyers, I believe,
8 he then took the deed and put it back in his
9 file.

10

11 Q Now, is that a copy of the deed to this property,
12 to the best of your knowledge?

13 A **This says it's a special warranty deed for SOLT IV.**

14 Q Is it or not, or do you know?

15 A **Well, that's what I have and this is what the paper
16 says in front of me, so that's what I have.**

17 Q And the consideration is recited on that deed, is
18 it not?

19 A **I don't have that on here. Yeah, I do. I do, too,
20 \$1.5 million. \$1,150,000.**

21 Q Well, which is it? 1.5 million or 1,150,000?

22 A **1,150,000.**

23 Q To the best of your knowledge, was that the price
24 paid for the SOLT IV property?

25 A **Best of my knowledge.**

1 Q Do you how many acres that \$1,150,000 purchased?

2 A I believe it was around 410 acres, 400 plus.

3 Q And do you know how much money was raised, all
4 told, to acquire that property? Do you know that
5 amount?

6 A Not right offhand.

7 Q Would the number \$1,193,423 sound about right?

8 A Like I said, I don't know that number. I don't
9 think I have that number in here.

10 Q Well, you testified that your money wasn't used to
11 purchase land, didn't you?

12 A No, I did not.

13 Q Well, let's assume for the moment that I'm correct.
14 and the total amount of money raised was
15 \$1,193,423.

16 A Okay..

17 Q Do you know what percentage of that the land cost,
18 without closing costs, that is \$1,150,000? Do you
19 know what percentage that is?

20 A No.

21 Q Would it be 97 percent in round numbers?

22 A If you say so.

23 Q Could you calculate it for me? You do do long
24 division, don't you?

25 A Right.

1 Q I mean, if Mr. Silver asked you to do long division
2 you could do it, couldn't you?

3

4 MR. CRAPPS: Pardon me. Badgering the witness.

5

6 Q Couldn't you?

7

8 MR. CRAPPS: It's getting out of hand.

9

10 A Probably.

11 Q Okay, well, then let's do it. Let's take
12 \$1,193,423 and -- excuse me. Let's take 1,150,000
13 and divide it by 1,193,423 and see what we come up
14 with?

15 A And what's your --

16 Q I'm asking you to do it since you know how to do
17 it.

18

19 MR. CRAPPS: I object.

20

21 Q Is it 97 percent or not, Mr. Hartman?

22 A I don't know.

23 Q Well, what percentage of your money didn't go for
24 acquisition of the land?

25 A I do not know.

1 Q So you're recanting your testimony that your money
2 wasn't used to acquire the land?

3 A No.

4

5 MR. CRAPPS: Parkin, I object. He --

6

7 A No.

8

9 MR. CRAPPS: He's misstating the record.

10 MR. MATHISON: Misstating what, sir? What am I

11 misstating?

12 THE COURT: Let's don't go back and forth between

13 the lawyers. And just watch your tone a

14 little bit and we'll proceed.

15

16 A The record will show that I said the money went to
17 purchase land and closing costs.

18 Q Do you know what the closing costs were?

19 A No.

20 Q Do you know whether the surveyor found an
21 additional ten acres in addition to the 410 that
22 were reflected as being transferred in that deed?

23 A No.

24 Q Do you know what the land transfer tax is in Chowan
25 County, North Carolina?

1 **A** **No.**

2 **Q** If I told you it's \$11,500, would you believe that?

3 **A** **I have no reason not to.**

4 **Q** What I'm getting at, sir, is where is this money
5 that disappeared according your testimony?

6 **A** **I didn't say any money disappeared.**

7 **Q** Well, how were you deceived?

8 **A** **In terms of the purchase?**

9 **Q** Yes, sir.

10 **A** **(Nonverbal Response.)**

11

12 -MR. MATHISON: I'd like the record to reflect that
13 the witness just shrugged.

14

15 **Q** Does that mean you weren't deceived or not?

16 **A** **The question was what was the money used for. The**
17 **money was used for purchase land and closing cost.**
18 **Now, are you asking me another question?**

19 **Q** No. I asked you specifically what is it about this
20 transaction that you feel that you were deceived
21 about?

22 **A** **What's the question?**

23 **Q** What were you deceived about?

24 **A** **Who said I was deceived about the purchase of the**
25 **property?**

- 1 Q Is there anything you were deceived about, sir?
- 2 A You have a question?
- 3 Q Is there any fact about which you were deceived in
4 your participation in SOLT IV?
- 5 A There are a number of things that were not brought
6 to my attention as it relates to SOLT IV. One, the
7 manager using -- allegedly using the money for
8 personal use. Two, --
- 9 Q Excuse me --
- 10 A I'll answer --
- 11 Q Excuse me --
- 12 A I'll answer your question. You want to know what I
13 was deceived about? I'll answer your question.
- 14 Q How do you know that?
- 15 A Well, this is information that --
- 16 Q You got from Rich Silver?
- 17 A I said allegedly. You want me to answer the
18 question or not?
- 19 Q It's information you got from Rich Silver, isn't
20 it?
- 21 A It's information that Rich Silver provided as it
22 relates to --
- 23 Q Thank you.
- 24 A -- records that were released by Sue and Jack.
- 25 Q You don't have any information that indicates that

1 money was used for any purposes other than the
2 acquisition of the land, just like I told you.
3 Isn't that correct?

4 **A** My contribution to the purchase of the property was
5 used, I believe, for the purchase of the property
6 and closing costs. Yeah, that's correct.

7 **Q** And you made a statement, I believe, in response to
8 one of Mr. Crapps' questions that you had made a
9 request for records to Mr. McIntyre. Is that
10 correct?

11 **A** Yes, sir.

12 **Q** And did you write a letter on September 28, 2012
13 asking that he deliver certain records to you?

14 **A** Yes, sir.

15 **Q** And this is the letter right here. Is that the
16 letter you wrote to Mr. McIntyre?

17 **A** Uh-huh.

18

19 THE COURT: Could you please answer yes or no.

20

21 **A** Yes.

22

23 MR. MATHISON: I move the introduction of the
24 letter. It's the Respondents' next exhibit.

25 THE COURT: Any objections?

1 MR. CRAPPS: I have no objection.

2 THE COURT: Admitted. This exhibit, what are we up
3 to?

4

5 (Off the Record)

6

7 (Whereupon, Respondents' Exhibit No. 9
8 was marked and received into evidence.)

9

10 THE COURT: We've marked the exhibit as Respondents'
11 Exhibit No. 9.

12

13 Q Would you take out the deed that you had in your
14 file that you were about to put away? Just hand it
15 to me, if you don't mind. The entire deed. You've
16 got a blank page next or you don't have anything
17 but the front page of the deed?

18 A That's all I got.

19 Q This is what you were referring to when you
20 testified?

21 A Yes.

22 Q The document that came out of your file. Is that
23 right?

24 A Yes.

25

1 MR. MATHISON: I move that be introduced with the
2 understanding that's only page of what I
3 believe is a three page deed as Respondents'
4 Exhibit No. 10.

5 THE COURT: Any objection? Do you want to see it?

6 MR. CRAPPS: Yes.

7 THE MATHISON: Just using this to identify what it
8 is that he looked at when you questioned him
9 about it. And I represent to the court that is
10 the face page of the actual deed which I
11 showed him to which they raised some kind of
12 concern.

13 THE COURT: It's admitted as Respondents' Exhibit
14 No. 10.

15
16 (Whereupon, Respondents' Exhibit No. 10
17 was marked and received into evidence.)

18

19 Q Do you know who made the earnest money deposit to
20 hold the property that was actually purchased by
21 SOLT IV?

22 A No.

23 Q If I told you that the entity known as SOLT I put
24 up the initial deposit, would that ring true with
25 you, or do you know?

1 **A** **No.**

2 **Q** Do you what the initial deposit was?

3 **A** **No.**

4 **Q** Do you know what five percent of \$1,150,000 is?

5 **A** **I guess I could calculate it.**

6 **Q** Well, just in round numbers would it be about
7 \$57,543?

8 **A** **Sounds good.**

9 **Q** And do you think that the members of SOLT I were
10 entitled to either to have that money paid back or
11 entitled to credit for that money in their
12 participation in SOLT IV?

13 **A** **I do not know what the contract stated as it**
14 **relates to that, if they were a participant or if**
15 **it was a loan.**

16 **Q** Okay. Do you know whether you were initially a
17 participant in an LLC that consisted of SOLT IV and
18 you and another individual investor or two? Do you
19 know what the agreement looked like when you signed
20 it? You did sign the agreement, didn't you?

21 **A** **Yes.**

22 **Q** I'm showing you what's been identified as the
23 State's Exhibit No. 4. And I'm representing to you
24 that that is the agreement for SOLT IV.

25 **A** **Okay.**

1 Q Did you read that before you signed it?

2 A Yes.

3 Q Would you look through and see if you can find your
4 signature among the signature pages?

5 A Found them.

6 Q So you did sign it?

7 A Yes.

8 Q And you did read it?

9 A Yes.

10 Q Do you know whether that document is identical to
11 the SOLT II agreement that you were shown before
12 you decided to participate?

13 A No.

14 Q I believe you testified you didn't recall whether
15 you had reviewed and signed the SOLT IV agreement
16 before you put your money in.

17 A Yes.

18 Q You don't remember?

19 A No.

20 Q Do you know whether there is any management fee at
21 all specified in the SOLT IV agreement as opposed
22 to the SOLT II agreement?

23 A I don't recall if the 20 percent is in here or not
24 without reading it as it relates to Jack's share of
25 the --

1 Q Who told you that there was a 20 percent management
2 participation in the SOLT IV --

3 A I said I don't recall how it's worded, sir.

4 Q Okay. Well, why don't you read it, then, and see
5 if you can find where it says that there was to be
6 a 20 percent management fee paid.

7 A Do you know what page this is on?

8 Q I didn't testify, sir. I'm asking you to find what
9 it is that you think supports your testimony that
10 there's a 20 percent management fee due under that
11 contract.

12 A So if you're asking me if I see this in here
13 specifically, the answer is no.

14 Q Do you know whether there is a specific management
15 fee provided in the SOLT II contract?

16 A No.

17 Q Who told you to say that there was a 20 percent
18 management fee in that contract?

19 A I was told from the very beginning that there
20 would be a 20 percent of the property given to Jack
21 McIntyre for his management services.

22 Q But it doesn't exist in there, that you can find,
23 is there?

24 A Not just quickly looking at it, no.

25 Q Well, then look at it as thoroughly as you need to.

1 A Well, I can see right here where the Silver Oak
2 Land Management, LLC received 21 -- 20.1 percent.
3 And that was their share for all -- for the
4 management of the property.

5 Q Do you know whether Silver Oak Land Management
6 owned a participation in Silver Oak Land Trust I?

7 A No.

8 Q But if they did, they'd be entitled to a
9 percentage, wouldn't they, just like the other
10 investors in Silver Oak Land Trust I?

11 A Not necessarily.

12 Q Because you were basically buying their equity,
13 weren't you?

14 A I said I did not see how that down payment was made
15 or who was involved in it or the contract or how
16 that contract read. So I can't say that, no.

17 Q Do you know anything of your own knowledge that
18 hasn't been imparted to you by Mr. Silver?

19 A Yes...

20 Q What?

21 A Well, one of the things that I was getting to when
22 you asked me about how I was deceived, a couple of
23 things. Number one was that the information I did
24 receive from Rich Silver indicated that personal
25 expenses were used in the management of the

1 **property. Sue --**

2 Q Excuse me.

3 A **Sue Vitek never indicated to me her involvement --**

4 Q Excuse me.

5 A **-- in the management association.**

6 Q Didn't I ask you do you have information that

7 wasn't imparted by Mr. Rich Silver?

8 A **And I talked to --**

9 Q Did I ask you that or not?

10 A **And I talked to --**

11 Q Did I ask you that or not, sir? Just limit

12 yourself to what you know of your own knowledge,

13 not what Mr. Silver told you.

14 A **Let me give you two things, then. I constantly,**

15 **constantly -- shouldn't use that word. -- Several**

16 **times I had discussions on the phone with Jack**

17 **McIntyre, about replacing trees. He indicated that**

18 **after each cutting it was taken care of. Never**

19 **done.**

20 Q How do you know that?

21 A **Because of what people who visited the property and**

22 **have told us that.**

23 Q In other words, you know it because someone else

24 has told you?

25 A **Yes.**

1 Q You haven't visited the property, have you?

2 A No.

3 Q And when you were talking to Mr. Davis, Mr. Davis
4 was describing different recommendations that he'd
5 made as to cuts on different sectors of the
6 property. Isn't that right?

7 A Correct.

8 Q Multiple sectors of the property?

9 A Correct.

10 Q Some thin, some replanted. But you've never been
11 to the property?

12 A He's never reported any replanting because it was -
13 -

14 Q Have you ever been to the property?

15 A I just answered that.

16 Q Have you ever been there? no.

17 A Correct.

18 Q So there's no way you could put in context anything
19 that he said to you. Isn't that right?

20 A Mr. Davis told me the trees were not replanted.

21 Q Where?

22 A On SOLT IV.

23 Q 420 acres?

24 A Where any of the cuttings took place. That's
25 correct. Now, if you know the difference, I'd like

1 to know that.

2 Q Well, do you know whether all the tree stands on
3 the 420 acres are of the same age?

4 A I'm assuming they're not.

5 Q Do you know whether, if they're not, different
6 recommendations would apply as to different
7 portions of the property depending upon the age and
8 whether the trees had been thinned before?

9 A When you clear cut trees, when you thin trees,
10 there's an opportunity to replant. I was told that
11 that was done, by Jack McIntyre. So, if it's done,
12 great. I'm very happy that it is.

13 Q But you don't know whether it was done or not done.
14 All you know is what Mr. Silver told you and what
15 Mr. Davis told you and what everybody else told
16 you?

17 A That's correct.

18 Q Because you've never been there?

19 A No.

20 Q And you don't have a map and have no idea of what's
21 what on the property, 420 acres worth of property?
22 Or do you have a map? Didn't you have some
23 promotional materials that you put away when Mr.
24 Crapps was asking you about my promotional
25 materials?

1 A I've got this green stuff here, but --

2 Q Well, let me see what --

3 A That's my stuff. You have a question regarding it,
4 ask me.

5

6 THE COURT: Mr. Mathison has the right to look at
7 whatever materials you brought with you.

8

9 Q The promotional materials, that's what I want to
10 see.

11

12 MR. CRAPPS: On the stuff that Mr. Hartman
13 referenced in his testimony --

14 THE COURT: The way I understand, the witness has
15 brought these materials with him to testify.
16 He's gone through certain of these materials.
17 Mr. Mathison is entitled to review whatever he
18 brought with him today.

19

20 Q Are these documents stapled together, seven pages,
21 are these materials that you received from either
22 Mr. McIntyre or Silver Oak Land Management with
23 respect to your acquisition of this property?

24 A That was given to me by Sue Vitek.

25

1 MR. MATHISON: I'm going to introduce that. That's
2 Respondents' Exhibit No. 11.

3 MR. CRAPPS: No objection.

4 THE COURT: We'll receive this as Respondents'
5 Exhibit No. 11.

6

7 (Whereupon, Respondents' Exhibit No. 11
8 was marked and received into evidence.)

9

10 Q In the materials that you were supplied, there are
11 multiple parcels, are there not, that went to make
12 up this 420 acres?

13 A Yes.

14 Q Do you know whether all those parcels came out of
15 the same grantor or came out of different grantors?

16 A No.

17 Q Do you know whether all of those parcels had been
18 previously committed to Silver culture or the
19 raising of trees?

20 A That's not my understanding, no.

21 Q Some of them had not been, in other words?

22 A I don't know.

23 Q Do you know whether there was standing hardwood
24 timber on some of those parcels?

25 A That's my understanding.

1 Q Can you tell me which ones?

2 A No.

3 Q Can you tell me whether there was conifer timber on
4 other parcels?

5 A No.

6 Q So you don't know anything about the differences in
7 those parcels?

8 A No.

9 Q Do you know any commonalities between them or among
10 them?

11 A All I can go by is what's on here, the different
12 ages of the plantations and so on and so forth.
13 But where they are and which ones, no.

14 Q Do you know what the present market value is of the
15 410 acres that were acquired plus the ten acres
16 that were found as the result of this survey?

17 A No.

18 Q Do you know whether the property is listed for
19 sale?

20 A No.

21 Q Do you know whether it's worth any less than
22 \$1,150,000 that was paid for at the time it was
23 acquired?

24 A I do not know the value of the property.

25 Q Do you know whether some of the acreage was, in

1 fact, sold to pay the surveyor's debt?

2 **A** I do not know the acreage that was sold to pay the
3 surveyor's debt.

4 **Q** Do you know what the present extent of the stake
5 is, how big the acreage is at present?

6 **A** I'm assuming it's 410 plus ten.

7 **Q** Do you know how many trimmings has taken place on
8 the property?

9 **A** Two, I'm assuming.

10 **Q** Why would you assume --

11 **A** That's all the information I have on how many
12 cuttings there were. So whether there were more or
13 not, I do not know.

14 **Q** Do you know whether there were trees cut in a not a
15 clear cut, but a selected cut?

16 **A** I've been told there was.

17 **Q** Do you know whether one portion of the property was
18 clear cut?

19 **A** Thirty-three acres, supposedly, were clear cut.

20 **Q** Where did you get that information?

21 **A** Wes Davis.

22 **Q** Do you have notes of your conversation with Mr.
23 Davis other than these that I have in my hand? It
24 appears to me that you're reading from something.

25 **A** I have notes that I made from a conversation I had

1 with Mr. Davis that I reviewed a few minutes ago.

2 Q Are those notes different than the notes that have
3 been introduced that I am holding in my hand?

4 A Yes.

5 Q May I see the notes that you're now reading from?

6 A (Witness complies.)

7

8 MR. MATHISON: I'm reserving my objections as to Mr.
9 Davis' testimony which has been offered here
10 through the vehicle of having Mr. Hartman
11 recapitulate.

12

13 Q When did you prepare this document in my hands?

14 A Is there a date on it?

15 Q Yeah, October 29th, 2012.

16 A That's when I did it.

17 Q Why did you elect to use this document as your
18 notes instead of this document?

19 A I'm sorry?

20 Q Why did you elect to use the document that I'm
21 holding --

22 A Two different documents.

23 Q Well, the both purport to reflect your notes of a
24 telephone conversation with Mr. Davis, don't they?

25 A No.

1 Q Well, then, which one does?

2 A **The one in your left hand.**

3 Q The one in my left hand is the one that's typed.

4 A **Yes.**

5 Q Well, then, what does the one in my right hand --

6 A **The conversation with Jack McIntyre.**

7 Q Okay. So these are the notes of your conversation
8 with Mr. Davis?

9 A **Yes.**

10

11 THE COURT: Can we clarify the exhibit number of the
12 handwritten notes just so the record will make
13 sense.

14 MR. MATHISON: I don't honestly know. I believe
15 it's State's Exhibit No. 13.

16

17 Q What induced you to send this to Mr. Silver?

18 A **He was our acting manager and I just wanted him to
19 be aware of what my conversation was with Mr.
20 Davis.**

21 Q When did the conversation take place?

22 A **Just before -- a day or two probably before that.**

23 Q And Mr. Davis, does he live in South Carolina?

24 A **I do not know.**

25 Q Where was he when you talked to him?

1 **A** I assume he was in North Carolina.

2 **Q** Where's the land?

3 **A** It's in North Carolina.

4 **Q** Do you know whether he's a licensed forester in
5 North Carolina?

6 **A** You'll have to ask Mr. McIntyre that.

7 **Q** So you don't know whether he's a licensed forester?

8 **A** No.

9 **Q** How did you know to contact him?

10 **A** I got his name from Rich Silver.

11 **Q** Do you know why 57 acres, in round numbers, on the
12 property was cut?

13 **A** Can I have my sheet back, please. Oh, here it is.

14 **Q** It is back, sir.

15 **A** I got it here.

16

17 MR. CRAPPS: I'll object. Object. I want the
18 witness to testify as to what he knows and not
19 to speculate.

20 THE COURT: I'm going to overrule it. I mean,
21 you've opened the door with all of these
22 notes. And I'm going to let Mr. Mathison --

23

24 **A** No, I do not know why it was cut.

25 **Q** Do you know whether there was hurricane damage on

1 the property?

2 **A** No.

3 **Q** Did Mr. Davis tell you anything about a hurricane
4 that had done damage on the property?

5 **A** No.

6 **Q** Do you know whether there are poplar trees on the
7 property?

8 **A** All I know about the approximately 57 acres is that
9 in 2010 Mr. Wes Davis says approximately 60 acres
10 were clear cut and he advised Jack not to clear
11 cut, but to thin. And he went ahead and clear cut
12 them against his advice. And that he advised Jack
13 to replant. And the trees were not replanted,
14 which Jack indicated to me that they were. And, I
15 guess, you're indicating that maybe they were
16 planted.

17 **Q** It would be nice to have Mr. Davis here. We could
18 ask him what he meant, wouldn't it?

19 **A** Well, we can ask Jack, I guess.

20 **Q** Do you know whether Mr. Davis advised the natural
21 regeneration after the cut was excellent when he
22 came to the density of the pines as opposed to the
23 hardwoods?

24 **A** What does that mean?

25 **Q** The regeneration that happens in nature without

1 your actually planting the trees.

2 **A Right. And what was the question?**

3 **Q** Do you know whether he advised that it was
4 excellent with respect to the density of the pine
5 trees?

6 **A No, I do not know that.**

7 **Q** You testified that Mr. McIntyre had told you that
8 eleven percent was the rate of return that was to
9 be expected. Is that right?

10 **A To be honest with you, I think he said on**
11 **investments like this that he was referring to**
12 **other investments such as the annual return is**
13 **eleven, twelve percent, as I recall.**

14 **Q** And he also told you, didn't he, that that was a
15 statistic that was disseminated by the state of
16 South Carolina and specifically the Department of
17 Natural Sources, didn't he?

18 **A I don't remember that, but.**

19 **Q** If it was you would rely on it, wouldn't you, if
20 that's the average that they release annually?

21 **A As an expected return?**

22 **Q** Yes.

23 **A (Nonverbal Response.)**

24

25 **MR. MATHISON:** I'd like the record to reflect that

1 the witness shrugged --

2

3 A I'm trying to understand --

4

5 MR. MATHISON: -- and looked dismissively.

6

7 A No, I'm trying to understand your question, sir. I
8 want to answer you.

9 Q If it were a state disseminated statistic as the
10 average for this type of tree farming operation,
11 you would credit that statistic, would you not?

12 A Yes, I would.

13 Q And isn't it a fact that that specific
14 representation appears in the materials that I've
15 just marked?

16 A I believe it does.

17 Q So you know full well that wasn't Jack McIntyre
18 making that figure up. That's a figure --

19 A I said that he said that on property such as this
20 the average expectation for return. I believe I
21 said that.

22 Q But it wasn't his figure, it was the state's
23 figure. Isn't that right?

24 A Well, I didn't know where he got the figure, but
25 that's -- but I agree with you that if it's the

1 state's figure it could be . . .

2 Q It's something that you can at least take at face
3 value as being true?

4 A Right. Yeah.

5

6 MR. MATHISON: Thank you.

7 THE COURT: Are you finished, Mr. Mathison?

8 MR. MATHISON: Yes, sir, I am.

9 THE COURT: Mr. Crapps.

10

11

RE-DIRECT EXAMINATION

12 BY MR. CRAPPS:

13 Q Mr. Hartman, were you provided financial
14 information concerning SOLT IV?

15 A Other than the K1, no.

16 Q And so would you have the ability to know how the
17 money was spent?

18 A No.

19 Q And even after you requested the financial
20 documents to review that information, did you
21 receive it?

22 A No.

23 Q You had direct conversations with Jack McIntyre
24 about the investment prior to when you made it,
25 correct?

1 A Yes.

2 Q In general terms, what topics did that conversation
3 cover?

4 A Well, I was introduced to this by Sue Vitek. And
5 when I had some questions about the operating
6 agreement -- I had a lot of questions for Sue,
7 which she provided some information. When I had
8 questions about the operating agreement that's when
9 my first contact with Jack McIntyre. I wanted to
10 see a copy of the management agreement. That's
11 when he sent me the copy of SOLT II. And then
12 that's when I had the follow-up questions with the
13 next conversations related to how this would all
14 work, which we went through earlier.

15 Q And that conversation covered what was to be
16 included in the 20 percent provided to Mr.
17 McIntyre?

18 A Right. There's two things. One is that I thought
19 the 20 percent was a pretty hefty number for
20 someone to receive for managing the property. But
21 when I saw the list of the things that were
22 included, I said to myself, well, I can see why
23 this is 20 percent now.

24 Q And that representation in that conversation was
25 pertinent to your investment?

1 **A** **Yes.**

2 **Q** In that conversation, you also talked about what
3 your money would be used for?

4 **A** **Yes.**

5 **Q** And what were those responses?

6 **A** **My investment would be used for the purchase of the**
7 **property and closing costs related to that**
8 **purchase.**

9 **Q** In that conversation, or at anytime prior to your
10 investment, did Mr. McIntyre ever tell you that
11 your money would be used in other SOLT entities?

12 **A** **No.**

13 **Q** Do he ever indicate that he would take further
14 management fees or consulting fees?

15 **A** **No.**

16
17 MR. CRAPPS: That's all I have.

18 - - - - -

19 RE-CROSS EXAMINATION

20 BY MR. MATHISON:

21 **Q** If I understand your testimony correctly, you say
22 that Mr. McIntyre told you he was taking 20 percent
23 essentially to manage the property?

24 **A** **Correct.**

25 **Q** And you assumed that the management would include

1 things like getting a consulting forester, certain
2 legal work, phase study, wetland study, that sort
3 of thing?

4 **A That's correct.**

5 **Q** And some of what you assumed it would include would
6 typically be closing costs, like title insurance,
7 timber insurance, that sort of thing. Is that
8 right? You thought that Jack was going to pay for
9 all those things out of his --

10 **A** I thought it was unusual that the management would
11 cover that, but because of the hefty 20 percent
12 fee, I assumed that was what was part of it,
13 correct.

14 **Q** Right. But you read the document that I handed to
15 you. As a matter of fact, you shuffled through it
16 for the better part of five minutes and couldn't
17 find anything that had to do with management fee,
18 could you?

19 **A** No, I could not.

20 **Q** So there was no management fee. Is that right?

21 **A** There was a 20 management fee. According to Jack,
22 he received 20 percent of the property for managing
23 it. Why else would he receive it?

24 **Q** But you couldn't find it, so which is it?

25 **A** It's in the -- it shows he received 20 percent of

1 the property for what? For management fee.
2 There's a very -- there's a section in the document
3 talking about management fee, no matter how big it
4 is.

5 Q Okay. Well, show it to me. Show it to me.

6 A Management fee or management responsibilities.

7 Q Fee, that's what we're talking about.

8 A No, I said management responsibilities. There's
9 some documents in here that talks about the
10 management responsibilities. That's where I was
11 concerned and why I made the phone call because
12 it's very vague as to the role of the manager.

13 Q You're not going to look through it because you
14 know there's no provision.

15

16 MR. CRAPPS: Let him find the document.

17

18 A Let me look at it and I'll show you what I'm
19 talking about.

20

21 MR. CRAPPS: Can we identify the document and hand
22 it to the witness.

23 MR. MATHISON: Forgive me, I gave him the wrong --
24 He wasn't looking at it, anyway.

25

- 1 Q Where the yellow marker is, that's the SOLT IV
2 management agreement.
- 3 A It talks about .16. It talks about the manager,
4 1.6.
- 5 Q Yes, sir.
- 6 A Management of the company, number six.
- 7 Q Yes, sir.
- 8 A So that's what I'm saying. That's what I was
9 referring to.
- 10 Q What were you referring to?
- 11 A That the role and responsibilities of the manager
12 are very vague.
- 13 Q First, who was the manager?
- 14 A I assume that it was Jack McIntyre.
- 15 Q You don't know, do you? Who was the manager?
- 16 A Jack McIntyre.
- 17 Q Now, look at 1.6. What does it say?
- 18 A Silver Oaks Land Management.
- 19 Q Specifically it says manager means initially Silver
20 Oak Land Management, LLC, a South Carolina limited
21 liability company. Is that what it says?
- 22 A Yeah.
- 23 Q Is there anything vague or ambiguous about that?
- 24 A No, it's Jack McIntyre.
- 25 Q It says management, under paragraph six, would you

1 read paragraph 6.1, please?

2 **A** (As read) Decisions of the company, except as
3 otherwise set forth herein, all decisions affecting
4 operation of the company shall be decided by the
5 consent of the manager.

6 **Q** And the manager is Silver Oak Land Management,
7 isn't that correct? Sir?

8 **A** Jack McIntyre.

9 **Q** What does the document say?

10 **A** It says Jack McIntyre.

11 **Q** What does?

12 **A** The person who signed it.

13 **Q** Signed it for whom? For whom?

14 **A** Silver Oak Land Trust, LLC.

15 **Q** You can be as obstinate as you want to, we're going
16 to do this until we get it all done. Is there
17 anything ambiguous about 6.1?

18 **A** No, sir.

19 **Q** Now, read 6.2.

20 **A** (As read) Manager shall have the authority and
21 power necessary to discharge the business of the
22 company without limiting the foregoing. The
23 manager shall have the authority and power to
24 perform the following acts.

25 **Q** Go ahead. I'm looking for the vagueness, sir.

1 Just keep reading. Maybe we'll find the vagueness.

2 Come on.

3 **A** Do you have a specific question?

4

5 MR. CRAPPS: I'll object. Is this within the scope
6 of my re-direct?

7

8 **Q** Find it, please.

9

10 THE COURT: And I overrule the objection.

11

12 **Q** You need to read it and show me what's vague about
13 it:

14

15 MR. HARTMAN: (To the Court) You want me to read
16 this?

17 **Q** Yes, sir.

18

19 THE COURT: It's up to Mr. Mathison.

20

21 **A** (As read) Execute and deliver any and all
22 agreements, contracts, documents, certifications,
23 instruments necessary or convenient in connection
24 with the carrying on of the usual way of business
25 and affairs of the company.

1 Q Is there anything ambiguous or vague about that?

2 A No. He does that for his 20 percent, so that's no
3 question there. (As read) Execute and deliver any
4 deed, lease, mortgage, mortgage note, bill, sale,
5 easement, license, contract or other instruments
6 purporting to convey, sale, exchange or encumber
7 all or any part of the company's property.

8 Q Anything vague? Is that vague?

9 A (No response)

10 Q Would you read 6.2c, please?

11 A (As read) Deposit and invest company funds in such
12 interest bearing or non-interest bearing
13 investments or bank accounts as deemed advisable to
14 the extent such funds are not required for the
15 company operations and are not required to be
16 distributed pursuant to this agreement.

17 Q So that if he wanted to invest the company's funds
18 in another SOLT entity, he'd be authorized by that
19 provision, wouldn't he?

20 A I'm not sure what that means. It says any bearing
21 or interest, investment or bank accounts. So if
22 they're bearing or non-interest bearing, I'm not
23 sure what that means.

24 Q Would you read 6.2d?

25 A (As read) Retain or employ, coordinate the

1 services, employees, independent contractors,
2 supervisors, accountants, attorneys and other
3 persons necessary to appropriately carry out the
4 business and the purpose of the company.

5 Q Is that vague?

6 A No.

7 Q How about e?

8 A (As read) Engage in any kind of activity and to
9 perform, carry out such contracts of any kind
10 necessary to operate the business and purposes of
11 the company in accordance with this agreement.

12 Q Vague?

13 A No.

14 Q How about ?

15 A (As read) Pay all debts and other obligations of
16 the company to the extent the funds of the company
17 are available.

18 Q And if they're not available, is he required to pay
19 them?

20 A It doesn't say that.

21 Q Then let's look at 6.3, liability of the members
22 and the manager. Would you read that for me?

23 A (As read) Members and manager shall not be liable
24 to the company or to any member for any debts owed
25 by the company or for any actions taken or

1 omissions made in good faith and reasonably
2 believed by the member or manager to be the in the
3 best interest of the company or for the errors of
4 judgement except to the extent that such acts or
5 omissions constitute gross negligence or willful
6 misconduct.

7 Q Misconduct?

8 A Yeah.

9 Q Is that vague to your way of thinking? Is it
10 vague?

11 A I'm looking at it again just to make sure I
12 understand it all here. I guess not.

13 Q And continuing with paragraph 6.3, with provided
14 the standards at the bottom of page five.

15 A (As read) Providing the standards of the section
16 6.3 are satisfied the company indemnify each member
17 and manager for all cost and expenses, including
18 reasonable attorney fees associated with the
19 defense of any action or claim brought against the
20 member or manager by any other member of the
21 company or third party except for action brought
22 pursuant to section 3.3.

23 Q Does that appear vague or uncertain or ambiguous to
24 you?

25 A I guess it can be interpreted.

- 1 Q And then let's look at 6.4. What does that say?
- 2 A (As read) Pursuant of other ventures and activities
3 by members or manager even the direct competitive
4 with the business of the company is hereby
5 consented by the members and shall not be deemed
6 wrongful or improper. No member or manager shall
7 be obligated to present any particular investment
8 opportunity to the company, even if such
9 opportunity is of character presented to the
10 company shall be taken by the company. The company
11 may --
- 12 Q Excuse me. It actually is could be taken.
- 13 A . . . could be taken by its company. The company
14 may enter into agreements with one or more members
15 to provide management consulting, marketing,
16 construction or other services to the client.
- 17 Q Okay. Do you know whether Silver Oak Land
18 Management, the manager, entered into any
19 agreements essentially with itself to provide
20 services or not?
- 21 A I do not know that.
- 22 Q But if they had done so, that would be authorized
23 by that provision, would it not?
- 24 A I'm not sure.
- 25 Q Now, is there any mention of a management fee in

1 paragraph six?

2 **A** No.

3 **Q** Is there any mention of a management fee anyplace
4 else in the document that you can find?

5 **A** Only to the extent where they show what the
6 percentage he receives is for, if that is what I'm
7 understanding is the fee for doing this with a 20
8 percent of the property.

9 **Q** Are you referring to Exhibit A?

10 **A** Yes, sir.

11 **Q** You believe that the participation was in order to
12 get all the management services paid? Is that
13 right?

14 **A** Yes.

15 **Q** Not delivering the property or management up until
16 that point, but from that point on? Is that right?

17 **A** Part of Jack's comments to me was the 20 percent
18 included finding property and SOLT II -- it would
19 include finding the property.

20 **Q** And that's found in a section that is called
21 Members Initial Contributions. Is that right?

22 **A** I don't know.

23 **Q** Does it say that or not?

24 **A** I don't recall.

25 **Q** Members initial contributions and ownership

1 percentages.

2 **A Okay.**

3 **Q** Is that what it says?

4 **A Yeah.**

5

6 MR. MATHISON: Thank you. I don't have any further
7 questions.

8

9 FURTHER EXAMINATION

10 BY MR. CRAPPS:

11 **Q** Mr. Hartman, you wrote down, indicated by the blue
12 ink on State's Exhibit No. 13, did you assume those
13 or were those things told to you by Jack McIntyre?

14 **A Told to me by Jack McIntyre.**

15 **Q** And that was told to you in a conversation
16 pertaining as to whether or not you would invest in
17 SOLT IV?

18 **A Yes.**

19 **Q** And you were offered the opportunity to invest in a
20 couple other SOLT entities?

21 **A Right.**

22 **Q** And you refused those?

23 **A Yes.**

24 **Q** And so would it be pertinent to you that your money
25 would be used in those same entities that you

1 refused to invest in directly? If you were told
2 prior to your investment that it was going to be
3 used in entities you did not invest in, would that
4 have been important to you?

5 **A Yes, it would have been.**

6

7 MR. CRAPPS: That's all I have.

8

9 FURTHER CROSS EXAMINATION

10 BY MR. MATHISON:

11 Q As a follow up to that, my understanding was that
12 in response to my question, you said that it would
13 have been appropriate, indeed entirely condign, if
14 the \$53,000 that was put up as a deposit by SOLT I
15 for SOLT IV was, in fact, returned at the closing.
16 That type of payment wouldn't be objectionable,
17 would it?

18 **A Was it part of the purchasing of the property? Was
19 that part of the purchase price of the property?**

20 Q Would it be objectionable or not?

21 **A I'd have to read how the contract was written as it
22 relates to that.**

23 Q Well, if it was SOLT I's money that secured the
24 earnest money, wouldn't it be appropriate to pay
25 SOLT I back?

1 A Like I said, I did not see that contract, so I
2 can't comment on that.

3 Q Would that be something that you would consider a
4 misuse of your money if the person that actually
5 put the money up got paid back?

6 A Again, I don't know how that all came about, so I'm
7 not going to comment on that.

8 Q But your unqualified statement that you wouldn't
9 want your money used in another SOLT enterprise
10 would be qualified if, in fact, the money was owed
11 to that other SOLT enterprise, wouldn't it?

12 A I was not interested in being part of a situation
13 where my money was being loaned to another company,
14 correct.

15 Q Well, wasn't SOLT I's money being loaned to you?

16 A I do not know that.

17 Q But, if it was, wouldn't it be appropriate to pay
18 it back?

19 A Again, I don't know how that contract read, if it
20 was an investment or how it read, so.

21 Q Did you make an effort to find that out?

22 A No.

23 Q Why?

24 A Wasn't aware of it.

25 Q You did make an effort, though, to get Mr. McIntyre

1 to answer questions that is reflected in
2 Respondents' Exhibit No. 9, right?

3 A Uh-huh.

4 Q And you did that on the 28th of September. Isn't
5 that correct?

6 A Uh-huh.

7 Q And isn't that three days after Mr. McIntyre
8 resigned as the manager of all of the SOLT
9 entities, or do you know?

10 A I don't know.

11 Q Well, did you know that Mr. McIntyre surrendered
12 the books and records to your colleague back there,
13 Mr. Silver?

14 A I don't know when that took place.

15 Q Did you make inquiry of these facts to Mr. Silver
16 who had the books and records?

17 A As to when they would be -- when I wrote this
18 letter I wasn't aware, I guess, of the process of
19 trying to obtain those. Those were for my own
20 personal information just to find out -- at that
21 point in time, I was hearing some things on one
22 side and some things on the other, so I called Jack
23 and I said, Jack, listen, I need to get some
24 information from you so I can make a determination
25 of what's going on here. So that was my purpose in

1 requesting the information from Jack. I wanted to
2 hear his side of the story here.

3 Q Mr. Hartman, didn't Dr. Vitek tell you that the
4 materials had been delivered to Mr. Silver on or
5 about September 25th, which is the date of Mr.
6 McIntyre's resignation?

7
8 MR. CRAPPS: I still feel like we're going outside
9 the scope of my two questions.

10 THE COURT: Well, I'll --

11

12 A I don't recall her telling me that. I know that
13 happened sometime, but I don't remember who told me
14 or --

15 Q Did you ever pursue it once Mr. Silver had the
16 records?

17

18 MR. CRAPPS: Did you give a ruling on my objection?

19 THE COURT: Yeah, I'm going to let him to continue;
20 but we need to wrap this up.

21

22 Q This is the last question. Did you ever pursue it
23 once you found out Mr. Silver had the books and
24 records?

25 A I don't know the exact time I went down to visit

1 Sue to ask her if she could intercede and get this
2 information for me. That may or may not have been
3 after the resignation or when we had the records.

4 Q Okay. But irrespective of when you talked to Sue,
5 meaning Dr. Vitek, did you pursue the same
6 information from Mr. Silver once you realized that
7 he had the books and records?

8 A Yes.

9 Q And did he, at any juncture, refer you to the
10 accounting firm that did the work for all of these
11 entities?

12 A No.

13 Q Why not?

14 A You'll have to ask Mr. Silver that.

15 Q Do you know what the accounting firm was?

16 A No. But I can look it up here. Is it the same one
17 that did our K1?

18 Q Yes, sir.

19 A You want me to get that out?

20 Q If you were interested, wouldn't you have started
21 with the accounting firm since you knew who they
22 were?

23 A Maybe it was my mistake.

24 Q Do you know who they are now or do you have to
25 consult --

1 **A** I'd have to look.

2 **Q** Would you mind?

3

4 THE COURT: We really do need to wrap it up.

5

6 **A** Carey & Company is what I have.

7 **Q** Carey? Patrick Carey? That's all right. Do you
8 know whether that's a certified public accounting
9 firm?

10 **A** No. I'm assuming. I got it here somewhere.

11 **Q** That's all right. There's no need to look for it
12 anymore.

13

14 MR. MATHISON: Thank you.

15 MR. CRAPPS: Nothing further with this witness.

16 THE COURT: Ms. Gray, you're here representing your
17 witness?

18 MS. GRAY: Yes. And I have no interest in the case.

19 I'm just here to advise him.

20 THE COURT: Then we're through with this witness.

21 And I suggest we eat.

22

23 (Off the Record)

24

25 THE COURT: We're back on the record. Do you want

1 to proceed, Mr. Crapps?

2 MR. CRAPPS: We'll call Rich Silver.

3

4 Whereupon,

5 RICHARD A. SILVER, being duly sworn and
6 cautioned to speak the truth, the whole truth,
7 and nothing but the truth, testified and
8 deposed as follows:

9 Court Reporter: State your full name for the
10 record, please.

11 Witness: Richard A. Silver

12

13

DIRECT EXAMINATION

14 BY MR. CRAPPS:

15 Q Mr. Silver, where do you reside currently?

16 A On Daufuskie Island in South Carolina.

17 Q Are you a South Carolina resident?

18 A Yes, I am.

19 Q Can you give the court here a brief description of
20 your educational background?

21 A Yes. I have a undergraduate degree in accounting
22 and a master's in business administration.

23 Q And what's your professional background?

24 A I spent, after a couple of years working for a
25 large CPA firm, one of the world's largest, Price

1 Waterhouse Coopers, after going back and getting my
2 MBA I spent about 32 years as an executive on the
3 administrative side of the mutual fund industry in
4 Boston.

5 Q And what do you currently do?

6 A After retiring seven-and-a-half years ago when I
7 moved down here, and trying to enjoy retirement
8 prior to what's happened in the last year, I also
9 joined -- was invited to join the board of a \$400
10 million closed end investment company called the
11 Korea Fund, which was a New York Stock Exchange
12 listed investment company. I was also appointed
13 immediately upon joining that board in 2006 to be
14 chairman of the audit committee of that board, a
15 position that I retain to this day.

16 Q How did you come to learn about the Silver Oak Land
17 operations and Jack McIntyre?

18 A Well, first, I became friendly over time. First a
19 real estate client and then just friends with Jim
20 Paris through whom I later met Jack McIntyre I
21 believe in the late '90s. I don't remember exactly
22 when I met him through Jim. And had heard them on
23 one or two occasions talking about some timber
24 investments they were making. And I think I even
25 remember at one point saying to Jack, who I was

1 becoming closer friends with at the time, that if
2 he ever does anymore of these I might be
3 interested. So at some point in 2007, I received
4 an offering document from Jack to participate in
5 the SOLT IV offering.

6 Q Did you invest in SOLT IV?

7 A I did invest in SOLT IV, yes.

8 Q And when about was that investment?

9 A I think it was the fall of 2007. It was sometime
10 in 2007. I forget the exact date.

11 Q And what was told to you about the purpose of that
12 company?

13 A In learning about how these timber LLCs worked that
14 Jack had put together, my understanding was that he
15 created these. He researched and found property
16 and that each LLC, as he formed each one, would own
17 a single tract of timberland. And that the purpose
18 would be to manage the timber over time for cutting
19 and harvesting and that that would produce a
20 current return. And that a longer term return
21 somewhere down the road would be a presumed capital
22 gain at some point by disposing of the property to
23 a developer at an advantageous time from that.

24 Q And at the time you invested, what was your
25 understanding of who the managing member was?

1 **A** The only name that appeared on the offering
2 document for SOLT IV, to my knowledge, was Jack
3 McIntyre's. There was no reference to Silver Oak
4 Land Management in the SOLT IV offering. I never
5 knew of or heard of Silver Oak Land Management at
6 the time. And so in my understanding from
7 conversations with Jack, is these were his
8 companies that he created and that he managed by
9 himself.

10 **Q** Did you know that Sue Vitek had a interest in
11 Silver Oak Land Management?

12 **A** No, at the time, again, that I was being offered
13 the Silver Oak IV, and even through and including
14 post my investment in Silver Oak IV, I never heard
15 of Silver Oak Land Management, to my recollection.
16 And it was not disclosed anywhere in the documents.
17 I never knew who Sue Vitek was or that she existed
18 until about a year ago.

19 **Q** And did you contemplate at the time you were
20 offered the security, and prior to your investment,
21 that you would have an active role in the company?

22 **A** I had no intention to have an active role, at all.

23 **Q** And, prior to the discovery of recent events, in and
24 around September 2012, did you ever play a role in
25 the company?

1 **A** No, never.

2 **Q** Do you know of any other person other than Jack
3 McIntyre who did play an active role?

4 **A** Again, prior to my becoming aware of Sue Vitek's
5 existence and, you know, subsequently becoming
6 aware that she was part owner of Silver Oak Land
7 Management, my understanding from the beginning was
8 that Jack was the sole manager of SOLT IV. And
9 I've never been aware that anybody else played any
10 managerial role in SOLT IV.

11 **Q** Who sold you the investment in SOLT IV?

12 **A** Jack McIntyre provided me with the offering
13 documents.

14 **Q** Did you speak with anyone else about the investment
15 prior to your investment?

16 **A** No, only with Jack.

17 **Q** You stated earlier that you had heard of these
18 entities through Jim Paris. What was that
19 conversation regarding?

20 **A** Well, I heard about them probably when I was
21 together with both of them. We had become friends
22 and we would get together occasionally. And once
23 in a while somebody would make a comment about it
24 or make a reference to one of these timber tracts.
25 And that was all I knew. I mean, I didn't know

1 much of anything. There was no approach at that
2 time to me, other than, as I said, I might have
3 actually at one point later said to Jack if you
4 ever do anymore of these I may be interested.

5 Q And when you spoke with Jim Paris was there any
6 current offering going on?

7 A No.

8 Q Did you speak to Jim Paris about SOLT IV?

9 A Not at the time I was being offered or making the
10 offering or even anytime shortly thereafter.

11 Q How much money did you invest in SOLT IV?

12 A I have to look at my notes. I think it's just
13 under \$100,000.

14 Q That's okay. And were you given any sales
15 materials?

16 A I received an offering brochure, yes.

17 Q Who gave you that material?

18 A Jack McIntyre. My investment was 98,760.

19 Q Mr. Silver, I'm going to show you a document we
20 referenced earlier marked as Exhibit No. 3 in Mr.
21 Mathison's and my copy of the exhibits. Is that an
22 accurate copy of the offering materials you
23 received?

24 A It appears to be an accurate copy of the offering
25 materials, yes. It does appear to be an accurate

1 copy.

2 Q Mr. Silver, what is this page here?

3 A This page, I would call the subscription letter or
4 whatever. The form you fill out to participate in
5 the offering.

6 Q And, for the record, this is the second page within
7 Exhibit No. 3. And what is that document entitled?

8 A It's entitled Membership Offer.

9 Q And who is the signatory on that page?

10 A In terms of making the offer or . . .

11 Q Yes.

12 A It's coming from Jack McIntyre. It has his name in
13 two places, one at the top and one at the bottom.
14 And, again, absolutely no mention or reference to a
15 Silver Oak Land Management. Which, again, I never
16 heard of at the time.

17 Q And that handwriting on that page, is that yours?

18 A That's my handwriting, yes.

19 Q Why would you fill out that page?

20 A Based on my understanding of the company and my
21 friendship with Jack and my desire to participate
22 in future similar endeavors of his in these timber
23 farms that's a diversification away from stock
24 investments, so I decided to participate and filled
25 it out to purchase, I guess, what you'd call two

1 units, because each unit was 49,000 something.

2

3 MR. CRAPPS: If it's not already in the record, I
4 will offer this page of Exhibit No. 3 into the
5 record.

6 MR. MATHISON: I don't know what page he's referring
7 to. I don't object.

8 THE COURT: Okay. Do you want to mark that page
9 separately?

10 MR. MATHISON: For the record, Your Honor, if
11 there's an interlineation on it. There's a
12 percentage circled and there's circle out next
13 to the percentage that circled, the word final
14 equals 6.62 percent it appears.

15 MR. CRAPPS: We would like to mark this, since I'm
16 not sure it's in here. If there's no
17 objection of Rob, if this whole exhibit is
18 coming in, we can leave it marked as is.

19 THE COURT: I think we've already put it in. It's
20 Exhibit No. 3.

21

22 Q Mr. Silver, did you receive or see the operating
23 agreement which was to govern SOLT IV prior to your
24 investment?

25 A No.

1 Q Do you remember the first time you did see it?

2 A I don't remember the exact date. It was many weeks
3 after the investment of the money and the closing
4 of the purchase of the property. I got in the
5 mail, again, another little spiral -- I think
6 spiral bound binder that had some legal documents
7 in there such as the Secretary of State's papers
8 that were filed to organize the company and I think
9 the closing document from the purchase of the land
10 or whatever. And one of the tabs has an operating
11 agreement, yes. That was a number of weeks after
12 the investment, but I don't know what direction --

13 Q Do you remember when you signed the operating
14 agreement?

15 A I don't remember when I signed it. What I do
16 remember is when I signed it all I was given was a
17 signature page and never saw the document at the
18 time I signed it. And the circumstances were such
19 that, again, as friends getting together socially
20 periodically, what Jack would do in the middle of a
21 little gathering or social gathering of some kind
22 where several of us might have been there, and
23 probably would have been Jim and myself and I don't
24 -- I didn't know any of the other investors in SOLT
25 IV, so I don't recall. But in the middle -- after

1 having some drinks and in the middle of a meal he
2 would say, oh, we got to take care of a little
3 housekeeping. And he would take out a blank
4 signature page and says you just need to sign this
5 for the housekeeping. And that's how he obtained
6 my signature on the operating agreement.

7 Q Mr. Silver, were any representations made to you
8 about an expected return on investment?

9 A Well, in the material it mentioned an eleven
10 percent return, which was a historical number that
11 was published. And I didn't necessarily rely upon
12 that as anything that I would expect to receive as
13 a return. Having spent my life in the investment
14 industry, I know -- and, in fact, in the mutual
15 fund world, you would have to accompany that with
16 another sentence that would say that historical
17 returns have no relevance, or whatever the correct
18 legal language is, to potential future returns.
19 But that language was not in there. But I knew
20 that the returns were not necessarily reliable from
21 history. But I did expect that they would exceed
22 an average return over time in the stock market
23 over a particular period and just be a good
24 diversification away from stock market.

25 Q So you did expect a return on your investment?

1 A I expected a return on my investment from timber
2 operations, and I expected a capital gain somewhere
3 down the road, yes.

4 Q What was your understanding as to how timber income
5 was to be distributed?

6 A Was to be distributed? Just proportionally with
7 ownership interest in the company.

8 Q And what were you told your money, your investment
9 in SOLT IV, would be used for?

10 A To acquire the tract of land that Jack had under
11 contract to be able to close on that purchase. I
12 believe he had it under contract. He had
13 identified a piece of property to be purchased. I
14 don't know if it was under contract. That is my
15 recollection. It was to complete the purchase of
16 that piece of property.

17 Q What was Jack McIntyre's or Silver Oak Land
18 Management's compensation to be from SOLT IV?

19 A My understanding from talking to Jack as to how
20 these companies worked was that his compensation
21 for all the work it took to locate the properties
22 and research properties, acquire the properties
23 after negotiating a deal, and then to manage the
24 properties upon an ongoing basis until the ultimate
25 disposition of the property was that he was given a

1 20 percent ownership interest off the top. So he
2 put no money in and was given 20 percent ownership
3 interest, which we were happy to do, frankly, at
4 the time. He was a friend. He was going to do all
5 the work. I didn't want to do any of the work.
6 And we felt that was reasonable compensation for
7 the fact that he was going to do the work.

8 Q Were you told at the time you invested, or prior to
9 it, that money would be transferred to Jack
10 McIntyre and his management company?

11 A No.

12 Q Were you told at the time you invested that money
13 would be used for the personal expenses of the
14 manager?

15 A No.

16 Q Would you have invested in SOLT IV if you had been
17 told that your money would be spent this way?

18 A Absolutely not.

19 Q In what company did you invest next, within SOLT
20 enterprises?

21 A Number V. These are all Roman numerals, by the
22 way.

23 Q And when about was that investment?

24 A I believe it was 2008. I don't know the exact
25 date. It was 2008. I don't know the exact date.

1 Q And approximately how much money did you invest?

2 A \$23,200.

3 Q What was the stated purpose of SOLT V?

4 A Basically the same as SOLT IV, to, again, another
5 tract of land had been identified for purchase.
6 And Jack was looking to bring in investors by
7 selling interest in the company to fund the
8 purchase and operate the property as a timber
9 investment.

10 Q How was that company organized?

11 A As an LLC, the same as SOLT IV, and with Silver Oak
12 Land Management, which was the first time I did see
13 a reference to that name, although I didn't pay any
14 attention to it at the time. I just assumed that
15 was Jack's own LLC that he had formed. But Silver
16 Oak Land Management was given a 20 percent
17 ownership interest off the top for no money in, and
18 the rest of us put in all the money. And he was to
19 manage the entity.

20 Q Prior to your investment, and at the time of your
21 investment, did you anticipate having an active
22 role in the company?

23 A Absolutely not.

24 Q And prior to recent events, did you ever play an
25 active role in SOLT V?

1 **A** None whatsoever.

2 **Q** Do you know any other individual who did play an
3 active role?

4 **A** No.

5 **Q** Who sold you the investment in SOLT V?

6 **A** Who sold it to me? Jack McIntyre gave me the
7 offering documents..

8 **Q** Did you speak with anyone else concerning that
9 investment?

10 **A** No.

11 **Q** Were you given any sales material prior to your
12 investment?

13 **A** Yes. I got the membership offering with a brochure
14 similar to the one that was put together for SOLT
15 IV.

16

17 MR. MATHISON: It's Exhibit No. 6.

18 MR. CRAPPS: I'm seeing if it's in the original

19 here. It's not.

20

21 **Q** Is this an accurate copy of the offering materials
22 you received prior to your investment with SOLT V?

23 **A** It looks like it. Yes, it looks like what I
24 received. It looks like an accurate copy of what I
25 received.

1 MR. CRAPPS: And the exhibit I'm showing the
2 witness currently is marked Exhibit No. 6.

3 THE COURT: Let's do the same thing we decided to do
4 with Exhibit No. 3. For whatever reason, they
5 seem to be missing from the original exhibits,
6 so we'll make a copy and give it to the court
7 reporter.

8 MR. MATHISON: I believe that my objection was that
9 nobody could properly tie it up. These people
10 received it and can tie it up, so. That
11 objection would be academic at this juncture.

12 THE COURT: Well, we'll receive it into evidence.
13 As I say, we'll make a copy.

14

15 Q I'm showing you now the third page of that exhibit.
16 What is that document entitled?

17 A Silver Oak Land Trust V Membership Offer.

18 Q Who's purported to be the author of that document?

19 A Again, Jack McIntyre's name appears near the top
20 and also at the bottom of the page, in terms of who
21 it's signed by, although it's not signed, but it's
22 his typed name from what should be a signature.

23 Q Now, Mr. Silver, didn't you receive or see the
24 operating agreement that was to govern SOLT V prior
25 to your investment?

1 A No, I did not.

2 Q Do you remember when you first received that
3 document?

4 A Again, I don't remember exact dates. I know it was
5 many weeks after the closing. Again, it arrived as
6 part of the spiral bound group of papers referred
7 to as the members information or something like
8 that, with other legal documents.

9 Q Mr. Silver, can you identify this as the operating
10 agreement?

11 A It appears to be SOLT V's operating agreement, yes.

12

13 MR. CRAPPS: We'll admit this into evidence.

14 THE COURT: Do you have any objections, Mr.

15 Mathison? Have you seen it?

16 MR. MATHISON: I'm looking through the signature
17 pages, Your Honor. Hold on, one second.

18 Excuse me, Jordan, what you've actually given
19 me is two different agreements. I guess
20 that's a substitution. May I voir dire the
21 witness?

22 THE COURT: Do you object, Mr. Crapps?

23 MR. MATHISON: That's all right, Your Honor, we
24 don't have any objection.

25 THE COURT: Do you withdraw your request?

1 MR. MATHISON: Yes.

2 THE COURT: Exhibit No. 14 is accepted into
3 evidence.

4

5 (Whereupon, State's Exhibit No. 14 was
6 marked and received into evidence.)

7

8 Q Mr. Silver, were any representations made to you
9 about an expected return on investment?

10 A I believe the same clause is in the offering
11 document that refers to the quoted eleven percent
12 return.

13 Q Where was that return supposed to come from?

14 A Timber operations, basically. Harvesting it.
15 Unrelated to a potential future capital gain from
16 selling property.

17 Q What was your understanding as to how timber income
18 was to be distributed?

19 A Distributed, my understanding would be based on
20 ownership percentages in the company.

21 Q What were you told your money would be used for?

22 A To complete the purchase of the piece of property
23 that had been identified and may have been under
24 contract already.

25 Q And what was Silver Oak Land Management/Jack

1 McIntyre's compensation?

2 **A** Silver Oak Land Management, in the end, and that
3 was the first reference to it anywhere that I ever
4 even heard of, was giving 20 percent ownership off
5 the top with no money invested.

6 **Q** In which company did you invest next?

7 **A** Silver Oak VII.

8 **Q** And when about was that investment?

9 **A** Early 2009.

10 **Q** And approximately how much money did you invest?

11 **A** \$94,836.50.

12 **Q** And what the stated purpose of that?

13 **A** Same as the previous two that I had participated
14 in, which was to acquire a single tract of
15 timberland and manage the timber over time for a
16 current return and ultimately look to dispose of
17 the property at an advantageous time for a capital
18 gain.

19 **Q** How was that company organized?

20 **A** As an LLC owned by the people that participated in
21 the offering.

22 **Q** Prior to your investment, or at the time of your
23 investment, did you contemplate having an active
24 role in the company?

25 **A** No.

1 Q And prior to the recent events, did you ever play a
2 role in the company?

3 A No.

4 Q To your knowledge, did any other investor, other
5 than the manager, play a role in the company?

6 A No.

7 Q Who sold you the investment in SOLT VII?

8 A Jack McIntyre.

9 Q And were you given any sales material prior to your
10 investment in SOLT VII?

11 A I got a member offering document similar to what I
12 had seen in the previous ones that I had
13 participated in.

14 Q And who gave you those materials?

15 A Jack McIntyre.

16
17 MR. CRAPPS: Rob, going through that exercise again,
18 my existing Exhibit No. 5 in our records.

19 THE COURT: And, Mr. Crapps, what exhibit is it from
20 before?

21 MR. CRAPPS: It's my Exhibit No. 5.

22 THE COURT: Let's do the same thing. This is
23 Exhibit No. 5.

24

25 Q Mr. Silver, can you identify this document here

1 entitled Exhibit No. 5 in our records?

2 **A** It looks like an accurate copy of the SOLT VII
3 offering document, yes.

4 **Q** Last page of that exhibit, what is that document
5 titled?

6 **A** Membership Offer.

7 **Q** And can you read the first paragraph, including the
8 signatory there?

9 **A** (As read) We hope that you have an interest in this
10 project. We encourage you to return your
11 membership offer form and a check as soon as you
12 can. If you have any questions or need more
13 information, please call me anytime at 843-342-
14 3363. All membership payments must be received
15 before the deadline of April 30, 2009. We reserve
16 the right in our sole discretion to accept or
17 reject any membership in whole or in part. We
18 reserve the right to accept membership on a first
19 come first serve basis. If the offering is
20 oversold or if we do not accept all or a portion of
21 an interest, we will return the unaccepted portion.
22 Your truly, Jack McIntyre.

23 **Q** Thank you. Is this your handwriting here at the
24 bottom?

25 **A** That is my handwriting, yes.

1 Q That was completed. Why did you complete that?

2 A I completed that because I agreed to invest in SOLT
3 VII on May 1, '09.

4 Q Mr. Silver, did you receive or see the operating
5 agreement which was to govern SOLT VII prior to
6 your investment?

7 A No, I did not.

8 Q Do you remember when you first received it?

9 A Again, I just don't recall precise timing, but it
10 was weeks after the closing in a similar form, in a
11 spiral binder with other legal documents.

12 Q Were any representations made to you about an
13 expected return on investment in SOLT VII?

14 A I believe the same eleven percent number was
15 mentioned in there. I'd have to double check it.

16 Q And so that representation was made in the offering
17 documents?

18 A I believe it was, yes.

19 Q And what was that return supposed to come from?

20 A Well, same as the other entities. From managing
21 the timber in terms of cutting and thinning and
22 harvesting over time. And then -- well, that was
23 the current return that I would equate with what
24 was quoted as a historical eleven percent return.

25 Q What were you told as to how your money would be

1 used?

2 A It would be used along with the rest of the
3 investor's money that bought interest to purchase -
4 - to close again on the purchase of a piece of
5 property that had already been identified and may
6 have been under contract.

7 Q What would Silver Oak Land Management and Jack
8 McIntyre's compensation to be?

9 A Well, this one gets a little more complicated
10 because my understanding it was 20 percent, as it
11 was in the other companies. And what I found out
12 much later on is that Silver Oak Land Management as
13 the manager ended up with 14.29 percent because
14 shortly after all of the investor's money was put
15 in, which aggregated about \$574,000, using rounded
16 numbers, Silver Oak Land Management liquidated 5.71
17 percent of its ownership interest and withdrew
18 32,057 in cash from the money that came in during
19 the offering.

20 Q So they were provided with 20 percent?

21 A They were to be -- yes, they were provided with 20
22 percent and then liquidated a piece of that right
23 away.

24 Q Were you told at the time, or prior to the time you
25 invested, that your money would be transferred to

1 Jack McIntyre and his management company?

2 **A No.**

3 **Q** Were you told at the time you invested that
4 investor money would be used for restaurant
5 expenses?

6 **A No.**

7 **Q** Were you told at the time you invested, or prior to
8 it, that money would be used for personal expenses
9 of the manager?

10 **A No.**

11 **Q** Would you have invested if you had known that was
12 how your money would be spent?

13 **A Absolutely not.**

14 **Q** In which company did you next invest?

15 **A Silver Oak Energy.**

16 **Q** When about was that investment?

17 **A** I think my money actually went in in February 2010.

18 **Q** About how much was that?

19 **A \$99,375.**

20 **Q** What is the stated purpose of Silver Oak Energy?

21 **A** The stated purpose was different from the timber
22 companies. It was a bio fuel startup company that
23 was experimenting with a particular grass product
24 hoping to develop a viable market for mass
25 production of this product. Mass production and

1 mass selling of the product to energy companies as
2 a clean energy alternative to fossil fuels.

3 Q At the time of your investment, and prior to it,
4 how much did you know about renewable energy and
5 the bio fuel industry?

6 A As little as anybody on the street would know.
7 Basically zero.

8 Q In that time of your investment, prior to it, how
9 much did you know about miscanthus grass?

10 A I knew virtually nothing other than by strange
11 coincidence when the landscape designer did the
12 landscaping at my home on Daufuskie in 2005, or
13 2006 after we moved in, some of those grass plants
14 that I actually have planted on my property are
15 miscanthus, but a total different species of
16 miscanthus from the kind that would be use for bio
17 fuel. Other than that, I had never even heard of
18 miscanthus. Didn't know anything about it.

19 Q How was Silver Oak Energy organized?

20 A As an LLC in which a small number of people
21 participated as investors.

22 Q And prior to your investment, at the time of your
23 investment, did you anticipate having an active
24 rôle in Silver Oak Energy?

25 A No way.

1 Q And did you ever play an active role in the
2 company?

3 A I never played an active role. What did happen as
4 the company started what I'll call floundering for
5 lack of a better word at the moment, after a period
6 of time of failing to really get it off the ground
7 in any kind of a meaningful way, we talked -- there
8 were several conversations that I had with Jack and
9 that there were, I think, emails across some of the
10 investors in terms of we needed to raise money to
11 buy land to be able to grow large quantities of the
12 grass plant so that we could be able to deliver on
13 a contract that we were hoping to get signed with
14 any one of several energy companies, some of which
15 were located overseas. And at one point, I
16 remembered having met somebody during a tennis
17 match that was in the private equity business. And
18 I remember later on I think I might have asked Jack
19 do you want me to reach out to this person to see
20 if he can help find somebody that may be willing to
21 -- you know, a venture capital type of private
22 equity investor in our company. And Jack said,
23 sure, go ahead. So I believe I wrote an email or
24 two to that guy and had a brief exchange with that
25 guy. And he expressed basically no interest,

1 really. That was the only role I ever played in
2 the management of Silver Oak Energy, if you want to
3 call that a management role. I was just trying to
4 find somebody that would give us \$20 million as an
5 investor.

6 Q Who sold you the investment in Silver Oak Energy?

7 A Jack McIntyre.

8 Q Did you speak with anyone else about that
9 investment?

10 A I think the first time I heard about, again, I
11 think I was having lunch with Jack and Jim. And
12 Jack was talking about the fact that he had already
13 been experimenting with these grass plants. This
14 is my recollection. It's foggy at best. But so I
15 learned about his playing around with these
16 miscanthus plants at the time. And ultimately he
17 put the offer together and I agreed to invest in
18 it.

19 Q What was your return on investment to come from in
20 Silver Oak Energy?

21 A Well, I didn't expect any current return, because
22 unlike the timber companies this was meant to be
23 the start up of what would become what I would call
24 an operating company as opposed to an investment
25 company where we meant to mass produce a product

1 and sell it in the market place. So my expectation
2 of return on this would have been from some day --
3 well; just either making a profit over time from
4 being in business or, more likely and more
5 hopefully over time, being bought out by a larger
6 company or doing an initial public offering where
7 the initial investors would get a large payout for
8 having started the company.

9 Q What were you told your money that you invested in
10 Silver Oak Energy, what were you told that money
11 would be used for?

12 A Well, it was much less specific. I did understand
13 that we needed to buy a what's called a propagation
14 farm, a small piece of property to grow what I'll
15 call experimental quantities of the grass plant to
16 try to develop the one that would be the most fuel
17 efficient and the most appealing to the market.
18 And I understood that we had to buy and assemble a
19 greenhouse, which -- and beyond that, I wasn't sure
20 where the rest of the money was going to go other
21 than to operate this fledgling company over time
22 until it could take off.

23 Q And what was Silver Oak Land Management and Jack
24 McIntyre's compensation would be?

25 A In this company, because we knew it was an

1 operating company that was going to be a lot more
2 labor intensive than just buying a tree farm and
3 then watching the trees grow, we gave him 35
4 percent off the top for no money in.

5 Q Do you know any other investor who received equity
6 for no money?

7 A No, there was none, no other.

8 Q Were you told at the time you invested, or prior to
9 it, that your money would be used for restaurant
10 expenses?

11 A No.

12

13 MR. MATHISON: Just a second. I can't hear what he
14 said. For what kind of expenses?

15 THE COURT: Will you repeat your question, Mr.

16 Crapps.

17

18 Q Were you told at the time you invested, or prior to
19 it, that investor money would be used for
20 restaurant expenses?

21 A No.

22

23 MR. MATHISON: Is that restaurant?

24 MR. CRAPPS: Restaurant, yes.

25

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1 Q Were you told at the time you invested, or prior to
2 it, that investor money would be transferred to
3 Jack McIntyre and his management company?

4 A No.

5 Q Were you told at the time you invested, or prior to
6 it, that investor money would be used for personal
7 expenses of the manager?

8 A No.

9 Q Did you invest in another company?

10 A Yes.

11 Q Which company was that?

12 A Silver Oak I, the original of these companies that
13 was started earlier. In late 2010, I received a
14 secondary offering document. Just one day it
15 showed up in the mail from Jack. Here I was, a
16 good friend of his, never a phone call saying,
17 Rich, you can expect to get something from me in
18 the mail, we're looking to raise more money for
19 this company. And nothing. All of a sudden it
20 just showed up cold turkey one day in the mail. So
21 it was an offering to participate in a secondary
22 money raising for Silver Oak I.

23 Q Did you speak with anyone else about investing in
24 SOLT I?

25 A Anyone else? no. I called Jack right away when I

1 got it and said what is this, what's this all
2 about?

3 Q What was the purpose of SOLT I?

4 A SOLT I, back in late 2005, had been the first of
5 the timber companies created. And it had acquired
6 a tract of land out on Route 278 off of Hilton Head
7 in Hardeeville. I think it's Hardeeville. I get
8 the towns mixed up. But it was a pretty attractive
9 piece of land that I had known about through my
10 friendship with Jack. So at the time I got the
11 opportunity to invest in the secondary offering, I
12 actually was really excited about it.

13 Q Mr. Silver, can you identify this document here?

14 A Yes. That's the membership offer, or what I call
15 the subscription letter where I filled out the fact
16 that I was participating in the offering.

17 Q Will you read the top half of that page?

18 A (As read) Silver Oak Land Trust I, LLC. I hope
19 that you have an interest in this project. I
20 encourage you to return your membership offer form
21 and a check as soon as you can. If you have any
22 questions or need more information, please call me
23 any time at the phone number. All membership
24 payments must be received before the deadline of
25 September 10, 2010. Only seven new members will be

1 accepted. I reserve the right in my sole
2 discretion to accept or reject any membership, in
3 whole or in part. I reserve the right to accept
4 memberships on a first come first serve basis. If
5 the offering is oversold or if I do not accept all
6 or a portion of an interest, I will return the
7 unaccepted portion. Yours truly, Jack McIntyre
8 managing member of Silver Oak Land Trust I.

9 Q Can you identify the handwriting there?

10 A That's my handwriting.

11 Q You filled this out to do what?

12 A To participate in that secondary offering in the
13 amount of \$99,550 for a seven percent interest in
14 the company.

15

16 MR. CRAPPS: We'd admit this into evidence.

17 THE COURT: Do you have any objection?

18 MR. MATHISON: Without objection.

19 THE COURT: I'll admit it as Exhibit No. 15.

20

21 (Whereupon, State's Exhibit No. 15 was
22 marked and received into evidence.)

23

24 Q How was SOLT I organized?

25 A It was an LLC owned by the participants in the LLC.

1 Q And what was the stated purpose of your investment?

2 A The stated purpose -- I called Jack right away when
3 I got the offering. And the stated purpose that he
4 told me was that this was the only one of any of
5 the SOLTs that had a mortgage against its land and
6 that the investors had decided that rather than
7 continuing to pay interest on that mortgage, that
8 it would be wiser to bring in new investors, even
9 if it meant diluting their own interest, to avoid
10 future interest payments on the mortgage.

11 Q And at the time you invested, and prior to it, did
12 you contemplate having an active role in the
13 company?

14 A No.

15 Q And prior to these recent events, did you ever play
16 an active role in the company?

17 A No.

18 Q Do you know any other investor or individual who
19 played an active role in SOLT I?

20 A I did not know at the time I invested. I've since
21 learned that some of the decisions made, such as
22 the agreement to bring in new investors to pay off
23 the mortgage, was made I believe by the group of
24 the original five investors.

25 Q This document marked as Exhibit No. 7, can you

1 identify that document?

2 A This appears to be a copy of the secondary offering
3 document that I received for Silver Oak I. It does
4 appear to be an accurate copy, yes.

5 Q Can you turn to the next to the last page in that
6 exhibit.

7 A Yes.

8 Q Can you read the top half of that page?

9 A (As read) Silver Oak Land Trust I, LLC. I hope
10 that you have interest in this project. I
11 encourage you to return your membership offer form
12 and a check as soon as you can. If you have any
13 questions or need more information, please call me
14 at any time at such-and-such phone number. All
15 membership payments must be received before the
16 deadline of September 10, 2010. Only seven new
17 members will be accepted. I reserve the right in
18 my sole discretion to accept or reject any
19 membership in whole or in part. I reserve the
20 right to accept memberships on a first come first
21 serve basis. If the offering is oversold, or if I
22 do not accept all or a portion of an interest, I
23 will return the unaccepted portion. Your truly,
24 Jack McIntyre, managing member of Silver Oak Land
25 Trust I.

1 Q And you received this document?

2 A I received that document sometime in late 2010, I
3 think.

4 Q In connection with this offering, were any
5 representations made to you about a return on
6 investment?

7 A I don't recall any specific representation in
8 connection with this offering, no.

9 Q Did you expect a return on your investment?

10 A Yes. In the offering document, number one, my
11 understanding was that this was another timber
12 investment, so I expected similar returns from the
13 timber investments. But in the offering document
14 itself, there is a reference to an appraisal that
15 was obtained on the property several years earlier
16 for \$6.4 million and with a statement that while
17 the market conditions may not -- I forget the exact
18 language. But while market conditions may not be
19 the best right now, that at the right opportunity
20 they will look to sell the property and that the
21 target price would be no less than the \$6.4 million
22 that they had previously had it appraised at. So
23 my expectation, when I agreed to acquire seven
24 percent of the company for just under \$100,000 was
25 that even if they sold it for a third less than

1 \$6.4 million, I could make a good return on my
2 investment.

3 Q Mr. Silver, how were you told your investment in
4 SOLT I would be used?

5 A To pay down the mortgage that existed against the
6 property.

7 Q And what was Silver Oak Land Management/Jack
8 McIntyre's compensation within SOLT I?

9 A I actually didn't know at the time. My
10 understanding would have been that he had been
11 given a 20 percent ownership interest off the top,
12 but I never actually knew that. I didn't know who
13 owned what percentage of Silver Oak I at the time.
14 All I knew is I was acquiring seven percent
15 interest.

16 Q Were you told at the time you invested, or prior to
17 it, that your money would be transferred to Jack
18 McIntyre and his management company?

19 A No.

20 Q Were you told at the time you invested that your
21 money would be used for personal expenses of the
22 manager?

23 A No.

24 Q And since you've become manager of SOLT I, do you
25 know what happened to your money after it was

1 deposited?

2 A I've been able to track what's happened to my money
3 and one other woman who participated in the
4 secondary offering at the same time that I did.

5 Q I want to show you a listing from the Quicken
6 accounts from SOLT I. Can you identify your
7 deposit?

8 A January 4, 2011 deposit from Richard Silver,
9 \$99,550.

10 Q And which account does it indicate that money went
11 into?

12 A To the checking account which would have been at
13 Bank Meridian at the time.

14
15 MR. MATHISON: May I see the document, please.

16
17 Q And can you indicate that that money was later
18 transferred out of that checking account?

19 A Three days later the money was transferred on
20 January 7, 2011 to a different account at a
21 different bank, at Bank of America. The 99,550 was
22 taken out of the Bank Meridian account in the name
23 of Silver Oak I and put into one account at Bank of
24 America, a savings account, for the name of Silver
25 Oak I.

1 Q Here's the Quicken report of all the transactions
2 that were listed for that savings account. Can you
3 identify your deposit there?

4 A It shows two deposits on 99,550. One was the
5 transfer I just mentioned from my money that came
6 first into the checking account. And the second
7 deposit was directly into this account from the
8 other woman that participated in this offering for
9 the same amount of money, 99,550. So on January
10 7th, there were two deposits each for 99,550.

11 Q Can you read to the Court the subsequent
12 transactions?

13 A So the deposits were made on January 7th. On
14 January 21st, a bank account to bank account
15 transfer of \$10,000 from this account to the
16 account at Silver Oak Land Management. On February
17 7th, a similar bank account to bank account
18 transfer to Silver Oak Land Management for \$5,000.
19 Each of these is labeled in the Quicken records by
20 the manager as loans to SOLM. February 17th a
21 similar transaction for \$2500. February 25th
22 another similar transaction for \$3500. On March
23 3rd, 6,000 was transferred back into the regular
24 checking account. March 15th another loan to SOLM
25 bank account to bank account, \$5500. March 18th,

1 another transfer to checking for \$3500. March 28th
2 another loan to SOLM of \$6,000. April 13th another
3 loan to SOLM for \$5,250. April 15th another loan
4 to SOLM for \$5,000. Keep going for the rest of
5 year? Do you want me to keep going? That's what
6 happened in the first three months after the
7 deposits were made.

8 Q Yeah, you can --

9 A There's some very small ones for some bank charges,
10 \$19.50. A payment to Staples for \$87.93. These
11 are in July. A payment to a restaurant called It's
12 Greek to Me for \$42. A payment to Shell Oil
13 Company for gas for \$77.41, which is labeled as for
14 SOLT III, by the way. Another restaurant on July
15 22nd, Carraba's, for \$66. A payment to something
16 labeled Regal - I have idea what that is. - for
17 \$27. These were all small amounts in July. And
18 then on July 27th another transfer to checking of
19 \$13,000. And then a couple of more small -- bank
20 charges in July and September for \$14 each. And
21 then two new deposits come into the account in
22 December 1, 2011. One from Martin Rehder, one of
23 the original five investors in SOLT I, who put in
24 an additional 61,775.45 as capital. And then
25 Murray Reed also on December 1st, another one of

1 the original five investors in SOLT I, put in the
2 same amount of money as additional capital. On
3 December 1st, there's a transaction labeled
4 principal reduction paid to South Carolina Bank &
5 Trust which, by then, had taken over Bank Meridian
6 which had failed in the summer of 2011. So this
7 money was sent over to the McNair escrow account
8 for a principal reduction of \$123,550. And then
9 another \$15 bank charge in December. And then on
10 December 7th to clear out the account, for the most
11 part, all but a few hundred dollars, a transfer
12 back into the checking account of \$133,000.

13 Q Thank you.

14 A And then a payment of \$480 to Jack McIntyre on
15 December 29, 2011.

16 Q So within about three months of your investment,
17 Mr. McIntyre and Silver Oak Land Management had
18 taken about \$42,750 of yours and Rose Patteson's
19 money. What were you told by Jack McIntyre as to
20 what your money would be used for?

21 A Again, I was told that all of my money would be
22 used to pay down the mortgage.

23 Q And did he ever mention to you at any time prior to
24 your investment that he would be transferring money
25 to himself?

1 **A** **No.**

2 **Q** Did he ever tell you within that three months, or
3 ever, that he would be transferring money to
4 himself?

5 **A** **No. I had no idea ever until I became the manager**
6 **and got my hands on the books and records.**

7 **Q** So you were not told that within three months
8 \$42,000 would be transferred?

9 **A** **No.**

10 **Q** On a regular basis throughout the operation of all
11 of these entities --

12 **A** **Can I add one other thing, because it doesn't show**
13 **on there because he used the same Quicken account**
14 **to reflect two different bank accounts.**

15

16 MR. MATHISON: Excuse me, Your Honor, but I would
17 ask that one or the other of -- consistently
18 ask the questions and the other one answer.

19

20 **Q** Mr. Silver, --

21

22 THE COURT: You'll need to respond to Mr. Crapps'
23 questions.

24

25 **Q** Mr. Silver, on a regular basis throughout the

1 operation of these entities that you invested in,
2 did you have regular access to information about
3 the operation of the companies?

4 A No. The only information we got every year was a
5 K1 from the CPA at the end, you know, in April.
6 And what, I forget the title of it, but a year end
7 cover letter from Jack that was about a page-and-a-
8 half or two pages long covering all seven
9 companies, which had a brief paragraph for each
10 company as to what had taken place in verbiage.
11 There were no financial information provided of any
12 kind.

13 Q So you never had access to financial information of
14 any of these companies?

15 A None whatsoever.

16 Q Who first raised suspicions about Jack McIntyre's
17 management?

18 A I received a phone call on August 24, 2012 from
19 Paul Finn. He asked me if I was sitting down, that
20 he had a story to tell me. So I sat down and he
21 proceeded to tell me a story about --

22

23 MR. MATHISON: I'm going to object, Your Honor,
24 unless I hear a representation that Mr. Finn
25 will be called as a witness in this

1 proceeding. He's not here today.

2 THE COURT: I'm going to let the questions proceed.

3 MR. MATHISON: He's going to tell you what Mr. Finn
4 told him, which is clearly hearsay. It's
5 prohibited by every evidentiary rule I've ever
6 heard. Now, they can cure it by simply
7 bringing Mr. Finn in.

8 THE COURT: I understand. But it goes to his
9 knowledge, what he perceived.

10 MR. MATHISON: Pardon me? It goes to his knowledge
11 what?

12 THE COURT: It goes to what he believed what his
13 state of mind was.

14 MR. MATHISON: How is that relevant?

15 THE COURT: I'm going to let it in.

16 MR. MATHISON: Thank you.

17

18 A Mr. Finn proceeded to tell me that Friday evening
19 that for some months he'd been getting increasingly
20 concerned and anxious and angry, ultimately, with
21 what had transpired over the previous six or seven
22 months starting in late 2011. And what he
23 explained was that in late 2011, Jack McIntyre had
24 called Paul and asked Paul to lend Silver Oak
25 Energy Company \$25,000. Paul Finn was already an

1 investor in Silver Oak Energy in the tune of
2 \$106,000. So he was asked by Jack to lend Paul the
3 -- Paul to lend the energy company \$25,000. The
4 explanation, according to Paul at the time, I
5 believe was to acquire some additional miscanthus
6 plants from a company in Florida that we had
7 legitimately purchased some miscanthus plants from
8 a year or two earlier.

9
10 MR. MATHISON: May I make this a continuing
11 objection?

12 THE COURT: I'll consider it continuing objection.

13 MR. MATHISON: I did hear a representation by Mr.
14 Crapps previously that Mr. Finn would be here
15 tomorrow. Is that true or not? Is he going
16 to be here tomorrow?

17 THE COURT: Do you expect Mr. Finn?

18 MR. CRAPPS: We do expect Mr. Finn to be here.

19
20 Q So Paul Finn brought to your attention what he
21 considered suspicious behavior?

22 A Yes. Again, he went on to explain that he
23 discovered that over time Jack McIntyre had changed
24 his explanation or story as to what happened with
25 Paul's \$25,000. He apparently came up with like

1 four different explanations over different periods
2 of time. Each one of which Paul was able to
3 determine was not the truth as to what really
4 happened with money. And so he kept pushing harder
5 and harder to get supporting documentation which he
6 never got from Jack as to what happened with the
7 money.

8 Q Did you seek financial records from Jack McIntyre
9 and Silver Oak Land Management?

10 A Well, what happened was, following that phone call
11 on a Friday night, Paul said he's flying down to
12 Hilton Head - He lives in the Boston area. - the
13 next day. And we had a what I'll call an emergency
14 meeting of the investors of Silver Oak Energy,
15 excluding Mr. McIntyre, at Paul's home - He owns a
16 home on Hilton Head - that Monday, the 27th of
17 August 2012 and discussed in more detail what had
18 transpired between Paul and Jack and another one of
19 the investors, I think, who at that point was also
20 trying to put pressure on Jack to deliver documents
21 supporting his explanations as to what was going
22 on. And, ultimately, that meeting resulted in a
23 vote being taken by the remaining members of Silver
24 Oak Energy, who collectively own 65 percent of the
25 company, that Jack McIntyre would be removed as

1 manger and that Dave Short, another one of the
2 investors, would be appointed as the interim
3 manager until a better solution could be found. A
4 letter was -- first, I believe Jack was notified by
5 phone or email, which he refused to respond to. So
6 a letter delivered by a lawyer was done on
7 Wednesday of that week, I believe August 29th,
8 instructing Jack, formally informing him that he
9 was removed as manager and instructing him to turn
10 over all books and records and access to the bank
11 accounts to Mr. Short who had taken over as
12 manager.

13 Q Mr. Silver, can you identify this document here?

14 A It looks like an email I wrote to Jack requesting
15 info about partners, I guess.

16 Q Did you draft that document?

17 A Apparently I did. It looks like my language. Yes,
18 it looks like one I wrote.

19

20 MR. CRAPPS: We'll admit this into evidence.

21 THE COURT: Do you have any objections, Mr.

22 Mathison?

23 MR. MATHISON: Let me read it, Your Honor, if you
24 don't mind.

25 THE COURT: Take your time.

1 MR. MATHISON: No objection, Your Honor.

2 THE COURT: We'll admit it into evidence as Exhibit
3 No. 16.

4

5 (Whereupon, State's Exhibit No. 16 was
6 marked and received into evidence.)

7

8 Q Can you identify the to and the from and the date?

9 A From Rich, which is me. Date, September 23, 2012.

10 To Jack McIntyre. Subject, partner info.

11 Q Can you read the first two paragraphs of that
12 paragraph?

13 A (As read) Jack, since you continue to refuse to
14 respond to my information request, and since there
15 is clear evidence of significant questionable acts,
16 I am left with no choice but to take further
17 action. Please supply me immediately (by tonight)
18 with contact me information for all partners in all
19 SOLT entities, email, address and phone numbers for
20 every partner of every SOLT entity. Do you want me
21 to keep going?

22 Q That's fine. Do you remember what prompted this
23 email?

24 A Well, what happened was, after those events at the
25 end of August with Silver Oak Energy and the

1 meeting we had as investors, we, in talking about
2 it, I started expressing aloud my concerns that
3 this may be a tip of a very big iceberg or was
4 actually hoping out loud that it wasn't. I was
5 coming at it from the other direction. Jack was a
6 very good friend of mine. I wanted to believe that
7 this was nothing more than a misunderstanding over
8 the \$25,000 between him and Paul and that it
9 couldn't possibly be anything worse than that.
10 There's no way my friend could have done this to
11 anybody. So, but was we talked about it, again, I
12 just expressed out loud let's just all hope that
13 that's all this is and that the explanation is
14 something relatively simple, that Jack got in over
15 his head for \$25,000 on something, was embarrassed
16 to admit why he really needed to the money and just
17 caused Paul to lend the money to Silver Oak Energy
18 under false pretenses and that it would get repaid.
19 What happened after that and after Dave Short got
20 his hands on the bank records and transaction
21 journals from Jack's Quicken records was I called
22 Dave Short a -- this was the end of the same week,
23 I believe, by that Friday or Saturday or Sunday at
24 the very end of August. I called Dave and I said
25 do you have those bank statements now and whatever

1 else Jack gave you. And he said, yes, I do. And I
2 said would you mind if I borrow them all from you.
3 I said I'm pretty good at doing accounting analysis
4 and financial analysis, I'd like to look through it
5 and see what's there. So Dave and I met and he
6 handed me all of the bank statements that he had
7 collected for Silver Oak Energy. This was only in
8 Silver Oak Energy at the time. And a transaction
9 journal that had listed literally every transaction
10 chronologically that had ever taken place in the
11 Quicken records of Silver Oak Energy. And I
12 started spending time with that shortly -- you
13 know, the day I got them, I think, and my eyes just
14 started popping out of my head as to what I was
15 finding in terms of where money was going that had
16 come into Silver Oak Energy from the investors.
17 And examples were in the first three weeks alone of
18 -- from December 9th to December 31st of operations
19 of Silver Oak Energy when the first, call it
20 \$50,000 using a rounded number, money came in from
21 one of the investors, there were a series of bank
22 account to bank account transfers amounting to the
23 total of \$11,000 from Silver Oak Energy's bank
24 account to the bank account of Silver Oak Land
25 Management starting two days after I believe the

1 deposit was made on December 8th or 9th. It was
2 the -- what became a high volume use of debit cards
3 taken out against the bank account to pay any
4 number of different types of expenses. There were
5 as many as 65 to 75 debit card transactions in the
6 first three weeks alone. More than 100 the next
7 month and equal numbers until basically all the
8 money was gone seven or eight months later. And so
9 having seen that in Silver Oak Energy, I realized
10 the problem was much bigger than a \$25,000 loan
11 that was made by Paul into Silver Oak Energy, and
12 that it was a problem probably much deeper than
13 just one company as well. That's when I started
14 requesting information from Jack to deliver records
15 to me on all the Silver Oak companies. I alone had
16 \$415,000 invested collectively in these different
17 companies. And I was extremely concerned with
18 where my money was really going or where my money
19 was earning from what was supposed to be timber
20 operations was going. And so I started requesting
21 information. Jack was not responding and not being
22 cooperative. And, ultimately, I decided that I
23 needed to demand stuff in writing and to contact
24 all of the other investors to alert them to the
25 fact that we may have a major problem on our hands

1 that nobody knew about. And I didn't know other
2 than Jim Paris, as I said. And by then I had met a
3 couple of investors in energy company, Paul Finn
4 and Dave Short. And Dave Short I had met once or
5 twice before. But I didn't know any of the other
6 investors. I had no way of reaching out to them
7 other than by demanding and requesting email
8 addresses from anybody and everybody that had them.
9 So that's what I was doing.

10 Q So prior to this September 23rd email, you did not
11 have any financial records from the SOLT entities?

12 A I don't know if I got some of them by then, but was
13 frustrated that I couldn't get everything I was
14 asking for or if when I wrote that I had yet to
15 receive any of the records. I don't remember the
16 dates that records started getting delivered to me
17 by Jack.

18 Q Do you recognize this document here?

19 A Yes. This, I believe, this is the email I then
20 wrote to as many of the investors whose email
21 addresses I was able to obtain, some of which I was
22 able to obtain by looking through old emails from
23 Jack and seeing who they were addressed to and
24 others from talking to a couple of people who knew
25 somebody who knew somebody who was able to get me

1 an email address. So this was the email that I
2 crafted to all investors or as many of the
3 investors as I could get email addresses for
4 introducing myself and explaining some of what we
5 had already discovered or I had discovered.

6 Q So this email was written by you to as many
7 investors as you had identified at this point?

8 A Yes.

9 Q What's the date of that email?

10 A September 24, 2012.

11 Q Can you read that first paragraph?

12 A The subject, urgent information about your
13 investment in Silver Oak. (As read) Hi everyone,
14 my name is Rich Silver. Most of you do not know
15 me, but we are all investors (members) in one or
16 more of the Silver Oak Land Trust (SOLT) entities
17 formed and managed by Jack McIntyre (JM) through
18 his personal company Silver Oak Land Management
19 (SOLM). You may or may not be aware that in
20 addition to the six SOLT entities JM formed and
21 managed, again through SOLM, a bio fuel startup
22 company called Silver Oak Energy (SOE) in late
23 2009. A few of us that are investors in one or
24 more of the SOLTS also became investors in SOE
25 along with a couple of new investors. Keep going?

1 Q That's okay. Will you read the first three
2 sentences there through the clause "Much of which
3 were later proven false."

4 A (As read) Unfortunately, the investors in SOE
5 uncovered some financial irregularities that have
6 occurred since SOE's creation. When the first of
7 these irregularities came to light, information and
8 documentation was requested of JM. These requests
9 were initially ignored, but instead various and
10 conflicting explanations were provided by JM as to
11 what actually had transpired, much of which were
12 later proven false.

13 Q Thanks.

14
15 MR. MATHISON: I object to that on the same basis
16 that I stated before. That information came
17 from Mr. Finn.

18 THE COURT: I'll rule the objection now in, and we
19 understand Mr. Finn is going to be here
20 tomorrow and you can cross examine him on the
21 email.

22

23 Q Towards the end of that email you request a vote on
24 the removal of Jack McIntyre and SOLM as the
25 manager. What was the result of that vote?

1 **A** The result of the vote was that a majority of
2 investors by percentage owned in each of the six
3 Silver Oak Land trusts voted to remove Jack, or
4 Silver Oak Land Management in the case of SOLTs IV,
5 V and VII, as the manager and to -- I think the
6 same vote was to appoint me as an interim manager
7 for waiting for somebody better qualified to come
8 forward.

9 **Q** And so you also requested a vote implementing you
10 as the manager until a longer term solution could
11 be found?

12 **A** Yes.

13 **Q** And what was the result of that vote?

14 **A** Again, a majority, based on percentage owned, of
15 each of the members of each of the six SOLTs voted
16 to name me as the interim manager.

17 **Q** Do you have the support of the investors in the
18 land trust companies?

19
20 MR. MATHISON: Objection. Calls for shear
21 speculation.

22 THE COURT: I'll sustain the objection.

23 MR. CRAPPS: This September 24th email, we'd like to
24 enter into evidence.

25 THE COURT: Do you have an objection, Mr. Mathison?

1 MR. MATHISON: I have a copy of it. We did not
2 receive it. It wasn't sent to us, so he
3 authenticate it and said he sent it to the
4 people that are on this list. I can't see
5 that I have an objection while I've never seen
6 it.

7 THE COURT: We'll admit it as Exhibit No. 17.

8
9 (Whereupon, State's Exhibit No. 17 was
10 marked and received into evidence.)
11

12 Q Can you identify this letter here?

13 A It's another email I wrote to Jack copying in all
14 of the email addresses that I had obtained dated
15 October 1, 2012.

16 Q And to whom was that email addressed?

17 A To Jack McIntyre.

18 Q What was the context of this email?

19 A The subject matter was called record delivery.

20 Q And what's the date on that?

21 A October 1, 2012. I begin by pointing out that the
22 most important records that I had been requesting
23 had not been complied with. I mean, I can read it
24 if that's easier as opposed to trying to quickly
25 reread it and paraphrase it. But I was looking for

1 all the detailed records, including bank statements
2 and supporting documentation for every company.
3 Was pointing out that I still was not getting what
4 I needed. And pointed out that he had, in fact,
5 given me some things by this time, but I was still
6 missing a lot of what I had asked for. And I was
7 at this point also reminding him or demanding that
8 he give me a copy of his QuickBooks files so that I
9 could have access to the books and records of the
10 companies. For two reasons, I wanted to do an
11 audit of what had gone on the past. But now those
12 belonged to me as the manager of these companies.
13 They were company property that he refused to
14 deliver initially. Thirdly, I was looking for bank
15 statements for Silver Oak Land Management, his
16 company, and again, I never knew of the existence
17 of the co-investors, Sue Vitek and Silver Oak Land
18 Management. But because a lot of the money I
19 believed had been allegedly misappropriated over
20 time was being transferred bank account to bank
21 account by any one of these companies to Silver Oak
22 Land Management, even though none of us owned an
23 interest in Silver Oak Land Management, I felt we
24 needed to get our hands on the books and records so
25 we can see where that money was going and how it

1 was being used. Then, I pointed out the amounts of
2 money that I had discovered that Silver Oak Land
3 Management had taken in different forms from the
4 different companies. And pointed out that you have
5 neither answered any of my questions nor supplied
6 me with any supporting documentation that I've been
7 asking for. I asked for explanations about the
8 cash transfers between SOLM and all of the other
9 companies and supporting documentation which he had
10 not provided me with. I had pointed out that I
11 have asked him other questions regarding
12 transactions in Silver Oak Energy which he had not
13 responded to. I'm still waiting for responses to
14 those inquiries, I say. I point out that it was
15 clear from the records I do have so far there are
16 many more questions that there are many more
17 questionable transactions that have occurred with
18 the SOLT entities long before SOE commenced
19 operations. And I point out several specific
20 examples of how fees or monies were paid to or
21 transferred to Silver Oak Land Management as
22 management fees or other types of fees that were
23 not provided for in the operating agreements over
24 and above his ownership percentage and consulting
25 fees that were also some of the expense categories

1 used for some of the transfers were called
2 consulting fees, and a commission of \$27,000 that
3 was taken out of one of the companies. Lastly, I
4 asked you to submit a signed copy of your
5 resignation letters for each SOLT. You have
6 ignored these requests also. I must have these
7 signed letters to provide to the bank to provide
8 proof that you have been replaced. I am now
9 copying all members of all the SOLTs and Silver Oak
10 Energy so that everyone is aware of my repeated
11 request for documents and information and your
12 continued stonewalling of these requests.

13 Q So by October 1st, Mr. McIntyre was still
14 stonewalling requests, as you put it?

15 A That would be the phrase I would use, yes. I had
16 gotten some information piecemeal, but a lot less
17 than everything that I had asked for.

18
19 MR. CRAPPS: We'd like to offer this email as
20 evidence, as well.

21 MR. MATHISON: Without objection.

22 THE COURT: Exhibit No. 18.

23
24 (Whereupon, State's Exhibit No. 18 was
25 marked and received into evidence.)

1
2 Q Mr. Silver, how did you come to be manager of these
3 land trusts?

4 A Again, in that email to members, I pointed out what
5 we had discovered as alleged malfeasance and asked
6 to be elected as the interim manager because I had
7 no desire to do this on an ongoing. But at that
8 point I was the only that had been digging into
9 what was going on. I didn't know any of the other
10 people, other than my friend Jim Paris. And so I
11 was willing to take on that role temporarily until
12 a better long-term solution could be found.

13 Q And in your role, did you eventually receive bank
14 records for Silver Oak Energy and Silver Oak Land
15 Trust I?

16 A Yes.

17 Q Can you identify these records?

18 A These look like all the monthly bank statements for
19 Silver Oak Energy, and these look like all the bank
20 records for Silver Oak Land Trust I, yes.

21 Q In each of those in some of the statements there's
22 some handwriting, some checkmarks in handwriting.
23 Do you know what that is?

24 A Well, I believe the checkmarks were Jack's checking
25 off that he had posted the transaction into the

1 Quicken records, I believe. The other handwriting,
2 I believe, if it's not all mine it's mostly mine,
3 as I circled certain items, put explanations on
4 certain items as I matched up what I found in the
5 bank statement with how a particular transaction
6 may have been entered into the QuickBooks records.

7 Q And those bank records there, where did you get
8 those from?

9 A The ones from Silver Oak Energy I believe I got
10 from Dave Short who had originally gotten them from
11 Jack McIntyre. The rest I got from Jack directly
12 via Jim Paris as an intermediary.

13 Q What did you do with those records while they were
14 in your possession?

15 A What did I do with them?

16 Q Uh-huh.

17 A I punched three holes in every page and created
18 binders and still have them all. And I performed
19 what I would call a forensic audit over months and
20 months of detailed digging into the records.

21

22 MR. CRAPPS: We'd like to offer these into evidence.

23 MR. MATHISON: To prove what? I'm going to object in
24 terms of relevancy unless somebody ties this
25 up. I've been handed what amounts to maybe

1 250 pages of documents, all of which have
2 multiple interlineations on them. If he wants
3 to put them in and discuss them and to do it
4 one by one, but I'm not going to agree that he
5 can put in 250 documents with many different
6 handwritings on it.

7 MR. CRAPPS: Your Honor, these were part of the file
8 that Mr. Mathison reviewed last time. And as
9 far as relevance, these show the operation of
10 the company.

11 THE COURT: I'll let them in and I understand the
12 issues with handwriting.

13 MR. CRAPPS: So we'll mark these --

14 MR. MATHISON: The other thing I would raise is that
15 they don't have a proper chain of evidence, at
16 least as to the ones that were non-delivered
17 by Mr. McIntyre. I think the ones that he
18 said came from Mr. McIntyre is a proper chain.
19 And I believe that's the Bank Meridian, is it
20 not?

21

22 Q Which items did you receive from Mr. McIntyre?

23 A **Everything other than Silver Oak Energy, which**
24 **would be this stack here.**

25

1 MR. CRAPPS: We'd offer these bank records into
2 evidence.

3 THE COURT: I'll accept them, and I understand the
4 objections with the handwriting.

5
6 (Whereupon, State's Exhibit No. 19 was
7 marked and received into evidence.)

8
9 Q How did you obtain these Silver Oak Energy
10 documents?

11 A Those were the same documents that were delivered
12 by Jack McIntyre to David Short, and David gave me
13 --

14
15 MR. MATHISON: Objection. It's another let's put
16 words in somebody else's mouth. Every time
17 we're stuck for something, we go and find
18 somebody who's not a witness in the courtroom
19 and we say he told me. He didn't say that he
20 told me because he knows that if he says it
21 that way I'll get up. He said but basically
22 he knows it because someone else told him.

23 MR. CRAPPS: Your Honor, these are bank records.
24 There's no allegation that they are
25 questionable in authenticity.

1 THE COURT: I'll let them in.

2 MR. MATHISON: They're not self-authenticating bank
3 records, Your Honor. There is no such thing.
4 They have interlineations all over them as
5 well.

6 THE COURT: I understand with regard to the
7 handwriting and so forth, but they do appear
8 to be bank records.

9 MR. CRAPPS: We'll admit these into evidence.

10

11 (Whereupon, State's Exhibit No. 20 was
12 marked and received into evidence.)

13

14 Q. Once you obtained records for each SOLT entity,
15 what did you do next?

16 A I performed what I would describe as a forensic
17 audit of each of the companies from day one of
18 existence of each of the companies up until the
19 date of transition by analyzing every single bank
20 transaction, analyzing and comparing every
21 transaction with how that transaction was entered
22 into the QuickBooks records and following the flow
23 of information to all of the tax documents that I
24 had also by then obtained from the CPA, Carey &
25 Company.

1 Q What did that financial analysis, very generally,
2 what did you discover?

3 A I discovered a number of things that I would
4 describe as alleged forms of malfeasance, including
5 a number of transactions for which --

6

7 MR. MATHISON: Excuse me, is he being offered now as
8 an expert, because he's generalizing based on
9 theoretically what he observed in the
10 documents that I've already objected to.

11 THE COURT: I'll let him talk about what he's
12 observed and the analysis he's done.

13 MR. MATHISON: So is he testifying as a fact witness
14 or as an expert? He hasn't been qualified as
15 an expert.

16 MR. CRAPPS: He performed these audits himself. I
17 think he's testifying to his own knowledge of
18 the situation.

19 THE COURT: Right.

20 MR. MATHISON: Well, I don't know about you, Jordan,
21 but I'm not qualified to audit anyone. All
22 right.

23 THE COURT: Well, it sounds to me like he's
24 summarizing what is in the documents. I'll
25 allow that in.

1

2 **A** Should I continue answering the question?

3 **Q** As to SOLT I, did you find transfers of money to
4 Jack McIntyre himself?

5 **A** I found many transactions that were recorded as
6 loans to Jack McIntyre and many more that were
7 recorded as loans to Silver Oak Land Management and
8 some transactions that were payments not labeled as
9 loans but as consulting fees or other types of
10 payments to Jack McIntyre or Silver Oak Land
11 Management.

12 **Q** Who was the manager of SOLT I?

13 **A** Jack McIntyre.

14 **Q** Did Silver Oak Land Management have a relationship
15 with SOLT I?

16 **A** None whatsoever.

17 **Q** According to your financial analysis, what amount
18 of transfers did you see to Mr. McIntyre and then
19 Silver Oak Land Management?

20 **A** In the aggregate, I accounted based on information
21 in the documents approximately \$133,000 worth of
22 loans to either Jack McIntyre or Silver Oak Land
23 Management which were recorded as such by Jack
24 McIntyre in doing the books. In addition to that,
25 I discovered 50-something thousand dollars worth of

1 consulting or management fees that were paid to him
2 that were labeled as such either on the books or on
3 the tax records. So those were the direct payments
4 that I would say that went from Silver Oak Land
5 Trust I only to either Jack McIntyre or Silver Oak
6 Land Management.

7 Q Did you see expenses --

8

9 MR. MATHISON: I'm renewing my objection. Forgive
10 me, Jordan, you can't see me, but I stood up.
11 It's become increasingly clear that they don't
12 intend to go through those documents that they
13 threw up there as admitted evidence and tell
14 you exactly where that exists. They're going
15 to put this man on to summarize, and he's not
16 qualified to summarize. He hasn't been
17 established as an expert. He can't digest the
18 material of what amounts to 300 plus pages of
19 bank records. He simply doesn't have the
20 qualifications to do it. Now, if he's voir
21 dired and someone can establish that he's
22 qualified, I think he then can do it. But he
23 can't do it now, not as a fact witness. He's
24 testifying about hearsay documents created by
25 somebody not in this room, from memory,

1 without doing anything to point toward the
2 transactions that he believes fall into the
3 category that he believes are these illicit
4 loans. Simply unprecedented in my experience.
5 I've never heard any testimony like that
6 except from an expert.

7 MR. MATHISON: Your Honor, we'll get in all the
8 records that we believe support Mr. Silver's
9 testimony. And he spent a lot of his time
10 analyzing these records and he's testifying to
11 the facts as he knows them.

12 THE COURT: I'll let them in as it's been shown he's
13 gone through them. He's telling us what he
14 saw in the records as he understood the
15 records.

16
17 Q Mr. Silver, did you see expenses that you would
18 categorize as personal?

19 A In all of the companies or are we just talking --

20 Q In SOLT I..

21
22 MR. MATHISON: Objection. That calls for a
23 conclusion. Personal to him may not be
24 personal to the Internal Revenue Service. An
25 ordinary and necessary business expense can be

1 incurred for something that could be also
2 personal, such as a restaurant charge. That's
3 asking him for an opinion. He's not an
4 expert.

5 THE COURT: I'm going to overrule and let him
6 proceed.

7
8 A I did notice a number of transactions that would be
9 to all appearances personal in nature, not even
10 counting the tens of thousands of dollars that were
11 spent at restaurants which are a different matter
12 entirely. But there were many other transactions
13 that clearly appear to be purely personal in
14 nature.

15 Q Do you have examples of those expenses?

16 A I do. And we're talking Silver Oak I only. There
17 were purchases at liquor stores. There were
18 payments for college board SAT fees. There were
19 payments to car services other than for the vehicle
20 that was operated by Jack McIntyre which the
21 original five members of Silver Oak I allowed him
22 to purchase and service at company expense. There
23 were payments to the Evergreen Pet Lodge for
24 kenneling somebody's dog. There were payments to a
25 tire company, again, not related to the truck that

1 Jack drove. There were payments to Sea Turtle
2 Cinemas. There was payment to a chiropractor.
3 There was a transfer of money to his wife's
4 business account. There was another transfer to
5 his wife's business account. There were a purchase
6 at Victoria's Secret. There were payments to
7 Plantation Animal Hospital. There was a payment to
8 a photographer whose work I had purchased at Jack's
9 wife's art gallery. There was a payment --
10 multiple payments to a dentist or Dr. Galloway. I
11 think that's a dentist. And those are just the
12 ones that were altered when they were entered into
13 the Quicken records. In other words, the payee as
14 it's clearly shown on the bank records using a
15 debit card was totally changed when the
16 transactions were entered into the Quicken records.
17 In addition to that, --

18
19 MR. MATHISON: This is a continuing objection.

20 THE COURT: I understand.

21
22 A In addition to that, in July 2007 there was a cash
23 withdrawal taken from Silver Oak I's bank account
24 in the amount of \$4,366, and the paperwork from the
25 bank explains and shows clearly that the check that

1 was requested was a bank check, based on the
2 withdrawal slip, payable to the Beaufort County
3 Treasurer for property taxes. None of these
4 companies owns property in Beaufort County except,
5 I think, for one acre of Silver Oak Land Trust I's
6 159 acres. I think one acre of it may overlap into
7 Beaufort County. So that was not for company taxes
8 of any kind. There were 40 different payments to
9 dry cleaners amounting to over -- almost \$1100.
10 Another chiropractor. Seven payments over time for
11 400-and-something dollars to a home coffee service.
12 Eighty-two payments to car washes. A payment to
13 the Medical University of South Carolina. Fifty-
14 two payments to super markets aggregating almost
15 three-and-a-half thousand dollars and 54 payments
16 to Starbucks aggregating \$3,218. Those are just
17 some of what appear to be what I would call purely
18 personal unrelated to what could be argued to be
19 travel and entertainment expenses like a
20 restaurant. That's a different matter in terms of
21 the volume of that that was done. And, just for
22 the record, the volume of that that was done in
23 Silver Oak I alone \$39,000 was spent at eating
24 establishments in 600 separate transactions.

25

1 MR. MATHISON: Mr. Silver is going to testify from a
2 document which he's been reading from. I'd
3 the like the document marked and made part of
4 the record, please.

5 THE COURT: We can do that.

6 MR. MATHISON: The entire document.

7

8 Q Mr. Silver, can you indicate what you were
9 refreshing your recollection with?

10 A I was refreshing my recollection from this page
11 right here.

12

13 MR. MATHISON: I want the entire document, Mr.
14 Silver, because I saw you turn the pages.

15

16 A Well, I just -- yeah, I'll pull out the other page
17 that I referred to.

18

19 MR. MATHISON: All the other pages, sir.

20

21 A I referred to only one other page.

22

23 THE COURT: No, I think that he's entitled to have -
24 - you brought the document with you and you've
25 been using it. It can be marked.

1 MR. CRAPPS: I don't know how you want . . . mark
2 this --

3 THE COURT: Just mark the ring binder.

4 MR. MATHISON: If Jordan would not mind, I'd like
5 for him to mark the spot that he had cut. I
6 did not see him refer back, but I did see him
7 refer beyond that. And that's the portion I
8 want marked.

9 THE COURT: Okay.

10 MR. MATHISON: Just put something in there to
11 indicate where . . .

12 THE COURT: Okay.- Mr. Mathison, so you want to mark
13 behind the yellow tab he put in and not what's
14 in front of the yellow tab?

15 MR. MATHISON: I didn't see him refer to what's in
16 front. If he wants it in the entirety, that's
17 fine. I just want to know where it was when :
18 . . .

19 THE COURT: Okay. Y'all handle however you want to
20 do that.

21
22 Q Mr. Silver, did you analyze how revenue was
23 distributed for SOLT I?

24 A I did. For SOLT I and for each of the companies.
25 I isolated the date on which a deposit was made

1 from timber cutting and hunt lease revenue and
2 traced the use of that money until it was all gone.
3 In each event of the timber cutting in each company
4 since the inception of each company.

5 Q And what did that analysis discover?

6 A It discovered that about just under 50 percent of
7 all the money that was taken in from timber
8 operations which could have been distributed to
9 investors after paying expenses of the company was
10 in fact distributed and the remainder was diverted
11 to other uses such as loans to Silver Oak Land
12 Management or other payments to Silver Oak Land
13 Management or inter company loans to other
14 companies. So if one company had timber money
15 coming in, it would lend some of that money to an
16 inter company transactions to any one of the other
17 companies in the family of companies. And to pay
18 for some of what --

19
20 MR. MATHISON: Excuse me, Your Honor --

21
22 A -- appeared to be personal expenses.

23
24 MR. MATHISON: I don't mean to interrupt this
25 soliloquy, but I want to make note that my

1 objection continues. It's obvious that he's
2 come in prepared to testify in paragraphs.
3 And I would prefer that he respond to
4 questions instead of just orating.

5 THE COURT: Noted Mr. Mathison. If you could ask
6 more broken up questions.

7
8 Q Do you have examples of how revenue was
9 distributed?

10 A I do.

11 Q Do you remember that, how certain revenue was
12 distributed?

13
14 MR. MATHISON: Now I'd like to have an entire book
15 he's referring to again because he doesn't
16 know. He's just going to look it up in his
17 book. So I'd like the entire book marked.

18 THE COURT: That's fine. We'll accept the book, and
19 it will be Exhibit No. 21.

20
21 (Whereupon, State's Exhibit No. 21 was
22 marked and received into evidence.)

23
24 Q If you would refresh your recollection, what are
25 some of those examples of how revenue was

1 distributed?

2 A If we're talking Silver Oak I, out of a total of
3 120 -- I'll call it 121,000 using rounded numbers
4 of money available from operations to distribute to
5 members, approximately, according to my analysis,
6 26,000 of that was spent on what I call legitimate
7 external expenses such as property taxes,
8 consulting fees, interest, insurance, those things
9 that are direct obligations of the entity itself.
10 Leaving potentially 94.4 thousand available for
11 distribution in Silver Oak I. And this is from
12 several different timber cuttings over time. This
13 is the aggregate numbers of Silver Oak I. There
14 were a total of three separate timber -- well, one
15 that overlapped a year. Really, two separate
16 cutting operations. Of which only 39,000 out of
17 94.4 thousand, 39.6 was distributed to the owners.
18 And the rest was used for other purposes such as
19 cash payments and loans to Jack McIntyre and/or
20 Silver Oak Land Management in the amount of 16,200.
21 Cash transfers to other SOLTs or SOE for \$1,000.
22 And what I've labeled JM's expenses. So all of
23 these debit and credit card transactions that were
24 paid for by the companies. And about 18-and-a-half
25 thousand was left rather than being distributed to

- 1 help pay off the line of credit that Silver Oak
2 wanted taken out that was in default by this time.
- 3 Q Mr. Silver, did you perform a financial analysis of
4 SOLT II?
- 5 A I did.
- 6 Q Did you identify --
7
8 MR. MATHISON: Same objection.
9 THE COURT: Noted.
10
- 11 Q Did you identify expenses you have categorized as
12 personal?
- 13 A In SOLT II just several, not a high volume as there
14 was because there wasn't as much money available in
15 SOLT II. But there was just an ATM withdrawal,
16 three payments to car washes, a payment to
17 Starbucks, a payment for a Wall Street Journal
18 subscription and a payment to State Farm Insurance
19 for what I don't know.
- 20 Q And in SOLT II, did you see transfers made to Jack
21 McIntyre and to Silver Oak Land Management?
- 22 A SOLT II I show that were on the books \$5500 of
23 loans that were recorded as such to either Jack or
24 Silver Oak Land Management. And then \$3550 of
25 other payments that I believe were categorized by

1 Jack as consulting fees.

2 Q In SOLT II, did you see transfers to other SOLT
3 entities?

4 A SOLT II, \$2,930 is the number I have for transfers
5 to other SOLTs or Silver Oak Energy.

6 Q And that SOLT I, did you see transfers to other
7 SOLT entities?

8 A Yes. The ones I have on this schedule are only
9 what came directly from new money that came in from
10 timber cutting. So on this schedule it's only
11 1,000. I don't have the analysis with me on the
12 total volume of inter company transactions. I may
13 have it on another schedule. Hold on. In SOLT I,
14 cash transfers to other SOLTs or Silver Oak Energy,
15 there were 16 different transactions aggregating
16 53,028.

17

18 MR. MATHISON: How many transactions?

19

20 A I counted 16 separate transactions aggregating
21 53,000.

22 Q And then for SOLT II, did you do an analysis on how
23 revenue was distributed?

24 A Yes, I did. In SOLT II, there was net of
25 commissions paid, some of which went to Jack

1 McIntyre because SOLT II is one of the two
2 companies where he is provided with a 15 percent
3 cash management fee from revenue. So net of the
4 commissions paid to the agent and to Jack, there
5 was about \$90,000 taken in over time in several
6 different cutting operations and from hunt leases.
7 And overlapping that, so I had to account for some
8 other cash that was coming in around the same time,
9 there was \$9500 that came into SOLT II from
10 borrowings inter company from other SOLTs. And
11 \$24,000 that came in at the same time that
12 overlapped from a new investor that had come in
13 with \$2,000 monthly installments to buy his
14 ownership interest in the company. So the total
15 cash available was \$123,000. 62,600 of which was
16 used to purchase some additional land for SOLT II.
17 And another 12, 13 -- about \$19,000 was used again
18 for these legitimate external expenses such as
19 consulting and site prep work, legal and
20 professional fees, interest, insurance and taxes.
21 Leaving 42,000, approximately 42,100, that could
22 have been distributed to members. 19,000 of which
23 was distributed to members. Of the remaining
24 \$23,000, 9,250 was made in the form of payments of
25 some sort or cash transfers or loans to Silver Oak

1 Land Management and Jack. 2,930 that I mentioned
2 before was in cash transfers to other SOLTs or
3 Silver Oak Energy. And 11,038 was in the form of,
4 again, what I call JM's expenses, the debit and
5 credit card transactions.

6 Q Did you perform a financial analysis of SOLT III?

7 A I did.

8 Q In that analysis, did you identify items that you
9 categorized as personal?

10

11 MR. MATHISON: Same objection.

12 THE COURT: Noted.

13

14 A Well, there was one transaction in what I call the
15 altered payee list where there was a cash transfer
16 of \$300 to his wife's business bank account. I
17 believe it is called Gallery Ten. And was recorded
18 as paid to Bank Meridian as a bank charge.

19 Q In your analysis of SOLT III, did you identify
20 transfers of money to Jack McIntyre or Silver Oak
21 Land Management?

22 A I did. In SOLT III, there were \$13,550 worth of
23 loans made to Silver Oak Land Management. \$500
24 consulting fee paid to Jack or Silver Oak -- I
25 think Jack in that case. So those two totaled

1 14,050 of loans or payments to Jack or Silver Oak
2 Land Management.

3 Q Did you see transfers to other SOLT entities in
4 SOLT III?

5 A In SOLT III, cash transfers to other SOLTs or
6 Silver Oak Energy amounted to \$31,235.

7 Q Did you perform an analysis of how revenue was
8 distributed?

9 A I did. In Silver Oak III, none of those
10 commissions that were paid to the forestry agent
11 and the fifteen percent fee paid to Jack McIntyre,
12 there was \$62,000 available for distribution.
13 Well, which could have been available for
14 distribution to members. Minus about \$2800 worth
15 of these external expenses, again consulting,
16 legal, professional fees, insurance, interest and
17 taxes. Leaving available for distribution 59,300,
18 approximately of which 8,000 was distributed. Of
19 the remaining amounts, 14,400 was transferred to
20 Silver Oak Land Management or Jack McIntyre.
21 23,660 was transferred -- was paid -- was
22 transferred to other SOLTs or Silver Oak Energy.
23 About \$3800 was in what I call Jack's expenses,
24 again, the credit and debit card transactions. And
25 9700 was used to repay loans.

1

2 MR. MATHISON: Excuse me. Loans meaning whose loan?

3 MR. CRAPPS: You'll have a chance to cross examine.

4 THE COURT: You can follow up with cross

5 examination.

6 MR. MATHISON: Actually, you can't. He's saying it

7 so fast you can't write fast enough.

8

9 Q Did you perform a forensic accounting of SOLT IV?

10 A I did.

11 Q I'm showing Exhibit No. 9. Can you recognize that

12 document?

13 A I do recognize that document.

14 Q What is that?

15 A It is a photocopy of a bank check drawn from Bank
16 Meridian payable to Beaufort County Treasurer in
17 the amount of \$12,834.16 dated June 30, 2011. And
18 the remitter of these taxes is listed as John M.

19 McIntyre.

20 Q And when was that expense?

21 A June 30, 2011.

22 Q Was that expense eventually paid back?

23 A That expense was eventually paid back by Susan
24 Vitek after it was disclosed a year-and-a-half
25 later to the remaining investors in all of these

170

1 companies when I had my first real meeting face to
2 face with all the investors. Well, some of them
3 were to face to face. Some called into the meeting
4 from out of state. And shortly after that meeting,
5 she approached Jim Paris with a check to reimburse
6 that payment with the comment, according to Jim,
7 which --

8
9 MS. VITEK: Oh, wow.

10 MR. MATHISON: Your Honor --

11

12 A I'll let Jim testify.

13

14 THE COURT: Sustained.

15 MR. MATHISON: Well, that would be, you know,
16 unusual.

17 THE COURT: And I want to ask a question just for
18 me. I want to make sure you are -- you're the
19 current manager of all these entities?

20

21 A I represent all of the investors. I am the
22 manager, yes.

23

24 MR. MATHISON: Forgive me, but that's not true.

25 He's not the manager of Silver Oak Energy.

1

2 A Oh, excuse me, you're right, I'm not. The six Land
3 Trusts I'm the manager of.

4 Q What was that transaction entered into the Quicken
5 records as?

6 A The transaction was entered into the Quicken
7 records as a payment to Milliken Forestry as a
8 consulting expense.

9 Q In your financial analysis of SOLT IV, did you see
10 items that you have deemed personal expenses?

11 A I did.

12 Q Do you have examples of those?

13 A The big one on what I called the altered payee
14 list, again, was that property tax payment that was
15 entered as a payment to Milliken Forestry. There
16 was a cash transfer directly to SOLM that was
17 actually, according to the bank statement, paid to
18 Staples, and a cash withdrawal on South Carolina
19 from an ATM that was recorded as if paid to the
20 North Carolina Forestry Association. And then
21 there were several payments of auto registration
22 and auto excise tax fees in the amount of \$341,
23 \$269, \$298.

24 Q Did you see transfers of money to Jack McIntyre or
25 Silver Oak Land Management?

1 A Yes. On Silver Oak IV, according to the books,
2 there were \$28,796 worth of loans to Jack or Silver
3 Oak Land Management. \$175 fee, I think it was
4 recorded as a consulting fee, to Jack or Silver Oak
5 Land Management. And what I've labeled as an
6 excess distribution, there were actually two
7 separate amounts that totaled \$9,362.08 taken by
8 Silver Oak Land Management in excess of it's 20.01
9 percent ownership interest in Silver Oak IV.

10 Q Did you see transfers to other SOLT entities out of
11 SOLT IV?

12 A I did. Cash transfers to other SOLTs or Silver Oak
13 Energy aggregated \$10,764 from Silver Oak IV.

14 Q Mr. Silver, did you perform a financial analysis of
15 SOLT V?

16
17 MR. MATHISON: Excuse me, Your Honor, same
18 objection. We've been doing this for two
19 hours now.

20 THE COURT: I understand the objection.

21 MR. MATHISON: May we have a break?

22 THE COURT: We can have a break, but I understand
23 he's testifying as the manager from the books
24 and records of this corporation, so I will let
25 him talk about it. Yeah, we can take a break.

1 MR. MATHISON: May it please the court. If he were
2 telling you what's on the sheets of paper that
3 you have in front of you, that would be fine.
4 But he's telling you what his analysis is.
5 And he's not been qualified to perform that
6 analysis.

7 THE COURT: I understand. He's the manager of the
8 company. I'll take his testimony.

9 MR. MATHISON: And the manager can testify as to
10 what's in the books and records. The manager
11 cannot testify as to what is the result of an
12 audit and reaching decisions as to what are
13 personal expenses and what aren't.

14 THE COURT: Well, overruled. I understand it's a
15 continuing objection.

16 MR. MATHISON: Thank you, Your Honor.

17 THE COURT: And we can take a break.

18

19 (Off the Record)

20

21 Q Mr. Silver, did you perform a financial accounting
22 of SOLT V?

23 A Yes, I did.

24 Q And did you note transfers to Jack McIntyre and
25 Silver Oak Land Management?

1 A Just a very modest amount. I have \$650 in loans to
2 Silver Oak Land Management.

3 Q Did you identify loans between Silver Oak entities?

4 A In Silver Oak V, I noted \$16,148 worth of transfers
5 from SOLT V to other of these entities.

6 Q And did you identify any personal expenses?

7 A I don't believe there was much of anything to speak
8 of in V. No, there was nothing I noted.

9 Q And did you analyze how revenue was distributed in
10 SOLT V?

11 A I did. There was just I think it was one cutting,
12 one timber cutting, if I remember right. Yes,
13 there was just one timber cutting and some hunt
14 lease income. So there was only about nine-and-a-
15 half thousand dollars to distribute less some
16 modest legal and professional fees. 9400, 6,000 of
17 which was distributor. So this one didn't have a
18 lot left over. But of what was left over there was
19 the \$650 loan to Silver Oak Land Management. \$968
20 of transfers to SOLTs during this period as part of
21 the larger number I mentioned earlier. And 1800
22 and change in what I call Jack's expenses.

23

24 MR. MATHISON: Excuse me, I didn't hear the last

25 part.

1

2 A 1800 and change in what I call Jack's expenses.

3 Q Mr. Silver, did you perform a financial auditing of
4 SOLT VII?

5 A I did.

6 Q Did you identify any expenses you have deemed
7 personal?

8 A Just six cash withdrawals totaling \$1845.

9 Q Did you see any transfers to Jack McIntyre or
10 Silver Oak Land Management?

11 A In Silver Oak VII, I noted \$13,250 of loans to
12 Silver Oak Land Management or Jack, and an
13 additional \$13,000 that I believe was labeled
14 consulting fees to Silver Oak Land Management. And
15 a distribution in excess of the ownership interest
16 in Silver Oak Land Management from the one
17 distribution that was made amounting to \$3,426.

18 Q And in all of these SOLT entities you've identified
19 a lot of transactions or loans to Jack McIntyre and
20 his management company. Did you see those loans
21 being paid back?

22 A There were two repayments of loans. One for Silver
23 Oak IV and one for Silver Oak VII. They both came
24 immediately prior to the investor meeting I called
25 last November. So, at that time, loans totaling

1 23,746 which was the prior year end's loan balance,
2 I believe, on the books of Silver Oak IV as of the
3 2011 tax return. This happened in November 2012.
4 So there was a check given to Silver Oak IV for
5 23,746 and a check for 11,800 given to SOLT VII at
6 the same time based on the balance on its 2011 tax
7 return of loans taken by Silver Oak Land
8 Management.

9 Q And so for the duration of the period from
10 beginning of SOLT I until I believe you said
11 November 2012, were there payments being made on
12 those loans?

13 A There were no other payments being made on the
14 loans with one, what I'll call minor exceptions,
15 occasionally - Because these numbers are net
16 numbers of loans in and out. Occasionally, as
17 money would come in and would get totally swept
18 over to Silver Oak Land Management for the most
19 part as inter company loans, in addition to some of
20 the other uses, if a bill had to get paid of a
21 relatively small amount in one of the companies,
22 there was occasionally a transfer back in from SOLM
23 for a relatively small amount, like 500 or 1,000
24 here or there. But all of these numbers I've
25 mentioned are net activity of those loans that went

1 mostly to Silver Oak Land Management and small
2 amounts, that might have come back.

3 Q Mr. Silver, did you analyze the financial records
4 of Silver Oak Energy?

5 A I did.

6
7 MR. MATHISON: Excuse me. Now we're confronted with
8 that worst case situation. This man's not a
9 manager of Silver Oak Energy. He's got no
10 basis on which to testify to his knowledge of
11 these facts and figures other than the fact
12 that he's an unqualified expert proceeding to
13 read conclusions and calculations that have
14 been made out of the presence of the court.
15 And I renew my objection and take the position
16 that based on your ruling, Your Honor, that
17 he's not a manager in any capacity in Silver
18 Oak Energy and, therefore, he's not qualified
19 to state what Mr. Crapps is going to ask him.

20 THE COURT: Mr. Crapps, would you like to voir dire
21 him and qualify him as an expert for this
22 corporation?

23 MR. CRAPPS: If necessary, we can. I still would
24 argue that he performed financial audit of
25 these companies based on the records he

1 received from the manager from Silver Oak
2 Energy and is still a fact witness as to that.

3 THE COURT: Let's have you qualify him in this case
4 because he's not a manager. This is actually
5 different.

6 MR. CRAPPS: One second, Your Honor.

7

8 VOIR DIRE EXAMINATION

9 BY MR. CRAPPS:

10 Q Mr. Silver, can you tell us your educational
11 experience in a little more detail than you did
12 earlier?

13 A Undergraduate degree in accounting from Bentley
14 University in Massachusetts. I have a master's in
15 business administration from Suffolk University in
16 Massachusetts.

17 Q And what is your professional experience dating
18 back to really your first job?

19 A My first job was an auditor for what's now known as
20 Price Waterhouse Coopers based on some mergers of
21 some other CPA firms where I spent two years doing
22 audit work. Then I went to graduate school. And
23 after that I spent 32 years in the mutual fund
24 industry. I served as chief financial officer and
25 treasurer of one trillion dollars worth of the

1 fidelity funds. Every US and Bermuda based
2 fidelity fund was under me as treasurer and chief
3 financial officer. I served as treasurer and chief
4 financial officers of other fund families during my
5 career. As I mentioned, I currently serve on the
6 board of directors and as chairman of the audit
7 committee of that board at the Korea Fund and
8 retirement. In order to serve as a chairman of an
9 audit committee of a New York Stock Exchange listed
10 company I have to be recognized by the Securities
11 and Exchange Commission as what they call a
12 financial expert.

13 Q What was your graduate degree in again?

14 A It was a general business master's. Just a general
15 MBA with no specificity.

16 Q So the SEC has deemed you, what was that title,
17 again?

18 A A financial expert I believe is the phrase that's
19 used to qualify for me to serve as a chairman of an
20 audit committee.

21 Q And what board are you the chairman of that audit
22 committee, what company?

23 A It's a company known as The Korea Fund, Inc.

24 Q What do they do?

25 A It's an investment company that owns a portfolio of

1 stocks of companies based in South Korea.

2 Q In your role as CFO and treasurer of the fidelity
3 fund, what were your duties?

4 A I oversaw all financial operations and accounting
5 operations for the funds themselves and for
6 services provided to the funds and for the
7 shareholders. And during my stint in fidelity, I
8 ran all of what's called the back office
9 operations, which is the accounting operations,
10 financial reporting operations, SEC filings
11 operations. So I had CPAs and lawyers reporting to
12 me out of a group of over 600 people.

13 Q In your role as chairman of the audit committee,
14 what duties do you have?

15 A To fulfill the charter of the audit committee,
16 which is to oversee from a high level the financial
17 operations of the company that the board oversees
18 from all aspects, to work with the outside auditors
19 to make sure they are independent and that to work
20 with them in case there's any issues that they need
21 to bring to the board's attention without the
22 presence of management, if they should uncover
23 anything that would be of that nature which,
24 fortunately, I've never run into. And to oversee
25 what's called the compliance operations as well for

1 compliance rules and regulations.

2 Q And to be deemed an SEC financial expert, what is
3 that process?

4 A I don't know, to tell you the truth. It's based on
5 my experience, I guess. But I'm not sure. I mean,
6 I didn't have to take an exam with the SEC to be
7 deemed a financial expert.

8

9 MR. CRAPPS: I think at this point, Mr. Hunter, we'd
10 like to offer Rich Silver as an expert in
11 auditing and forensic accounting of companies.

12 THE COURT: Mr. Mathison?

13 MR. MATHISON: I would like to ask a few questions
14 myself.

15 THE COURT: Proceed.

16

17

CROSS EXAMINATION

18 BY MR. MATHISON:

19 Q Mr. Silver, the auditing experience that you had
20 before you went to graduate school, what years were
21 that?

22 A 1969 to 1971.

23 Q So more than 40 years ago?

24 A I believe so.

25 Q Have you had any auditing experience since then?

- 1 **A** Not in practice as a CPA. As an auditor.
- 2 **Q** Have you ever had occasion to sit for the CPA exam?
- 3 **A** I did. I think around the time I graduated college
- 4 I tried taking once or twice. I only passed about
- 5 half of it and then I stopped trying because I knew
- 6 I wasn't going to practice in public accounting.
- 7 **Q** So, if I understand correctly, you did take the
- 8 exam and you didn't pass it?
- 9 **A** I didn't pass all parts of it.
- 10 **Q** Have you supplemented your knowledge of auditing
- 11 since you failed to pass the CPA exam with
- 12 meaningful work experience?
- 13 **A** Depending on how you define meaningful work
- 14 experience. As I mentioned, I spent 32 years
- 15 running accounting and financial reporting back
- 16 office operations and functions for trillions of
- 17 dollars worth of investor money.
- 18 **Q** Forgive me, but to an old country boy like me that
- 19 sounds like you may have been in really rarified
- 20 air and not doing auditing. You might have been
- 21 listening to what other people did. Is that
- 22 possible, that you were just way up there and the
- 23 people that were actually doing the work were
- 24 reporting to you?
- 25 **A** Well, towards the end of my career, yes, but not as

1 I climbed the ranks, no. I did lots of accounting
2 work myself.

3 Q Do you know the Internal Revenue Code section that
4 applies to ordinary and necessary business
5 expenses?

6 A I'm not a tax person.

7

8 MR. MATHISON: I don't believe he's qualified, Your
9 Honor.

10 THE COURT: I'm going to accept him as an expert.

11 Your objection is noted.

12 MR. MATHISON: Thank you, Your Honor.

13

14

15 CONTINUED DIRECT EXAMINATION

16 BY MR. CRAPPS:

17 Q Mr. Silver, in your financial forensic audit of
18 Silver Oak Energy, did you see purchases of
19 rhizomes from that account?

20 A I saw transfers of money from Silver Oak Energy
21 directly to Silver Oak Land Management's bank
22 account that in the accounting records were
23 accounted for as rhizome purchases.

24 Q Did you see any actual purchases directly to a
25 third party?

1 A I did see several. The former number was about
2 71,600 or something like that.

3

4 MR. MATHISON: Forgive me. I'm trying to figure
5 this out. The former number being?

6

7 A The first number I referred to of transfers to
8 Silver Oak Land Management for what were labeled
9 rhizome purchases was 71,600. In addition to that,
10 there were direct payments to outside vendors for
11 rhizome purchases that amounted to, I believe,
12 approximately 28 or 29,000, something in that
13 range. Maybe 30,000. I think it was just under.

14 Q Mr. Silver, did you request invoices to support the
15 expenses that were transferred into Silver Oak Land
16 Management under the category of rhizome purchases?

17 A I did request supporting documentation directly
18 from Jack to supply me with invoices or any kind of
19 support for the 71,600 paid as what he called
20 rhizome purchases.

21 Q And what did you receive?

22 A I eventually got one statement that he had created
23 on a Silver Oak Land Management invoice or
24 letterhead - I forget the exact thing. - but it was
25 a Silver Oak Land Management something that, in

1 effect, was purported to be an invoice billing
2 Silver Oak Energy in the amount of \$120,000 for
3 rhizomes supposedly being sold by Silver Oak Land
4 Management to Silver Oak Energy.

5 Q Did you see other transfers to Jack McIntyre and
6 Silver Oak Land Management not inclusive of those
7 ones labeled rhizome purchases?

8 A Again, on a net basis, there's a minor amount of
9 about \$1200 that I show as loans from the records
10 to Silver Oak Land Management.

11 Q Did you see expenses that you have deemed personal
12 in nature?

13 A I saw quite a few in Silver Oak Energy.

14 Q Do you have any examples of those?

15 A I do. And the ones I'm going to read from, this
16 list are all in what I call in the altered payee
17 category. So everyone of these I'm about to
18 mention, the actual payee for the actual payee for
19 the bank statement was altered when the transaction
20 was entered into the Quicken records with a
21 different payee.

22
23 MR. MATHISON: Forgive me. May I inquire what page
24 in his booklet you're reading from?

25

1 A This is from a scheduled called SOE Schedule of
2 Altered Payees Earliest to Date.

3

4 MR. MATHISON: Does it have a page number?

5

6 A Well, it's page one in this tab, but that's --
7 well, every one of these is page one because I had
8 to run each company as a separate transaction
9 report, so it's always page one.

10

11 THE COURT: Which tab is that?

12

13 A It's in a tab called -- it's called various
14 expenses, I'm sorry. An application fee to Wake
15 Forest University recorded as a payment to Home
16 Depot. And application fee to Vanderbilt
17 University recorded as a payment to Home Depot.
18 For both cases for what were called bench material.
19 A purchase at a place called the Goldsmith Shop
20 entered in the accounting records as paid to
21 Jaderloon Greenhouse. A purchase that what was
22 labeled Just Fifth the day before Christmas, which
23 was really paid to Off Fifth recorded as a selling
24 expense. A payment to Sea Turtle Cinemas. A
25 payment to college board SAT recorded as a payment

1 to Lowe's. A payment to Mid Island Primary Care, a
2 medical facility, recorded to just Mid Island so
3 you couldn't tell what it was, as an office
4 expense. A purchase at Gullah Family Jewelers
5 entered as payment to Home Depot. UNCA admissions
6 fee entered as bio fuels convention. College board
7 SAT recorded as a payment to something called
8 Online for a bio fuels convention. Richmond
9 University application recorded as something called
10 CommApp, bio fuels convention. Hilton Head Prep
11 yearbook recorded as a payment to Morris & Weldron.
12 Sea Turtle Cinemas recorded as just to Sea Turtle
13 so you didn't know it was a cinema, as an office
14 expense. College board SAT recorded as a payment
15 to Great American Cleaners. Red Fish restaurant
16 recorded as to Red Bowl. Now, there were a number
17 of these Red Fish ones. And Jack's wife, Judy, who
18 was a very close personal friend of mine and my
19 wife's, owns an art gallery located in the Red Fish
20 restaurant. So we attended many functions there
21 with Jack and Judy at the Red Fish. And these were
22 a series of a number payments to Red Fish entered
23 in the accounting records as to a different
24 restaurant called Red Bowl. Another payment to Sea
25 Turtle Cinemas. A payment to a place called Main

1 Street Medical. Again, just entered as Main Street
2 as an office expense. Two more Red Fishes.
3 Another college board entered as Great American
4 Cleaners. Evergreen Pet Lodge entered as Evergreen
5 with no pet lodge called planting tools. A zoo
6 admission entered as just admissions, a travel
7 expense. Another Red Fish. A purchase at a
8 grocery store entered as to Staples. A Red Fish.
9 Jason Putnam, DMD, a dentist entered without the
10 DMD called planting expense. Hilton Head Oral and
11 Maxillofacial entered as to Hoffman Nursery for
12 rhizome purchases. Another Red Fish, another Sea
13 Turtle Cinemas. Barnard Tire Company entered as
14 Baynard Supply irrigation expense. Two more Red
15 Fishes entered as Red Bowls. Another Evergreen Pet
16 Lodge. Two more Red Fishes. Payments to Stokes
17 Brown Toyota entered as to OC Welch Ford. Home
18 Goods entered as Home Depot. Le Bistro restaurant
19 entered as for education at a bio fuel conference.
20 Marvin Jewelers entered as just Marvin as an
21 irrigation expense. Another movie theater called
22 North Ridge entered as a selling expense. Another
23 Evergreen Pet Lodge. Another Plantation Animal Pet
24 Hospital and another Sea Turtle Cinema. And those
25 are the ones from the altered payee list. In

1 addition to that, there were 20 separate cash
2 withdrawals from ATMS totaling \$4,752. Three
3 payments to a Dr. Galloway, a dentist, amounting to
4 \$374. Seventeen payments to dry cleaners amounting
5 to \$434. Forty-four payments to supermarkets
6 aggregating \$2,919. An auto insurance payment for
7 \$529. Eighteen payments to car washes for \$352. A
8 payment to LabCorp, a medical facility for lab
9 testing, for \$50. A purchase at a liquor store for
10 \$18. Seventeen separate payments to Starbucks for
11 \$860. State Farm Insurance auto insurance payment.
12 Something paid to a fellow name Steve Goggins who I
13 looked up on the internet who I think is a personal
14 trainer, but I have no idea if that's that's the
15 same Steve Goggins that this payment went to for
16 \$200.

17 Q Mr. Silver, would you have invested in Silver Oak
18 Energy if you knew Jack McIntyre and Silver Oak
19 Land Management would spend money like this?

20 A Absolutely not.

21 Q Did you receive the Quicken records for these
22 entities?

23 A I did.

24 Q Where did you get those from?

25 A From Jack via I think the actual delivery to the

1 boat to be sent over to my island was Jack gave
2 them to Jim Paris to put on a boat to me and the
3 thumb drive, or whatever you call it, was in a
4 sealed envelope when it came to me.

5 Q And did you alter those QuickBooks records in any
6 way?

7 A I did not alter them in any way. I think before I
8 decided it would be smarter to make a duplicate
9 copy I may have entered a couple of new
10 transactions from the time I took over for a couple
11 of recent payments that had been made. I'm not
12 even sure if that was on that version or not. It
13 might have been. There might be a couple
14 transactions dated in November or something like
15 that.

16 Q And did you send those Quicken records to the South
17 Carolina Attorney General's office?

18 A Yes, I did.

19 Q Who at the securities division received those
20 documents?

21 A Sandra Matthews.

22

23 MR. MATHISON: Objection to that. It's obviously
24 hearsay. He doesn't know who received them
25 unless she told him.

1

2 A I personally handed them to Sandra Matthews.

3

4 MR. MATHISON: Then I withdraw my objection.

5 MR. CRAPPS: That's all I have for this witness.

6 THE COURT: At the last break, we discussed how we
7 would end the day. And I think we've all
8 decided that we will end the day at the end of
9 Mr. Silver's direct and we'll resume tomorrow
10 at nine o'clock if that suits everybody. And
11 I've asked Mr. Silver not to discuss his
12 testimony between now and the start of the
13 hearing tomorrow.

14 MR. MATHISON: May it please the court, I'd like to
15 have access to the courtroom at 8:30, if
16 possible, so that I can look at the book that
17 has been made as an exhibit.

18 THE COURT: That will be fine.

19 MR. MATHISON: Thank you.

20

21

22

23

24

25

1 Day Two - October 2, 2013

2

3 THE COURT: I know there a couple of new people in
4 the room today. I'll have them stand up and
5 introduce themselves and if you will do the
6 same since you weren't here when we did that
7 yesterday on the record.

8 MR. MCLEOD: Thank you. My name is Andrew McLeod,
9 and I'm an assistant attorney general in the
10 securities division. I'm just here to be of
11 any assistance that I can offer.

12 MR. FINN: Paul Finn.

13 THE COURT: Our court reporter called the previous
14 court reporter and I guess time went by and we
15 had forgotten and we solved the problem with
16 the exhibits. And those three exhibits were
17 marked, but apparently they weren't entered
18 into evidence. And so what we need to do
19 today is, unless there are any objections,
20 make sure they get entered into evidence and
21 we'll include them in this transcript to clean
22 up the record.

23 MR. CRAPPS: I have copies of one of the pleadings
24 that were in our exhibits copies and not in
25 the official record. I think I got them all

1 Whereupon,

2 PAUL ANDREW FINN, being duly sworn and
3 cautioned to speak the truth, the whole truth,
4 and nothing but the truth, testified as
5 follows:

6 Court Reporter: State your full name for the
7 record, please.

8 Witness: Paul Andrew Finn

9
10

11 DIRECT EXAMINATION

12 BY MR. CRAPPS:

13 Q Mr. Finn, can you tell the court where you reside.

14 A 8 Larrington Road, Hilton Head Island, South
15 Carolina.

16 Q Are you a South Carolina resident?

17 A I am.

18 Q What is your brief explanation of your educational
19 background?

20 A Graduate of college. Graduate of law school.
21 Graduated law school 1976. College 1971. Master's
22 from Harvard University Extension School 1990.

23 Q What is your professional background?

24 A I'm a mediator. I've been a mediator since
25 February 1, 1992.

1 Q And is that your current occupation?

2 A It is.

3 Q Mr. Finn, how did you come to learn about the
4 Silver Oak Land operations and Jack McIntyre?

5 A Through my friend Jim Paris. I work with Jim Paris
6 in Sea Island, Georgia and he told me about Jack
7 McIntyre.

8 Q And when about was that?

9 A 2006.

10 Q What entity did you first invest in?

11 A Silver Oak IV.

12 Q And when did you first hear about Silver Oak IV?

13 A 2007, I believe.

14 Q And who approached you about that investment?

15 A Jack McIntyre.

16 Q Did you talk to Jim Paris about that potential
17 investment?

18 A I did.

19 Q What was that conversation about?

20 A I don't recall.

21 Q What was your conversation with Mr. McIntyre about?

22 A He told me about Silver Oak IV and he told me I
23 could buy an interest in it.

24 Q So Mr. McIntyre made you the offer?

25 A He did.

1 Q And what was the stated purpose of SOLT IV?

2 A I think it was to be a tree farmer. That's my
3 recollection.

4 Q And, to your knowledge, how was that company
5 organized?

6 A I think it's a land trust, Silver Oak Land Trust
7 IV, LLC.

8 Q And who was the managing member?

9 A Jack McIntyre.

10 Q That was your understanding?

11 A Yes.

12 Q Prior to and at the time of your investment, did
13 you contemplate having an active role in SOLT IV?

14 A No.

15 Q At any point did you play an active role SOLT IV?

16 A Other than having idle conversation with Mr.
17 McIntyre, no.

18 Q On a regular basis, did you have access to
19 financial information about the company?

20 A No.

21 Q Did you involve yourself in the day-to-day
22 operations of SOLT IV?

23 A No.

24 Q And so it was Mr. McIntyre who convinced you to
25 invest? How much did you invest?

1 A I think convince is a poor choice of words. I did
2 it on my own after talking to Jack McIntyre. He
3 didn't convince me of anything other than I thought
4 it was a good investment.

5 Q But he sold you on the idea? Is that a better
6 term?

7 A Yeah, you could say that.

8 Q How much did you invest?

9 A 49,000 and change.

10 Q Were you given any sales materials prior to your
11 investment?

12 A I'm sorry, I didn't hear you, sir.

13 Q Were you given any sales materials prior to your
14 investment?

15 A No.

16 Q So your investment was based solely on your
17 conversation with Jack McIntyre?

18 A Yes.

19 Q And did you see the operating agreement that was to
20 govern SOLT IV prior to your investment?

21 A No.

22 Q When did you receive that operating agreement?

23 A To my recollection, I never did.

24 Q Did you sign the operating agreement?

25 A I might have signed a piece of paper, but I'm not

1 sure what it was for.

2 Q Mr. Finn, were any representations made to you
3 about an expected return on your investment in SOLT
4 IV?

5 A Yes.

6 Q And what were those representations?

7 A Twelve percent per year.

8 Q Who made those representations?

9 A Mr. McIntyre.

10 Q Do you know what that return was supposed to come
11 from?

12 A It was supposed to come from cutting the trees.

13 Q And what was your understanding as to how the
14 timber income was to be distributed?

15 A Depending on the percentage of what you had in the
16 land trust.

17 Q What were you told your money, your investment, in
18 SOLT IV would be used for?

19 A Buy the land.

20 Q And what was Silver Oak Land Management or Jack
21 McIntyre's compensation supposed to be for his
22 services?

23 A Well, it was like anybody else. He was -- he told
24 me he had -- he invested in it as well. He put
25 money into it as was well and that the management

1 services were going to come out of the return from
2 the sale of the trees, his percentage.

3 Q Were you told any time prior to your investment
4 that money in SOLT IV would be used for restaurant
5 expenses?

6 A No.

7 Q Were you told at the time you invested, or prior to
8 it, that money would be transferred to Jack
9 McIntyre and his management company?

10 A No.

11 Q And were you told at the time you invested that
12 your money would be used for personal expenses of
13 the manager?

14 A No.

15 Q Were you offered an investment in SOLT V?

16 A I think I was.

17 Q Do you remember who made you that offer?

18 A Jack McIntyre.

19 Q Did you invest in SOLT V?

20 A No.

21 Q Which company did you invest in next?

22 A VII.

23 Q And how did you first hear about SOLT VII?

24 A Jack McIntyre.

25 Q When about was that investment?

1 **A** Probably 2008.

2 **Q** What was the stated purpose of SOLT VII?

3 **A** Same as IV.

4 **Q** And prior to the time of your investment, did you
5 contemplate having an active role in SOLT VII?

6 **A** No.

7 **Q** Did you ever actually play a role in SOLT VII?

8 **A** I might have seen it. As a matter of fact, I did
9 see it.

10 **Q** Did you ever participate in the day-to-day
11 activities of SOLT VII?

12 **A** No.

13 **Q** Were you given any sales material prior to your
14 investment in SOLT VII?

15 **A** No.

16 **Q** And at any time prior to your investment, did you
17 see the operating agreement that was to govern SOLT
18 VII?

19 **A** No.

20 **Q** Do you remember when you saw that operating
21 agreement?

22 **A** I've searched high and low. I can't find it. I
23 don't -- never remember seeing it.

24 **Q** Mr. Finn, were any representations made to you
25 about an expected return on investment in SOLT VII?

1 A Other than what he told me about SOLT IV, the
2 answer is no. I assumed it was going to be the
3 same.

4 Q Did you expect a return on your investment in SOLT
5 VII?

6 A I did.

7 Q And what was that return going to come from?

8 A Sale of the trees, cutting.

9 Q And for SOLT VII, what was Silver Oak Land
10 Management and Jack McIntyre's compensation to be?

11 A Well, I think at that time, 2008, I wasn't aware of
12 Silver Oak Land Management. It was just Jack
13 McIntyre. It wasn't until 2009, I believe, or --
14 yeah, 2009 that I became aware of Silver Oak Land
15 Management. So the compensation, to answer your
16 question, the compensation was the same as I
17 mentioned before, come out of the sale of the
18 trees.

19 Q Were you told prior to the time you invested that
20 money would be used for restaurant expenses?

21 A No.

22 Q Were you told at the time you invested that money
23 would be transferred to Jack McIntyre and his
24 management company?

25 A No.

- 1 Q And were you told at the time you invested that
2 money would be used for personal expenses?
- 3 A No.
- 4 Q Mr. Finn, for SOLT IV and SOLT VII, would those
5 have been pertinent to your investment? Would you
6 have invested if you had known money would be spent
7 that way?
- 8 A I would not have invested.
- 9 Q Mr. Finn, did you invest in Silver Oak Energy?
- 10 A I did.
- 11 Q Do you remember how much you invested?
- 12 A \$106,000.
- 13 Q And at the time of that investment, were you under
14 the assumption that you were buying three percent
15 of the company away from Mr. McIntyre?
- 16 A I was not.
- 17 Q And that he would retain 97 percent?
- 18 A I was not.
- 19 Q Did he ever tell you that that was the deal?
- 20 A He did not.
- 21 Q What was the purpose of Silver Oak Energy?
- 22 A The purpose of Silver Oak Energy was to grow
23 miscanthus grass and sell it as a bio energy fuel,
24 bio mass energy fuel. That was the purpose of
25 Silver Oak Energy, yes.

1 Q At the time that you invested, did you think that
2 this was going to be another passive investment?

3 A No.

4 Q And at the time of the investment, how much did you
5 know about miscanthus grass?

6 A At the time? Nothing.

7 Q And how much did you know about the bio fuel
8 industry?

9 A Nothing. Yeah, nothing.

10 Q For Silver Oak Energy, when did you begin doing
11 some work for the company?

12 A My initial investment was in December 2009. I had
13 numerous conversations with Mr. McIntyre prior
14 thereto in which he educated me about miscanthus
15 grass. He educated me about the southeastern part
16 of the country being the best place to grow
17 miscanthus grass. He educated me about the BTU
18 quality of the miscanthus grass. He told me about
19 synesting. He told me about you let it sit --
20 everything I learned about miscanthus grass in the
21 beginning was from Mr. McIntyre.

22 Q When did you begin working for the company, do you
23 remember?

24 A No. Probably 2010. Taking an active role, 2010.

25 Q And when was your investment?

1 A December 2009. Well, it was two. The initial
2 investment was December 2009. And then I put
3 another \$56,000 into it over the course of, I
4 think, two or three months in 2010.

5 Q And once you began doing some work for the company,
6 what was your involvement kind of week to week?

7 A Well, in the beginning it was more of being
8 educated about the business, about what it is what
9 our goal was. In the beginning it was about
10 marketing it to power plants and power companies in
11 the southeast. My recollection, one of them was
12 Duke Power and the other one was SCANA. I think
13 it's SCANA in South Carolina. There was
14 conversation with Mr. McIntyre about Mendel Labs
15 and about a company called -- no, that was Europe.
16 Mendel Labs. So what I was trying to do in the
17 beginning was I was trying to raise money for the
18 company because I thought it was a very, very good
19 idea and a good investment because of the nature of
20 our environment. That's my answer.

21 Q Mr. Finn, during the operation of the business, did
22 you have regular and kind of unfettered access to
23 details about the business?

24 A What do you mean by unfettered?

25 Q On a day-to-day basis, did you know what was going

1 on?

2 **A No.**

3 **Q** During the operation of the business, did you have
4 access to the financial records of the company?

5 **A No.**

6 **Q** Did you have access to the bank records of the
7 company?

8 **A No.**

9 **Q** Were you still working as a mediator during this
10 time?

11 **A Oh, yes.**

12 **Q** And where are you a mediator?

13 **A In Boston. Brockton, Mass.**

14 **Q** Where is Silver Oak Energy?

15 **A Hilton Head Island, South Carolina. I think they
16 used his home address.**

17 **Q** Did you ever visit Silver Oak Energy farm?

18 **A Yes. Farm?**

19 **Q** Yes.

20 **A Yes, the farm. Sure.**

21 **Q** How many times did you visit the farm?

22 **A Once. July 2010.**

23 **Q** What was the scope of that visit?

24 **A To check out the miscanthus that's just been
25 planted. That was in Clio. I think that's**

1 **Marlboro County.**

2 **Q** Did you ever place orders for the business for
3 product?

4 **A** No.

5 **Q** How did you come to get a title in the company?

6 **A** It was Jack's idea. We were going to Europe. We
7 needed to have business cards, so we kicked it
8 around and came up with director of business
9 development. I still have the cards.

10 **Q** Did you expect a return on your investment in
11 Silver Oak Energy?

12 **A** I sure did. It was my retirement plan.

13 **Q** And what was that return supposed to come from?

14 **A** When we started -- when we got an off-take
15 agreement and we started making money..

16 **Q** What were you told your investment would be used
17 for?

18 **A** The purchase of land, the purchase of miscanthus
19 rhizomes. In the beginning rhizomes and then later
20 seed. And the greenhouse that we put up. That's
21 when I saw Silver Oaks VII, because we put the
22 greenhouse on Silver Oaks VII. So when we took --
23 I visited the farm in July 2010, we then drove down
24 to - I guess it's down - to Lake Wateree and we saw
25 a couple places there. But one of them was VII

1 **where the greenhouse was.**

2 **Q** Did you finance operations in the business after
3 your capital investment?

4 **A** **No. Other than my loan?**

5 **Q** Did you pay for trips of the company?

6 **A** **I did.**

7 **Q** Where were those trips to?

8 **A** **One to London, England. We went up to a company**
9 **called Drax. That was in April 2011. The other**
10 **one was to Warsaw, Poland the day after**
11 **Thanksgiving 2011. And the last one was Denver,**
12 **Colorado, a biomass conference in April 2012. My**
13 **partner and I financed those.**

14 **Q** What was Silver Oak Land Management and Jack
15 McIntyre's compensation from Silver Oak Energy to
16 be?

17 **A** **Professional services.**

18 **Q** And what was he going to receive in return for
19 those professional services?

20 **A** **Thirty-five percent of the business.**

21 **Q** And why was Mr. McIntyre to receive 35 percent of
22 the business as opposed to the 20 percent he
23 received --

24 **A** **Because he wasn't putting any money into it.**

25 **Q** Did you receive any share of the business for

1 services rendered?

2 **A** No.

3 Q Do you know if anyone else received a share of the
4 business, not for capital contribution, but for
5 services rendered?

6 **A** No.

7 Q Were you told that your money that you invested in
8 Silver Oak Energy would be used for personal
9 expenses of the manager?

10 **A** No.

11 Q Were you told at the time you invested that that
12 money would be transferred to Jack McIntyre and his
13 management company?

14 **A** No.

15 Q If you had been told that, would you have invested?

16 **A** No.

17 Q Were you given the opportunity to invest in SOLT I
18 in 2010 or 2011 when they were --

19 **A** No, 2012.

20 Q And did you invest in SOLT I?

21 **A** No.

22 Q Did you ever loan Silver Oak Energy money?

23 **A** I did.

24 Q And how much was that?

25 **A** \$25,000.

1 Q And what was the intent of that loan?

2 A To spruce up the farm for a potential visit from
3 people from Poland. The loan was contemplated for
4 that. The loan was made and -- After we came back
5 from Poland.

6 Q What were you told that that loan was used for?

7 A In January 2012, I had a conversation with Mr.
8 McIntyre in which he told me that he took my 25,000
9 and 25,000 of his own money and purchased all the
10 rhizomes and/or seed that Speedling had.
11 Speedling, a company out of Florida.

12 Q Do you recognize this document here?

13 A I do.

14 Q How do you recognize that document?

15 A This was a document I've seen that was sent to me
16 by Speedling. It shows an invoice dated August 3rd
17 --

18

19 MR. MATHISON: Objection. I'd like to see the
20 document. Without objection, Your Honor.

21

22 A May I answer?

23

24 THE COURT: You can proceed.

25

1 **A** This document I received from Speedling. It's
2 dated August 13, 2010. It's an invoice number --
3 wait a minute. There is no invoice number, is
4 there? Yeah, well, there's a shipping number.
5 It's for the purchase of 50,000 miscanthus cuttings
6 for a price of 25,000. Freight is 598.45 for a
7 total invoice of 25,598.45. And this says sold to
8 Silver Oak Land Management, Inc.

9 **Q** What's the date on that?

10 **A** August 13, 2010.

11 **Q** And Speedling sent you that?

12 **A** They did.

13 **Q** Why did Speedling send you that?

14 **A** Why did Speedling send me this? Because I asked
15 them to.

16 **Q** Why did you ask them to?

17 **A** Because I called Speedling and asked them if there
18 had been a purchase in January 2012 by Silver Oak
19 Land Management and/or Silver Oak Energy for
20 \$50,000 worth of crop --

21

22 MR. MATHISON: Objection.

23

24 **A** -- and they told me no.

25

1 MR. MATHISON: Objection. He's putting words in
2 somebody at Speedling's mouth. We don't even
3 know who.

4

5 A He was a comptroller. He was a guy. I got his
6 email somewhere.

7

8 MR. MATHISON: You're a lawyer, sir. You know what
9 hearsay is.

10

11 A Excuse me? Pardon me?

12

13 THE COURT: I'll overrule it and let it in. Let's
14 don't go back and forth.

15 MR. CRAPPS: You can proceed.

16 THE COURT: Proceed.

17

18 A I spoke to the comptroller at Speedling. I asked
19 the comptroller at Speedling had there been a sale
20 to Silver Oak Land Management and/or Silver Oak
21 Energy in January 2012 and they told me no. He
22 went back in his archives and found this and said
23 this is the only purchase Silver Oak Land
24 Management ever made. The conversation took place
25 on August 2012.

1

MR. MATHISON: May I rise as a point, personal
privilege, Your Honor.

2

3

4

THE COURT: You may.

5

MR. MATHISON: I don't quite understand letting him
in rank hearsay without somebody even coming
up with an exception. If there is an
exception, I don't know what it would be.

6

7

8

9

But no one's put one on the record. Is it the

10

Court's view that the hearsay rule does not

11

apply to these proceedings?

12

THE COURT: I've made my ruling. I'll let it in.

13

It's not a jury trial, and I'll give it

14

whatever weight I determine to give it.

15

MR. CRAPPS: We'll admit this into evidence.

16

MR. MATHISON: May it please the court. I realize

17

that you're aware of this, but it's very

18

difficult to cross examine a phantom. That

19

man from Speedling, he's not coming. He's not

20

going to give me a chance to talk to him.

21

Thank you.

22

23

(Whereupon, State's Exhibit No. 22 was

24

marked and received into evidence.)

25

- 1 Q Mr. Finn, when again did you invest in Silver Oak
2 Energy?
- 3 A December 2009.
- 4 Q This is a bank statement of Silver Oak Energy. Can
5 you identify the date of this deposit here?
- 6 A Maron. I can't read it. It looks like it's
7 December 8th., December 8th.
- 8 Q And what is the amount of that?
- 9 A \$49,687.50.
- 10 Q And if you could read this as well. It's a deposit
11 slip. Can you read the date and the writing on
12 that?
- 13 A No, I can't. I really can't. I can't read it.
14 Sorry, I just can't read it. It looks like twelve,
15 but I don't know what the next -- May I see it
16 again? I know it's '09. I know it's December, but
17 I'm not sure if the date is the 18th or it's the
18 8th. I'm not sure. And I can't -- I can barely
19 make out the amount.
20
- 21 THE COURT: I think somebody's volunteering a
22 magnifying glass.
23
- 24 A 12/18/09.
- 25 Q What's the name written under the deposit amount?

1 A Ann. A-n-n.

2 Q Are you sure?

3 A Isn't that what it says? Under the deposit amount
4 it says A-n-n. That's what it looks like to me.

5 Or A-m-i. Oh, Finn. Now, I see it. F-i-n-n.

6 Sorry.

7 Q Were you aware the balance of the Silver Oak Energy
8 bank account at the time of that investment?

9 A No.

10 Q If you could, read to the court the previous
11 balance before your investment.

12 A \$43.01.

13 Q Can you tell the court subsequent expenses after
14 your investment?

15 A There's an ATM withdrawal for \$3.00, maybe that's a
16 charge. \$123.

17 Q And what was that?

18 A Transfer to management \$2500. Kangaroo Express
19 \$24.30. Transfer to management \$1,000. By the
20 way, let me go back. The transfer to management --
21 the first transfer to management was on December
22 9th. The second transfer was on December 10th.
23 That was for a \$1,000. Kangaroo Express was
24 December 10th, 24.30. Home Depot, 12/11, 41.70.
25 Best Buy, 12/14, \$320.94. What me to go on?

1 Q Can you read the, on the next page --

2

3 MR. MATHISON: Forgive me, Your-Honor. Did I
4 misunderstand? I thought the deposit was made
5 on December 18th?

6

7 A That's what it says. That's what I read.

8 Q December 8th, I'm sorry.

9 A Well, I mean, as I said before, even with a
10 magnifying glass it looks like it's the 18th, but
11 who knows what it is. If you look at it yourself,
12 you tell me.

13

14 MR. MATHISON: I haven't seen it so I cannot tell
15 you, sir.

16

17 A It's on the last page, or second to last.

18

19 MR. MATHISON: I object to all the testimony as
20 irrelevant since it has to do with deposits
21 made before the 18th, which is the day he said
22 it was deposited.

23

24 Q Mr. Finn, can you look again to see when your
25 deposit was made?

- 1 **A** I'm not going to change. I'm looking here with a
2 magnifying glass as best I can. There could be a
3 zero before the eight, but I don't know. I'm not
4 going to speculate on that.
- 5 **Q** Can you go again to the first page?
- 6 **A** Sure. Deposit is made, according to the statement,
7 49,687.50 on December 8th. And if you look at the
8 deposit slip on the one that I'm having a hard time
9 reading the date it's the same amount, 49,687.50.
10 And it has Finn underneath it. So I apologize for
11 my poor eyes.
- 12 **Q** In the summary on the first page, can you read to
13 the court the total amount of deposits and credits
14 for the account?
- 15 **A** 49,690.50.
- 16 **Q** And how many deposits and credits were made?
- 17 **A** Two.
- 18 **Q** So there are only two deposits made?
- 19 **A** There's a previous balance of 43.01. And then two
20 deposits were totaling 49,690.50
- 21 **Q** Thank you.
- 22 **A** First time I've seen this.
- 23 **Q** Mr. Finn, can you turn to the third page to two
24 expenses made on December 16th?
- 25 **A** I see one to StevenMadden.com, \$188.50 it looks

- 1 like. Eighty cents. Sorry. 188.80.
- 2 Q What's the next expense?
- 3 A The next one is to Macy's East on 12/16, \$118.21.
- 4 And then there's one after that for Starbucks,
- 5 \$52.18.
- 6 Q Did you know your money was going to be spent at
- 7 these locations?
- 8 A No.
- 9 Q Can you go to the next page?
- 10 A Sure.
- 11 Q Go to the expense for \$5,000.
- 12 A Transfer to management 12/16, \$5,000.
- 13 Q And on 12/17 there's an expense for \$3,000.
- 14 A Transfer to SOLT I, \$3,000.
- 15 Q Were you an investor in SOLT I?
- 16 A No.
- 17 Q Can you turn to the next page. The last two
- 18 expenses on that page.
- 19 A It looks like comp app Wake Forest University, \$50.
- 20 Q And the next?
- 21 A Comp app Vanderbilt, \$50.
- 22 Q Can you proceed to the next two pages from that, to
- 23 an expense on December 24th for \$100.
- 24 A Off Fifth, December 24th, \$100.
- 25 Q Can you proceed to the next page, December 28th.

- 1 **A** **Yes.**
- 2 **Q** There's an expense for 55.50.
- 3 **A** **College boards, SAT, 12/28, \$55.50.**
- 4 **Q** I'm sorry, can you go back one page.
- 5 **A** **I will.**
- 6 **Q** There's an expense on 12/23 for 508.25.
- 7 **A** **508.25, the Goldsmith Shop, Inc., 12/23, 508.25.**
- 8 **Q** Can you go forward two pages.
- 9 **A** **Yeah.**
- 10 **Q** 12/28 and expense for 19.50.
- 11 **A** **Sea Turtle Cinemas movie show, 12/28, \$19.50.**
- 12 **Q** And an expense on 12/29 for 2500.
- 13 **A** **Transfer to management 2500, 12/29.**
- 14 **Q** And the next page, expenses 12/30 for?
- 15 **A** **Which one?**
- 16 **Q** For \$40.
- 17 **A** **University of Illinois online payment, 12/30 \$40.**
- 18 **Q** Did you know your money was going to be spent in
19 that fashion prior to your investment?
- 20 **A** **No, I did not.**
- 21 **Q** Would you have invested if you had known it would
22 be spent in that fashion?
- 23 **A** **No, I would not.**
- 24
- 25 MR. CRAPPS: We admit this into evidence.

1 THE COURT: Objection, Mr. Mathison?

2 MR. MATHISON: Pardon me?

3 MR. CRAPPS: Admitting the bank records in evidence.

4 MR. MATHISON: He can't authenticate the bank
5 records. Aren't those part of the bank
6 records that have already been authenticated?

7 MR. CRAPPS: These will be coming in later.

8 MR. MATHISON: Well, he can't authenticate them,
9 then I object.

10 THE COURT: So you withdrawing that --

11 MR. CRAPPS: Withdrawing it.

12

13 Q Mr. Finn, I'm going to show you Respondents'
14 Exhibit No. 7. Do you recognize this document
15 entitled Employment Contract?

16 A No.

17 Q Did you draft that document?

18 A I know that I drafted an employment contract, but
19 this is not the one I drafted.

20 Q Mr. Finn, is this the contract you drafted?

21 A It is.

22 Q What's the difference between this one and the one
23 marked as Exhibit No. 7?

24 A The signature lines for David C. Short, Richard A.
25 Silver, James R. Paris, Brian J. Mone and Paul A.

1 Finn.

2 Q Let me show you Exhibit No. 7 again. It's
3 purported to be an email from you. Did you send
4 that email?

5 A I sent two emails. I sent one December 29th and
6 one December 30th.

7 Q Can you read the first sentence of the December
8 30th email?

9 A (As read) Jack, rationale for an executive
10 committee of board of directors approval. My legal
11 training tells me you can't have managing director
12 approve an employment contract for managing
13 director unless the managing director is the
14 majority shareholder, but I'm not sure on that just
15 yet. To make it legit, we can say the majority
16 shareholders voting approve the contract, and
17 Brian, you and me have 70 percent of the shares. I
18 want to talk this through with you further when I
19 get back to Brockton this afternoon, but rest
20 assured I want to get this right within your
21 comfort level.

22 Q Would you have drafted a compensation contract that
23 Mr. McIntyre would be able to approve on his own?

24 A No.

25 Q Did you?

1 **A** I did not.

2

3 MR. CRAPPS: We'll admit this into evidence.

4 MR. MATHISON: I don't object.

5 THE COURT: Okay. So we're admitting it as Exhibit

6 No. 23.

7

8 (Whereupon, State's Exhibit No. 23 was
9 marked and received into evidence.)

10

11 MR. CRAPPS: That's all we have for this witness.

12 THE COURT: Mr. Mathison.

13

14

15 - - - - -
 CROSS EXAMINATION

16 BY MR. MATHISON:

17 Q Mr. Finn, I'm handing you an email dated October
18 31, 2011. Halloween, if you will. On the bottom
19 paragraph, would you read that to the Court,
20 please?

21 **A** This is from Jack McIntyre to the -- it appears to
22 be the investors in Silver Oak Energy. (As read)
23 As of today, we have the foundation to build an
24 international bio mass feedstock entity.
25 Unfortunately, we do not have the financial

1 resources yet to execute any of the above mentioned
2 opportunities. For the past 18 months I have
3 personally been funding the operations and overhead
4 with the exception of the London trip. Thank you
5 Paul and Brian of Silver Oak Energy for my savings.
6 I am unable to continue funding the upcoming year.

7

8 THE COURT: Do y'all need copies?

9 MR. CRAPPS: I would like to see a copy.

10 MR. MATHISON: I don't have a copy. I just wanted
11 him to read it and then you can look at it.

12

13 Q Did you, in fact, get that email?

14 A It's addressed to me. I probably did.

15

16 MR. MATHISON: I move the introduction of
17 respondent's exhibit.

18 THE COURT: Any objection, Mr. Crapps?

19 MR. CRAPPS: I'm not sure if Mr. Finn has laid a
20 proper foundation for that.

21 MR. MATHISON: He's seen it.

22 THE COURT: I'll let it in.

23

24 (Whereupon, Respondents' Exhibit No. 11
25 was marked and received into evidence.)

- 1 Q Mr. Finn, was there an ongoing schedule about
2 whether Mr. McIntyre should be compensated for his
3 work in Silver Oak Energy and whether his expenses
4 should be paid?
- 5 A There was a conversation with Mr. McIntyre, myself
6 and Brian Mone on October 2011 at a restaurant in
7 Brockton, Massachusetts about deferred
8 compensation. That was the first time it came up.
9 That's my recollection.
- 10 Q And, according to your testimony, on or about
11 October 29th you prepared an agreement, which has
12 been marked and placed in evidence, which proposed
13 you pay Jack in arrears \$260,000 for 2011.
- 14 A Incorrect.
- 15 Q Well, --
- 16 A You said October 29th, sir.
- 17 Q I'm looking at the email which has been marked as
18 Respondent's Exhibit No. 7.
- 19 A May I see it?
- 20 Q Sure.
- 21 A I think you're looking at the date he sent it to
22 you. See? That's to you October 29th, see?
- 23 Q What's the date of the actual email?
- 24 A December 30th.
- 25 Q Did anybody pay Mr. McIntyre the \$260,000 this

1 agreement called for?

2 **A Excuse me?**

3 **Q Did anyone pay Mr. McIntyre \$260,000?**

4 **A Not that I'm aware of.**

5 **Q And didn't this agreement also call for him to be**
6 **paid all of his expenses in 2011?**

7 **A Which one are you talking about?**

8 **Q The one that you prepared, sir.**

9 **A May I see it?**

10 **Q Sure.**

11 **A Yeah, it does.**

12 **Q But y'all never signed this or paid him anything,**
13 **did you?**

14 **A Correct.**

15 **Q And what was he supposed to receive in 2012?**

16 **A He was supposed to be receiving -- once we started**
17 **making money, he was supposed to make 5,000 bucks a**
18 **week. There was one for me as well, but I never**
19 **got paid, either.**

20 **Q And was he also supposed to be compensated for all**
21 **of his out of pocket expenses in 2011?**

22 **A He was. Yes, he was.**

23 **Q But y'all never signed that?**

24 **A No.**

25 **Q You never paid him anything?**

1 **A** **Correct.**

2 **Q** So you're aware that he had a financial problem,
3 isn't that correct? That's what his email to you
4 stated.

5 **A** **He made me very, very aware in writing and orally**
6 **that he was having a financial problem, correct.**

7 **Q** And, in addition, he made you aware that the
8 company lacked the resources to execute what you
9 were planning, which is the off-take agreement?

10 **A** **Correct.**

11 **Q** There was not enough cash available?

12 **A** **Correct.**

13 **Q** And, isn't it true, in order to solve that problem,
14 you asked Mr. Silver to go into the capital markets
15 and deal with some friends of Mr. Silver in an
16 effort to raise \$20 million.

17 **A** **I did not.**

18 **Q** Did he do that or not?

19 **A** **Who?**

20 **Q** Mr. Silver.

21 **A** **Don't know.**

22 **Q** Where were you going to get the money to actually
23 build the facility that was necessary to generate
24 the product to get an off-take agreement.

25 **A** **There was three ways we were going to do it. The**

1 first way we were going to do it is I hired a guy
2 by the name of Mike Nolan. I paid him \$2500 out of
3 my own pocket to write up a viable business plan.
4 That was the first way. The second way was my
5 brother, Joe, who is in the business world and my
6 nephew, Christopher, we were going to make an
7 offering in Massachusetts to 80 potential -- 80 to
8 100 potential financiers. And the third way is we
9 had a fellow by the name of Jan Zemeski who I had
10 been paying out of my own pocket \$3,000 a month
11 starting in January 2012 through May 2012 to open
12 up and explore the European market. Those are the
13 three ways that I did.

14 Q Yes, but in any of those ways, the money was coming
15 from somewhere other than you and the original
16 investors, was it not?

17 A That was the idea.

18 Q So you were looking to raise money from other
19 people?

20 A We were.

21 Q And you were actively involved in it and Mr. Mone
22 was actively involved in it --

23 A I wouldn't say Mr. Mone was. But I was.

24 Q What happened in 2012 that scuttled your efforts to
25 advance the interests of Silver Oak Energy?

1 **A** I had a conference call with Jack, myself and Jan
2 in August 2012. And Jack was extremely strange in
3 the telephone call. The next morning I woke up and
4 I said to myself, Geez, I've heard so many stories
5 about this \$50,000 that we spent on Speedling and
6 that it had been destroyed, I decided to call
7 Speedling, which I did.

8 **Q** I wasn't referring to that, but we'll get to that
9 in a second. I don't want to limit your ability to
10 talk about it. What I was referring to was the
11 price of natural gas. What happened to the price
12 of natural gas in 2012?

13 **A** Wouldn't know. You have to tell me. I have no
14 idea.

15 **Q** Did it get cut in half?

16 **A** I have no idea.

17 **Q** Do you know whether bio fuels companies also use
18 natural gas?

19 **A** I have no idea.

20 **Q** Do you know what the competitive price is for bio
21 fuels versus natural gas?

22 **A** I have no idea.

23 **Q** Do you know whether there is any market for bio
24 fuels at the moment because of the exiguous price
25 in natural gas?

1 **A** What's exiguous mean?

2 **Q** Small.

3 **A** Small?

4 **Q** Small.

5 **A** That's a new word. Thanks. No. Europe.

6 **Q** You don't know anything about that?

7 **A** I do, Europe. There's a market for it in Europe.

8 **Q** A market for what?

9 **A** Bio fuel.

10 **Q** You're telling me that Europe does not buy natural
11 gas in the world market?

12 **A** I wouldn't know. You'd have to ask them.

13 **Q** So, in your opinion, there still is a market for
14 miscanthus?

15 **A** I still think it's a great idea, sir.

16 **Q** But, despite the fact that it was a great idea, you
17 never paid Jack the money that you were going to in
18 this contract. And you never paid yourself. How
19 much were you going to pay yourself?

20 **A** \$100,000.

21 **Q** And you never went out and executed any of the
22 three plans that you had to raise the money.

23 **A** Yes, I did.

24 **Q** Where is the money, then?

25 **A** I paid \$15,000 to Jan Zemeski out of my own pocket

1 to try to get this business off the ground. I paid
2 my nephew money to put together the business. I
3 paid \$2500 to Mr. Nolan out of my own pocket.

4 Q Yes, sir. But nothing materialized in terms of
5 sufficient capital to actually produce the amount
6 of plants that were necessary to support an off-
7 take agreement. Is that correct?

8 A Well, I stopped doing it.

9 Q Would you tell the court what an off-take agreement
10 is?

11 A It's a contract.

12 Q And how is it arranged?

13 A The company -- you promise to sell bio fuel for a
14 company and then it's like an import/export thing.
15 Off-take agreement is they take it off the land and
16 they take it and they buy it from us. There's two
17 ways of doing it. There's FOB and I think it's CIF
18 or something like that. I forget now. Where they
19 pay what the port or we have to ship it there and
20 they take it at the port over there. So it cost
21 more money to ship it than it is to have it FOB.

22 Q Is it a requirements contract, meaning that you
23 have to ship an absolute minimum every time you
24 ship?

25 A Don't know. Never saw one.

1 Q Is it an output contract, meaning that you have to
2 send the entire amount that you produced to them?

3 A Again, I haven't seen one, so. We never had one.

4 Q My understanding was that y'all were on the verge
5 of getting not one but two. One with Drax and one
6 with Bio Energy --

7 A No. Drax never called me back. A fellow by the
8 name of -- his name was Robert Wood. We met him in
9 April 2011. I followed up with him in May. And in
10 June I actually called. I called him. And then I
11 met his bosses in Boston in July 2011. That
12 meeting was set up by a fellow by the name of Kurt
13 Malzer from Fulghum Fibers out of Augusta, Georgia.
14 We met Mr. Malzer in England at Drax gratuitously.
15 And I became friends with Mr. Malzer and he set up
16 a meeting with me and I forget the two guys' names
17 from Drax. One was an American and the other one
18 was British, but I can't remember their names. But
19 we never got the off-take agreement or anything
20 like one.

21 Q And if you had gotten it, you didn't have the
22 ability to supply it. Is that correct?

23 A Correct.

24 Q And what production level would you have had to
25 achieve to be able to supply a standard off-take

1 agreement, the type of which you were negotiating
2 in your

3 **A** You have to ask Jack that. I don't know.

4 **Q** You don't know whether you had enough or not?

5 **A** I know we didn't have enough.

6 **Q** Do you know where the miscanthus was planted? Do
7 you know where the fields were?

8 **A** Ours?

9 **Q** Yes.

10 **A** We had miscanthus -- my recollection is we had
11 miscanthus planted in Clio. We had miscanthus
12 planted with Rotemoor. I think it's Tom Rotemoor.
13 He's known as the Sod King.

14 **Q** The Sod King.

15 **A** Sod King, right. And then we had miscanthus
16 planted at our greenhouse that was at Silver Oak
17 VII. I think there might have been one other
18 place. There might have been -- but I thought we
19 might have torn that down. I think we had another
20 greenhouse in Ridgeland or maybe at the Technical
21 College of the South.

22 **Q** Do you know whether there were rhizomes stored at
23 the greenhouse on Silver Oak VII's property?

24 **A** I do.

25 **Q** Do you know what became of those rhizomes when the

1 Silver Oak VII property was sold?

2 **A** It's still there.

3 **Q** And what's going to become of them?

4 **A** If we don't take them off by, I think is it March,
5 if we don't take them off by March, the person who
6 bought the property gets it.

7 **Q** For nothing?

8 **A** That's way I understand it. I had nothing to do
9 with it.

10 **Q** Who did?

11 **A** Mr. David Short.

12 **Q** Do you know what the rhizomes are worth?

13 **A** Maybe a buck-and-a-half a piece.

14 **Q** Do you know how many hundreds of thousands there
15 are?

16 **A** I wouldn't say there was hundreds of thousands.

17 **Q** Do you know how many there are?

18 **A** I do not.

19 **Q** What type of rhizomes are they? Do you know that?

20 **A** Now you're way beyond my scope.

21 **Q** Do you know what Silver Oak Select is?

22 **A** Yeah, it's a name.

23 **Q** Do you know what hybrid miscanthus is?

24 **A** Hybrid?

25 **Q** Yes. Do you know what type of rhizomes you had at

1 SOLT VII?

2 **A** It could be from either Michigan or Illinois.

3 **Q** And you don't know how much they're worth?

4 **A** No idea.

5 **Q** You don't know how many there are?

6 **A** No.

7 **Q** But somebody's going to get them for nothing --

8 **A** Yeah, unless someone else buys them.

9 **Q** -- if you don't do something with them in March?

10 Is that right?

11 **A** Correct. I think it's March.

12

13 MR. CRAPPS: Parkin, I'd like to object to the
14 relevance of the placement of these rhizomes
15 currently after the management of Mr.
16 McIntyre.

17 THE COURT: Well, I'm going to overrule and let Mr.
18 Mathison proceed.

19 MR. MATHISON: Actually, I think you're
20 misunderstanding. They were there when he was
21 the manager.

22

23 **A** Yeah, they were. That's true, they were. I saw
24 them there.

25 **Q** And now let's go to what you wanted to talk about

1 which was the situation with Speedling. And I
2 believe you said that you thought that Mr. McIntyre
3 was not entirely candid with you about what
4 happened with the \$25,000 that you loaned him. Is
5 that correct?

6 **A** **Correct.**

7 **Q** I'm going to hand you a series of emails that was
8 compiled by Mr. McIntyre sent to you and others.
9 I'm going to ask if you can identify those for me,
10 please.

11 **A** **I've seen these.**

12 **Q** And don't they explain to everyone's satisfaction
13 exactly where the misunderstanding originated?

14 **A** **No, they don't.**

15 **Q** Well, tell me why they don't.

16 **A** Because this is a stream of emails in conversations
17 that he was having with a fellow by the name of
18 Rasto Ivanic who worked, at the time, for Mendel
19 Labs. The conversation I had with Mr. McIntyre had
20 to do with Speedling, not Mendel Labs. Rasto
21 Ivanic no longer works with Mendel Labs. His boss
22 is a fellow by the name of Jeff Klingenberg. I
23 contacted Mr. Klingenberg and I went through the
24 stream of emails and he said he never knew about
25 any 50,000 plants that they were going to give to

1 us. Mr. Klingenberg is now working for Reprive
2 because Mendel is going out of business. He's
3 still in Tifton, Georgia. I got his phone number
4 or I can get it.

5 Q Yes, sir. Do you know whether or not the plants
6 that we're talking about were actually owned by
7 Mendel while they were at Speedling?

8 A I have no idea.

9 Q Do you know who provided the experimental plants on
10 your farm in Clio?

11 A Mendel.

12 Q Do you know whether the plants that Speedling had
13 were identical to those that are on your farm in
14 Clio?

15 A Well, that depends. I'm not sure whether Speedling
16 had rhizomes or whether they had seed. My
17 understanding that Mendel has seed, not rhizomes.
18 That's what Mendel was trying to do.

19 Q But your belief is that the explanation provided by
20 these emails does not satisfy you as to the 25,000

21 --

22 A Absolutely not.

23 Q But you did get these emails?

24 A I did.

25 Q And do you know whether other people got them as

1 well?

2 **A** Yeah, everybody else did. At least I think so.

3

4 MR. MATHISON: I'd like to move the introduction of
5 the emails as a compilation.

6 MR. CRAPPS: Are we admitting them -- For what
7 purpose are we admitting them?

8 MR. MATHISON: For what purpose? To provide an
9 explanation to the \$25,000 which is something
10 he has denied. But we're going to come back
11 and discuss that on re-direct. He received
12 those, therefore, I can authenticate them, and
13 I want to put them into evidence.

14

15 **A** I did receive them.

16

17 MR. CRAPPS: We don't think it's been properly
18 authenticated if he did receive these.

19 THE COURT: Well, he's testified that he's received
20 them, so --

21

22 **A** Absolutely:

23

24 MR. MATHISON: He says he doesn't agree with them.

25

1 **A** **Right.**

2

3 MR. CRAPPS: I mean Mr. Finn has no knowledge of
4 these conversations.

5 THE COURT: He's testified that he received them. I
6 will let them in as that he has own notice of
7 what in them. It doesn't -- he's testified he
8 had, may not agree with them, but he has
9 notice of what's in them.

10 MR. CRAPPS: Thank you very much, Your Honor.

11

12 (Whereupon, Respondents' Exhibit No. 12
13 was marked and received into evidence.)

14

15 **Q** Mr. Finn, the SOLT VII property has been sold, has
16 it not?

17 **A** **It has.**

18 **Q** Do you know when it was sold?

19

20 MR. CRAPPS: Again, I'll object to this as outside
21 the -- First, the scope of my direct, and then
22 again outside the relevance of this hearing.
23 This action was done long after Mr. McIntyre
24 was replaced as the manager.

25 THE COURT: I'll let him testify.

1

2 **A I can answer?**

3

4 MR. MATHISON: One second.

5

6 Q When did the SOLT VII transaction close, do you
7 know?8 **A I think it was this year.**

9 Q 2013?

10 **A I think so.**11 Q And how much money was received for the SOLT VII
12 property?13 **A Me?**

14 Q No, the total.

15 **A I have no idea.**

16

17 MR. CRAPPS: Can my objection be --

18 THE COURT: It can be continuing if you want it to.

19 MR. CRAPPS: Thank you.

20

21 Q Did you receive your investment back?

22 **A I did not.**

23 Q How much did you receive?

24 **A \$60,000.**

25 Q What was your investment?

- 1 **A** **Seventy-five.**
- 2 **Q** So you lacked \$15,000, is that right?
- 3 **A** **Correct.**
- 4 **Q** But you still got an undetermined quantity of
5 miscanthus rhizomes and a greenhouse that could be
6 sold? Isn't that right?
- 7 **A** **Absolutely.**
- 8 **Q** Do you know whether any effort has been made to
9 sell those?
- 10 **A** **Not sure. No. The answer is no, I don't.**
- 11 **Q** And do you know what the market value is?
- 12 **A** **Like I said, I think it's like a buck-fifty, based**
13 **on what I've read.**
- 14 **Q** Per rhizome?
- 15 **A** **Correct.**
- 16 **Q** Who sold Silver Oak VII?
- 17 **A** **Who?**
- 18 **Q** Who?
- 19 **A** **A real estate broker.**
- 20 **Q** Who was in charge of the sale?
- 21 **A** **I guess the real estate broker was.**
- 22 **Q** Who authorized the sale? Who was the manager?
- 23 **A** **Who is the manager of Silver Oak VII?**
- 24 **Q** Yes, sir.
- 25 **A** **Mr. Silver.**

1

2 MR. CRAPPS: For the record, objection. Same
3 objection.

4 THE COURT: It's noted.

5

6 Q And what happened to the percentage of interest
7 that should have gone to Silver Oak Land
8 Management?

9 A I don't know what you're talking about.

10 Q I'm talking about the percentage of interest set
11 forth on the agreement.

12 A I'm not aware of that.

13 Q You don't know that Silver Oak Land Management had
14 a percentage of interest?

15 A I do.

16 Q I thought you testified to that in response to . .
17 . You do?

18 A I do.

19 Q And I'm asking what happened to the money that was
20 due Silver Oak Land Management?

21 A I have no idea.

22 Q You didn't receive any of it, did you?

23 A I did not.

24 Q Do you know whether any of your other investors --

25 A I'm not aware of that.

1 Q Do you think that is something that Mr. Silver may
2 know?

3 A You'll have to ask him.

4

5 MR. CRAPPS: He's being asked to assume something.

6 I object to that question.

7 THE COURT: Repeat.

8 MR. CRAPPS: He's being asked to assume something

9 that he doesn't know.

10

11 A I think I answered that. You'd have to ask him.

12 Q Do you know whether or not any money was disbursed
13 to Silver Oak Land Management?

14 A Again, I don't know what you're talking about.

15 Q Well, I'm asking you this. Have you and Mr. Silver
16 and a number of your cohorts agreed that what
17 you'll do is keep Mr. McIntyre's and Silver Oak
18 Land Management's money?

19 A No.

20 Q So you don't know anything about that? Is that
21 right?

22 A About what?

23 Q Keeping their money?

24 A Not sure.

25 Q What do you mean you're not sure?

1 **A** Well, if they're keeping it -- because I'm not
2 sure. Are they keeping their money?

3 **Q** Did anyone ask you if they should keep Silver Oak
4 Land Management's money?

5 **A** No.

6 **Q** So you never voted on that?

7 **A** I did not.

8 **Q** So if it's happening, you're not a participant?

9 **A** If it's happening, I'm in favor of it.

10 **Q** Okay.

11 **A** How's that?

12 **Q** But you're not complicit in it? Or are you?

13 **A** Right now I am. I just said I was in favor of it,
14 so right now today I'm in favor of keeping his
15 money until this is resolved. How's that?

16 **Q** Do you know how much money it is?

17 **A** I have no idea.

18 **Q** In your capacity as director of business
19 development for Silver Oak Energy, did you make
20 presentations to various potential purchasers of
21 fuel chips that you had access to timber at all of
22 the SOLT properties?

23 **A** No. Run that by me again.

24 **Q** When you were serving in capacity of director of
25 business development for Silver Oak Energy, did you

1 make presentations to potential purchasers of wood
2 chips that you had access to timber which could be
3 used for wood chips?

4 **A** Yes.

5 **Q** In all six of the SOLT entities.

6 **A** I remember that we went to a -- when we were in
7 Poland we were in Warsaw and then we flew up to --
8 I forget the name of the town, but it could have
9 been Gdansk. I think it was Gdansk. Whatever it
10 was. And we met with a guy from Staabos, myself,
11 McIntyre, Mone, and Jan Zemeski. And we talked
12 about that, about wood chips. But we were all
13 there, myself, Mone, Zemeski, McIntyre over one of
14 the worst lunches I ever had. It was awful.

15 **Q** Would it have been possible to sell the wood chips
16 during a period that you were developing a
17 miscanthus crop that could be used for bio fuels?

18 **A** Would it have been possible?

19 **Q** Yes, sir.

20 **A** I know that Jack and I talked about that all the
21 time. So the answer is yes.

22 **Q** Did you pursue the wood chip opportunity overseas
23 as opposed to the miscanthus opportunity?

24 **A** With the SOLT properties?

25 **Q** With Silver Oak Energy or the SOLT properties?

1 A Yes.

2 Q And what became of that?

3 A It went nowhere.

4 Q I believe you testified that you were given an
5 opportunity to participate in the second offering
6 with respect to SOLT I. Is that correct?

7 A I didn't know it was a second offering at the time,
8 but, yes, Mr. McIntyre contacted me in March 2012
9 and said that SOLT I was about to be sold and he
10 wanted me to be a part of it because of all the
11 work I had done, so for 25 grand I could buy into
12 it. And I said no.

13 Q And did you know where the SOLT I property was?

14 A Oh, sure, I've been on it. It's right next to OC
15 Welch.

16 Q That is between Hardeeville and Okatee?

17 A Yeah. I think that's, what, heading east on 278?

18 Q It is.

19 A Yeah.

20 Q And just to the east, but slightly to the north of
21 the New River Swamp, right?

22 A I don't know that. I know it abuts the -- one time
23 Jack took me out on it. And I know it goes around
24 OC Welch and it abuts the University of South
25 Carolina in Beaufort. We went up to a fence, I

1 **remember that.**

2 Q And in addition to the revenue growing trees and
3 selling timber, wasn't one of the objectives
4 ultimately to sell this property for a considerable
5 profit? Weren't the properties selected --

6 A **Correct. You're right. Absolutely right.**

7 Q And do you believe that this SOLT I property was in
8 an advantageous area to ultimately sell?

9 A **I think it's on 278. I mean, everything else
10 around it has been built.**

11 Q Do you know whether or not the SOLT I property is
12 currently listed for four-and-a-half million
13 dollars?

14 A **I heard that the last time I was here.**

15 Q But you don't know it?

16 A **Other than what I heard.**

17 Q Why did you decide not to participate in SOLT I?

18 A **Because I was tapped city.**

19 Q I believe that you indicated that your initial
20 participation was in Silver Oak IV. Is that
21 correct?

22 A **Correct.**

23 Q And do you know how much money was raised, all
24 told, from equity participants to capitalize Silver
25 Oak IV?

- 1 **A** I think it sold for a million dollars. I think.
- 2 **Q** Would the number \$1,193,423, would that be close to
3 what it is?
- 4 **A** That's it.
- 5 **Q** And do you know whether the property that was
6 purchased with that money cost on the face of the
7 deed \$1,150,000?
- 8 **A** I do not know. Wait a minute. I don't recall. I
9 want to be precise about this. I'm not sure.
- 10 **Q** I'm handing you what has been marked as
11 Respondents' Exhibit No. 10. I represent to you
12 that's the first page of the deed in question.
- 13 **A** Okay.
- 14 **Q** Does it recite a consideration?
- 15 **A** It does. One million -- yes, it does, sir. Thank
16 you, sir.
- 17 **Q** And do you know what the closing costs were in
18 conjunction with that transaction?
- 19 **A** No, sir.
- 20 **Q** Do you know what conventional closing costs would
21 be? One percent, maybe?
- 22 **A** In South Carolina?
- 23 **Q** Yes.
- 24 **A** I know what they are in Massachusetts, but I don't
25 know what they are in South Carolina.

1 Q Do you know whether \$1,150,000 is approximately 97
2 percent of a \$1,193,000?

3 A I do now.

4 Q And do you know what the value of SOLT IV property
5 is right now?

6 A Minus the three acres he deeded out? I'm not sure.

7 Q Okay. Do you know whether it's on the market?

8 A I'm not sure. Well, that's the lot up in North
9 Carolina, right? I'm not sure.

10 Q Do you know whether your investment is a good one
11 in SOLT IV?

12 A At this point, no.

13 Q You don't?

14 A I don't. I don't have much faith in much anymore.

15 Q Could you determine or reassure yourself by getting
16 a market valuation which would show that SOLT IV is
17 well above the \$1,150,000?

18 A Absolutely I could.

19 Q Do you know what is the attribute of the SOLT IV
20 property that makes it attractive for ultimate
21 sale?

22 A I think it's near Moorehead City and it's Nixons
23 Beach. And supposedly there's a town up there,
24 Edenton that's supposedly spectacular. Voted the
25 best town around. The Nixons Beach property,

1. clearly my recollection, that was what Jack told me
2 about because that's the first one I was in, right?
3 And that was one that was attractive for potential
4 res -- We get all our money back, so we get all our
5 money back by the tree cutting and then this
6 property is in a great residential area and we sell
7 it for residential development and we all make a
8 gazillion dollars, or thereabouts. Does that
9 answer your question?

10 Q Yes. And, as far as you know, the ultimate
11 desideratum, which is subdivided, sell it, you all
12 make a zillion dollars --

13 A Correct.

14 Q -- could still be accomplished, could it not?

15 A Praise God.

16 Q I believe you indicated in response to Mr. Crapps'
17 question you had a conversation with Jim Paris
18 about the Silver Oak IV opportunity. But didn't
19 you say that you couldn't remember what you
20 discussed with Mr. Paris?

21 A I didn't have a conversation with Jim Paris about
22 Silver Oak IV, sir. That's not what I said. I
23 said I had a conversation with Jim Paris about tree
24 farming and Jack McIntyre in the Silver Oak
25 property that he was a part of. Silver Oak IV was

1 marketed to me by Mr. McIntyre.

2 Q Yes, I heard you say that. But I thought first you
3 said that you had conversation with Mr. Paris, but
4 you didn't recall what you and he discussed.

5 A About the tree farming?

6 Q About Silver Oak IV specifically.

7 A If I said that, then I was mistaken.

8 Q And do you know the twelve percent that you
9 testified to, do you know where that figure
10 originated?

11 A Yeah, Mr. McIntyre told me that.

12 Q Do you know whether it's a state disseminated
13 figure or not?

14 A A what?

15 Q A figure disseminated by the State of South
16 Carolina?

17 A I'm not aware of that, sir.

18 Q If it were, would you believe it as an average rate
19 of return?

20 A I'm now a South Carolina resident. I believe
21 anything this state says.

22 Q That's certainly a noble position on your part.

23 A Thank you, sir.

24 Q Could it be eleven percent instead of twelve?

25 A Could be.

1 Q And if it were a state endorsed figure that is put
2 out by the a state department as a statistical and
3 historical average, you would assume that it is
4 probably reliable? Is that correct?

5 A I would.

6 Q And I believe you testified that you did not get
7 any of the promotional materials that went along
8 with Silver Oak IV? Isn't that right?

9 A Correct.

10 Q So if there was a provision in the promotional
11 materials that said that a certain department of
12 the State of South Carolina says this is the
13 average rate of return over ten years for a tree
14 farm, you wouldn't know that because you didn't get
15 the materials. Is that right?

16 A That information I got from Mr. McIntyre. So the
17 answer is yes, I wouldn't know that because I
18 didn't get the materials.

19 Q And, incredibly, we have yet another person who put
20 up money evidently without seeing the operating
21 agreement in advance. Isn't that right?

22 A What do you mean incredibly?

23 Q Everybody who invested in this said they never saw
24 the operating agreements until well after the fact.
25 I believe your testimony was you've never seen one

1 at all. Isn't that right?

2 A Well, the incredible part, I take issue with. But
3 the answer is yes.

4 Q Well, you're a lawyer, aren't you?

5 A I am.

6 Q And where did you get your degree?

7 A In Boston.

8 Q What law school?

9 A The Whelan School of Law Boston.

10 Q Kind of a maxim isn't it, that you ought to read
11 contracts if you're going to be bound by them?

12 A Not when you trust somebody.

13 Q So that you never read any of the operating
14 agreements?

15 A No, this reminds me of my mother saying to me that
16 my eyes were bigger than my belly. And this is a
17 prime example of my eyes being bigger than my
18 belly.

19 Q Is that your testimony --

20 A My testimony is I know exactly what you're asking.
21 Yes, I was stupid. I should have asked for the
22 operating agreement, and I didn't because I trusted
23 him.

24 Q So you --

25 A That's my testimony.

1 Q And are you complaining that Silver Oak Land
2 Management was the actual manager of Silver Oak IV
3 as opposed to Mr. McIntyre individually?

4 A The first time I heard -- That's a good question.

5 Q Are you complaining?

6 A Yes. But I have to qualify that answer.

7 Q Go ahead.

8 A Silver Oak Land Management, I wasn't aware of
9 Silver Oak Land Management until 2010, 2011,
10 something like that. When we had our first meeting
11 we were at -- Jack had this pavilion on his
12 property at the Paddocks. We had our first meeting
13 when he handed out the operating agreements for the
14 energy company, and he gave us a sheet about who
15 had what. And at the top it said Silver Oak Land
16 Management. That's the first time I ever became
17 aware of it. I didn't know that Silver Oak Land
18 Management had any management -- what's the word?
19 I didn't know that Silver Oak Land Management was
20 in charge of IV or VII.

21 Q But if you had followed through and made a point of
22 finding out what the LLC operating agreement said,
23 you would have known because it's in that
24 agreement, isn't it?

25 A Correct.

1 Q And you have seen the agreements now, haven't you?

2 A No, I'm going by what I've been told.

3 Q So you've never read any of the operating
4 agreements?

5 A No, I read the energy one, but I've never seen IV
6 and I've never seen VII. The last time we were
7 here, I think you brought it out about my ability
8 or inability to read. And I agreed with you
9 because I had nothing to read.

10 Q I see. And did you ever inquire?

11 A About an operating agreement?

12 Q Yes, sir..

13 A Of Mr. McIntyre? No, sir.

14 Q Did you ever inquire among your colleagues as to
15 whether they had one?

16 A No, sir.

17 Q Because their testimony has been that they got one,
18 they just didn't get one until after the fact.

19 A I never asked them.

20 Q So it wasn't important to you? Is that right?

21 A In retrospect it should have been, but the answer
22 is, no, it wasn't.

23

24 MR. CRAPPS: Parkin, these questions are irrelevant.

25 Mr. Finn has no need to request anything.

1 MR. MATHISON: May it please the court, if we're
2 going to talk about misrepresentation, Mr.
3 Finn has a duty to acquit himself the way a
4 reasonable person would under the
5 circumstances. And gross negligence in the
6 face of a misrepresentation claim is a very
7 good defense.

8 THE COURT: I'm going to overrule the objection.
9

10 Q During your peregrinations with Mr. --

11 A What's that mean?

12 Q Travels.

13 A Thank you.

14 Q -- with Mr. McIntyre and Mr. Mone, did you never
15 discuss the finances for the various Silver Oak
16 entities?

17 A I know in London we had a discussion with him. We
18 were at a bar/restaurant. I think that might have
19 been the first or second night we were there. And
20 Jack told us about a fellow by the name of I think
21 it's either Phil Carr or Paul Carr or something
22 Carr that he knew from Florida who let's why don't
23 we do this, why don't we bring all the entities
24 together and do a IPO. So the answer is yes.

25 Q Did you routinely receive K1s on each one of these

1 entities from Carey & Company, the CPA firm?

2 **A I did.**

3 **Q** Would it have been possible for you to contact
4 Carey & Company and ask to see the books and
5 records of the entities?

6 **A I don't know. I never asked them. Would it be**
7 **possible for me to contact them? Sure.**

8 **Q** And do you know whether the books and records were
9 open and available to anybody who had an interest
10 in the entities?

11 **A I'm not aware of that.**

12 **Q** Would it be your testimony that you weren't
13 sufficiently interested to actually do that, ask
14 the CPAs for information?

15 **A I'm a mediator. Accountants do what accountants**
16 **do. Mediators do what mediators do.**

17

18 MR. MATHISON: May I have just a moment?

19 THE COURT: Sure. Take all the time you need.

20

21 **Q** Do you have any information yourself as to how the
22 plants are propagated, miscanthus plants?

23 **A Yeah, they -- you take the rhizome, you put it in.**
24 **It has one growing year. Then you pull it up and**
25 **then you cut it up. You can take one rhizome, and**

1 after one growing season you can make one rhizome
2 into 50.

3 Q Who cuts the rhizomes?

4 A Well, I know that Jim Paris did it. I know that
5 his son did it. I know Dave Short -- I think Dave
6 Short did it. I never did it. It's done by hand,
7 but now I think there's a machine that does it.

8 Q But at least, in this instance, Mr. Paris and his
9 son were principal among those who were actually
10 cutting the rhizomes?

11 A I know they did it one time.

12 Q Once they're cut how are they then transferred to
13 the place where they're going to be grown?

14 A I don't know.

15 Q You've never seen them planted?

16 A I have. I have seen them planted. I went to a
17 farm owned by Phil Jennings up in Silverton,
18 Georgia. That was in September 2010. It could
19 have been 2011. Mr. Jennings was a competitor.
20 And I contacted him about seeing his operation.
21 And I went up there and I saw it planted up there.
22 Yes, sir. He's known as the -- he's not the Sod
23 King, he's the -- he's got some other name.

24 Q The Sod King is in Orangeburg?

25 A Yeah, this guy is in Silverton. He's known as the

1 something king.

2 Q The Sod Father?

3 A The Sod Father, that's it.

4

5 MR. MATHISON: I need a moment with my clients. I

6 think I can wrap this up.

7

8 (Off the Record)

9

10 A Actually, when we went out to Lake Wateree we also
11 went over to Rotemoor's Farm. And I remember
12 coming down 77. It was on either side of 77 or 16
13 in Orangeburg. But I did actually go to Rotemoor's
14 Farm.

15 Q All right. A couple of questions again about the
16 wood chips.

17 A Sure.

18 Q Didn't you, in fact, engage in a purchase of wood
19 chips after there was a failure of the orange crop
20 in Florida?

21 A Purchase wood chips? No. We ground up wood chips
22 and sent them to Poland.

23 Q Right. Acquired, not purchased.

24 A Right.

25 Q Did you acquire some wood chips?

1 A We did.

2 Q And weren't the wood chips from areas in which
3 quarantined trees had been drawing and had died?

4 A Quarantined because of a canker.

5 Q And y'all acquired those and ground them up? Is
6 that right?

7 A We hired -- Brian Mone and I paid for -- I forget
8 where the guy was out of. He could have been out
9 of Pensacola, but he was out of the panhandle. He
10 went down to an orange grove and ground them up.
11 And we put them in a container. We shipped them to
12 -- we had them trucked down to -- it could have
13 been Canaveral, and then it was shipped to Poland.

14 Q And what happened is, that once it got to Poland
15 they discovered that they had actually ground up a
16 sprinkler system that had been sprinkling water on
17 the trees. Isn't that correct?

18 A No.

19 Q The chips, were they contaminated?

20 A There was some black pipe in it from the old
21 irrigation system. Some black pipe, not much.

22 Q And was the shipment rejected for that reason?

23 A No.

24 Q Why did not you pursue further wood chip shipments?

25 A Well, after we sent the wood chips over and it

1 needed to have a certain calorific value. It was
2 sent over for testing, and it came back with a
3 proper calorific value. And then it came down to
4 negotiating a contract with a fellow by the name --
5 I forget his last name. His first name is Kevin
6 and somebody by the name of Amy that I met in
7 August 2012. I drove down to Florida and I met
8 with them. And we made a deal with him because he
9 had -- he took us out into a whole bunch of fields
10 that had canker sores and that had been
11 contaminated. And our problem was that this fellow
12 from Poland, Dr. T, wanted us to send it to Poland
13 and pay for the shipping. And we realized that we
14 couldn't finance that. We couldn't finance the
15 shipping. So I gave him a price FOB and he said
16 (gesture). That's the last time he spoke to me.

17 Q But that entire operation is something that you
18 were in charge of, not Mr. McIntyre?

19 A I specifically took charge of it, correct.

20 Q And Mr. McIntyre, in fact, recommended that a
21 sample be sent to Minneapolis for testing before it
22 went overseas?

23 A No, he didn't.

24 Q But if he had, that might have saved the problem of
25 contamination of the --

1 A There wasn't any contamination. I don't know what
2 you're talking about.

3 Q Well,--

4 A This was a sample. This wasn't anything other than
5 a sample.

6 Q What is done with the wood chips once they're used?
7 How are they utilized?

8 A You put them in an oven and they burn.

9 Q And if black plastic is mixed in with the wood
10 chips, what happens in the oven?

11 A I have no idea.

12 Q But that's all you? That was done in your capacity
13 as director of business development. Is that
14 right?

15 A That was after Mr. McIntyre had been removed as the
16 managing partner.

17 Q This was all done last fall?

18 A The part about Dr. T and trying to negotiate a
19 contract was after Mr. McIntyre was a managing
20 partner. The beginning, he was the managing
21 partner, but at the end he wasn't.

22 Q But at no point was he involved in this enterprise
23 that you've just described?

24 A Correct. Well, it was the telephone call, the
25 conference call with him, Jan Zemeski and Brian

1 Mone was specifically about that when he went
2 bananas about this contamination which had nothing
3 to do with anything.

4 Q So he was not enthusiastic about this?

5 A Absolutely not.

6 Q Would it be safe to say that he was opposed to it?

7 A Absolutely.

8 Q But you did it anyway?

9 A Of course.

10 Q Are you still the director of business development
11 for Silver Oak Energy?

12 A No.

13 Q Have you resigned?

14 A No.

15 Q So Mr. Short is the only person making decisions
16 for Silver Oak Energy now?

17 A With our input.

18 Q Are you capable of finding someone who can value
19 the miscanthus that's still in the greenhouse?

20 A I probably could. His name is Jeff Klingenberg. I
21 mentioned his name before.

22 Q And I was going to get back to that. If Mr.
23 Klingenberg is, in fact, an employee of Mendel's?
24 Isn't that right?

25 A It's my understanding he's with --

1

2 MR. CRAPPS: I don't understand the relevance of
3 this.

4

5 A It's my understanding he's with Reprive now.

6

7 THE COURT: I'll overrule it and let him continue
8 his testimony.

9

10 A It's my understanding he's with Reprive now.

11 Q But he was with Mendel, isn't that right?

12 A Absolutely.

13 Q And he's the person that you contacted to assure
14 yourself that there had been no transaction in 2012
15 involving the sale of miscanthus? Is that correct?

16 A Correct.

17 Q Do you know whether Mr. McIntyre, as a matter of
18 course, dealt with that gentleman or instead dealt
19 with the CEO, Mr. Don Panter?

20 A You want hearsay or not?

21 Q Do I want it?

22 A Yeah.

23 Q Do you know is what I asked you.

24 A Run that question by me again.

25 Q Do you know whether Mr. McIntyre routinely dealt,

1 with the CEO of Mendel, a gentleman by the name of
2 Mr. Don Panter?

3 **A** I don't know.

4 **Q** Do you know who Mr. Don Panter is?

5 **A** No.

6 **Q** Do you know whether a Dr. Ivanic is also an
7 employee of Mendel?

8 **A** How do you spell it?

9 **Q** I-v-a-n-i-c.

10 **A** That's Rasto.

11 **Q** Okay. And do you know whether Mr. McIntyre dealt
12 with Rasto?

13 **A** Absolutely.

14 **Q** Why did you not attempt to corroborate whether
15 there was a transaction with either Mr. Panter or
16 with Rasto?

17 **A** I did. Mr. Ivanic, Dr. Ivanic is no longer
18 employed with them. I tried to get a hold of him
19 first. I sent him an email and I called him on his
20 phone. I think he's in San Francisco. He wasn't
21 with them anymore. And that's how I got directed
22 to Mr. Klingenberg.

23 **Q** What did Mr. Klingenberg do for Mendel?

24

25 MR. CRAPPS: Your Honor, I have to object to the

1 relevance of any of this. I mean, we are here
2 on the allegations laid out in the C&D, and we
3 have ventured way beyond that. And there is a
4 current civil suit going on that is related to
5 the same activities, much of it focused on the
6 activities after Mr. McIntyre left as the
7 manager. And seems to be what's happening
8 here is Mr. Mathison is trying to receive
9 testimony related to that case as opposed to
10 anything related to anything within the scope
11 of this case.

12 THE COURT: Well, I'm going to overrule your
13 relevance objection. I note what you're
14 saying. I'm going to allow him to proceed.

15

16 **A What was the question?**

17 Q Did you receive an email from Jack McIntyre on or
18 about August 30, 2012?

19 **A I don't remember seeing this. But is addressed to
20 me, but I don't remember seeing it.**

21 Q And isn't it true that Mr. McIntyre had offered to
22 arbitrate the subject of this dispute?

23 **A He did.**

24 Q And isn't it true that y'all had no part of that?
25 Y'all didn't want to arbitrate?

1 **A** **Absolutely.**

2 **Q** And didn't you respond back setting forth your
3 understanding of how you believe Mr. McIntyre had
4 deceived you? Isn't that what your email in
5 response to Mr. McIntyre's --

6 **A** **This one?**

7 **Q** Yes. Yes, sir.

8 **A** **The one at the top? The one I wrote?**

9 **Q** Yes, sir.

10 **A** **That he had deceived me?**

11 **Q** Yes. Is that your rendition of why you felt he
12 deceived you?

13 **A** **The best of my recollection, it is.**

14 **Q** Is there anything in there that you would change
15 now having reflected on it?

16 **A** **This was written at the time, so this was**
17 **contemporaneous.**

18 **Q** Contemporaneous with what?

19 **A** **With what -- my memory was probably better then**
20 **than it is now. Does that make sense?**

21 **Q** Yes. So you are adopting, continue to hold these
22 views? Is that right?

23 **A** **Absolutely.**

24

25 MR. MATHISON: I ask that be marked.

1 MR. CRAPPS: The whole thing be introduced or the
2 one that --

3 MR. MATHISON: Both.

4 MR. CRAPPS: For the truth of Jack's email or for
5 the -- for his notice and knowledge of?

6 MR. MATHISON: His notice and knowledge, for his
7 rendition of events.

8 MR. CRAPPS: No objection.

9 THE COURT: It's admitted as Respondents' Exhibit
10 No. 13.

11

12 (Whereupon, Respondents' Exhibit No. 13
13 was marked and received into evidence.)

14

15 Q Mr. Finn, were you aware that Mr. Silver was
16 threatening Jack McIntyre with, among other things,
17 criminal prosecution if he didn't terminate his
18 position as managing member of each of these
19 entities?

20

21 MR. CRAPPS: We renew our objection.

22 THE COURT: I sustain this objection. I think we
23 are getting past.

24 MR. CRAPPS: Thank you.

25

1 Q Did you threaten Mr. McIntyre with criminal
2 prosecution?

3

4 MR. CRAPPS: That's still beyond the scope of Mr.
5 McIntyre's management of this company and
6 offer of securities.

7 THE COURT: I sustain that objection.

8 MR. MATHISON: May it please the court, we are in
9 proceedings that are inflected with the
10 potential for criminal prosecution. The
11 person making the objection has written a
12 letter to the criminal division of the
13 Attorney General's office referring this for
14 criminal investigation. And for him to sit
15 here and object to it is, frankly,
16 disconcerting.

17 MR. CRAPPS: We are trying the matter presented in
18 the C&D and Mr. Mathison's answer. I find it
19 completely irrelevant and way beyond the scope
20 of this proceeding.

21 THE COURT: I sustain those objections. We need to
22 stick with this matter.

23

24 Q Who contacted the Attorney General's office and got
25 them involved in this dispute?

1 **A** **Me.**

2 **Q** And who did you contact, the first person?

3 **A** **Don't remember.**

4 **Q** Who was the second person?

5 **A** **Sandra Matthews.**

6 **Q** You don't remember who the first person was?

7 **A** **It could have been her. I'm not sure. I don't**
8 **remember.**

9 **Q** Well, did you do it by email or by telephone call?

10 **A** **Don't remember. I thought it was telephone. I**
11 **thought it was telephone.**

12 **Q** Did you speak to someone higher than Ms. Matthews
13 or lower than Ms. Matthews in the hierarchy of the
14 attorney general's office?

15 **A** **Don't remember.**

16 **Q** You don't remember who you talked to?

17 **A** **No, sir.**

18 **Q** Did you do this before or after Mr. Silver
19 threatened Mr. McIntyre with criminal prosecution
20 if he didn't do what he wanted.

21

22 **THE COURT: I sustain.**

23 **MR. CRAPPS: Thank you.**

24

25 **Q** Which?

1

2 MR. CRAPPS: Excuse me, I object.

3 MR. MATHISON: That's fine, but I'm going to ask the
4 questions and if he wants to object to them,
5 that's fine.

6 MR. CRAPPS: Well, I object to it.

7 THE COURT: I sustained the objections.

8

9 Q Mr. McIntyre did, in fact, resign, did he not, on
10 September 25th, or do you know?

11 A That's my recollection.

12 Q Did you contact the Attorney General's office
13 before or after Mr. McIntyre resigned?

14 A Don't remember.

15 Q I'll hand you this email. And I'm asking you --

16

17 MR. CRAPPS: Mr. Mathison, may I see that?

18 MR. MATHISON: Sure.

19 MR. CRAPPS: No objection.

20 MS. MEYERS: If the witness can identify it.

21

22 Q I'll hand you this document and ask if you can
23 identify it, specifically the section in red and
24 it's got a little parentheses out in the margin.

25 A Yeah, I wrote that.

1 Q And that was written to the investors?

2 A It was.

3 Q And when was it written?

4 A From this it looks like it's October 19, Friday,
5 2012, 3:52 p.m.

6 Q And had you contacted them on or about that day or
7 was it before that?

8 A It would be before that.

9 Q When?

10 A Don't know.

11 Q And you don't know who you talked to?

12 A I don't, other than Sandra Matthews, no.

13 Q Did you discuss contacting the attorney general's
14 office with anybody before you did it?

15 A No.

16 Q You did it on your own?

17 A I did.

18

19 MR. MATHISON: I move the introduction of this
20 document as Respondents' Exhibit No. 14.

21 MR. CRAPPS: The whole page or just the email that
22 Mr. Finn identified.

23 MR. MATHISON: The whole page.

24 MR. CRAPPS: May I see it again? We have no
25 objection to the admission of Mr. Finn's

1 email, but there's an additional email in here
2 that hasn't been identified or authenticated
3 in any way. So we would object to the bottom
4 half of that page.
5

6 Q Is the email below, the one that has the
7 parentheses, your email addressed to Mr. Finn?

8 A I'm sorry.

9 Q Addressed by Mr. Finn to Mr. Silver?

10 A You're going to have to run that by me again, sir.

11 Q Is the email at the bottom your email addressed to
12 Mr. Silver?

13 A The one that says Hello Rich?

14 Q Yes.

15 A It appears to be.

16 Q You can identify that as your work? Is that right?

17 A As my what?

18 Q Something that you prepared.

19 A Hello Rich?

20 Q Yes.

21 A No. That's from Murray Reed. That's not from me.

22 Q That's not from you?

23 A No.

24

25 MR. MATHISON: It's being offered for this portion

1 right here.

2 MR. CRAPPS: Can the admitted portion be redacted?

3 MR. MATHISON: It is.

4 MR. CRAPPS: By folding it?

5 MR. MATHISON: Yes, I'm not offering the rest.

6 THE COURT: I'll accept it as redacted as we've
7 discussed. And how would we -- would we like
8 to actually redact it and substitute an
9 exhibit?

10 MR. CRAPPS: That will be fine.

11 THE COURT: If we could do that.

12

13 (Whereupon, Respondents' Exhibit No. 14
14 was marked and received into evidence.)

15

16 Q Didn't you think it might have been a good idea for
17 you to read the operating agreements before you
18 reported somebody to the attorney general's office?

19 A Excuse me?

20 Q Didn't you think it would be a good idea to read
21 the operating agreements?

22 A I read one of them.

23 Q Forgive me, but not 30 minutes ago you said you
24 read none of them. Which is it?

25 A No, I said I never saw IV and I never saw VII. I

1 did get an operating agreement for the Silver Oak
2 Energy.

3 Q Okay.

4 A You want to read it back, that's what I said.

5 Q All right.

6 A And the answer is, yeah, it would be a good idea,
7 and that's what I did.

8 Q Did you read provisions that had to do with the
9 authority and duties of the managing member?

10 A I did.

11 Q So you read what is paragraph six of that
12 agreement? Is that right?

13 A Probably did.

14 Q Did you send it to the attorney general's office?

15 A I didn't.

16 Q What do you consider to be a personal expense as
17 opposed to an ordinary and necessary business
18 expense?

19 A Jewelry, college applications, Best Buy, Sea Turtle
20 Cinema. Other than when he went to Chicago
21 supposedly on business for our company or if he
22 were meeting with the folks in Tifton, which is
23 Mendel. Jewelry? Please. That's ridiculous.

24 Q If when you were here visiting with Mr. Crapps, Mr.
25 Crapps took you out for lunch, it would be ordinary

1 and necessary for him to deduct the cost of your
2 lunch, wouldn't it?

3

4 MR. CRAPPS: I object to that. He's asking --

5 THE COURT: Sustained.

6

7 **A That would be up to him. I don't know.**

8 **Q** You don't know?

9

10 MR. CRAPPS: You don't have to answer the question.

11

12 **A No, you'd have to ask him.**

13 **Q** Well, he asked you a question about personal
14 expenses. Is that what you meant when you said
15 personal expenses?

16 **A Yes.**

17 **Q** Sea Turtle Cinema?

18 **A Yes.**

19 **Q** Okay. If you took a customer to Sea Turtle Cinema
20 as a measure of goodwill --

21 **A It better be a movie about biomass.**

22 **Q** Okay. So you wouldn't consider that deductible,
23 either?

24 **A Unless it's a movie about biomass, no.**

25 **Q** So, if I understand correctly, the investment you

1 could have made in SOLT I is probably a good one
2 and you're not going to profit from that. The
3 investment you did make in SOLT IV, virtually all
4 of the money, 97 percent of it that was raised from
5 the investors went into the acquisition of the
6 land. And, as far as you know, your situated well
7 in that one to make a profit, or at least not lose
8 money.

9

10 MR. CRAPPS: Is there a question?

11 THE COURT: Yes, please ask a question.

12

13 Q Isn't that true?

14 A **What?**

15 Q SOLT IV, you feel that investment is reasonably
16 safe and secure at this point?

17 A **That's your words, not mine.**

18 Q How do you feel about it?

19 A **I told you. I have no faith in anything anymore as
20 a result of this. I said that, didn't I?**

21 Q In Silver Oak Energy, your investment in that was
22 in fact, was it not, to some extent influenced by
23 your own management of the company?

24 A **Excuse me?**

25 Q Your investment in Silver Oak Energy was influenced

1 by your own management of the company?

2 **A No. Wrong.**

3 **Q It wasn't?**

4 **A No.**

5 **Q Okay.**

6

7 **MR. MATHISON: Thank you.**

8 **THE COURT: Before we continue I'd like at this**
9 **time, unlike yesterday, I'd like to limit it**
10 **to one re-direct and one re-cross. And please**
11 **stay within the scope of each others**
12 **examination.**

13

14

15

RE-DIRECT EXAMINATION

16 **BY MR. CRAPPS:**

17 **Q Mr. Finn, how was Silver Oak Energy eventually**
18 **going to create a profit and a return on your**
19 **investment?**

20 **A With an off-take agreement.**

21 **Q What does that involve?**

22 **A It involves negotiating a contract with a company**
23 **that would buy our biomass.**

24 **Q What was y'all's biomass?**

25 **A Pardon me? Miscanthus.**

1 Q You testified in answer to a question of Mr.
2 Mathison's that you didn't know the types of
3 rhizomes on the property.

4 A I did not.

5 Q And so you were dependent on --

6 A Well, no, there were -- he mentioned Silver Oak
7 Select and I know that I had heard that word
8 before. And then he asked me where did it come
9 from, and I said I thought it was Illinois or
10 Michigan, is what I think I said.

11 Q And so you were dependent on Mr. McIntyre to
12 cultivate the rhizomes and the miscanthus?

13 A Absolutely.

14 Q And Silver Oak Energy was to create a profit by
15 selling miscanthus?

16 A Correct.

17

18 MR. CRAPPS: No further questions.

19 MR. MATHISON: I don't have any further questions.

20 THE COURT: Now, did I understand you have to travel
21 today?

22 MR. FINN: Yes, sir. I have to go back to Boston,
23 sir. Thank you.

24 THE COURT: Is any objection to releasing him?

25 MR. MATHISON: No.

1 MR. CRAPPS: No objection.

2 THE COURT: Thank you for coming and you are free to
3 go.

4 MR. MATHISON: May it please the court, I need a
5 break. Mr. Finn asked to talk to me. Before
6 he leaves I'll talk to him.

7 THE COURT: Okay. And I'd also like to put on the
8 record I think that Mr. Paris, if you would
9 introduce yourself to the room and the court,
10 reporter for the record since you weren't here
11 --

12 MR. PARIS: My name is Jim Paris. I live in Hilton
13 Head, South Carolina.

14
15 (Off the Record)

16
17 THE COURT: I guess where we're left now is for Mr.
18 Mathison's cross of Mr. Silver.

19 MR. CRAPPS: Mr. Hunter, if there's no objection, if
20 I can reopen the direct exam of Mr. Silver for
21 the limited purpose of introducing an exhibit,
22 which was an oversight yesterday.

23 THE COURT: Do you have any objection, Mr. Mathison?
24 Do you want to review the exhibit?

25 MR. MATHISON: I don't know what the exhibit is.

1 This is the first I've heard of it.

2 MR. CRAPPS: It's additional bank record.

3 MR. MATHISON: Your Honor, these all appear to be
4 records pertaining to Silver Oak Land Trust
5 VII. And as Your Honor can see, every page is
6 full of scribbling, interlineations and all
7 kinds of different marks. Based on what
8 happened yesterday, my assumption is Mr.
9 Crapps is going to put these in in bulk. He's
10 going to hand them up and say here they are.
11 And then he's going to have Mr. Silver state
12 fifteen conclusions as fast as he can out of
13 the book and then he's going to rest without
14 actually finding where those conclusions might
15 be of record in these documents. And while I
16 don't object to his reopening, because I think
17 you've got the right to let him do that and
18 put it in. I do object to the documents if
19 they're coming in the way those came in.

20 THE COURT: Then we'll allow you to put Mr. Silver
21 up for the purpose of introducing this
22 exhibit, and then you can state your
23 objection.

24 MR. CRAPPS: Thank you.

25 MR. MATHISON: May it please the court, Mr. Silver

1 has now come up with another group of
 2 documents from which he intends to read.
 3 MR. SILVER: It's a blank pad of paper. You're
 4 welcome to examine it.

- - - - -

FURTHER DIRECT EXAMINATION

8 BY MR. CRAPPS:

9 Q Mr. Silver, did you obtain bank records for Silver
 10 Oak Land Trust VII?

11 A I did.

12 Q Did you send those to the Office of the Attorney
 13 General?

14 A I believe I did.

15 Q Can you identify those documents?

16 A They are copies of the Bank Meridian bank
 17 statements for Silver Oak Land Trust VII.

18 Q And if you turn through some of those pages you
 19 will see some writing on them, some handwriting.
 20 Can you identify that writing?

21 A That is my writing, other than the checkmarks which
 22 I believe were Mr. McIntyre's checking off each
 23 time he made an entry into the Quicken records.

24 Q But you identify those documents as what?

25 A The handwriting is my handwriting on the copies of

1 the bank statements that I had obtained from Mr.
2 McIntyre.

3

4) MR. CRAPPS: I think we'll admit these into
5 evidence.

6 THE COURT: Mr. Mathison?

7 MR. MATHISON: I object for the reasons that I
8 stated previously. There are multiple
9 interlineations on them other than checkmarks.
10 There are conclusions, names, various
11 statements of implications, all of which could
12 conceivably be argued mean something. Just
13 putting them in in bulk, if as I surmise is
14 going to happen, he doesn't ever refer to, but
15 simply testifies in a conclusory fashion, is a
16 complete waste of time, at least in so far as
17 my cross-examination is concerned.

18 THE COURT: Well, I'll admit them the same way I did
19 yesterday, understanding the handwritten notes
20 are on there, but admit them as the bank
21 records. And it will be State's Exhibit No.
22 24.

23

24 (Whereupon, State's Exhibit No. 24 was
25 marked and received into evidence.)

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MR. CRAPPS: That's all we have. Thank you.

THE COURT: Are you ready to proceed with your cross?

MR. MATHISON: I am.

THE COURT: Before you start, just for time, it's 25 to twelve. Do you want to proceed to like 12:30 and then break or how?

MR. MATHISON: I've got some preliminary materials that I want to get out of the way, and then I've got some questions. It appears they're going to object that I want to put on the record, and I think by that time it would be a good time to break.

THE COURT: Okay. Just let me know when it's a good time for you.

CROSS EXAMINATION

BY MR. MATHISON:

Q Yesterday I voir dired you when you were qualified as an expert by the hearing officer with respect to Silver Oak Energy. Do you recall?

A Yes..

Q And you did not know what section of the Internal

1 Revenue Code dealt with ordinary and necessary
2 business expenses.

3 **A I do not practice tax accounting. I'm not a tax**
4 **accountant.**

5 **Q** I understand. But there is such a thing, and what
6 is considered deductible is, in fact, what is
7 typically deducted and treated as ordinary and
8 necessary business expenses. Isn't that right?

9 **A I don't know anything about the tax law.**

10 **Q** Well, did you testify yesterday repeatedly that
11 certain items you had identified were "personal
12 expenses"?

13 **A I did.**

14 **Q** And my question to you is what is the definition
15 that you applied to determine whether something is
16 a personal expense?

17 **A Something that was totally unrelated to the nature**
18 **of the business.**

19 **Q** Okay. Then let me ask you this. You would concede
20 that an airline trip taken in furtherance of
21 business's objectives would be considered ordinary
22 and necessary?

23 **A Not necessarily. Depending on the capacity in**
24 **which the person who purchased that airline ticket**
25 **was operating.**

1 Q Okay. Well, why don't you just fine tune that for
2 me and explain that to me because we're parsing
3 things, and I don't fully understand. You explain
4 how an employee traveling on business for his
5 employer would not be entitled to treat that as a
6 business expense. I'd like to hear you explain it.

7 A Well, first of all, the items that I referred to as
8 personal expenses were not in that category
9 yesterday. I referred only to expenses that appear
10 to be totally unrelated to the nature of the
11 business. I said that I was not including in those
12 examples restaurants and expenses like that at this
13 time.

14 Q Forgive me, sir, but Mr. Crapps asked you on three
15 different occasions about three different limited
16 liability companies how much were restaurant
17 expenses, and you proceeded to put those in there
18 with the same stain on them as personal expenses.
19 You identified them by number, didn't you?

20 A No. I think he asked me if I was aware if
21 restaurant expenses were going to be made out of
22 the money I invested, what I have invested. And I
23 believe I said no. I think in one example I gave
24 an example of -- in one of the LLCs, I gave an
25 amount that I believe had been spent on

1 **restaurants.**

2 **Q** And is it your understanding that any restaurant
3 expense is not ordinary and necessary?

4 **A** I've never stated that. There may be some
5 occasions when some restaurant expenses are
6 ordinary and necessary as long as they're . . .

7 **Q** Have you ever held a sales job?

8 **A** I was trying to --

9

10 **MR. MATHISON:** Excuse me --

11 **MS. GRAY:** Let him finish his answer. You're
12 interrupting him.

13 **MR. MATHISON:** Good Lord. How many different
14 lawyers are actually here on this gentleman's
15 behalf?

16 **THE COURT:** We do need to proceed with Mr. Crapps.

17 **MR. CRAPPS:** I'll just state that we would like for
18 Mr. Silver be able to answer the questions
19 that Mr. Mathison is asking him.

20 **THE COURT:** Right. And you need to give him time to
21 respond.

22

23 **A** So can you restate the previous answer that I --

24 **Q** Have you ever held a sales job?

25 **A** No.

1 Q Have you ever worked in a company that sells
2 anything?

3 A Yes.

4 Q Do salesmen routinely write off meals that they
5 have with customers?

6 A Yes. I would assume so.

7 Q Aren't they ordinary and necessary?

8 A In that context they would be probably.

9 Q Do suppliers frequently write off meals that they
10 have with customers?

11 A I would have no knowledge of that myself.

12 Q Well, are you applying the no knowledge standard to
13 the what you testified was your forensic audit?

14 A I'm not following the question. My forensic audit
15 was an examination of books and records comparing
16 entries and accounting records with the same data
17 that came from bank statements and tax returns.

18 Q Well, let me put it this way. Isn't it true that
19 in order to know what would be an ordinary and
20 necessary business expense, you'd have to know a
21 little something about the business?

22 A Not always, but probably more often than not.

23 Q Do you know who planted the crop of miscanthus at
24 the farm in Clio?

25 A I have no idea. I assume Jack did or used help to

1 plant it. I have no idea.

2 Q Do you know whether or not hotel and motel expenses
3 were incurred when the farmed was planted?

4 A I see a lot of hotel and motel expenses in the
5 records. I don't know what they were connected
6 with.

7 Q Do you know whether meals were eaten while the
8 planting was taking place?

9 A I know there are hundreds and hundreds and hundreds
10 of debit card transactions at restaurants. I don't
11 know what they were connected with.

12 Q Do you know how many of them were in the Clio area
13 of South Carolina?

14 A No, I don't even know where Clio is exactly. I
15 know it's maybe an hour from here somewhere. I
16 don't know --

17 Q Have you ever been to Clio?

18 A No, I have not.

19 Q Have you ever seen the farm?

20 A I've seen pictures of the farm. I've never seen
21 the farm.

22 Q How many acres are on the farm?

23 A I believe 66.

24 Q Who tills it?

25 A Who tills it? I have no idea.

- 1 Q How many plants per acre?
- 2 A I have no idea.
- 3 Q How are the plants planted?
- 4 A I have no idea.
- 5 Q Is there irrigation at the farm?
- 6 A I have no idea. I assume so.
- 7 Q Who built it?
- 8 A Who built what?
- 9 Q The irrigation system.
- 10 A I'm not familiar with the irrigation system. I
- 11 certainly have no idea who built it. I do see some
- 12 expenses in the books for irrigation related
- 13 expenses.
- 14 Q Have you ever been to Orangeburg?
- 15 A I don't know where that is. I might have driven
- 16 through it.
- 17 Q Do you know whether Silver Oak Energy has
- 18 miscanthus plants growing in Orangeburg?
- 19 A I'm not aware of that. I don't know one way or the
- 20 other.
- 21 Q Do you know who tends the plants, if there are
- 22 plants in Orangeburg?
- 23 A I'm not aware of any plants one way or the other,
- 24 and I would have no idea who tends them.
- 25 Q Do you know whether expenses were incurred for

1 travel to Orangeburg for purposes of either tending
2 the plants or meeting with the people who do?

3 A I have no direct knowledge of that. Again, I think
4 if you look at the addresses on some of the
5 restaurant and hotel charges, some of them may have
6 come from Orangeburg. I'm not sure.

7 Q Where is the greenhouse located?

8 A There is a greenhouse located on the land that was
9 owned by SOLT VII.

10 Q And the greenhouse, have you ever seen it?

11 A I did see it once after -- I think it was after I
12 became manager. I came up to this area and met
13 with the forestry agent for SOLTs II, III and VII.

14 Q And where did you meet with him at the greenhouse?
15 Where is that?

16 A Where is it?

17 Q Yes.

18 A It's at SOLT VII's land right off the road.

19 Q Where?

20 A I don't know where. I forget where. It's wherever
21 SOLT VII's land was near Lake Wateree.

22 Q You don't know the address?

23 A The street address?

24 Q Yes.

25 A No, I have no idea what the street address is.

1 Q Do you know whether there is a joint venture
2 currently underway with some entity in Orangeburg
3 County? Silver Oak Energy and another -- did you
4 hear the term the Sod Farmer earlier today?

5 A I've heard the term today, the Sod Farmer. I've
6 heard Jack refer to The Sod Farmer on a couple
7 previous occasions.

8 Q But you don't know who that is?

9 A The Sod Farmer I believe is -- I don't know the
10 guy. I forget the guy's name.

11 Q Do you know whether any of expenses have been taken
12 in connection with that venture, and specifically
13 in the Orangeburg area?

14 A Not specifically, no.

15 Q Do you know who arranged for the joint venture?

16 A I assume Jack did.

17 Q Do you know how many meetings it took to make the
18 joint venture viable?

19 A I don't know that it is viable.

20 Q You don't know anything about it, do you?.

21 A I know very little about it, or if anything. I
22 think Jack told me once he was working on the joint
23 venture. That's all I know.

24 Q How many dinners did Mr. McIntyre buy as part of
25 his joint venture in an effort to set it up? Do

1 you know that?

2 **A** I have no idea.

3 **Q** Have you ever heard of a gentleman by the name of
4 Mr. Rotemoor?

5 **A** I do not recall the name. He may -- if Jack ever
6 mentioned it to me, I just don't recall it.

7 **Q** Do you know how he interfaces with the Silver Oak
8 entities?

9 **A** No, I do not.

10 **Q** Do you know how many meetings were held between
11 Silver Oak representatives and the Orangeburg
12 County Development Corporation?

13 **A** No.

14 **Q** Do you know where the meetings were held?

15 **A** No.

16 **Q** What was the purpose of involving the Orangeburg
17 County Development Corporation in Silver Oak's
18 business?

19 **A** I have no idea. I was not involved in the
20 management of Silver Oak's business.

21 **Q** Do you know where Technical College of the
22 Lowcountry is?

23 **A** No, I do not. I think Jack took me there once, but
24 I don't remember where it is. I think it's in
25 Beaufort, maybe. I don't even know.

1 Q Do you know whether Silver Oak has rhizomes at
2 Technical College of the Lowcountry?

3 A I believe we did. Jack took me there once to show
4 them. I thought he later told me they were moved
5 to our farm, but I don't recall that for sure.

6 Q Do you know whether there were meetings in Beaufort
7 having to do with the venture in common with
8 Technical College of the Lowcountry?

9 A I'm not familiar with any particular meetings, no.

10 Q Do you know how many trips were taken from Hilton
11 Head to Beaufort in connection with the venture
12 with Technical College of the Lowcountry?

13 A I do not.

14 Q Do you know who initially tended those plants?

15 A I know the one day that I went there to see it,
16 just out of curiosity, Jim Paris was there helping
17 -- I think Jim was there helping them physically
18 split the root systems, the rhizomes.

19 Q Mr. Paris, this gentleman right here?

20 A Yes.

21 Q Do you know whether he incurred expenses in doing
22 that?

23 A I'm not aware of that?

24 Q Do you have a recollection of a meeting that took
25 place when the rhizomes previously at Technical

1 College of the Lowcountry were moved to the farm?

2 **A I do not have a recollection of such a meeting, no.**

3 **Q Do you remember having lunch with Jack, Jim Paris**
4 **and Dr. Vitek?**

5 **A No, I never met Dr. Vitek before.**

6 **Q Do you know who paid for that lunch?**

7 **A I have no idea. I don't know of any lunch that**
8 **you're talking about.**

9 **Q Okay.**

10 **A Or at least I don't recall one.**

11 **Q Would that have been ordinary and necessary if you**
12 **had your lunch bought by someone while you were**
13 **observing this relocation of the plants?**

14

15 **MR. CRAPPS: I object. He's asking him to make a**
16 **determination when he previously testified**
17 **that he had no knowledge to make that**
18 **determination.**

19 **MR. MATHISON: May it please the court, he's made**
20 **determination after determination and**
21 **testified in conclusory form.**

22 **THE COURT: I'll let him answer the question.**

23 **Overrule the objection.**

24

25 **Q Would it have been ordinary and necessary to take**

1 you to lunch?

2 **A** I would say that it was an ordinary and necessary
3 expense in all of these examples you've given of
4 the company that had been retained by the land
5 trust to perform management services, and that any
6 and all ordinary and necessary expenses incurred by
7 that company to perform the management services
8 that that it was being compensated to perform
9 should have come out of the money and revenue that
10 the manager received as compensation for its
11 services.

12 **Q** That's your position?

13 **A** Yes.

14 **Q** And where would I find that written down? Where
15 would I find that rule that you just announced
16 written down?

17 **A** That is standard business practice. For example,
18 when I worked for a management company, which I did
19 my entire career for the most part, the management
20 company received a fee from the underlying
21 investment companies that it was managing. And any
22 and all expenses incurred by the management company
23 in connection with performing its duties to fulfill
24 its requirements to perform those duties were
25 incurred by the management company from the fees

1 that it earned. It was the expenses were not
2 expenses of the underlying investment companies.

3 Q Did you read any of the operating agreements that
4 you received?

5 A First of all, I never received them prior to making
6 any investments, number one. And, number two, --

7 Q Did you read it is what I asked.

8 A I read it last year when all of this stuff started.
9 I --

10 Q Isn't it a fact that the manager can take whatever
11 he wanted as expenses?

12 A I don't believe it says that as expenses. No, I
13 don't believe it says that.

14 Q You sold the property that was SOLT VI. Is that
15 right?

16

17 MR. CRAPPS: Excuse me. We'll raise our previous
18 objection. That's outside the scope of this
19 hearing and is pertaining to activities
20 happened long after Mr. McIntyre ceased to be
21 the manager. And, again, there's a private
22 lawsuit between, from my understanding, Ms.
23 Vitek here and against Mr. Silver. And Mr.
24 Mathison is going beyond the scope of this
25 hearing to take testimony --

1 MR. MATHISON: I don't represent Ms. Vitek in that
2 lawsuit. That's not the purpose of the
3 question.

4 THE COURT: I'll let him answer the question. I've
5 been pretty generous to both sides on
6 relevance in these hearings.

7

8 Q Did you sell the property at SOLT VII?

9 A SOLT VII's property was sold, yes.

10 Q What was the purchase price?

11 A Purchase price?

12 Q Yes.

13 A Or sale price?

14 Q Either or both. I'm assuming they were the same.

15 A Were you asking me what we originally paid for it
16 or what we sold it for?

17 Q What did you sell it for?

18 A I don't recall the exact number. I believe it was
19 \$2200 an acre.

20 Q How many acres are there?

21 A I get mixed up on the companies without looking at
22 my notes. Can I have my binder?

23 Q Sure.

24 A I think it's 258 acres. So I think we sold it for
25 500-and-something thousand dollars. I can get the

1 exact number.

2 Q Would it be \$567,600 in round numbers?

3 A It could be approximately that in round numbers,
4 yes. Whatever \$2200 an acre times I think it's 258
5 acres.

6 Q Okay.

7 A Yes, that sounds right.

8 Q What was done with the proceeds of the sale?

9 A The proceeds were deposited into the bank account
10 of Silver Oak VII.

11 Q Then what was done with the proceeds of the sale?

12

13 MR. CRAPPS: We renew our objection.

14 THE COURT: Sure. I'll continue the objection.

15

16 A Your Honor, I'm going to refuse to answer questions
17 that relate to a lawsuit that's been brought
18 against me by Ms. Vitek.

19 Q You don't have that luxury, sir.

20 A That do not relate to the issues at hand here in
21 this case.

22

23 THE COURT: You don't -- you'll have to -- He can
24 ask the questions. There can be objections
25 and I can rule on the objections, but

1 otherwise you'll have to answer the questions.

2

3 A And what are the penalties if I don't?

4

5 THE COURT: We'll see what happens. We'll proceed.

6

7 Q After you put the money in the bank, what happened
8 to it next?

9 A After satisfying whatever debts there were of the
10 company, a distribution was made to the investors.

11 Q What debts of the company were paid?

12 A I don't recall specifically for that company.
13 There were inter company loans that had been on the
14 books that I had to satisfy.

15 Q Do you know what the net available for
16 distribution?

17 A I don't recall that number, no.

18

19 MR. CRAPPS: We feel this is getting out of hand.

20 This is way beyond the scope of our C&D. And
21 anything we've been -- that is to be decided,
22 in this case. All this activity that Mr.
23 Mathison is getting into occurred way after
24 the management of Mr. McIntyre which we're
25 here to discuss.

1 MR. MATHISON: May it please the court, this
2 gentleman testified yesterday there were two
3 components to each one of his investments in
4 the land trust. And one component was what he
5 expected to be the yield from the timber
6 cutting, and the other component was what he
7 expected to be the capital gain at the end.
8 My understanding of Ms. Vitek's litigation is
9 that she's questioning the propriety of the
10 price as accepted. I'm not going to ask him
11 about any questions about that. I'm not here
12 to litigate whether or not it was a proper
13 amount or an improper amount. I want to know
14 what he did with the money.

15 MR. CRAPPS: We feel that's --

16 MR. MATHISON: That's what I wanted to know.

17 MR. CRAPPS: That's way after anything that's
18 alleged or being decided by this --

19 MR. MATHISON: Well, I'll make an offer of proof.
20 That man did not pay Silver Oak Land
21 Management --

22 MR. CRAPPS: Excuse me, now he's testifying.

23 THE COURT: Well, I'm going to overrule the
24 objection. I mean, he did testify that part
25 of the returns would be capital gains which

1 would be incurred, at least as I understand
2 it, at the end of the transaction, so I'm
3 going to allow the testimony.

4

5 Q How much money was distributed, all told, to the
6 investors that you represented as the managing
7 member?

8 A I don't recall the amount. I didn't bring that
9 information with me because that doesn't pertain to
10 the issues at hand in this case.

11 Q What was done with the money, that otherwise would
12 have been paid to Silver Oak Land Management for
13 its participation?

14 A It's being held in an escrow account?

15 Q By whom?

16 A At the bank where the company's bank accounts are.

17 Q In whose name?

18 A The name of the company.

19 Q And who has signing authority on that account?

20 A I do as manager of the company.

21 Q So you kept his money, is that what you've done?

22 A I put it into escrow.

23 Q Well, where is the account.

24 A In South Carolina Bank & Trust.

25 Q And it's in the name of Silver Oak Land Trust VII?

- 1 **A** **Yes.**
- 2 **Q** How much money is in that account?
- 3 **A** **I do not recall the amount.**
- 4 **Q** Were amounts escrowed for any other participants in
5 Silver Oak Land Trust VII?
- 6
- 7 MR. CRAPPS: Is our objection continuing?
- 8 THE COURT: I'll note it as continuing.
- 9
- 10 **Q** Were other people not paid?
- 11 **A** **No.**
- 12 **Q** Nobody else was not paid?
- 13 **A** **Nobody else was not paid. That's correct.**
- 14 **Q** So everyone with the exception of Silver Oak Land
15 Management should have received their distribution?
- 16 **A** **Yes. Silver Oak Land Management is the only entity**
17 **that I believed had engaged in alleged malfeasance**
18 **against the company.**
- 19 **Q** This is malfeasance in your eyes?
- 20 **A** **Yes.**
- 21 **Q** And so you have unilaterally taken it upon yourself
22 to keep their money. Is that right?
- 23 **A** **I'm holding it in escrow until all of these issues**
24 **are resolved one way or the other.**
- 25 **Q** Are there any outstanding debts that were not paid

- 1 by Silver Oak Land Trust VII?
- 2 **A** None that I believe are valid.
- 3 **Q** That means there are some that aren't paid. Isn't
4 that correct?
- 5 **A** No, because if they're not valid, then they're not
6 there.
- 7 **Q** Who's making the decision or the determination
8 about validity, Mr. . . .
- 9 **A** Well, that's a subject of yet another lawsuit Ms.
10 Vitek has filed, so . . .
- 11 **Q** So you're making the determination that they're not
12 valid? Is that right?
- 13 **A** The operating agreement actually very clearly makes
14 the determination that it was not a valid loan.
- 15 **Q** So you're using the operating agreement to defend
16 yourself, but you didn't bother to consult the
17 operating agreement before you decided to
18 participate in these proceedings?
- 19 **A** I looked at the operating agreements after all of
20 the proverbial "S blank, blank T" hit the fan for
21 the first time. And when I became aware of a
22 particular loan that had been made to Silver Oak
23 VII, I read the operating agreement section that
24 dealt with that and saw that it was very clearly in
25 violation of the operating agreement.

1 Q I see. Are you holding \$90,000 in round numbers
2 for Silver Oak Land Management?

3 A I do not recall the amount.

4 Q Have you offset that against what you believe to be
5 the debts of Silver Oak Land Management to SOLT
6 VII?

7 A Have I offset what? Say that again.

8 Q The amount that you're holding for Silver Oak Land
9 Management.

10

11 MR. CRAPPS: We still haven't looked at anything
12 relevant to this case. We would ask that--

13 THE COURT: I'm going to overrule. I'm going to let
14 him build his record.

15

16 Q Did you offset it against what you perceive Silver
17 Oak Land Management may owe to Silver Oak Land
18 Trust VII?

19 A I subtracted the receivables that were on the books
20 that Mr. McIntyre had recorded as amounts due back
21 to Silver Oak VII.

22 Q Forgive me, but that's not answering my question.
23 I said did you offset what should have been paid to
24 Silver Oak Land Management against what you believe
25 Silver Oak Land Management may owe to Silver Oak

1 Land Trust VII? That's what I asked you. Did you
2 do it or not? Yes or no?

3 **A Ask the question one more time.**

4 **Q** Did you offset the amount that otherwise would be
5 due and payable to Silver Oak Land Management
6 against what you believe may be the amount owed by
7 that entity to Silver Oak Land Trust VII?

8 **A I offset receivables from Silver Oak Land**
9 **Management against payables to Silver Oak Land**
10 **Management, yes.**

11
12 MR. MATHISON: May it please the court, would you
13 instruct him to answer the question?

14
15 **A Yes. I said yes. I offset receivables against**
16 **payables.**

17 **Q** I'm asking you a specific question with respect to
18 specific entities, not receivables and payables.

19 **A I'm talking about one specific entity. Silver Oak**
20 **VII's receivables from Silver Oak Land Management**
21 **against the payable to Silver Oak Land Management.**

22 **Q** So you did offset it?

23 **A I did offset it, the receivables, yes.**

24 **Q** And how much is now in escrow?

25 **A I do not recall the number.**

1 Q So you've already taken some of the money that
2 would have gone to Silver Oak Land Management?

3 A I haven't taken it. It was a receivable on the
4 books of Silver Oak VII that was offset against a
5 payable.

6 Q You mean there's a note? Is that the receivable
7 you're talking about?

8 A Their were receivables recorded on the books by Mr.,
9 McIntyre for money he had taken, or that Silver Oak
10 Land Management had taken.

11 Q You don't know how much money is in escrow? Is
12 that what you're saying?

13 A I did not bring that information with me, no.

14 Q Well, did you bring this information with you? How
15 much do you consider Silver Oak Land Trust VII to
16 be owed by any combination of Silver Oak Land
17 Management and Jack McIntyre? You did bring that
18 with you, didn't you?

19 A I did. I believe the last time I accrued interest
20 on the running balance, which was as of May 31st,
21 it was approximately \$26,000.

22 Q What was 26,000?

23 A What I believed was due back to Silver Oak VII from
24 Jack or Silver Oak Land Management.

25 Q Well, then why didn't you disperse the balance to

1 Silver Oak Land Management?

2 **A** It's being held in escrow until the final
3 resolution of all the issues.

4 **Q** Why would that money be due and payable to anybody
5 other than Silver Oak Land Trust VII?

6 **A** Because owners of the other companies may have
7 claims against it in settlement of lawsuits.

8 **Q** And you've taken it upon yourself to keep Silver
9 Oak Land Management's money on that pretext?

10 **A** I'm not keeping it. I'm holding it in escrow.

11

12 MR. CRAPPS: Is Mr. Silver's management of these
13 companies question in this hearing?

14 THE COURT: I think at this point we do need to
15 reign it in. So I sustain the objection.

16 MR. MATHISON: I have one more question, Your Honor,
17 in this.

18

19 **Q** Didn't you testify yesterday that one of the debts
20 that was paid off was a debt to Silver Oak Land
21 Trust VII by Silver Oak Land Management of
22 approximately \$26,000?

23 **A** No, I did not. I don't recall saying that at all.

24 **Q** I thought you said that Dr. Vitek showed up and
25 paid that debt off?

1 Q Was that \$11,000, in fact, paid in November 2012?

2 A In November 2012, just before the meeting that I
3 had asked all investors to come to to review some
4 of the findings that I was coming up with during
5 the forensic audit I was doing, as I did testify
6 yesterday, Mr. McIntyre, I believe delivered to Jim
7 Paris to give to me a check from Silver Oak VII for
8 the \$11,800 plus some interest and a check for
9 23,796, I think it was, for Silver Oak IV plus
10 interest.

11 Q So the 11,000 was, in fact, paid off. Is that
12 correct?

13 A The 11,800, I believe, yes, was paid off.

14 Q So I'm trying to figure out exactly what it is that
15 you're withholding the money for having to do with
16 Silver Oak VII.

17

18 MR. CRAPPS: We're going to renew our previous
19 objection. Withholding the money from the
20 sale of that occurred way after Mr. McIntyre's
21 management of these companies. It's
22 completely irrelevant.

23 THE COURT: I'll overrule it for now, but let's try
24 -- let's . . .

25

- 1 Q What is it being held for?
- 2 A What is the money being in escrow for?
- 3 Q Yes.
- 4 A Until the final resolution of any and all claims
5 that might -- that have arisen and might arise
6 against Mr. McIntyre and Silver Oak Land
7 Management.
- 8 Q Does Silver Oak VII have any claims currently
9 against Silver Oak Land Management?
- 10 A No civil suit has been filed if that's what you
11 mean.
- 12 Q No, is there a debt owed beyond the \$11,000?
- 13 A Well, depending on how you mean that. If you
14 consider the offset that you asked me, having
15 satisfied what was due back to Silver Oak VII, then
16 the net amount after that offset would be excess
17 over and above what was due back to Silver Oak VII.
- 18 Q And the net amount you said was \$26,000?
- 19 A The amount that was offset was the \$26,000.
- 20 Q And so how much remains?
- 21 A I don't recall the number, as I said.
- 22 Q Did you send an email to Mr. McIntyre's wife
23 telling her that you intended to use that money
24 that you kept from that sale to add additional
25 lawsuits against Jack?

1

2 MR. CRAPPS: I object. This is still well beyond --

3 THE COURT: I sustain it. Let's . . .

4 MR. MATHISON: I want to make it part of the record,

5 and I want it marked for identification. And

6 I'd like to be heard on the objection.

7 THE COURT: Sure.

8 MR. MATHISON: I have in my hand eight emails from

9 Mr. Silver which demonstrate his state of mind

10 which is inconsistent with the judicious and

11 objective presentation that he's made here.

12 If I might be permitted a little editorial

13 license, they're practically foaming at the

14 mouth replete with threats. Not only against

15 Mr. McIntyre, but also against his wife. And

16 I think that they speak to his state of mind.

17 I heard a great deal of hearsay come in

18 yesterday all because it had something to do

19 with the hearer's state of mind. I'm not

20 certain that this is not a much, much higher

21 order of magnitude in so far as state of mind

22 is concerned. It goes to impeach this man.

23 Basically what's in dispute here is his

24 credibility because he's testified as to

25 conclusions that he's drawn from books that

1 he's put in the record without actually
2 pointing out where in the books they exist.
3 And I'll be happy to let Mr. Crapps see all
4 the -- I mean, there are seven of them. And
5 some of what he said is so injudicious that
6 it's actionable.

7 MR. CRAPPS: It's our position, Parkin, that this
8 and anything has to do with anything beyond
9 the management of the companies of Mr.
10 McIntyre is really outside the scope of this
11 hearing. And we're here to hear matters in
12 relations to the C&D, and that's it. I think
13 this is all well beyond that.

14 MR. MATHISON: May it please the court, his
15 credibility is directly an issue. If he's
16 telling the truth, my client did something
17 wrong. If he's not telling the truth, my
18 client didn't. These letters go to his state
19 of mind showing that he's got, a) some
20 incentive to prevaricate and, b) some tendency
21 to engage in hyperbole and threats that are
22 beyond payable.

23 MR. CRAPPS: And, Parkin, just so you know, this
24 document is titled Settlement Offer.

25 MR. MATHISON: I'm not putting that in. And he

1 wasn't offering to settle with my client's
2 wife.

3 MR. CRAPPS: It still goes to the -- trying to
4 resolve these issues. It's all well after the
5 management of Mr. McIntyre.

6 THE COURT: I'm going to sustain the objection and
7 let's try to move it back into the closer time
8 frame.

9 MR. MATHISON: I'd like this marked for
10 identification. And I don't want to put it in
11 for the purpose of showing that there was a
12 settlement. The settlement can be -- I'm
13 putting it in for the purpose of showing this
14 gentleman made threats and made threats
15 against people who owed him no money just for
16 the purpose of putting pressure on my client.
17 I'd like it marked for identification. And
18 this is -- I have a number of these because,
19 quite frankly, he's threatened my client over
20 and over with criminal prosecution, FBI
21 investigation --

22 MR. CRAPPS: -- testify.

23 THE COURT: Yeah. Let's --

24 MR. MATHISON: Well, wait a minute now. If you can
25 parse hearsay, you can certainly hear what I'm

1 representing my offer of proof to be. Forgive
2 me, but I'm not misrepresenting what's in
3 these documents. And they depict this
4 gentleman as something other than the
5 dignified man who sat here before you. They
6 go to his character and his credibility. And
7 I will make them all part of the record
8 because what's going on here is a number of
9 threats have been made. At this juncture,
10 it's now incumbent upon him to see that the
11 threats are fulfilled. And if this were a
12 civil lawsuit and he controlled it, that would
13 be one thing. But, in theory, he doesn't
14 control it. They do. And he's threatening in
15 their names, and that makes it even more
16 repugnant.

17 THE COURT: I'm going to sustain the objection.

18 Now, this one, are we going to mark this one?

19 MR. MATHISON: Mark that one for identification, if
20 you don't mind, please, Your Honor. Is that
21 an adequate offer of proof?

22 THE COURT: Yes.

23 MR. MATHISON: Thank you.

24

25 (Whereupon, Respondents' Exhibit No. 15

1 was marked for identification purposes
2 only.)

3

4 Q Mr. Silver, you remember yesterday I suggested that
5 maybe your experience in the financial world was at
6 a level too high for you to know how business is
7 done down here in a lower level at South Carolina.
8 Do you recall that?

9 A There was no reference to South Carolina, but I do
10 recall a reference to my upbringing at a high level
11 at one time in my career.

12 Q I think I used the term "rarefied air."

13 A You might have, yes.

14 Q Have you ever employed casual laborers?

15 A Casual laborers?

16 Q Yes, sir.

17 A Other than to do work around my own house, no.

18 Q Do you know whether casual laborers are typically
19 paid in cash?

20 A I believe possibly sometimes they are and possibly
21 sometimes they're not. I have no idea.

22 Q Do you have any way to account for how much cash
23 that you claim was misappropriated by Mr. McIntyre
24 that was paid to casual laborers for work on the
25 sundry farms and projects where the rhizomes were

1 being developed and trees were being harvested?

2 A I have no direct information because Mr. McIntyre
3 refused my many requests for him to turn over
4 supporting documentation for any and all monies
5 that were spent by these companies which belonged
6 to the companies and for which he's continuously
7 refused to turn over.

8 Q Well, if I understand correctly, you analyzed the
9 books and records that he did turn over to you
10 specifically what your computer program that you
11 think contains entries that are either inaccurate
12 or false. Didn't he turn that over to you?

13 A He turned over his QuickBooks records and the bank
14 statements, yes.

15 Q Okay.

16 A And I asked him for supporting documentation behind
17 every expense and offered to go through that with
18 him so that whatever could be substantiated could
19 be moved from a questionable column or what I
20 called an invalid column to a valid column. But
21 only upon proof of what the documentation said.

22 Q Do you know whether casual laborers were paid
23 during the period from and after the time you took
24 over as manager?

25 A From and after the time I took over as manager?

1 Q Yes, sir. Have you paid casual laborers?

2 A No, I have not.

3 Q Yesterday you indicated that you were repelled to
4 some extent by the fact that there were loans made
5 from one Silver Oak entity to another. You
6 considered that inappropriate. Is that right?

7 A Yes.

8 Q And would I be correct in assuming, or reasonable
9 conclusion, that you believe it's inappropriate
10 because the entities are not functionally
11 identical? They're different entities and they
12 should have their own money?

13 A It is highly irregular and illegal in my opinion
14 for separate companies that are separate legal
15 entities to commingle funds in any way, shape, or
16 mint.

17 Q Well, isn't --

18 A Even when managed by the same manager.

19 Q Isn't it a fact that all of the loans about which
20 you are so scandalized appear on the tax records?

21 A I don't believe all of them did, but probably most
22 of them did.

23 Q And once they're listed as loans, what is any
24 different than one entity loaning another entity,
25 than the bank owing the entity money as long as the

1 loans are paid?

2 A Well, first of all, it was never an attempt to
3 repay any of the inter company loans, number one.
4 Number two, again, it is highly irregular and, in
5 my opinion, illegal to commingle funds among
6 separate legal entities that are managed by the
7 same manager or by anybody else.

8 Q How is it commingling if when you transfer funds
9 from one to the other you create an entry which
10 says this is a loan?

11 A Because the lending company has no interest in
12 lending money to another company that could have
13 been used to pay its own expenses or to distribute
14 to its owner from a timber distribution, for
15 example.

16 Q Well, certainly it does. It has the opportunity to
17 earn interest on the money. Isn't that correct?

18 A No interest was ever paid or accrued on any of
19 these inter company loans, nor was there any
20 documentation provided that any of the loans were
21 subject to documentation that would state an
22 interest payment.

23 Q Well, who was the net winner and who was the net
24 loser in this circular loaning? I mean, obviously,
25 some people were net debtors and some people were

1 net borrowers or net obligees. Who was owed money?

2 **A** There were loans that went back and forth amongst
3 all seven of these companies at different times.

4 **Q** Who is owed money now?

5 **A** SOLT II owes SOLT I \$18,596. SOLT V owes SOLT I
6 \$1850. SOLT I owes Silver Oak Energy \$40,710.
7 SOLT II, I said, owes SOLT I 18,596. It owes SOLT
8 IV \$470. It owes SOLT VII \$1,000. SOLT V, as I
9 said, owes SOLT I \$1850. It owes Silver Oak Energy
10 \$2200. Silver Oak Energy owes Silver Oak IV \$2700.
11 Owes Silver Oak VII \$2310. And it owes Silver Oak
12 III \$3. I think that's what's left of the inter
13 company loans after I was able to pay some of them
14 back when money did come in.

15 **Q** And what I'm getting at is, some are owed more than
16 others, and some are not owed at all. Isn't that
17 correct?

18 **A** Yes.

19 **Q** For example, you're not pessimistic about the
20 prospects of selling Silver Oak I's property in an
21 amount sufficient to repay the loan to Silver Oak
22 Energy, are you?

23 **A** No, not in an amount that would be sufficient to
24 pay the loan.

25 **Q** Correct. It's currently listed for what, \$4.5

1 million dollars?

2 A You can list a property for anything you want.

3 There's been absolutely no expressions of interest
4 at that level of price.

5 Q Well, who decided the price at which to list it,
6 sir?

7 A Well, Mr. McIntyre previously listed for, I think,
8 almost double that. And then in my tenure after
9 meeting with the executive committee we decided to
10 lower it to something somewhat more reasonable
11 knowing it was still a huge stretch to think it
12 would be sold for four-and-a-half million --

13 Q Would that be a circumlocution for your having made
14 that decision?

15 A No, it would not be. I do not make any decisions
16 on my own, even though I'm the manager, for these
17 companies when it comes to managing the properties
18 or the timber on the properties.

19 Q Okay.

20 A I appointed an executive committee made of people
21 that I never met before, except for Mr. Paris, that
22 were among the investors to take over the
23 management recommendations for how these properties
24 should be dealt with from a timber perspective and
25 from an ultimate disposition of the real estate

1 perspective.

2 Q Your investment in the second offering of Silver
3 Oak I, which is actually Silver Oak, is a little
4 less than \$100,000, isn't it?

5 A It was 99,000 and change, yes.

6 Q And there is no mortgage on the property, is there?

7 A There isn't now. There was even after my money
8 came in that was supposed to be used to pay off the
9 mortgage.

10 Q But there isn't any mortgage on the property?

11 A A year later the mortgage was -- a year-and-a-half
12 later the mortgage was paid off. And a lis pendens
13 that was against the property put on there by the
14 bank, which I was never told about, was ultimately
15 removed.

16 Q And consequently, if your current assessment,
17 reached with the input from committee and people,
18 none of whom wants to take any responsibility, even
19 if it's only, you know, 80 percent correct and you
20 get \$4 million, what's going to be your return on
21 your \$100,000 investment?

22 A Well, first of all, \$4 million would be a gross
23 exaggeration of what this market would bring for
24 that property, so I don't think that would be
25 realistic.

1 Q Well, then why list it at that price?

2 A To hope to get any kind of expressions of interest
3 to be able to work with a prospective buyer to
4 maybe negotiate a deal, number one. Number two,
5 what I also found out that Mr. McIntyre never told
6 me is that six months after my money went in in the
7 secondary offering, he signed a contract to sell
8 that entire tract of land for \$1,546,000 which fell
9 through. Net of -- less \$100,000 commission. So
10 we would have received, without my knowledge or
11 without the knowledge of the other participant in
12 the secondary offering, \$1.456 million dollars
13 against which a 650,000 plus in penalties would
14 have had to been paid against the mortgage leaving
15 less than \$700,000 to be distributed to the owners.
16 I own seven percent of the company, which would
17 have given me 50-something thousand dollars back
18 for my \$99,000 investment. And I never knew about
19 this until very recently.

20 Q And how did you find that out?

21 A How did I find out about the sale?

22 Q The supposed contract, yes.

23 A From Mr. Paris.

24 Q From who?

25 A Mr. Paris.

1 Q From Jim?

2 A Yes.

3 Q The gentleman that's been sitting back here?

4 A Yes.

5 Q And you really seriously believe that the entire
6 parcel was going to be sold for \$1.5 million
7 dollars?

8 A That's what I understand from what I was told, yes.

9 Q Are you naive?

10 A No, not at all.

11 Q He didn't tell you it was 20 acres?

12 A No, that was a separate thing that I was told, that
13 the parcel for 20 acres was being put up for
14 auction and subdivided into three subsections.

15 Q Have you ever seen the contract that you just
16 described?

17 A I have not seen a contract. I've seen an email
18 from Mr. McIntyre referencing the contract.

19 Q Okay. So what you've got is you've got your
20 understanding that Mr. Paris told you the entire
21 tract was going to be sold for \$1.5 million dollars
22 confirmed by some reference in an email from Mr.
23 McIntyre, but never ever seen the contract, right?

24 A Mr. McIntyre refuses to deliver any documents to
25 me.

1 Q I guess what you're saying is that it's likely,
2 , although, good Lord, it might be a close squeeze,
3 that y'all will be able to sell that property for
4 enough to repay that \$40,000 loan to Silver Oak
5 Energy, right?

6 A **Hopefully some day, yes.**

7 Q And the rest of the loans are just completely
8 negligible, aren't they? They're bookkeeping
9 entries that you could write a check for tomorrow
10 if you wanted to?

11 A **No, because he drained all the money out of all of
12 these accounts before he handed over anything to me
13 or even long before he handed over anything to me.
14 He left every one of these companies with virtually
15 no money in them. So there was no ability to pay
16 off any inter company loans.**

17 Q How many capital calls did you have in these
18 companies, Mr. Silver, in the last three years?
19 How many times did you go in your wallet to come up
20 with some money to keep them afloat?

21 A **There were no capital calls.**

22 Q Right. So why are you sitting here complaining
23 that they got no money?

24 A **He drained all the cash. What does one thing have
25 to do with the other?**

1 Q What cash was there?

2 A There was no cash left when -- there was cash
3 coming in from timber cuttings that was being
4 misdirected to his own accounts in loans to his own
5 company that have never been paid back and for
6 which interest has never been accrued or paid. And
7 money is diverted to other uses. Excess
8 distributions paid to Silver Oak Land Management
9 out of -- when distributions were made leaving no
10 money in the company. And providing a return from
11 timber investment income of about half of what it
12 could it been had monies not been misdirected.

13 Q In addition to the payment in SOLT VII that you
14 received from Dr. Vitek in November, did you, in
15 fact, receive a payment of \$23,000 against an
16 outstanding loan to Silver Oak Land Management?

17 A As I already testified, we received two checks from
18 Mr. McIntyre. I was not aware that they were from
19 Dr. Vitek. One for Silver Oak VII for 11,800 plus
20 some interest and one for Silver Oak IV for \$23,796
21 plus some interest.

22 Q And does Silver Oak IV owe any loans to any of
23 these other entities?

24 A I believe not because we had money that did come in
25 from the repayment of those loans to Silver Oak

1 Land Management, and I was able to pay off whatever
2 inter company loans existed on Silver Oak IV on the
3 payable side.

4 Q So neither IV nor VII has any outstanding loans?

5 A They don't have any outstanding loans payable.

6 They have outstanding loans receivable.

7 Q And the receivables are from which entities?

8 A Silver Oak IV is owed money by Silver Oak II.

9 Silver Oak IV is owed money by Silver Oak Energy.

10 Silver Oak VII is owed money by Silver Oak II. And

11 Silver Oak VII is owed money by Silver Oak Energy.

12 Q Is there currently a tree thinning operation

13 ongoing on Silver Oak IV?

14 A Yes.

15

16 MR. CRAPPS: Renew my objection. We're still beyond

17

18 THE COURT: I'll sustain now. Let's keep it to the

19 period of Mr. McIntyre's management.

20 MR. MATHISON: I'm trying to figure out if we

21 couldn't liquidate these debts about which he

22 is so concerned, Your Honor.

23

24 Q Going back to Silver Oak I, do you know whether a

25 portion of Silver Oak I was sold before you entered

1 it under Mr. McIntyre's leadership raising \$425,000
2 in cash for the initial investors?

3 A I do now. When I got the books and records, yes.

4 About seven or eight or nine months after the
5 formation of Silver Oak I, 190 of the 350 acres
6 were sold for about \$420,000 less commissions and
7 closing costs netting about 375, I think it was.
8 But something in that range, yes.

9 Q Or roughly three-quarters of the total capital
10 raised on the initial purchase for 485,000?

11 A Yes, long before I was involved in Silver Oak I,
12 yes.

13 Q So with the exception of the people that came in at
14 the second offering, everybody else has recaptured
15 three-quarters of their initial equity right now?

16 A Actually, that's not true because there were many
17 subsequent capital investments made by the initial
18 investors in SOLT I to help bail out the defaulted
19 loan or to make payments against the loan that Mr.
20 McIntyre had taken out. So that the amount of
21 capital contributed was far in excess of the cash
22 payout that was made to those same people from the
23 initial sale of the land, number one. Number two,
24 Mr. McIntyre, who put only \$24,000 into Silver Oak
25 I, eight months later received a check for \$87,500

1 for his 25 percent share of Silver Oak I, which was
2 legitimate and I'm sure the owners had no problem
3 with that. He was entitled to that.

4 Q Do you maintain that Silver Oak I is owed money by
5 Mr. McIntyre or by Silver Oak Land Management for
6 restaurant expenses?

7 A I believe that Silver Oak I is owed money by Mr.
8 McIntyre and Silver Oak Land Management for many
9 things, including excessive amounts so that even if
10 one could argue, which I would argue against, that
11 any of the restaurant expenses were legitimate
12 expenses of the company as opposed to of the
13 management which should have incurred those
14 expenses, then yes, that would be one part of
15 what's owed.

16 Q Do you believe that Silver Oak Land Management is
17 somehow implicated in owing money to SOLT I for
18 what would be called personal expenses?

19 A Either Jack McIntyre or Silver Oak Land Management
20 would owe money to Silver Oak I for what I call
21 personal expenses.

22 Q Which one is the manager of Silver Oak I?

23 A Jack McIntyre is the manager of Silver Oak I.

24 Q So management company wouldn't owe any money on
25 that, right?

1 A I don't know how the personal expenses were used,
2 but loans clearly went to Silver Oak Land
3 Management. Personal expenses must have gone to
4 Mr. McIntyre himself, yes.

5 Q But there are no loans that currently unclear in
6 Silver Oak I, are there? Just Silver Oak Land
7 Management.

8 A Silver Oak Land Management currently owes Silver
9 Oak I \$60,000 in loans it took out in 2011. As
10 they were desperate to try to pay off a defaulted
11 mortgage, Mr. McIntyre withdrew \$60,000 of money
12 that had been put in by subsequent investors as
13 loans to Silver Oak Land Management which have
14 never been repaid.

15 Q What is the current status of Silver Oak Land Trust
16 II in terms of debt that you believe is owed either
17 by Silver Oak Land Management or Mr. McIntyre?

18 A I believe that, including interest that I've
19 accrued through May 31st, \$43,775.

20 Q And what rate of interest are you accruing it at?

21 A I was incurring interest at five-and-a-quarter
22 percent through I think it was January 31. I had
23 provided notice to Mr. McIntyre that if he did not
24 pay what he owed, which I had sent him the
25 statement for, that subsequent to that date the

1 rate would go to a higher rate, which I found out
2 from an attorney that in South Carolina there's a
3 rate called the prejudgement rate of eight-and-
4 three-quarters percent. So I've been using eight-
5 and-three-quarters percent for the accruals
6 subsequent to January 31.

7 Q And what are the components of the total principal
8 that you believe is owed, excluding the interest?

9 A Excluding the interest, five-and-a-half thousand of
10 loans to Silver Oak Land Management which, by the
11 way, has absolutely no contractual relationship
12 with SOLT II at all. \$3550 of what I've labeled
13 improper consulting fees to Jack McIntyre or Silver
14 Oak Land Management. And I believe 300 went to
15 McIntyre and 3,250 went to Silver Oak Land
16 Management. And approximately \$28,000 worth of
17 what I labeled either personal expenses or expenses
18 that should have been borne by the manager from his
19 compensation by the manager.

20 Q Forgive me, but I don't understand the latter.
21 Expenses that should have been borne by the manager
22 as part of his compensation? Explain what you mean
23 by that?

24 A That was the same thing I reported before we broke
25 for lunch. That your questioning of me about what

1 are legitimate business expenses of an entity and
2 my response was that in the investment management
3 world when a manager is hired to manage assets for
4 a passive company, and that passive company pays
5 the manager a fee to perform those managerial
6 duties and services, the expenses that are incurred
7 by the manager in fulfillment of those duties are
8 borne by the manager out of its compensation. And
9 that is separate and distinct from other expenses
10 which are legitimate expenses of the underlying
11 client, the entity, such as property taxes and
12 legal fees and CPA fees that are the due
13 liabilities of the legal entity itself.

14 Q And which of these SOLT entities, if any, is a
15 management fee specified?

16 A In which of the entities? Silver Oak II and Silver
17 Oak III have a separate cash management fee
18 provided for for Mr. McIntyre.

19 Q So, you believe taking ordinary and necessary
20 business expenses in II and III would be
21 inappropriate because he's receiving a percentage
22 fee?

23 A I believe it's inappropriate in all of the
24 companies. He got paid a fee in one form or
25 another from all of the companies.

1 Q Oh, I see. But two of the agreements specify a
2 fee, they call it a management fee, don't they? In
3 paragraph 6.3 --

4 A Yes.

5 Q You and I know what the agreement looks like, don't
6 we? It's in paragraph 6.3.

7 A Yes, it is.

8 Q But the rest don't, do they?

9 A They don't have a management fee provided in
10 section six of the agreement at all. That's
11 correct.

12 Q Instead they allocate equity, don't they?

13 A In exchange for management services, yes.

14 Q Well, does it say that? Not all of them do, do
15 they?

16 A Well, some of them do. I don't remember which ones
17 do and which ones don't. But it was verbally told
18 to me by Mr. McIntyre that his being given the 20
19 percent was for his managerial services.

20 Q That was verbally told to you?

21 A Yes, it was. That was the whole basis of my
22 investment is what is this all about, how does it
23 work. And he explained that he gets 20 percent off
24 the top for the money that goes in and that's his
25 management compensation for the services he's

1 providing.

2 Q He explained that to you?

3 A Yes, he did.

4 Q Then he can explain it to us later on. SOLT III,
5 you've sold that property, isn't that right?

6 A I guess I did.

7 Q Was it you that sold it or was it the committee?

8 A The executive committee researched the property,
9 got estimates of value from two different
10 independent agents and made a recommendation to me.
11 And I was, in that case, strongly encouraged by the
12 three majority owners of that property to sell it
13 as quickly as possible, the piece of property is a
14 piece of crap, literally. It had been clear cut by
15 Mr. McIntyre without their knowledge. It was
16 decimated in value and let's just get rid of it for
17 anything we can get for it.

18 Q And what did you get for it?

19 A After getting estimates --

20

21 MR. CRAPPS: Your Honor, I feel we're veering back
22 off track here. We're back into the
23 management of Mr. Silver as-opposed to the
24 management of Mr. McIntyre.

25 MR. MATHISON: It's the investment component that he

1 testified to. I'm entitled to ask him that.

2 THE COURT: I'll let him answer the question. Let's
3 try to . . .

4

5 A There were estimates received that ranged from 800.
6 to \$1,000 an acre from an independent agent. We
7 had two of them. And we actually sold it for \$1400
8 an acre.

9 Q Meaning that you sold it for how much money?

10 A I believe it's 70-point-something acres, so it's
11 about \$98,000 gross.

12 Q And did you sustain a loss based on the total
13 amount of capital that had been raised for SOLT
14 III?

15 A There was never any capital raised for SOLT III.

16 Q That was one that was essentially capitalized by
17 preexisting interest in I?

18 A SOLT I was the sole original owner of SOLT III. It
19 put up \$191,000 and change to make the purchase of
20 the land from money SOLT I drew down from its line
21 of credit, yes. And for the first several years of
22 SOLT III years existence it's sole owner was SOLT
23 I.

24 Q And then what happened is the individual owners in
25 SOLT I were parsed out and became the owners of

1 III, isn't that . . . ?

2 A In 2010 Mr. McIntyre recorded entries on the books
3 to show that SOLT I was, in effect, I guess you'd
4 call it distributing out to the five original
5 owners of SOLT I their pro rate ownership interest
6 at the same percentage as they own SOLT I so that
7 they now individually would be the five owners of
8 SOLT III.

9 Q Was there a vote taken on the sale of the property
10 in SOLT III?

11

12 MR. CRAPPS: Mr. Hunter, this is still beyond the
13 management of Mr. McIntyre. We're still
14 asking questions on what Mr. Silver has done
15 long after Mr. McIntyre had left the company.

16 THE COURT: I'll sustain the objection. And we need
17 to try to stick to Mr. McIntyre's management.

18

19 Q Did you distribute the money you received for SOLT
20 III?

21

22 MR. CRAPPS: We have moved on. I object.

23 MR. MATHISON: Your Honor, this is the same
24 situation as SOLT VII. He's got money that's
25 owed to Mr. McIntyre and he hasn't paid him.

1 THE COURT: I sustain the objection. It's not for
2 this case.

3
4 Q Is any money still owed to SOLT III by either
5 Silver Oak Land Management or Jack McIntyre?

6 A There are loans that were taken by Silver Oak Land
7 Management from SOLT III and a minor amount of
8 consulting fees that were taken by Silver Oak Land
9 Management by SOLT III that have never been repaid
10 by Mr. McIntyre.

11 Q What amount is that?

12 A Those amounts are \$13,550 in loans and \$500 worth
13 of consulting fees.

14 Q And based on the price you received, wouldn't Mr.
15 McIntyre's interest have been worth \$19,000?

16 A No.

17 Q What would it have been worth?

18 A Whatever the net amount was after paying off some
19 inter company payables. So we sold the property
20 for 98,000 gross. There were commissions to be
21 paid and then there was a substantial amount of
22 inter company loans that were still owed by SOLT
23 III to other companies that had to be satisfied.

24 Q Was any of the money that would be due to Mr.
25 McIntyre used to discharge the debts that you

1 believe were owed by Mr. McIntyre or . . .

2

3 MR. MATHISON: I object to the question. We somehow
4 circumvented back to the resulting sale that
5 occurred when Mr. Silver was manager.

6 THE COURT: I sustain.

7 MR. MATHISON: He's testified that there are debts
8 outstanding. I'm trying to find out whether
9 there really are debts. He's got money that
10 he either could offset against them or hold
11 against the possibility that you would or
12 someone would rule that they should be offset.

13 MR. CRAPPS: What Mr. Silver has done to resolve the
14 issues caused by Mr. McIntyre we feel is
15 irrelevant to this case.

16 THE COURT: I'm going to sustain the objection.

17 MR. MATHISON: May it please the court. The two are
18 inextricably related. There either is a debt
19 owed and there is a fund from which the debt
20 to be paid or the debt has been paid with the
21 fund that was created by the sale. It can't
22 be both. And what we're doing is we're just
23 leaving it in limbo.

24 MR. CRAPPS: The basis of this hearing here is a
25 securities complaint. It's a securities case.

1 Securities were sold. There are certain
2 pretenses that other things happened under the
3 management of Mr. McIntyre and there is no
4 relevance to Mr. Silver's management of these
5 entities after that as resolution of issues to
6 the case at hand.

7 MR. MATHISON: What's relevant is whether there's
8 damage.

9 MR. CRAPPS: We're not here to prove damages. We're
10 here to prove a securities violation.

11 THE COURT: I sustain the objection.

12

13 Q Mr. Silver, I believe you testified that in your
14 first investment you didn't receive the agreement
15 until after you made your initial payment. Is that
16 correct?

17 A That's correct for all of the companies. And I
18 don't think I ever did get an agreement for SOLT I
19 as part of the secondary offering. I can't find
20 any evidence that I have gotten it. But on the
21 other ones that I invested in, I did eventually get
22 a spiral bound binder, as I testified, that had a
23 number of legal documents in it, none of which I
24 read to my own shame well after the fact of the
25 time that the investment was made. All because I

1 **trusted my good friend Jack.**

2 **Q** Well, let's analyze that. What was your first
3 purchase in?

4 **A** **Silver Oak IV.**

5 **Q** And how is that held? Is it held in your name
6 individually?

7 **A** **I think IV is held in my name individually, yes.**

8 **Q** It's not held in the name of Pensco Trust?

9 **A** **I think IV I did myself. I think I did V and VII**
10 **and later the secondary offering in I in the name**
11 **of a Pensco IRA for me. But I believe IV and the**
12 **energy company were what I'll call taxable money.**

13 **Q** And is it your testimony that you did not ever
14 receive the agreement for IV or which one did you
15 ...

16 **A** **I never got the agreement for I, I believe, as part**
17 **of a secondary offering. I did get the binders for**
18 **IV, V, and VII subsequent to my investment in it.**
19 **And I don't remember a similar binder for Energy,**
20 **but there may have been one.**

21 **Q** After you got the one for IV did you read it?

22 **A** **No, I did not.**

23 **Q** Why?

24 **A** **I had no interest in reading it. I didn't want to**
25 **be involved in these investments. I was happily**

1 enjoying retirement, playing tennis and building my
2, model railroad. And I was trusting my good friend
3 Jack to just give me an opportunity to invest in
4 what sounded like a safe and good diversification
5 away from the stock market. And I didn't want to
6 be involved. It was just all legal documents that
7 I couldn't care less about reading at the time.
8 Again, I admit my shame in not being smart enough
9 to read them. But I trusted my friend.

10 Q I see. So the next time you invested you hadn't
11 read the agreement that was sent to you the first
12 time?

13 A That's correct.

14 Q And you didn't read the agreement the next time
15 either?

16 A No, it was just more of the same, legal documents.

17 Q Just legal documents?

18 A And each time I was given a blank signature page
19 and asked to sign it by Mr. McIntyre, my friend, at
20 some kind of a social event without the document
21 attached.

22 Q Well, I guess, the question I have is if the
23 document had been attached and it was just another
24 legal document, would you have read it?

25 A Probably not then either, especially if I was at a

1 social event. If he had the whole document there
2 and he folded over just the signature page and
3 said, here, I need you to sign it, I probably would
4 have done it.

5 Q Well, isn't it a possibility that some of the things
6 about what you're complaining are authorized by
7 language in the agreement that you never read?

8 A I do not believe having read them now that they are
9 authorized, no.

10 Q Can you find a provision in any of the agreements
11 that says what you said, which is that whenever
12 there's a management fee provided for, all the
13 expenses are considered part of the fee? Does that
14 exist in any of those agreements?

15 A There's no language one way or the other, but I
16 never said all the expenses. There's a clear
17 difference between expenses associated with the
18 legal entity itself, which is the LLC, such as
19 property taxes and CPA fees and legal fees and
20 insurance and any other kind of tax and expenses
21 incurred by the manager to fulfil the duties that
22 he's been hired and compensated to perform.

23 Q But that clear difference does not exist in any of
24 the operating agreements that you didn't read, does
25 it?

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

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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 TWO**

Cory E. Manning
Michael J. Anzelmo
Kristen E. Horne
NELSON MULLINS RILEY &
SCARBOROUGH LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, South Carolina 29201
803.799.200

Robert V. Mathison, Jr.
Mathison & Mathison
Post Office Box 5271
Hilton Head Island, South Carolina 29938
843.785.6503

Attorneys for Appellants

Alan Wilson
Securities Commissioner

Tracy A. Meyers
Deputy Securities Commissioner

Officer of the Attorney General
State of South Carolina
Securities Division
Post Office Box 11549
Columbia, SC 29211
803.734.4172

Marilyn E. Gartley, Esquire
Assistant Attorney General

Attorneys for Respondent

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Certificate of Counsel

1 A There's no reference to expenses, I believe, in any
2 form in the operating agreements.

3 Q So where is this definition that you're giving me?
4 Where does it come from? Does it come from the
5 stratosphere? Does it come from your experience?
6 Where does it come from?

7 A Partly and mostly or mainly from my experience in
8 the investment management world, yes.

9 Q So we're taking your word for whether that's . . .

10 A Oh, you can verify that with anybody you want to in
11 the investment management world.

12 Q I see.

13 A Please do, in fact.

14 Q The investment management world?

15 A And that's what these products are. They're
16 investment products.

17 Q Do people in the investment management world
18 ordinarily read the documents that they sign?

19 A Usually yes, because you're dealing with arm's
20 length transactions and not a close friend just
21 saying let's invest, do you want to buy some of
22 these shares that I'm offering you in a company I'm
23 forming to buy some timberland.

24 Q You hold two degrees, don't you?

25 A I do.

1 Q Doesn't the law presuppose that you'll read your
2 agreements?

3 A The law presuppose?

4 Q Yes.

5 A I'm not a lawyer. I don't know what the law
6 presupposes.

7 Q So you're sitting here saying that you're basically
8 entitled to be treated as an innocent babe in the
9 woods because you didn't read your agreement.

10 A I'm sitting here saying that I did not read the
11 agreements to my own shame, that I trusted my
12 friend based on what he told me and what was in the
13 offering documents only.

14 Q So, if I'm correct and there perhaps is something
15 in one of these agreements that authorizes some of
16 the conduct that you find nefarious, you
17 unwittingly participated in your own undoing by not
18 reading the documents, didn't you?

19 A I disagree that there's anything in the language in
20 those agreement that would have provided him the
21 right to take our money in improper ways, what I
22 call improper ways.

23 Q Before you started discussing this matter with the
24 attorney general's office had you read all the
25 agreements?

1 **A** I don't remember when I had my first conversation
2 with anyone in the attorney general's office. But
3 I think that after the initial issues were raised
4 and I got involved in doing some investigative
5 work, I believe I then pulled out the operating
6 agreements right away and read one or two of them,
7 yes.

8 **Q** And, again, was that before or after you had
9 interaction with the attorney general's office?

10 **A** I'm guessing it was before. I don't remember the
11 sequence.

12 **Q** Do you remember when you had your first interaction
13 with the attorney general's office?

14 **A** I have no recollection about it.

15 **Q** None at all?

16 **A** No recollection as to dates, no.

17 **Q** I see.

18 **A** It was a little over a year probably.

19 **Q** Probably. But you don't have that date written
20 down in your book there?

21 **A** No, this is my accounting analysis. This isn't a
22 day book.

23 **Q** With whom did you interact, or do you not remember
24 that either?

25 **A** I interacted, I believe, only with Sandra Matthews.

1 I forget if it was anybody else that -- no, I don't
2 think there was anybody else that I ever interacted
3 with at the attorney general's office.

4 Q Well, I'm certain at some juncture you had to speak
5 to my colleague here, Mr. Crapps, didn't you?

6 A Oh, only after -- I never heard of Mr. Crapps until
7 after the order was issued.

8 Q Okay. I think I understood you to say that you
9 didn't really rely on the eleven percent figure
10 that was quoted. Is that correct?

11 A I read it out of interest, but again, having had
12 experience in the investment world, I know that any
13 quote of previous rates of return in any investment
14 product cannot be relied upon for an expected
15 future rate of return. It's certainly not a
16 guarantee of a rate of return.

17 Q Do you know whether the eleven percent was a rate
18 of return on investment or was a rate of growth of
19 the timber?

20 A I believe it was referred to as a rate of return on
21 the investment. I don't know how it was quoted in
22 the offering document.

23 Q But you didn't rely on it under any set of
24 circumstances?

25 A Not on a precise number, no. I was told that, you

1 know, that's the historical number. I would have
2 been happy with even a five or six percent average
3 annual rate of return on the current return plus a
4 payoff someday of the disposition of the property.
5 My entire return over five years in Silver Oak IV,
6 not average annual, entire return in terms of
7 distributions I received was about seven percent
8 which works out to an average annual of one point
9 something or two point something. And that's the
10 highest of all the Silver Oaks.

11 Q Are you telling me you that invested because you
12 expected cash flow out of the timber companies?

13 A That was one part of the investment, yes.

14 Q You know how long it takes a stand of trees to
15 grow?

16 A No, I do not. I don't know anything about the
17 timber business.

18 Q Do you know whether eighteen to twenty years is the
19 average or not?

20 A I do not know that one way or the other.

21 Q Do you know how many times you can timber a typical
22 Southern Yellow Pine forest in a period of twenty
23 years?

24 A No. You can ask me a thousand questions about the
25 timber industry and my answer is going to be I

1 don't know.

2 Q Then why would you expect any cash flow?

3 A Based on how the -- my knowledge of trees is
4 irrelevant to an investment in timber partnerships
5 that I were told provide a return from the cutting
6 of timber. And the fact that I didn't rely on an
7 exact rate of eleven percent is irrelevant. I
8 expected a return from the cutting of timber.
9 That's how the product was described to me by my
10 good friend Jack McIntyre.

11 Q Are the SOLT properties that have not been sold,
12 that is I, II, IV, V, are those on the market
13 presently?

14 A I is listed --

15

16 MR. CRAPPS: Excuse me. We're back on information
17 under Mr. Silver now.

18 THE COURT: I sustain. We need to . . .

19 MR. MATHISON: Again, he testified there is an
20 investment component, a capital gain as part
21 and parcel of what he bought. I'm trying to
22 find out what it is.

23 MR. CRAPPS: No representation was made in
24 connection with the offer of the security,
25 and the management of Mr. Silver has no basis.

1 MR. MATHISON: I'm not asking him anything about the
2 management. He said whether or not they're
3 listed.

4 MR. CRAPPS: Currently.

5 MR. MATHISON: He's not taking credit for managing
6 anything. He's going to a committee and
7 getting them to approve them.

8 MR. CRAPPS: Mr. McIntyre ceased being manager of
9 these over a year ago or about a year ago now.
10 So whether they're currently listed or not is
11 beyond the scope of this hearing.

12 THE COURT: I sustain.

13

14 Q Well, let's put it this way. You can't tell what
15 your return on investment is until you find out
16 what you can sell the property for, can you?

17 A That would be true.

18 Q Yes. So without knowing how much it's listed for,
19 we have no way of knowing how much you could sell
20 it for and how much your return would be, can we?

21

22 MR. CRAPPS: Again, I mean, Mr. Silver's remedial
23 measures since his management of these
24 companies is, regardless of the representation
25 made in connection with the sale of the

1 security and the management of Mr. McIntyre.,

2 THE COURT: I sustain the objection.

3 MR. MATHISON: If it sold at 100 percent markup,
4 then all of these representations would not
5 only be true but would be welcome. How could
6 that possibly be irrelevant? It's only
7 irrelevant because they want it to be. If all
8 of these are golden, they've got no complaint.
9 They're sitting here complaining about
10 literally the furniture moving around on the
11 Titanic.

12 MR. CRAPPS: Your Honor, we're proving that
13 securities fraud that occurred on the offer
14 and sale of the security. Certain
15 representations were made. Mr. McIntyre's
16 management of the companies was contrary to
17 that, and that's what we're here to prove.
18 We're not here to prove anything that Mr.
19 Silver has done to remediate Mr. McIntyre's --

20 MR. MATHISON: I'm not talking about Mr. Silver in
21 the context of remediation. I'm talking about
22 what the value of the investment is currently.

23 MR. CRAPPS: Again, it's irrelevant to the evidence
24 of violation.

25 THE COURT: I sustain the objection.

1 MR. MATHISON: Well, then how would be possibly know
2 what the value of the security is? There is
3 no evidence in the record as to what it was on,
4 the day of the alleged misrepresentation.
5 None.

6 MR. CRAPPS: We're not proving damages, a gain or a
7 loss on the securities. It's irrelevant to
8 the fraud that occurred at the outset proven
9 by Mr. McIntyre's management.

10 THE COURT: I sustain the objection.

11 MR. CRAPPS: Thank you.

12 MR. MATHISON: Forgive me, but I'm still -- it's
13 irrelevant. If that's the case, exactly what
14 is the case about?

15 MR. CRAPPS: Our case is laid out clearly in the
16 cease and desist order.

17 MR. MATHISON: There are fourteen pages of what I
18 would consider morbus bologna in that order.
19 You could find anything in it if you looked
20 hard enough. I'm asking --

21 MR. CRAPPS: Can we move on? The objection has been
22 sustained.

23 THE COURT: We do -- I've sustained the objection.
24 We do need to move on.

25

1 Q I believe you testified that you expected to be a
2 passive investor in your Silver Oak Land Trust
3 investments, that is in the investments that were
4 made in the companies that held timber. Is that
5 correct?

6 A As well as the energy company, yes.

7 Q When did you change your expectations, become
8 something other than just a passive investor in
9 Silver Oak Energy, LLC?

10 A I never really changed my expectations. The one I
11 mentioned under direct testimony, I think, that at
12 one point knowing as part of conversations we were
13 having about the need to raise capital to make the
14 business into an operating business from a startup
15 business, that having met someone through a tennis
16 match that I knew was in the private equity
17 business, I asked Jack if would be worthwhile if I
18 contact that person, which I did at Jack's
19 approval. And basically that was my only active
20 role ever, if you want to call it. I don't call
21 that an active role. I was just trying to find a
22 source for revenue once. Source of capital, I
23 should say.

24 Q Did you, Mr. Silver, authorize the use of your name
25 and credentials as part of the business plan

1 updated on December 10, 2010 that was disseminated
2 to potential customers and investors?

3 A We talked about giving each of us titles of some
4 sort so that when and if we could raise capital and
5 become an operating company, we could, if
6 necessary, have official roles in the company. So
7 I said I believe I'd serve as the initial chief
8 financial officer until we get the company really
9 up going at which point I would want to retire
10 again.

11 Q So you were going to be the chief financial officer
12 and --

13 A Only subject to the raising of capital to make it
14 an operating company.

15 Q And in the business plan, which has been admitted
16 as Respondent's Exhibit No. 5, that's you which is
17 described on page nine, Richard A. Silver. Is that
18 correct?

19 A Yep.

20 Q And you authorized that?

21 A Jack ran it by me. I penned in some details for
22 him and I said, okay, go ahead and use it. And I
23 guess I wasn't being called the chief financial
24 officer, just a financial advisor.

25 Q And who was it that you were attempting to raise

1 money with?

2 A Who was the party?

3 Q Yes.

4 A I don't even remember his name. It was somebody
5 who visited Daufuskie Island that I had a tennis
6 match with who I found out from conversation was in
7 the private equity business. And I think I had had
8 his phone number from scheduling the tennis match
9 and reached out to him when Jack said, yeah, go
10 ahead and do it. That's my recollection of how
11 that happened. I'm trying to think of a name.

12 Q The company was trying to raise between ten and \$20
13 million. Is that correct?

14 A We talked for a long time about 20 million. I
15 think at some point we may have lowered our
16 expectations that we would have settled for 10
17 million or something along those lines.

18 Q And that's your email that I just handed you to Mr.
19 McIntyre discussing that?

20 A I believe. Yes, this is my email, yeah. It refers
21 to a range of ten to 20 million, yes.

22 Q And you were working on getting that capital?

23 A I was not working on anything. I reached out to
24 one party that I had met that I thought might be
25 able to help us. He expressed no interest in it,

1 and that was the extent my involvement.

2 Q And this is a party whose name you can't recall?

3 A I think his name -- Now I'm thinking about it. It
4 was a tennis player. I think his last name might
5 have been Rizzi, something like that.

6 Q And did you ascertain ways that new investors could
7 be taken in by diluting the participations of the
8 existing investors? Was that one of the things
9 that you were charged with doing?

10 A Charged with doing? I don't recall being charged
11 with doing anything. I think we obviously said if
12 we bring in new capital it will dilute our
13 interest. It's a fact. You can't give a new owner
14 part of a company without it still adding to 100
15 percent ownership interest.

16 Q The email that I showed you, did you send that to
17 Mr. McIntyre?

18 A Is this the same one you just sent me?

19 Q Yes, sir.

20 A I believe it is, yes.

21 Q Did he respond as the email below it indicates?

22 A It looks like he did.

23

24 MR. MATHISON: I move that in evidence.

25

1 Q Did you --

2

3 THE COURT: Do you have objection?

4 MR. CRAPPS: What exactly is that email there? The
5 one he wrote or both emails?

6 MR. MATHISON: Both. He said that he received it
7 from Jack.

8

9 A I said it look like one I received, yes.

10

11 MR. CRAPPS: He can admit it for his knowledge of
12 it, not for the truth of the lower half.

13 THE COURT: Right.

14 MR. CRAPPS: We have no objection to it.

15 THE COURT: We admit it as Respondent's Exhibit No.
16 16.

17

18 (Whereupon, Respondents' Exhibit No. 16
19 was marked and received into evidence.)

20

21 Q Did you take it upon yourself to come up with a
22 plan for readjusting the equity in Silver Oak
23 Energy in order to take in these new investors?

24 A I don't recall a plan. But, again, it's simple
25 arithmetic, so I might have worked out something on

1 an Excel spreadsheet. I have no recollection of
2 doing that, but I might have.

3 Q I'm sending you an email that you prepared on
4 Wednesday, January 12, 2011 and ask if you can
5 identify for me, please.

6 A It looks like one I wrote, yes.

7 Q Would any of that arithmetical calculation or
8 recalculation had been necessary unless you raised
9 additional capital and took in new investors?

10 A No. I think this whole thing was based on what
11 would happen if we took in new investors. Why
12 would we need to adjust the capital without the --
13 why would we need to adjust ownership percentages
14 unless we had capital come in?

15 Q Okay. So you were not only working in getting the
16 new capital, you were also --

17 A I was not working on anything. You can keep
18 putting words in other people's mouths, but I was
19 not working on anything. I made one reach out to
20 one person I had met at a tennis match because I
21 knew he was in the private equity business and
22 asked Jack if he thought it would be worth our
23 while for me to contact him to see if he had any
24 interest. That was the only -- I wasn't working on
25 anything. So you can keep asking the same question

1 and try to put words in my mouth the same way. I'm
2 going to answer it the same way every time.

3 Q The words on the page, sir, while they didn't come
4 out of your mouth, did they come off your fingers?

5 A They did.

6 Q And if you weren't interested in this company in
7 some kind of management capacity, why would you
8 ever come up with this plan?

9 A We needed to raise capital to make the company
10 work. I was doing whatever I could in just helping
11 Jack. Jack didn't know how to work out the
12 formulas for what would happen when capital came
13 in.

14

15 MR. MATHISON: Objection?

16 MR. CRAPPS: Are you admitting it?

17 MR. MATHISON: I'm offering it, yes.

18 MR. MATHISON: Again, there's a second email there.

19 We have no objection to the one Mr. Silver has
20 claimed to have written. If you're going to
21 admit the lower half for Mr. Silver's notice
22 of it, but not for any truth asserted therein.

23 MR. MATHISON: The second email starts out "Happy
24 New Year MXG Growers." I don't think we'll
25 need that.

1 THE COURT: So we're admitting the first email only?

2 MR. MATHISON: And we're going to leave out the
3 felicitations for the MXG Growers.

4 THE COURT: Mark this one as Respondents' Exhibit
5 No. 17.

6

7 (Whereupon, Respondents' Exhibit No. 17
8 was marked and received into evidence.)

9

10 THE COURT: And do you want to physically redact it?

11 MR. MATHISON: If Jordan does.

12 THE COURT: Do you want to do that, Jordan?

13 MR. MATHISON: It's innocuous. I'm not trying to
14 use it is what I'm saying.

15 MR. CRAPPS: Parkin, we would agree to keep it
16 separate.

17

18 Q You didn't make any of the trips that Mr. Finn and
19 Mr. Mone did with the objective of finding and
20 executing off-take agreements, did you?

21 A No, I did not. I don't even think I knew about
22 them until after the fact, nor would I have gone
23 even if I had been asked to go.

24 Q How did you first learn that Mr. Finn had a problem
25 with Mr. McIntyre?

1 A I believe, as I testified under direct, I received
2 a phone call on August 24, 2012 from Mr. Finn.

3 Q And he said what?

4 A I can't repeat the conversation. It was a long
5 one. But he explained to me the issue with the
6 \$25,000 loan that he had made under what he
7 described as false pretenses based on his research
8 after the fact and the fact that he had received
9 multiple explanations over time as to how that
10 money was actually used. Each of which, after
11 doing additional research, he determined was a
12 fabrication of the truth.

13 Q And do you know what any of those
14 misrepresentations were?

15 A The only one I recall -- I recall two of them. I
16 believe he said the first, at the time of the
17 initial request, it was to clean up the farm or do
18 some work up at the farm to make it more
19 presentable or to clean it up or needed weeding. I
20 don't even remember the details. And then I
21 believe he was later told that after another
22 conversation with Jack that Jack had told him that
23 Jack would match the \$25,000 because they had an
24 opportunity to buy all of the remaining plants at
25 Speedling in Florida where they had previously

1 bought some plants in 2010 that were legitimate.
2 And that it would take \$50,000 to do it. That was
3 my understanding of what Paul explained to me at
4 the time.

5 Q Did he tell you why he thought that was false or
6 deceptive?

7 A He told me that --

8

9 MR. CRAPPS: Excuse me, Paul was just here. I guess
10 I object to continuing the questioning of Mr.
11 Silver as to what Paul just testified to
12 earlier today.

13 MR. MATHISON: Actually, he didn't. He didn't
14 testify to it except when I asked him. He
15 simply testified to something that he hadn't
16 documented in any of his email beforehand,
17 which is what Mr. Crapps asked him about. I'm
18 the one that asked him about Speedling.

19 MR. CRAPPS: Well, even more reason not to have to
20 ask Mr. Silver to try to determine Mr. Finn's
21 understanding of the situation.

22 THE COURT: Well, I'll let it in for Mr. Silver's
23 knowledge that Mr. Finn had problems with Mr.
24 McIntyre for notice, but not to the truth
25 that's asserted in the statements.

1

2 A Repeat the question, please.

3 Q You answered the last question I had. The next
4 question is, do you know whether Mr. Short made a
5 trip in an effort to locate the rhizomes that they
6 believed to have been purchased and planted?

7 A I think I remember Dave Short saying something at
8 some point in time about having gone up to the farm
9 to see if there were rhizomes planted there.

10 Q This is the farm in Clio? Is that right?

11 A Yes.

12 Q And do you know whether there were in fact rhizomes
13 planted there?

14 A Well, the farm had already been planted with some
15 rhizomes. I think he came back and reported that
16 there were no new rhizomes planted there, which
17 Paul had been told there were from these plants
18 that had been bought in Florida, based on what Paul
19 told me. And, again, you seem to be very
20 interested in hearsay evidence when it benefits you
21 but object quickly to hearsay evidence when it
22 doesn't.

23 Q I can't do anything other than that at this point,
24 Mr. Silver, because so much has been let in. I
25 pretty much have to do it myself. I mean, if we

1 were both to disarm, I'd be happy to. It's a
2 little late for that now.

3

4 THE COURT: Let's stick to questions and answers.

5

6 Q I think you also did a little moaning about not
7 having access to financial information. Is that
8 right? Is that correct?

9 A I don't moan. What was your specific question?

10 Q You said you didn't have any access to financial
11 information. Is that right?

12 A Are you talking about after I took over as manager
13 and requested documentation?

14 Q No, sir. I'm talking about when you were a passive
15 investor in the two SOLT or the three SOLT entities
16 and you were an active participant in Silver Oak
17 Energy, during that period.

18 A I was never an active participant Silver Oak
19 Energy. I made one reach out for capital raising
20 events. And you keep putting words in other
21 people's mouths. And, yes, I did -- I might have
22 said, and would say again, that I never got any
23 financial information from any of these companies
24 other than some proformas I think Jack did run from
25 time to time on the energy business as to how it

1 would financially if we were able to sign off-take
2 agreements.

3 Q And you got Kls, too, didn't you?

4 A Kls are useless pieces of information for
5 understanding the financial workings of an entity.

6 Q But they're good signposts to point you in the
7 direction of where you can find that financial
8 information, aren't they?

9 A No, they're not, actually.

10 Q Oh, because, you know, Carey & Company are
11 certified public accountants. You wouldn't want to
12 go there --

13 A Carey & Company never did an audit of the books.
14 They were not hired to be an auditor. They are a
15 tax preparer.

16 Q Did you ever contact Carey & Company in an effort
17 to look at the books that they had?

18 A They didn't have the books. And they would have no
19 reason to have the books. They are a tax preparer,
20 not an auditor.

21 Q So you're saying that you never contacted them
22 because you didn't think they could give you good
23 information?

24 A I knew they couldn't give me good information.
25 They don't audit the books and records of the

1 company. They've never seen the books and records
2 of the company.

3 Q Do you know whether or not these loans about which
4 you profess to be so shocked appeared on every
5 single tax return that was filed by the entities
6 during the period that you weren't paying any
7 attention?

8 A Say that again. What was it I'm paying attention
9 to?

10 Q The loans to Silver Oak Land Management.

11 A I didn't know about the loans until I became
12 manager and got my hands on the books and records.

13 Q But do you know whether or not they appeared on the
14 tax returns every single year?

15 A I know that many of the loans did appear on tax
16 returns. I think there were some that were not
17 properly accounted for.

18 Q So you could have learned of the loans simply by
19 going to Carey & Company?

20 A No, Carey & Company would not have shared any
21 information with me. When I took over as manager I
22 had to request Jack to write a letter to Carey &
23 Company to then turn over access to the tax records
24 to me.

25 Q Do you know whether Carey & Company maintained a

1 trial balance for each of these entities on a
2 monthly ending quarterly basis?

3 A I don't think they -- I don't know, but I don't
4 believe that they ever held -- did anything on a
5 monthly reporting basis. My understanding is at
6 the end of each year they received a one page
7 printout from Jack's Quicken records that was a
8 cash flow statement of inflows and outflows for the
9 year for each company. And that was all they
10 received in order to prepare tax returns.

11 Q Well, maybe that's what they told you. Did you
12 threaten them the way you threatened Mr. McIntyre?

13 A I never threatened anybody. I'm passive.

14 Q Thank you.

15

16 MR. MATHISON: Now, I'd like to be able to impeach
17 him with the documents that he previously
18 ruled out.

19 THE COURT: What do you say, Mr. Crapps?

20 MR. CRAPPS: I still feel like we're -- any kind of
21 threats made to anybody is kind of irrelevant.
22 And it has no bearing in this case.

23 MR. MATHISON: The threats are highly relevant.

24 They go to his state of his mind. They go to
25 his character. He just testified he never

1 work out a restitution plan to save him from more
2 dire circumstances.

3 Q Well, I'm going to hand you your email.

4

5 MR. CRAPPS: May I see it?

6 MR. MATHISON: Sure.

7 MR. CRAPPS: Your Honor, it's our position that this
8 whole line of questioning of alleged threats
9 is irrelevant to the case. We feel these
10 documents are being admitted to show that are
11 also irrelevant. And so again renew our
12 objection as the relevance of all this.

13 THE COURT: Well, it sounds like they are in the
14 relevant time period. And I think they do go
15 to the credibility of the witness. I'd think
16 I have to let them in.

17 MR. CRAPPS: We'd also object to let the record and
18 Mr. Silver state what he said as opposed to
19 Mr. Mathison paraphrasing and characterizing
20 his statements as things that may or may not
21 be . . .

22 MR. MATHISON: I'll have him read the letter. Would
23 that satisfy you?

24 THE COURT: Let's proceed.

25 MR. MATHISON: I move the introduction as the next

1 Respondents' exhibit.

2

3 (Whereupon, Respondents' Exhibit No. 18
4 was marked and received into evidence.)

5

6 Q Mr. Silver, would you now read your email starting
7 with the salutation "Jack."

8 A (As read) Jack, you have told Jim a number of times
9 you will resign from all SOLTs as manager and that
10 you will turn over all records to me, yet you
11 continue to do either one. This is your last
12 chance before criminal charges are brought. You
13 are to deliver via email by ten p.m. tonight a
14 resignation letter to every member of every SOLT in
15 which you resign as manager, and for SOLTs I, II,
16 III you name Murray Reed as interim manager and you
17 name me as treasurer. And for SOLTs IV, V, and VII
18 you name me as interim manager. Do you want me to
19 continue?

20 Q Yes.

21 A (As read) You are not to put anything in the
22 resignation letters other than that you are
23 resigning for personal reasons. No bullshit
24 stories of any kind. Plain and simple for personal
25 reasons you resign. If you put anything else in

1 that tries to paint you in a good light, I will
2 then send to all members of all SOLTs some of the
3 glaring examples of your outright theft of SOE
4 monies, including examples of how you recorded many
5 personal expenses under different payee names to
6 cover up your theft showing intentional fraud. I'm
7 not asking you to admit any guilt in these letters,
8 but you are not to put anything in that sheds a
9 good light on you or on anything you've done for
10 these entities over time. You are to deliver to me
11 by five p.m. tomorrow, Wednesday, 9/26/12 every
12 record you have for Silver Oak Energy and every
13 SOLT as previously requested. You are to include
14 copies of all monthly bank statements for SOLM
15 since the establishment of SOLT I through the end
16 of last month. You are to include all QuickBooks
17 history since inception of each entity in a file
18 that I can upload into my Quicken or QuickBooks
19 application. This is your final chance before much
20 more dire circumstances befall you.

21 Q What dire circumstances were you referring to, sir?

22 A We had been pleading with Jack for weeks to admit
23 he had violated the trust of his close friends, to
24 sit down with us and work out a restitution plan
25 which we were perfectly happy to do to turn over

1 the records so we could figure out the extent of
2 the alleged malfeasance and to try to get all of
3 this behind us. And that if he continued to
4 stonewall, that we'd have no other choice other
5 than to go to the governing authorities to see if
6 they could hold him accountable.

7 Q And he resigned, didn't he?

8 A He did eventually resign, yes.

9 Q He resigned on the 25th, didn't he?

10 A I don't remember the date.

11 Q And y'all reported him, anyway, to the governmental
12 authorities, isn't that right?

13 A I did not, no, not initially.

14 Q Well, who did?

15 A Well, I think you asked Mr. Finn if he's the one
16 that contacted the attorney general's office
17 earlier today, and I think he said yes.

18 Q But notwithstanding the fact that he resigned, he
19 still didn't do everything you wanted, did he?

20 A He did some of what I had been asking for, in terms
21 of delivering bank statements and Quicken records.
22 I never got the supporting documentation I asked
23 for.

24 Q Did you, thereafter, write an email to Mr.
25 McIntyre's wife, Judith Costello, threatening to

1 put Jack in jail unless he did what you wanted?
2 A Well, you can use the word "threat" all you want.
3 I was responding to a hysterical wife who pleaded
4 with me to do everything humanly possible to keep
5 her husband and father of her daughter out of jail.
6 And I told her I would do everything I could
7 possibly but that Jack needed to cooperate.

8
9 MR. CRAPPS: Your Honor, we renew our objection. We
10 would argue this is irrelevant, really a waste
11 of our time here, so.

12 THE COURT: Well, I overrule the objection. I think
13 it's as on the first one.

14 MR. MATHISON: May it please the court, Your Honor,
15 there are a couple of things that probably are
16 objectionable here. They made a settlement
17 proposal to Mr. McIntyre. And this was
18 written in anger because he had not accepted
19 that proposal. I'm not offering it for
20 anything having to do with what the proposal
21 was about. I don't feel that's relevant. The
22 only thing that's relevant is he was angry
23 because he wouldn't do it.

24 THE COURT: I accept it for that purpose only.

25

1 Q I'm showing you this document and ask you if that
2 is the email that you sent to Mr. McIntyre's wife.

3 A It looks like it, yes.

4 Q And lest we discuss things that I just said that I
5 didn't think should be discussed, would you start
6 reading that letter at the third paragraph, please.

7 A Again, this was a response to his wife's hysterical
8 pleas with me -- to me to try to help keep her
9 husband out of jail. I begged him to work with us
10 to sit down with us and make an offer. So this
11 says, (As read) I also informed Jack that this
12 will be his last opportunity to get the slate wiped
13 clean so that he can avoid having to spend
14 significant amounts of money defending himself
15 against lawsuits and against civil and criminal
16 charges which may be brought by both state and
17 federal law enforcement agencies. I promised you
18 that I would do whatever I could for Alex's sake -
19 Which is Jack's daughter - to help Jack stay out
20 of jail. I told Jack that the only way I will help
21 in that regard is if he accepts the settlement
22 offer. Should I keep going?

23 Q Yes.

24 A (As read) Since Jack apparently is determined to
25 fight this, things are going to get much worse.

1 Federal law enforcement officials are about to
2 become involved in addition to the state officials
3 already investigating. These investigations are
4 not limited to the energy company. The attorney
5 general's office already has copies of all of the
6 records for all of the land trusts and has been
7 digging through those records for many weeks. I
8 will now do everything in my power to see that Jack
9 goes to jail.

10 Q Do I understand your testimony to be that this
11 letter or this email was written to reassure a
12 hysterical wife?

13 A It was to respond to her pleas to me to help keep
14 her husband out of jail only because of the impact
15 it would have on their daughter. I had told her
16 that I would do whatever I could to do that, but
17 that Jack needed to cooperate with us.

18 Q And that is your email, you can identify as your
19 email?

20 A Yes.

21

22 MR. MATHISON: I move the introduction to that as
23 Respondents' Exhibit No. 19.

24 MR. CRAPPS: Just a renewal of our objection.

25 THE COURT: Objection is noted, but I will admit it.

1 MR. MATHISON: Excuse me, it's already in for
2 identification as Exhibit No. 15. Just move
3 it over.

4 THE COURT: So show it was admitted now.

5
6 (Whereupon, Respondents' Exhibit No. 15
7 previously marked for identification is
8 now received into evidence.)

9
10 Q The email dated September 25th, Respondents'
11 Exhibit No. 18, did you send that to anyone other
12 than Mr. McIntyre?

13 A This is the one you showed me earlier?

14 Q Yes, sir.

15 A I copied in Murray Reed and Jim Paris.

16 Q Did you have any BCCs on there that wouldn't
17 necessarily show? That's not your computer, that's
18 somebody else's computer that downloaded that.

19 A I have no recollection.

20 Q You don't know whether you did? So you could, you
21 just don't --

22 A I don't think I did in this case. The reason I
23 would have copied in Murray and Jim is that Murray
24 and Jim were Jack's two closest friends. For 20
25 years in the case of Murray and 25 years in the

1 case of Jim. They were the ones that I was using
2 as what I would call a go between to try to plea
3 with Jack to sit down with us, admit he had
4 violated the trust of his friends and to work out a
5 settlement plan with us.

6 Q So two other people received this that you know of?

7 A The two that were involved in trying to get Jack to
8 work out a settlement plan, yes.

9 Q And with respect to what's now been remitted to
10 Respondents' Exhibit No. 15, which is your email to
11 Mr. McIntyre's wife, did you send that to anyone
12 other than Ms. Costello, as she prefers to be
13 known?

14 A I sent it to Jack, it looks like.

15 Q Were there any BCCs on that one, sir?

16 A Not that I recall.

17 Q But you'd still have that in your computer,
18 wouldn't you, so we could find it if we needed to?

19 A Probably. I don't know which ones I saved and
20 didn't save at the time. I also had a computer
21 that crashed and got fried at one point somewhere a
22 year ago. I don't remember.

23 Q And in Respondents' Exhibit No. 18, specifically in
24 the second paragraph on the second page, did you
25 threaten that you would use the monies out of the

1 sale of the SOLT VII property to wage additional
2 lawsuits against Mr. McIntyre?

3

4 MR. CRAPPS: We'd like to object. We've gone from
5 one item we feel is irrelevant to something
6 that is being deemed irrelevant.

7 THE COURT: Well, this is a different context, and
8 I'm going to overrule the objection.

9

10 Q Would you read that paragraph for me, please?

11 A (As read) We are close to a sale of one of the
12 SOLT's property which will provide significant
13 monies to file additional lawsuits against Jack.
14 Some of his offenses call for triple damages, so he
15 and you will end up with no interest in any of the
16 companies and a fortune will have been spent on
17 legal fees. There is ample smoking gun evidence to
18 put him in jail.

19 Q And, again, I ask you how would a hysterical wife
20 find anything in that paragraph reassuring?

21 A At this point, I was informing her that in trying
22 to help her keep her husband out of -- I won't even
23 call it her husband -- her daughter's father out of
24 jail, which is the context I was trying to help her
25 in, that I had exhausted all avenues that were left

1 to me because he refused to cooperate.

2 Q May I ask in what connection you wrote those
3 letters with respect to entities, in which you had
4 no interest, for example, SOLT III, SOLT II?

5 A Once I became manager of -- I became manager of all
6 the entities, including the two that I did not have
7 an investment in, SOLTs II and III.

8 Q So that would be the case, obviously, with respect
9 to the second of the two letters, which is actually
10 Respondents' Exhibit No. 15. But that wasn't the
11 case on the 25th, was it? You weren't manager of
12 anything --

13 A Actually, I was because before Jack resigned, I had
14 already been elected by the members to serve as
15 manager. His resignation was just an additional
16 legal formality so that he couldn't come back later
17 and challenge the fact that he had already been
18 replaced as manager.

19 Q Where are those documents? You have documents that
20 establish that you had already been elected his
21 successor before he resigned?

22 A I believe once he resigned and we did new
23 resolutions, I didn't save the old ones that had
24 elected me as manager, but I may have them in a
25 folder at home somewhere.

1 Q You're saying that there were temporary or ad hoc
2 documents that were created to make you manager in
3 some capacity for all of these entities and then
4 that once he resigned you created new documents?
5 Is that what you're telling me?

6 A What happened was I went to the attorney that Jack
7 had used at McNair Law Firm to create these
8 companies. I asked her her advice as to what is
9 necessary absent any specific language in the
10 operating agreements to replace the manager. And
11 she explained to me that under South Carolina law
12 absent any language in the agreement or anything to
13 the contrary that it would take a vote of a simple
14 majority by percentage owned of the owners to
15 remove Jack and replace Jack. So I did an email,
16 which I believe you had me read earlier or I did
17 under direct, where I introduced myself to all of
18 the owners, explained what I had found during the
19 earlier stages of my investigation and asked the
20 owners to vote by email or verbally, - I don't even
21 remember. - which I was told by the attorney was
22 also okay, to get a majority vote to have Jack
23 removed and to have me named as manager. I then
24 filed the documents with the Secretary of State to
25 show that whatever that technical title is,

1 registered agent or something like that, was now me
2 instead of Jack. And then I went back to the
3 attorney and she said we ought to get this done in
4 a more formal way, and she drew up new resolutions
5 that were in writing that each person would then be
6 asked to sign again that named me as the manager.

7 Q So the McNair Firm ought to have a record of you
8 having attained your role in the one capacity and
9 then having attained it through the resignation?

10

11 MR. CRAPPS: Your Honor, I feel we have somehow gone
12 beyond the scope of impeachment and we're back
13 into the appropriateness of Mr. Silver's
14 management of the company which again is
15 subject to lawsuits beyond this forum and not
16 relevant to this hearing.

17 THE COURT: I'm letting these in because of the
18 credibility of the witness based on his prior
19 statements. And for that reason, I'm going to
20 overrule the objection and not letting them in
21 for the truth of what McNair advised or
22 anything else.

23

24 Q Subsequently, Mr. Silver, did you and Mr. Short,
25 the latter on behalf of Silver Oak Energy, LLC make