

Sealed

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO 09-MD-02106-CIV-GOLD/GOODMAN

FILED by _____ D.C.

OCT 07 2011

STEVEN M. LARIMORE
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S. D. of FLA. - MIAMI

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document relates to all actions.

**DECLARATION OF ROBERT W. MOCKLER IN SUPPORT OF TERM LENDER
PLAINTIFFS' RESPONSE TO BANK OF AMERICA, N.A.'S EVIDENTIARY
OBJECTIONS INCLUDED IN ITS RESPONSE TO PLAINTIFFS' STATEMENT OF
ADDITIONAL UNDISPUTED MATERIAL FACTS**

I, Robert W. Mockler, declare as follows:

1. I am a principal with the firm McKool Smith, P.C., counsel for Plaintiffs in the above-captioned action. Except where otherwise indicated, I have personal knowledge of the facts stated herein and, if called as a witness, could and would competently testify thereto. I submit this declaration in support of the Term Lender Plaintiffs' Response to Bank of America, N.A.'s Evidentiary Objections Included in its Response to Plaintiffs' Statement of Additional Undisputed Material Facts in Opposition to Defendant's Motion for Partial Summary Judgment.

2. A true and correct copy of excerpts of the deposition testimony of Peter V. Badala, dated August 16, 2011, is attached hereto as Exhibit A.

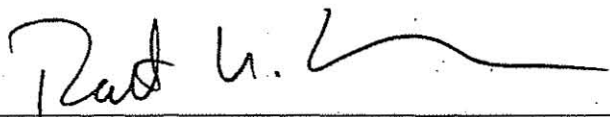
3. A true and correct copy of excerpts of the deposition testimony of Robert Barone, dated April 11, 2011, is attached hereto as Exhibit B.

4. A true and correct copy of excerpts of the deposition testimony of Shepherd G. Pyror IV, dated August 17, 2011, is attached hereto as Exhibit C.

5. A true and correct copy of excerpts of the deposition testimony of Bret Yunker, dated March 1, 2011, is attached hereto as Exhibit D.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: October 7, 2011



ROBERT W. MOCKLER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **DECLARATION OF ROBERT W. MOCKLER IN SUPPORT OF TERM LENDER PLAINTIFFS' RESPONSE TO BANK OF AMERICA, N.A.'S EVIDENTIARY OBJECTIONS INCLUDED IN ITS RESPONSE TO PLAINTIFFS' STATEMENT OF ADDITIONAL UNDISPUTED MATERIAL FACTS** was filed with the Clerk of the Court. I also certify that the foregoing document is being electronically served this day on all counsel of record or pro se parties identified on the attached Service List by agreement of all counsel.

Dated: October 7, 2011.



Lorenz Michel Pruss

SERVICE LIST

Attorneys:	Representing:
Bradley J. Butwin, Esq. Daniel L. Cantor, Esq. Jonathan Rosenberg, Esq. William J. Sushon, Esq. Ken Murata, Esq. Asher Rivner, Esq. O'MELVENY & MYERS LLP Times Square Tower 7 Times Square New York, NY 10036 Tele: (212) 326-2000 Fax: (212) 326-2061	Defendants Bank of America, N.A.
Kevin Michael Eckhardt, Esq. Jamie Zysk Isani, Esq. HUNTON & WILLIAMS 1111 Brickell Avenue Suite 2500 Miami, FL 33131 Tele: (305) 810-2579 Fax: (305) 810-2460	Defendants Bank of America, N.A.

EXHIBIT A

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

IN RE: FONTAINEBLEAU LAS VEGAS,
CONTRACT LITIGATION.

MDL NO. 2106.

CASE NO. 09-MD-02106-CIV-GOLD/GOODMAN

DEPOSITION of PETER V. BADALA, taken
pursuant to Notice, held at the law offices of
O'MELVENY & MYERS, LLP, Times Square Tower, 7 Times
Square, New York, New York, 10036, on Tuesday,
August 16, 2011, at 9:00 a.m. before JEANNETTE
MCCORMICK, a Certified Shorthand Reporter, License
No: XI00920, and a Notary Public.

JOB No. 169494

1 Q. So essentially 917 summarizes 919 through
 2 928?
 3 A. 919 is a summary of the detail that makes up
 4 the 64 million on line 12 of Exhibit 917.
 5 Q. So 919 is the detail of a line item on 917?
 6 A. Correct, for IVT's number 12.
 7 Q. And 920 is the same thing as 919 but for a
 8 different period and different IVI report, correct?
 9 A. Right. So you can see the reference in the
 10 heading, it will say -- it will give you the
 11 Turnberry West Construction ACR. It will give the
 12 date of June 11, 2008. That's probably the date of
 13 the ACR. And then it will refer to the IVI report
 14 that it could be found in.
 15 Q. And the same is true of Exhibits -- all of
 16 the Exhibits 919 through 928, the same type of
 17 summary just for different IVI reports, different
 18 period?
 19 A. Same mechanics, correct.
 20 Q. And how did you use these Exhibits 919
 21 through 928 in coming to the conclusions in your
 22 report?
 23 A. This is the source data that is then used to
 24 time phase, if you will, the information for each of
 25 the POCs included in the Boyken analysis.

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1 Q. So, for example, if you look at the Boyken
 2 analysis, and you conclude that a POC isn't included
 3 on any of the ACRs, that means you or someone else
 4 went through Exhibits 919 through 928 and checked to
 5 see whether a POC was listed; is that right?
 6 A. I think that is generally correct. And then
 7 to -- you then use 918, of course, as well because
 8 that is the source for the enhanced budget numbers.
 9 Q. Did you do anything else with 917 through
 10 928?
 11 A. Probably I did with respect to looking at the
 12 May 2008 period.
 13 Q. I think we can set aside 917 through 928
 14 unless you want to reference them later on. I think
 15 we can turn back to your expert report. See if I
 16 can pick up where we left off.
 17 A. Okay.
 18 Q. Let's go to paragraph 63. So what is the
 19 basis for your conclusion that Mr. Boyken's review
 20 of the structural steel change is unsupported by the
 21 documents?
 22 A. I guess the way I would describe it is the
 23 suggestion that these costs, this 40 million
 24 dollars, was known to be significant as they want to
 25 describe them, costs were known a year in advance.

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1 And my point is there's a process that negotiation
 2 of planning and even discussion among the limited
 3 documents that Mr. Boyken has provided that suggests
 4 there was a process of discussion going on during
 5 the period.
 6 Q. Let's look at Exhibit WW1 to the Boyken
 7 report, which is the last exhibit. I know you don't
 8 have tabs, but it should start about a dozen pages
 9 in. It's the WW steel change order.
 10 A. Yes.
 11 Q. If you go back a few more pages -- it's
 12 actually back the other direction.
 13 A. This way?
 14 Q. Yes. A couple more pages in. Right there.
 15 So this is a document you looked at in assessing
 16 Mr. Boyken's report, right?
 17 A. It's one of the documents, yes.
 18 Q. And what is this?
 19 A. This is the owner executed change order for
 20 the structural steel drawings POC 19A.
 21 Q. So you would agree that IVI and Bank of
 22 America knew about this change at least by the time
 23 they received this letter change order some time in
 24 June 2008?
 25 MR. MURATA: Objection.

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1 THE WITNESS: It was provided to them
 2 around that period of time, yes.
 3 BY MR. MOCKLER:
 4 Q. So at least by June of 2008 IVI and Bank of
 5 America knew there was going to be 41 million
 6 dollars more of structural steel pursuant to this
 7 OCO, right?
 8 MR. MURATA: Objection.
 9 THE WITNESS: There was a change order
 10 for the structural steel.
 11 BY MR. MOCKLER:
 12 Q. And it was for 41 million dollars?
 13 A. And it was for 41 million dollars.
 14 Q. And change. You also agree that Turnberry at
 15 least knew that there was going to be a need for
 16 more structural steel much earlier than that, right?
 17 MR. MURATA: Objection. Speculative.
 18 THE WITNESS: There is a document --
 19 there is documentation included within
 20 Mr. Boyken's Exhibit WW1 that would indicate
 21 there was a change order request in June
 22 2007.
 23 BY MR. MOCKLER:
 24 Q. And you can see from that change order
 25 request that Turnberry West was notified some time

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1 around June 2007 that WW Steel was saying that they
 2 wanted another 41 million dollars for structural
 3 steel, right?
 4 MR. MURATA: Objection.
 5 THE WITNESS: There is a pricing
 6 proposal.
 7 BY MR. MOCKLER:
 8 Q. For structural steel from WW Steel, right?
 9 A. Yes.
 10 Q. Do you understand why it took from June to
 11 2007 to May or June 2008 for that to proceed to
 12 another change order?
 13 A. Well, Mr. Boyken doesn't provide very much
 14 documentation on this issue, but there is a letter
 15 from the structural engineer dated May 29, 2008
 16 which provides some insight.
 17 Q. What insight does it provide?
 18 A. That the drawings have been evolving due to
 19 refinements by the designers and the landscape
 20 engineers, clarifications were made to the drawings,
 21 other design impacts due to elevators stair
 22 refinements, other clarifications. And it goes on
 23 to conclude that the structural drawings have been
 24 through an evolution process with the architectural
 25 designer drawings which is very common for

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1 Q. Anything else?
 2 A. I think that exhausts the paper in Boyken's
 3 file.
 4 Q. Were these owner change orders included with
 5 IVI project status reports?
 6 A. These what?
 7 Q. Owner change orders, executed owner change
 8 orders.
 9 A. Yes. I believe so.
 10 Q. Including this one?
 11 A. I believe so.
 12 Q. Have you reviewed Mr. Boyken's deposition?
 13 A. Yes.
 14 Q. Is there anything that you recall disagreeing
 15 with in it other than what's in your report?
 16 MR. MURATA: Objection.
 17 THE WITNESS: I can't say that I was
 18 looking at it from that perspective. I was
 19 trying to get a read of his deposition to see
 20 if it was consistent with his report.
 21 BY MR. MOCKLER:
 22 Q. And what was your opinion of whether it was
 23 consistent with his report?
 24 A. It seemed to be.
 25 Q. Did you form any other opinions not expressed

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1 fast-track projects.
 2 Q. So your conclusion from this letter is that
 3 the delay from June 2007 to May 2008 was the result
 4 of design evolution?
 5 A. It's --
 6 MR. MURATA: Objection.
 7 THE WITNESS: It's not a delay. It's an
 8 evolution.
 9 BY MR. MOCKLER:
 10 Q. So how about this, your conclusion that the
 11 lapse of time from the June 2007 price quotation to
 12 the June 2008 owner change order was the result of
 13 evolution in the drawings?
 14 MR. MURATA: Objection.
 15 THE WITNESS: I'm just reciting or
 16 stating to what Mr. Boyken has provided in
 17 the documents that explains the period
 18 between May 29 of 2008 and June 21 of 2007.
 19 BY MR. MOCKLER:
 20 Q. Do you see anything else in this
 21 documentation to explain that delay?
 22 A. Yes. On May 8, 2008, it also discusses the
 23 efforts that were made by the parties, the designer,
 24 Turnberry West and WW Steel to minimize the costs
 25 and the tonnage increases.

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1 in your report after reading his deposition?
 2 A. I didn't read it with that -- with that
 3 objective in mind. I can tell you that it reaffirms
 4 my analysis and my opinions with respect to the
 5 Boyken report.
 6 Q. And you haven't been asked to perform any
 7 additional analysis or form any additional opinions
 8 based on anything that Mr. Boyken said in his
 9 report?
 10 A. I haven't talked to the attorneys about that.
 11 Q. Let's talk about Mr. Pryor. I will get rid
 12 of more of my documents here by marking this one.
 13 (Whereupon, Plaintiff's Deposition
 14 Exhibit 929 was marked for
 15 Identification.)
 16 BY MR. MOCKLER:
 17 Q. So does Exhibit 929 look like something you
 18 recognize?
 19 A. Yes.
 20 Q. Is it the Pryor report you reviewed in
 21 connection with your report?
 22 A. The section that I looked at, yes, to be from
 23 the Pryor, his prior.
 24 Q. What section did you look at?
 25 A. Opinion number 2.

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C E R T I F I C A T E

I, JEANNETTE McCORMICK, a Certified Shorthand Reporter and Notary Public, certify that the foregoing is a true and accurate Computerized Transcript of the Deposition within.

I further certify that I am neither attorney, of counsel for, nor related to or employed by any of the parties to the action in which the Depositions are taken, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in the action.

Jeannette Mc Cormick

JEANNETTE McCORMICK, C.S.R.

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE: FONTAINEBLEAU LAS VEGAS

CONTRACT LITIGATION MDL NO. 2106

This document relates to all actions.

VIDEOTAPED DEPOSITION OF ROBERT BARONE

New York, New York

Monday, April 11, 2011

Reported by:
AYLETTE GONZALEZ
CLR

JOB No. 159910

ROBERT BARONE

4/11/2011

1 Q. Do you recall Mr. Bonvicino had
 2 predicted or had known that there were 150
 3 million dollars in cost overruns?
 4 MR. MURATA: Objection.
 5 A. I remember him speculating.
 6 Q. Speculating fairly correctly,
 7 right?
 8 MR. MURATA: Objection.
 9 A. I guess so.
 10 (Plaintiff's Exhibit 867,
 11 e-mail from Devin Kumar to Mr. Barone
 12 and Mr. Bonvicino, with attached
 13 spreadsheet, marked for
 14 identification, as of this date.)
 15 Q. 867 is an e-mail from Devin
 16 Kumar to you and Mr. Bonvicino and it
 17 attaches a spreadsheet that I believe shows
 18 an additional 187 million dollars in costs
 19 over budget. You see this?
 20 A. How much?
 21 Q. I think if you look in the far
 22 right, it says about 187 million?
 23 A. Yes.
 24 Q. Do you recall seeing this
 25 e-mail or spreadsheet around the time?

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1 A. It may have had to do with the
 2 advance certificate.
 3 Q. Okay. Just to point you to
 4 page 7, again, in that paragraph we've seen
 5 a similar paragraph in the other reports,
 6 the last sentence of the first paragraph:
 7 "While the ACR has been submitted by the
 8 developer of the true representation of
 9 costs, IVI is still concerned all
 10 subcontractor claims have not been fully
 11 incorporated into the report."
 12 A. Correct.
 13 Q. Do you recall being asked by
 14 Bank of America, and possibly others, to do
 15 a cost to complete review for the project?
 16 A. Yes.
 17 Q. Do you recall what you were
 18 asked to do?
 19 A. Specifically, no.
 20 Q. Generally?
 21 A. Generally, look at the costs as
 22 they were put forth by the developer.
 23 Where they came from. How they put them
 24 together and see if their approach was
 25 creditable.

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1 A. I remember something like this,
 2 yes.
 3 Q. You recall what your response
 4 was?
 5 A. That I said it in here, I'm
 6 sure --
 7 Q. Paragraph 32.
 8 A. I think we go back to stunned.
 9 Q. I'm going to show you what's
 10 previously marked as Exhibit 828. This is
 11 Project Status Report No. 23. If you
 12 would, just confirm that that's what it is.
 13 A. Yes, it is.
 14 Q. So, this was, essentially, the
 15 report from March; is that right?
 16 A. I don't know. Let's see.
 17 MR. MURATA: Objection.
 18 A. It's a report for February
 19 through March. We were there on March 2nd.
 20 Q. So, it seems like it's prepared
 21 a little bit later than on schedule with
 22 the other ones.
 23 Do you know why that is the
 24 case?
 25 MR. MURATA: Objection.

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1 Q. Do you recall what your general
 2 conclusion was?
 3 A. No.
 4 Q. So, let's --
 5 MR. MOCKLER: I'll give you
 6 guys copies of these.
 7 Q. And you can look at your
 8 Declaration as well.
 9 A. Okay.
 10 Q. This was previously marked as
 11 Exhibit 298. Can you just confirm that it
 12 is the cost to complete review.
 13 A. Yes, it is.
 14 Q. And that's your signature there
 15 on page 2?
 16 A. Yes, it is.
 17 Q. Do you recall receiving
 18 information about a "enhanced version" of
 19 the project submitted by the developer?
 20 A. I remember -- I remember
 21 something about it, yes.
 22 Q. Let's look at your Declaration.
 23 So, starting on paragraph 34 --
 24 A. Yes.
 25 Q. -- why don't I just have you

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ROBERT BARONE

4/11/2011

1 MR. MOCKLER: Finish mine. I
 2 don't know how much you guys are
 3 gonna have.
 4 MR. MURATA: If you want to
 5 take a break, sure. Let's go off the
 6 record.
 7 THE VIDEOGRAPHER: The time is
 8 approximately 11:59 a.m.
 9 We're off the record.
 10 (Whereupon, an off-the-record
 11 discussion was held.)
 12 THE VIDEOGRAPHER: The time is
 13 approximately 12:02.
 14 We're back on the record.
 15 BY MR. MOCKLER:
 16 Q. Hello again.
 17 A. Hi there.
 18 Q. You recall we spoke about a
 19 revised Construction Consultant Advance
 20 Certificate that Mr. Bonvicino executed on
 21 March 23rd?
 22 A. Yes.
 23 Q. Do you recall whether there was
 24 an additional changes to the advanced
 25 request following your execution of that

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1 document?
 2 A. No, I don't recall.
 3 Q. You recall we spoke about
 4 changes to the project budget that had been
 5 funded with equity early on in the timeline
 6 in 2008?
 7 A. I don't remember speaking about
 8 that.
 9 Q. I thought we had. I may be
 10 wrong. Let's look at an exhibit.
 11 Well, first of all, do you
 12 recall that that occurred?
 13 A. Yes.
 14 Q. And what was your understanding
 15 of -- your recollection of what happened?
 16 A. My recollection was that there
 17 were significant structural steel changes
 18 amongst some other minor things, but after
 19 the design was finished that had to be
 20 rectified.
 21 Q. Do you recall how you learned
 22 about that?
 23 A. It was disclosed by the
 24 borrower.
 25 Q. The borrower told there's a

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1 couple hundred million dollars in increased
 2 costs?
 3 MR. MURATA: Objection. That's
 4 not his testimony.
 5 A. I don't remember exactly how it
 6 happened.
 7 Q. Let's look at a document. I
 8 don't think it's been marked yet, so let's
 9 mark that as the next one.
 10 (Plaintiff's Exhibit 868,
 11 Project Status Report No. 14, marked
 12 for identification, as of this date.)
 13 Q. So, again, first, if you would
 14 look and identify the exhibit as -- or
 15 confirm that it's Project Status Report No.
 16 14.
 17 A. Yes, it is.
 18 Q. And if you look on page 2, the
 19 first sentence says: "Direct cost budget
 20 was increased by 190 million."
 21 You see that?
 22 A. Yes.
 23 Q. Do you recall that that
 24 happened?
 25 A. Yes, I do.

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1 Q. You think it was for structural
 2 steel? That's your recollection?
 3 A. There were some -- yeah, there
 4 were revisions -- there were completions of
 5 design that occurred right after closing
 6 that this was a result of additional costs.
 7 Q. And those costs showed up
 8 whenever the reporting period was for this
 9 June 25th, 2008 report?
 10 A. I believe so.
 11 Q. Do you recall having concerns
 12 about any delay in getting information
 13 about those changes to the budget?
 14 MR. MURATA: Objection.
 15 A. No, I don't remember.
 16 Q. Mr. Barone, you received a
 17 Subpoena in this case calling for you to
 18 join us here today. You recall that?
 19 A. Yes.
 20 Q. Let's mark it as the next
 21 exhibit.
 22 (Plaintiff's Exhibit 869,
 23 Subpoena, marked for identification,
 24 as of this date.)
 25 Q. Do you recall receiving -- this

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C E R T I F I C A T E

STATE OF NEW YORK)

: SS.:

COUNTY OF RICHMOND)

I, AYLETTE GONZALEZ, a Notary Public for and within the State of New York, do hereby certify:

That the witness, ROBERT BARONE, whose examination is hereinbefore set forth was duly sworn and that such examination is a true record of the testimony given by that witness.

I further certify that I am not related to any of the parties to this action by blood or by marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of April, 2011.


AYLETTE GONZALEZ

EXHIBIT C

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE: FONTAINBLEAU LAS VEGAS)
CONTRACT LITIGATION) Case No. 09-MD-02106
MDL No. 2106) CIV-GOLD/GOLDMAN
This document relates to all)
actions.)

Deposition of SHEPHERD G. PRYOR IV,
taken at 865 South Figueroa Street,
Los Angeles, California, commencing at
9:00 a.m. Wednesday, August 17, 2011, before
Gail E. Kenamer, CSR 4583, CCRR.

<p style="text-align: right;">2</p> <p>1 APPEARANCES OF COUNSEL: 2 FOR THE PLAINTIFF: 3 HENNIGAN DORMAN, LLP 4 BY KIRK D. DILLMAN, ESQ. 5 865 South Figueroa Street, Suite 2900 6 Los Angeles, California 90017 7 213.694.1200 8 dillmank@hdlitigation.com 9 10 FOR THE DEFENDANTS: 11 O'MELVENY & MYERS LLP 12 BY DANIEL L. CANTOR, ESQ. 13 and JOHN D. ESTERHAY, ESQ. 14 7 Times Square 15 New York, New York 10036 16 212.408.2483 17 dcantor@omm.com 18 jesterhay@omm.com 19 20 21 22 23 24 25</p>	<p style="text-align: right;">4</p> <p>1 Q. I will show you a document that we have had 2 marked as Exhibit 932. 3 MR. DILLMAN: Okay. 4 (Whereupon the document referred to is marked by 5 the reporter as Exhibit 932 for identification.) 6 BY MR. CANTOR: 7 Q. I don't know whether you have seen it before. 8 MR. DILLMAN: I'm impressed you have an 9 exhibit number that wasn't a 1. 10 BY MR. CANTOR: 11 Q. Mr. Pryor, have you ever seen this document 12 before? 13 A. Yes. 14 Q. And if you'd take a look at page 57 of the 15 document. 16 Is that your signature? 17 A. Yes. 18 Q. And could you tell me what this document is, 19 sir? 20 A. This is my expert report dated May 23rd, 2011. 21 Q. Okay. If you could turn to Exhibit A to your 22 report and in particular, pages 4 through 6 of Exhibit 23 A. 24 A. (Indicating.) 25 Yes.</p>
<p style="text-align: right;">3</p> <p>1 Wednesday, August 17, 2011; Los Angeles, California 2 9:00 a.m. 3 -- o0o -- 4 5 SHEPHERD G. PRYOR IV, 6 a witness herein, having been administered the oath, 7 testifies as follows: 8 9 -EXAMINATION- 10 11 BY MR. CANTOR: 12 Q. Could you state your full name for the record, 13 please. 14 A. Shepherd G. Pryor IV. 15 Q. And could you give me your business address, 16 please. 17 A. 975 North Avenue, Highland Park, Illinois 18 60035. 19 Q. And, Mr. Pryor, until a minute or so ago, you 20 and I never met before, have we? 21 A. We have not. 22 Q. Am I correct, sir, you have been retained as 23 an expert witness on behalf of the plaintiffs in this 24 litigation? 25 A. Yes.</p>	<p style="text-align: right;">5</p> <p>1 Q. Is that your current resume and curriculum 2 vitae, however you prefer to term it? 3 A. Yes. With one update. 4 Q. Okay. What would that be? 5 A. On page 6. 6 Q. Okay. 7 A. There is a listing of directorships in the 8 company. The second company listed, Uteig Engineers, 9 I'm now currently chairman of the board of that 10 company. 11 Q. Okay. Not executive chairman? 12 A. Correct. 13 Q. If you'd turn back to page 5, I will walk 14 through your resume a little bit and try to do it in 15 chronological order. 16 MR. DILLMAN: Sorry. Page 5 of Exhibit A? 17 MR. CANTOR: Of Exhibit A. I'm sorry if that 18 was unclear. 19 Q. Am I correct, sir, that First National Bank of 20 Chicago was the first job in the banking industry you 21 had? 22 A. Yes, it was. 23 Q. Okay. And you started there -- What is the 24 First Scholar Program, please? 25 A. The First Scholar Program was a management</p>

2 (Pages 2 to 5)

6	<p>1 training program that took a selected group of</p> <p>2 employees, brought them in as a selected group of</p> <p>3 employees. And I involved them in full-time day-to-day</p> <p>4 work in various rotational assignments, and at the same</p> <p>5 time those people also attended business school at</p> <p>6 night.</p> <p>7 Q. I see.</p> <p>8 And during that period, the assignments you got</p> <p>9 were various areas of the bank just to learn those</p> <p>10 areas; is that right?</p> <p>11 A. They were various areas. It was sometimes</p> <p>12 independently negotiated areas. So, for example, I</p> <p>13 worked in the holding company, I worked in the trust</p> <p>14 department, and I worked in a corporate banking area as</p> <p>15 well.</p> <p>16 Q. Okay. And then you became a loan officer in</p> <p>17 corporate lending?</p> <p>18 A. Yes.</p> <p>19 Q. And describe for me your responsibilities as a</p> <p>20 loan officer in corporate lending?</p> <p>21 A. As a loan officer, I would be marketing</p> <p>22 services of the bank to potential customers. I would</p> <p>23 be negotiating loan commitments, analyzing the credit</p> <p>24 worthiness of customers, documenting the loans,</p> <p>25 monitoring the loans, and maintaining the customer</p>	8	<p>1 get mixed. I was a loan officer or an assistant vice</p> <p>2 president over the course of time when I was with First</p> <p>3 National Bank of Chicago. I was in the corporate</p> <p>4 banking group for most of that time.</p> <p>5 Q. I see.</p> <p>6 A. And I was in more than one unit of the</p> <p>7 corporate banking group. So that I focused at one</p> <p>8 point on vessel owning and operating companies –</p> <p>9 Q. Right.</p> <p>10 A. – and at another time on capital goods</p> <p>11 manufacturers.</p> <p>12 Q. Okay. The vessel operating companies, what</p> <p>13 kind of ships are we talking about?</p> <p>14 A. Could be ocean-going vessels, such as LNG</p> <p>15 carriers or it could be river boats, which could be</p> <p>16 stern wheel steamers, barge, tow boats, those types of</p> <p>17 vessels.</p> <p>18 Q. Did it include things like large passenger</p> <p>19 ships, ocean liners?</p> <p>20 A. We looked occasionally at ocean liners. Those</p> <p>21 would fall within the category. I don't recall having</p> <p>22 a loan of that nature at that time.</p> <p>23 Q. And were these single-lender loans?</p> <p>24 A. Both single lender and multi lender.</p> <p>25 Q. When they were multi lender, generally</p>
7	<p>1 relationship.</p> <p>2 Q. Okay. Now in your resume here you state that</p> <p>3 you made construction finance loans to vessel operating</p> <p>4 companies.</p> <p>5 These are loans to build ships?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Anything other than that – Withdrawn.</p> <p>8 Let me ask a better question.</p> <p>9 Is anything else encompassed within construction</p> <p>10 finance loans to vessel operating companies as it</p> <p>11 relates specifically to your experience at First</p> <p>12 National?</p> <p>13 A. Well, I had a number of different experiences</p> <p>14 at First National, one of which was providing</p> <p>15 construction finance for vessels.</p> <p>16 When I was in a unit that specialized in ship</p> <p>17 financing, that was the name of the unit.</p> <p>18 Q. Okay.</p> <p>19 A. Also, at First Chicago, I was in other</p> <p>20 assignments, so I was in other parts of the corporate</p> <p>21 banking group.</p> <p>22 Q. Okay. And that's while you were a loan</p> <p>23 officer corporate lending or was that later on in your</p> <p>24 career at First National?</p> <p>25 A. Well, I was – Some of these things are – Can</p>	9	<p>1 speaking, how many co-lenders would you have?</p> <p>2 A. Well, in the case of the LNG carriers, which</p> <p>3 were several hundred million dollars, there were a</p> <p>4 fairly large number of co-lenders.</p> <p>5 Q. Did you have any agent responsibilities with</p> <p>6 respect to these multi-lender loans in connection with</p> <p>7 vessel – for vessel operating companies?</p> <p>8 A. Trying to recall. I believe in one – in one</p> <p>9 or two, yes.</p> <p>10 Q. Okay. You specifically recall instances in</p> <p>11 which – Well, withdrawn.</p> <p>12 And what, if any, agent responsibility did you</p> <p>13 personally have in those instances?</p> <p>14 A. Well, the ones I'm recalling, I would have</p> <p>15 been the -- the loan officer who was in charge as the</p> <p>16 agent.</p> <p>17 Q. Okay. And what were their agent</p> <p>18 responsibilities?</p> <p>19 A. Well, in any of those cases where I was an</p> <p>20 agent on a multi-bank credit, whether it was that</p> <p>21 particular loan, I was sort of thinking about others.</p> <p>22 An agent would be responsible for collecting money,</p> <p>23 coordinating with the -- the various lenders,</p> <p>24 syndicate -- syndicate lenders or participants,</p> <p>25 coordinating with the borrower, determining whether</p>

14	<p>1 Q. Okay. And when you say "personally active in</p> <p>2 lending to companies," can you explain to me what you</p> <p>3 mean by that?</p> <p>4 A. Sure. The market that we participated in, in</p> <p>5 the time period in which I was playing that role in</p> <p>6 particular, the late '80s, mid to late 1980s, our loans</p> <p>7 that we became involved in were more and more</p> <p>8 concentrated in the highly leveraged transactions.</p> <p>9 Tended to be larger, more leveraged. They were a group</p> <p>10 of leveraged buyouts, merger and acquisition</p> <p>11 financings, leverage recapitalizations, and other</p> <p>12 transactions that were fundamental sort of</p> <p>13 transformative character to the borrower.</p> <p>14 Most of the participations or the size of the --</p> <p>15 our portion of the loan would be in the 30-</p> <p>16 100 million-dollar area.</p> <p>17 Anything that approached \$100 million would</p> <p>18 require that I get on a plane, fly to California, and</p> <p>19 personally deal with the internal approvals, which</p> <p>20 meant that in order to accomplish that, I would be very</p> <p>21 deeply involved in the detail during the origination of</p> <p>22 those loans.</p> <p>23 So I would visit customers along with people who</p> <p>24 worked for me. I would help in the analysis and -- as</p> <p>25 well as review analyses that were done by those</p>	16	<p>1 A. -- slice of the map.</p> <p>2 And then at the point where I was transferring to</p> <p>3 California, just added everything in the Northern</p> <p>4 California, Pacific Northwest; so it just changed that</p> <p>5 geography.</p> <p>6 But the -- but I had P&L responsibility basically</p> <p>7 for the all of the business, the business of the</p> <p>8 corporate banking group in the Midwest.</p> <p>9 Q. What percentage of your time when you were</p> <p>10 senior vice president was spent on the -- the active</p> <p>11 lending-type activities that we have been discussing as</p> <p>12 opposed to your other duties as senior vice president?</p> <p>13 A. Well, the lending was our major business. So</p> <p>14 it would have been, I don't know, maybe 90, 95 percent,</p> <p>15 and the other smaller component is in pursuing the</p> <p>16 managerial, coordination of various things that had to</p> <p>17 be done to -- to just oversee the activities of all of</p> <p>18 the employers.</p> <p>19 Q. In the third bullet point down there under the</p> <p>20 Wells Fargo Chicago entry, you reference that you</p> <p>21 agented three major loans.</p> <p>22 Do you recall the details of those loans?</p> <p>23 A. To some degree.</p> <p>24 Q. Who were -- Who were the company -- the</p> <p>25 borrowers? Excuse me.</p>
15	<p>1 players.</p> <p>2 I would read and participate in the negotiation of</p> <p>3 documents, the actual loan documents, whether it was</p> <p>4 our documents or whether it was documents in a loan</p> <p>5 where we were participating.</p> <p>6 So I played a very direct role, very similar to</p> <p>7 the role that I would have played as an account</p> <p>8 officer.</p> <p>9 Q. Was there a threshold below which you didn't</p> <p>10 get involved --</p> <p>11 A. It would --</p> <p>12 Q. -- generally speaking?</p> <p>13 A. Generally, I was extremely involved as I went</p> <p>14 through that entire period. There may have been some</p> <p>15 loans in the 1- to 5-million sort of category where I</p> <p>16 was less involved.</p> <p>17 Q. Okay. And what were -- to the extent that it</p> <p>18 differs from what you were just explaining to me, what</p> <p>19 were your primary responsibilities as a senior vice</p> <p>20 president and regional manager?</p> <p>21 A. I was -- I was charged with the marketing and</p> <p>22 origination and customer maintenance in the Midwest.</p> <p>23 Everything from Ohio, to Nebraska, to Missouri, let's</p> <p>24 say --</p> <p>25 Q. Right.</p>	17	<p>1 A. One borrower was Reliance Electric. It's a</p> <p>2 leverage buyout.</p> <p>3 Q. Do you recall -- I'm sorry.</p> <p>4 A. Let me think about. The --</p> <p>5 (Indicating.)</p> <p>6 I want to set that loan aside.</p> <p>7 Q. Okay.</p> <p>8 A. I'm questioning whether that was exactly what</p> <p>9 role we were playing.</p> <p>10 One -- one was the Revco DS.</p> <p>11 Q. Okay. And --</p> <p>12 A. One was Farrell Gas.</p> <p>13 Q. F-a-r-r-e-l?</p> <p>14 A. F-a-r-r-e-l-l. Gas.</p> <p>15 Q. Okay.</p> <p>16 A. One was West Point Pepperell, which was really</p> <p>17 a Farley Industries, F-a-r-l-e-y, Industries/West Point</p> <p>18 Pepperell.</p> <p>19 Q. I remember that actually.</p> <p>20 So in your resume you mentioned three major loans.</p> <p>21 You have given me three, plus Reliance Electric.</p> <p>22 Do you -- As you sit here now, do you recall</p> <p>23 whether Reliance Electric was one that you guys agented</p> <p>24 it or not?</p> <p>25 A. We played a significant role. We may not have</p>

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18	<p>1 agented that particular one.</p> <p>2 Q. Okay. When was the Revco DS loan?</p> <p>3 A. Late 1980s.</p> <p>4 Q. And what kind of financing was that?</p> <p>5 A. It was a leverage buyout.</p> <p>6 Q. And what sorts of loan facilities did Wells</p> <p>7 Fargo provide or participate in, in connection with the</p> <p>8 leverage buyout?</p> <p>9 A. We provided a senior lending facilities. That</p> <p>10 would be senior-secured revolving credits. There could</p> <p>11 have been a term loan. It would be a mixture of --</p> <p>12 revolvers and term loans would be our portion. And</p> <p>13 there was a whole structure of other debt, subordinated</p> <p>14 debt and various mezzanine instruments that were</p> <p>15 provided by nonbanks.</p> <p>16 Q. Now, when you provide -- Let's talk</p> <p>17 specifically about Revco, but you can generalize, if</p> <p>18 appropriate.</p> <p>19 When you provide financing in an LBO context, are</p> <p>20 you simply providing transaction financing or are you</p> <p>21 also providing financing for the company's operations</p> <p>22 post closing of the LBO?</p> <p>23 A. Well, you raise a good point because post</p> <p>24 closing, if you haven't provided for operations, you</p> <p>25 probably created a big problem for yourself and the</p>	20	<p>1 say this poorly, but let me -- I will give it my best</p> <p>2 shot -- Were these lenders a part of the lending group</p> <p>3 pre-closing or did they sign on -- was the loan</p> <p>4 syndicated or participation sold post-closing or both?</p> <p>5 A. It was not a real either/or. They were --</p> <p>6 They were -- These -- These lenders were not typically</p> <p>7 loaning money or having corporate banking relationships</p> <p>8 with the company prior to the transaction.</p> <p>9 Q. Okay.</p> <p>10 A. So for the most part, they were brought into</p> <p>11 the transaction. They were brought in pre-closing in</p> <p>12 order to be a part of the closing. And then, of</p> <p>13 course, post-closing this group of lenders would then</p> <p>14 become the bank lenders for the company.</p> <p>15 So we had to seek participants in the loan and --</p> <p>16 and talk to those people as they agreed or didn't agree</p> <p>17 to come into the financing.</p> <p>18 Q. Okay. And what was your role personally with</p> <p>19 respect to the agenting responsibilities on this loan?</p> <p>20 A. Well, I was the manager of the unit in which</p> <p>21 the loan was being negotiated and initiated.</p> <p>22 Because of the size of the loan, again, I</p> <p>23 participated in the analysis, the negotiations. I met</p> <p>24 multiple times with the buyout group prior to the</p> <p>25 transaction, personally involved in the negotiation of</p>
19	<p>1 borrower.</p> <p>2 Q. Right.</p> <p>3 A. Generally, the leverage buyout financing</p> <p>4 generally has those two components. You got a certain</p> <p>5 component that -- that is necessary to affect the</p> <p>6 initial transaction. So, for example, if it's a -- if</p> <p>7 it's a go-private transaction, the money is being paid</p> <p>8 to stockholders, it's not retrievable thereafter, and</p> <p>9 it's also not residing within the company. So that --</p> <p>10 that's the first component of the transaction.</p> <p>11 And thereafter, there is a need for working</p> <p>12 capital and operational financing.</p> <p>13 Q. So the -- the loans that we're talking about</p> <p>14 here involved both aspects of that?</p> <p>15 A. Yes.</p> <p>16 Q. And the agenting responsibilities would apply</p> <p>17 to which aspect of that?</p> <p>18 A. Both.</p> <p>19 Q. Both. And how big was the lender group in</p> <p>20 connection with the Revco transaction?</p> <p>21 A. I remember speaking to a pretty sizable</p> <p>22 roomful of bankers on more than one occasion on that;</p> <p>23 so just trying to remember from that. There had to</p> <p>24 be between 25, 30 lenders, maybe more.</p> <p>25 Q. Okay. And were these lenders -- I'm going to</p>	21	<p>1 terms and conditions, and in the approval process.</p> <p>2 In the syndication process, at the time we handled</p> <p>3 all within our office. We did not have sub units of</p> <p>4 the bank that were -- that were providing the</p> <p>5 syndication's efforts. We made contacts.</p> <p>6 I occasionally had discussions with other banks</p> <p>7 that we had meetings with, banks and the potential bank</p> <p>8 group; so I would meet occasionally with some of those</p> <p>9 people and attended the closing and thereafter the</p> <p>10 movement of money is not handled and was not handled in</p> <p>11 the Chicago office so the transfers of funds and those</p> <p>12 issues were handled by a group that reported to me, and</p> <p>13 that was housed in California.</p> <p>14 Q. Okay. And would that group have been the ones</p> <p>15 who would have been responsible for determining whether</p> <p>16 any conditions precedent to the borrower obtaining</p> <p>17 funds had been met?</p> <p>18 A. That kind of responsibility would have been</p> <p>19 resident with the loan officers, not the operational</p> <p>20 people.</p> <p>21 Q. Okay. And the loan officers were people who</p> <p>22 reported to you?</p> <p>23 A. Yes.</p> <p>24 Q. But you personally were not responsible for</p> <p>25 reviewing a -- a given request for funds and</p>

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22	<p>1 determining whether conditions precedent or other</p> <p>2 prerequisites to funding had been met; correct?</p> <p>3 A. I would not necessarily participate in all of</p> <p>4 those, but I recall participating in some.</p> <p>5 So if a question arose, for example, that might</p> <p>6 come into my office for discussion.</p> <p>7 Q. Do you remember any questions that arose --</p> <p>8 arose on the Revco DS financing?</p> <p>9 A. Yes.</p> <p>10 Q. Can you tell me anything?</p> <p>11 A. This company had a new chief financial</p> <p>12 officer, and he decided that it would be a good idea to</p> <p>13 make a prepayment under the agreement, and came into</p> <p>14 the bank, probably made a notification that he was</p> <p>15 planning to do prepayment.</p> <p>16 And I recall having discussions about whether that</p> <p>17 was a good idea on the part of the company or not.</p> <p>18 Whether -- Whether, if they made such a</p> <p>19 prepayment, they would have the ability to -- to</p> <p>20 reborrow.</p> <p>21 Q. Okay. Were those discussions with him or</p> <p>22 internally at Wells Fargo?</p> <p>23 A. I do -- I recall some internal discussions.</p> <p>24 There were certainly discussions between him and</p> <p>25 various people. I don't recall whether I was involved</p>	24	<p>1 Q. Okay. Why over time as opposed to when it</p> <p>2 occurred?</p> <p>3 A. There were some increasing pressures that this</p> <p>4 new CEO was trying to deal with.</p> <p>5 Q. Okay. What were the nature of the discussions</p> <p>6 with the other lenders?</p> <p>7 A. Requests that the company was making for</p> <p>8 waivers and amendments.</p> <p>9 Q. And were those waivers -- requests for waivers</p> <p>10 and amendments granted?</p> <p>11 A. Yes.</p> <p>12 Q. And how was it determined that those would</p> <p>13 be -- would be granted? Withdrawn.</p> <p>14 How did this -- the bank group determine whether</p> <p>15 those requests would be granted?</p> <p>16 A. Typical waivers and amendments have a</p> <p>17 requisite number of banks or proportionate number of</p> <p>18 banks who would vote. Submitted to the banks as a --</p> <p>19 as a question or as a recommended action, and then the</p> <p>20 companies recommended or requested the action. The</p> <p>21 banks vote. And if the requisite number of banks</p> <p>22 approve it, then it's an approved waiver or an approved</p> <p>23 amendment.</p> <p>24 Q. Okay. The Farrell Gas transaction, when was</p> <p>25 that?</p>
23	<p>1 in the direct conversation with him or not.</p> <p>2 Q. With respect to that issue, were there any</p> <p>3 conversations with other lenders?</p> <p>4 A. I don't recall.</p> <p>5 Q. Any other issues that you can recall that got</p> <p>6 elevated to you in connection with the Revco DS</p> <p>7 financing?</p> <p>8 A. I recall a conversation with the CEO about</p> <p>9 a -- I guess a threat that was issued to him from one</p> <p>10 of the subordinated lenders, and it was -- I don't</p> <p>11 know -- maybe threat is not the right word. Pressure</p> <p>12 from the subordinated lender for him to come and ask</p> <p>13 for some dispensations on the part of the -- of the</p> <p>14 senior lenders.</p> <p>15 Q. Dispensations for the company or for the</p> <p>16 subordinated lender?</p> <p>17 A. Well, dispensations for the company that would</p> <p>18 have accrued to the benefit of the subordinated lender</p> <p>19 in which -- which it was -- it was a -- more of an</p> <p>20 advisory conversation. I just gave my opinions on what</p> <p>21 I thought.</p> <p>22 Q. Were there any discussions with the other</p> <p>23 lenders concerning this request?</p> <p>24 A. I think it materialized into discussions with</p> <p>25 the other lenders over time.</p>	25	<p>1 A. Again, in the late 1980s.</p> <p>2 Q. Okay. And what kind of financing was that?</p> <p>3 A. That was a major acquisition financing.</p> <p>4 And followed by financing of a company with</p> <p>5 provisions for continued series of acquisitions.</p> <p>6 Q. All the funds were to be used for acquisitions</p> <p>7 as opposed -- as opposed to operations?</p> <p>8 A. Well, it would be hard to distinguish those in</p> <p>9 a way. The company was a propane distribution company.</p> <p>10 It purchased operating entities.</p> <p>11 Q. Right.</p> <p>12 A. And those became immediately part of its</p> <p>13 operation.</p> <p>14 The use -- I'm trying to recall whether the use of</p> <p>15 proceeds was somehow specifically restricted to</p> <p>16 acquisitions. I don't believe it was. I think it was</p> <p>17 a broad scope of uses of proceeds within which were</p> <p>18 acquisition financings, and they were conditioned by</p> <p>19 certain rules that we negotiated.</p> <p>20 Q. For example, if they wanted to acquire another</p> <p>21 gas company and in so doing they recognized this</p> <p>22 company had substandard equipment, could the funds be</p> <p>23 used to purchase equipment or were they only to be used</p> <p>24 for purchasing the ownership interest in this company?</p> <p>25 A. That's what I'm saying. More than likely,</p>

26	<p>1 they would have purchased assets as opposed to some</p> <p>2 ownership interest, and -- and those assets would be</p> <p>3 blended with their total pool of assets over time.</p> <p>4 Q. I see.</p> <p>5 A. So I believe that the use of proceeds was not</p> <p>6 limited to making those small acquisitions on the</p> <p>7 go-forward basis, but also encompassed other operating</p> <p>8 entities.</p> <p>9 Q. Okay. And what responsibilities did you</p> <p>10 personally have with respect to the agenting of these</p> <p>11 facilities?</p> <p>12 A. Similar to the other loan I was involved in:</p> <p>13 In the meeting with the principals, meeting with the</p> <p>14 company over time, helping to conduct analysis,</p> <p>15 overseeing and reviewing analysis, participating in the</p> <p>16 negotiations, participating in the approvals.</p> <p>17 Q. Were these loans where the bank group had</p> <p>18 committed financing in advance -- long in advance of</p> <p>19 the borrower actually -- actually accessing the</p> <p>20 financing or was it a situation for example with the</p> <p>21 follow-on acquisitions where each time the company</p> <p>22 would come back and say, "Okay, I'm going to do this.</p> <p>23 I need another million and a half" or whatever?</p> <p>24 A. In the relationship that we had with the</p> <p>25 company, there was the initial loan. There may have</p>	28	<p>1 involvement to Revco, where at some point in time only</p> <p>2 certain issues would get elevated to you and the rest</p> <p>3 was left to the lending officers?</p> <p>4 A. Most of the day to day was left to the lending</p> <p>5 officers, yes.</p> <p>6 Q. Do you recall whether there were any issues</p> <p>7 that were -- were elevated to you with respect the</p> <p>8 Farrell Gas financing?</p> <p>9 A. Yes.</p> <p>10 Q. Can you tell me about those issues?</p> <p>11 A. From time to time, I think we did process</p> <p>12 either additional loans or additional changes,</p> <p>13 amendments to the fundamental financing to provide them</p> <p>14 with additional funds to make those acquisitions, small</p> <p>15 acquisitions, that we were discussing.</p> <p>16 Q. Okay. West Point Pepperell, when was that?</p> <p>17 A. Similar timeframe, late 1980s.</p> <p>18 Q. So for all of West Point Pepperell, Farrell</p> <p>19 Gas, and Revco, these were all while you were senior</p> <p>20 vice president and regional manager?</p> <p>21 A. Yes.</p> <p>22 Q. And what kind of -- What kind of financing was</p> <p>23 West Point Pepperell?</p> <p>24 A. It was a loan to Farley Industries to acquire</p> <p>25 West Point Pepperell.</p>
27	<p>1 been some amending and increasing that went on</p> <p>2 thereafter in the facilities. There could have been</p> <p>3 possibly a new facility.</p> <p>4 Q. In the initial loan, was that fully funded at</p> <p>5 closing?</p> <p>6 A. Well, the acquisition portion was fully funded</p> <p>7 at closing.</p> <p>8 Q. Okay.</p> <p>9 A. The initial acquisition was as large as the</p> <p>10 company, existing company. So that was an ownership</p> <p>11 transfer whether by assets or stock, and it was -- so</p> <p>12 it was necessary to provide all that funding upfront.</p> <p>13 Q. I guess what I'm getting at -- and I apologize</p> <p>14 if my question is ill formed -- were the banks as a</p> <p>15 part of that initial financing, were they committing to</p> <p>16 provide financing for other transactions down the road</p> <p>17 or were they putting in all of their money at that</p> <p>18 time, and it was being used for this initial</p> <p>19 transaction?</p> <p>20 A. As I recall, there was a -- there was deeper</p> <p>21 commitment. That is, sufficient money to finance the</p> <p>22 initial acquisition and then ongoing funds that would</p> <p>23 be available both for the corporate operations and the</p> <p>24 other smaller acquisitions that might occur.</p> <p>25 Q. Was this a similar situation in terms of your</p>	29	<p>1 Q. And similar to what we talked about with</p> <p>2 Revco, did it involve providing financing for</p> <p>3 operations post closing?</p> <p>4 A. I would say yes.</p> <p>5 Q. And what were your responsibilities as agent</p> <p>6 with respect to the West Point Pepperell financing?</p> <p>7 A. Very similar to the -- my description in the</p> <p>8 other two cases.</p> <p>9 Q. Do you recall any instances with respect to</p> <p>10 West Point Pepperell where issues that might otherwise</p> <p>11 have been handled by the lending officers were elevated</p> <p>12 to your attention?</p> <p>13 A. Yes.</p> <p>14 Q. Please tell me what you recall.</p> <p>15 A. We had a co-agent bankers trust and we had</p> <p>16 numerous waivers and amendments that were requested by</p> <p>17 the company; and as a result, I was involved in</p> <p>18 numerous conversations about the waivers and</p> <p>19 amendments.</p> <p>20 Q. With the co-agent?</p> <p>21 A. With my account officers, with approval</p> <p>22 authorities with the co-agent. From time to time,</p> <p>23 definitely with the company, and could be conversations</p> <p>24 with the banks. I don't recall.</p> <p>25 Q. Okay. Now, other than these three that we</p>

8 (Pages 26 to 29)

30	<p>1 have been talking about and that are referenced in</p> <p>2 your – in your resume, while you were at Wells Fargo</p> <p>3 in Chicago, did you have any other experience agenting</p> <p>4 major loans?</p> <p>5 A. The qualification and the bullet point we're</p> <p>6 talking about was that these were billion-dollar size</p> <p>7 financing in the '80s. A billion-plus financing was</p> <p>8 probably comparable to some greater multiple,</p> <p>9 mini-billion-dollar financing.</p> <p>10 So yes, there were other situations where we might</p> <p>11 have agented loans that were smaller dollar amount than</p> <p>12 a billion dollars. Again, leverage buyouts, leverage</p> <p>13 recaps, or acquisition financings.</p> <p>14 Q. Were there any instances in which you were the</p> <p>15 lending officer with sort of front-line responsibility,</p> <p>16 if you will, for the agenting responsibilities?</p> <p>17 MR. DILLMAN: Other than as he's already</p> <p>18 testified?</p> <p>19 MR. CANTOR: Yes. I'm excluding these three</p> <p>20 now.</p> <p>21 MR. DILLMAN: Well, and First National Bank</p> <p>22 of Chicago.</p> <p>23 MR. CANTOR: All right. Let me start over.</p> <p>24 It was clearly not that great of a question.</p> <p>25 Q. During your time at Wells Fargo in Chicago,</p>	32	<p>1 active in lending to companies?</p> <p>2 A. I was certainly personally active in the</p> <p>3 approval process; but now the distance between me and</p> <p>4 the approval authorities was much different.</p> <p>5 Q. You were on the other side of the table from</p> <p>6 what you had been doing in Chicago?</p> <p>7 A. I wasn't just the approving authority at that</p> <p>8 point, but the approval authorities, the people that I</p> <p>9 had to go and seek a final approval from.</p> <p>10 Q. Right.</p> <p>11 A. I happened to be co-located with. So it was</p> <p>12 more a geographic change and the addition of the</p> <p>13 Pacific Northwest to my responsibilities along with</p> <p>14 those that I had in the Midwest.</p> <p>15 Q. Okay. Did you have any agenting</p> <p>16 responsibilities while you were senior vice president</p> <p>17 deputy group head?</p> <p>18 A. Well, as a continuation of those things that I</p> <p>19 had done when I was located in Chicago, those would</p> <p>20 have continued.</p> <p>21 Q. By that you mean, the specific loans that you</p> <p>22 had worked on when you were in Chicago?</p> <p>23 A. Right. Any of those things that were still in</p> <p>24 the portfolio.</p> <p>25 I basically would have everything that was in the</p>
31	<p>1 other than the three loans we have been talking about,</p> <p>2 were there other instances in which you were the</p> <p>3 front-line representative for Wells Fargo in terms of</p> <p>4 its agenting responsibilities?</p> <p>5 A. As I had done at first Chicago, occasionally</p> <p>6 served as the direct agent as an account officer, when</p> <p>7 I came over to Wells Fargo, I played a very similar</p> <p>8 role in banking. I was a direct account officer. I</p> <p>9 was calling on customers to seek direct business. And</p> <p>10 for several years, that was the total of my – my</p> <p>11 responsibilities before I took over the management</p> <p>12 responsibilities in that office.</p> <p>13 And in that time period, I served from time to</p> <p>14 time as an agent or I might have served as a direct</p> <p>15 lender with a single-lender transaction.</p> <p>16 Q. Okay. Now, 1991, you moved out to San</p> <p>17 Francisco and became or may have -- shortly before you</p> <p>18 moved became senior vice president, deputy group head;</p> <p>19 correct?</p> <p>20 A. I made a temporary move to San Francisco</p> <p>21 during that time period.</p> <p>22 Q. Am I correct this was a promotion?</p> <p>23 A. Yes.</p> <p>24 Q. And in this position, senior vice president</p> <p>25 deputy group head, did you continue to be personally</p>	33	<p>1 Chicago portfolio, now the addition of things that were</p> <p>2 in the portfolio from the San Francisco office that I</p> <p>3 took over. That -- that was basically all the Pacific</p> <p>4 Northwest.</p> <p>5 So from time to time, during that period, I might</p> <p>6 have become involved. I recall enough conversations to</p> <p>7 know that I was involved in and out of various loans,</p> <p>8 various agented loans.</p> <p>9 Q. Okay. Now, you left that job after a year;</p> <p>10 correct?</p> <p>11 A. I left that job in, I think, about mid-1991.</p> <p>12 Q. Okay. Why was that?</p> <p>13 A. May of 1991.</p> <p>14 Q. Why was that?</p> <p>15 A. Family reasons. I had elected after -- after</p> <p>16 trying to make the move, decided that I would leave so</p> <p>17 that my family would not be dissatisfied with moving,</p> <p>18 which it was becoming a very strong preference.</p> <p>19 Q. Okay.</p> <p>20 A. So it was a family decision.</p> <p>21 Q. When you made that decision, you needed to</p> <p>22 leave the bank as well?</p> <p>23 A. Yes. Because we had closed our offices at</p> <p>24 Southern California generally.</p> <p>25 Q. Okay. I want to jump ahead to the next item</p>

34	<p>1 up, if you will on your resume. I'm going to mangle</p> <p>2 this name. Lobue Associates.</p> <p>3 A. Lobue.</p> <p>4 Q. Am I close?</p> <p>5 A. Lobue.</p> <p>6 Q. Lobue.</p> <p>7 What kind of business is that?</p> <p>8 A. Lobue Associates is an international bank</p> <p>9 consulting firm.</p> <p>10 Q. And how did you get involved with them?</p> <p>11 A. Actually from an ad that they placed.</p> <p>12 Q. Where was the ad?</p> <p>13 A. In some financial press.</p> <p>14 And I was interested in putting together a product</p> <p>15 for a consulting company at the time. They were one</p> <p>16 that I talked to, about 1994, 1995. I was looking to</p> <p>17 put together a product to work on the credit process</p> <p>18 for banks, and they did not have a credit process, so I</p> <p>19 was bringing that capability to them.</p> <p>20 Q. And explain to me what you mean by "credit</p> <p>21 process"?</p> <p>22 A. The efficiency and the efficacy of the credit</p> <p>23 process, that is, the decision-making process,</p> <p>24 authority for credit approvals, monitoring of credits,</p> <p>25 the rating and grading of credits. Those things that</p>	36	<p>1 about previously or is that a different sort of</p> <p>2 function?</p> <p>3 A. That's similar to what I'm talking about.</p> <p>4 Q. Okay. And then "Rationalized underwriting</p> <p>5 process for high growth mortgage finance company," what</p> <p>6 does that involve?</p> <p>7 A. There was a mortgage finance company that</p> <p>8 issued first mortgages and home equity loans and their</p> <p>9 process took them 30 to 45 days to accomplish, and the</p> <p>10 project was to reduce the time necessary to accomplish</p> <p>11 that.</p> <p>12 Q. Okay. Let's talk about Shepherd G. Pryor IV</p> <p>13 Management Consulting.</p> <p>14 I can figure out where you got the name from. How</p> <p>15 many other employees are there in this company?</p> <p>16 A. I am the employee.</p> <p>17 Q. You are the employee.</p> <p>18 Looking at some of the bullets under that entry,</p> <p>19 the third one down, says "Evaluate, design, develop,</p> <p>20 and reengineer critical business processes for</p> <p>21 financial institutions."</p> <p>22 Can you explain to me what that means?</p> <p>23 A. Well, there is a colon, and then a series of</p> <p>24 examples thereafter: Credit processes, credit training</p> <p>25 systems, portfolio analysis, product development, those</p>
35	<p>1 are done according to regulatory mandates by every</p> <p>2 bank, but that sometimes are either costly, slow down</p> <p>3 the process, or maybe ineffective and create risk.</p> <p>4 Q. And what you did was to try and streamline</p> <p>5 that process or make it more efficient?</p> <p>6 A. Yes. Well, to rationalize that process. To</p> <p>7 make it more efficient on the one hand and to make it</p> <p>8 more effective on the other.</p> <p>9 Q. In the first bullet under that entry, you</p> <p>10 refer to, "Redesigned the credit process and credit</p> <p>11 policy for a major Saudi Arabian bank." Can you tell</p> <p>12 me what you mean by credit policy?</p> <p>13 A. Credit policies are generally documents and</p> <p>14 policies that govern the credit process of a bank.</p> <p>15 In this particular situation, I drafted and</p> <p>16 designed the credit policy for that bank's approval.</p> <p>17 But every bank has a -- a policy framework within which</p> <p>18 its authority structure, its monitoring structure, all</p> <p>19 of the various things that the banks do in order to</p> <p>20 maintain their -- their control over, and the value</p> <p>21 that they get from the credit relationships that they</p> <p>22 have with their customers.</p> <p>23 Q. Okay. The next bullet down talks about</p> <p>24 Rationalized Credit Group.</p> <p>25 Is that similar to what you've just been talking</p>	37	<p>1 types of things.</p> <p>2 Q. I see.</p> <p>3 A. So I was involved in a number of different</p> <p>4 projects to assist financial institutions with those --</p> <p>5 those areas.</p> <p>6 Q. Okay. And then the next bullet down talks</p> <p>7 about conducting on-site acquisition due diligence</p> <p>8 (financial service).</p> <p>9 What kind of due diligence would you be doing?</p> <p>10 A. Credit, operational, legal, and accounting.</p> <p>11 Q. And when you say "financial services</p> <p>12 industry," would you be doing due diligence for</p> <p>13 financial services companies that were making</p> <p>14 acquisitions or part of the lending process? What</p> <p>15 would your role be?</p> <p>16 A. The acquirer is a financial institution, and</p> <p>17 they had a number of financial institutions of various</p> <p>18 types that they were interested in acquiring, and they</p> <p>19 needed on-site due diligence to verify all of the</p> <p>20 assumptions that they were making about the value.</p> <p>21 And so I would go and either run a project team,</p> <p>22 for instance, say legal due diligence -- I'm not an</p> <p>23 attorney -- but I would have a series of a group of</p> <p>24 lawyers in the country doing legal due diligence and</p> <p>25 then coming back to me for further direction or inquiry</p>

1 STATE OF CALIFORNIA) ss

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3 I, Gail E. Kennamer, CSR 4583, CCRR do hereby
4 certify:

5 That the foregoing deposition was taken
6 before me at the time and place therein set forth
7 and at which time the witness was administered the
8 oath;

9 That the testimony of the witness and all
10 objections made by counsel at the time of the
11 examination were recorded stenographically by me,
12 and were thereafter transcribed under my direction
13 and supervision, and that the foregoing pages
14 contain a full, true and accurate record of all
15 proceedings and testimony to the best of my skill
16 and ability.

17 I further certify that I am neither counsel for
18 any party to said action, nor am I related to any
19 party to said action, nor am I in any way interested
20 in the outcome thereof.

21 IN WITNESS WHEREOF, I have subscribed my name
22 this 25th day of August 2011..

23

24

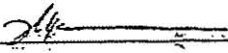
25 
Gail E. Kennamer, CSR 4583, CCRR

EXHIBIT D

BRET YUNKER

3/1/2011

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

In re: CASE NO. 09-21481-BRC-AJC
FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

VIDEOTAPED DEPOSITION OF BRET YUNKER,
a witness herein, taken by the Plaintiff, pursuant
to Article 31 of the Civil Practice Law & Rules of
Testimony, 7 Times Square, New York, New York,
beginning at 9:00 a.m. on Tuesday, March 1, 2011,
held at the above-mentioned time and place before
SARA FREUND, a Shorthand Reporter and a Notary
Public of the State of New York.

JOB No. 157278

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2

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12 New York, New York 10036

13 BY: DANIEL CANTOR, ESQ.

14 SAMANTHA A. HILL, ESQ.

15

16 ALSO PRESENT:

17 Thomas Delvecchio - videographer

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Page 2

1 VIDEOGRAPHER: Good morning. Here

2 begins media number one of the deposition of

3 Mr. Bret Yunker in the matter of In re:

4 Fontainebleau Las Vegas Contract Litigation.

5 This case is in the United States District

6 Court, Southern District of Florida, and the

7 case number is -- the MDL number is 2106.

8 Today is Tuesday, March 1, 2011. The time is

9 approximately 9:12 a.m. This deposition is

10 taking place at the office of O'Melveny &

11 Myers, 7 Times Square, New York, New York,

12 and is being taken on behalf of plaintiffs.

13 My name is Tom Delvecchio appearing on behalf

14 of Sarnoff Reporters Litigation Technologies.

15 All counsel/parties and deponent, please

16 take notice that as part of videotaping this

17 deposition, very high quality microphones are

18 being used. These microphones are very

19 sensitive. If any party, attorneys or

20 deponent wishes to make a statement or have a

21 conversation off the record, they should

22 state that they're going off the record and

23 gain concurrence from all parties. The

24 videographer will then stop recording. All

25 comments made by any party, attorney or

Page 4

1 Q. As you described it, to purpose was to
 2 let the retail lenders know what was going on with
 3 the resort?
 4 A. First was, to let them know what was
 5 going on with the project in terms of construction,
 6 general updates, leasing out the retail, etc., etc.
 7 Q. And those were the sort of topics you
 8 would discuss throughout the project?
 9 A. Presumably, yes. Those were discussed
 10 throughout the project, and any retail lender could
 11 call the company and get an update at any time.
 12 Q. And you haven't been involved in those
 13 conversations prior to October 23?
 14 MR. CANTOR: Objection.
 15 A. No, not with the retail lenders, no.
 16 Q. You said that was part of what was
 17 discussed, which was to give the retail lenders an
 18 update on the project?
 19 A. Yes, that's right.
 20 Q. What else?
 21 A. They also discussed the status of their
 22 loan.
 23 Q. So, they provided an update?
 24 A. I believe the company provided an
 25 update, and then some of the retail lenders

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1 you reviewed, right?
 2 A. I believe so, yes.
 3 Q. Anything stated in that that does not
 4 comport with your recollection of what was said at
 5 the meeting?
 6 MR. CANTOR: Objection. Assuming he has
 7 one.
 8 A. I believe it's generally consistent with
 9 what I recall from that meeting.
 10 Q. You recall that there was not sufficient
 11 interest by the retail lenders, other than Lehman,
 12 to cover the full amount of the Lehman obligations?
 13 A. Those were statements made by the other
 14 banks in that meeting. I don't know how much of
 15 that was posturing within the meeting within a bank
 16 group as to who was going to do what, but I believe
 17 those statements were made in that context at that
 18 meeting.
 19 Q. You didn't have a reason to doubt their
 20 correctness, did you?
 21 MR. CANTOR: Objection. He just gave
 22 you a reason.
 23 A. No. I had a very good reason to doubt
 24 it. Because banks within a bank syndicate may do
 25 something -- depending on the size of their

Page 175

1 discussed their perspectives on the status of that
 2 loan.
 3 Q. In preparing for your deposition here
 4 today, did you review any materials which refreshed
 5 your recollection on the discussions during this
 6 October 23, 2008 meeting?
 7 A. I did not review any materials specific
 8 to that meeting, other than there was one memo, I
 9 think, from one of the retail banks.
 10 Q. From Sumitomo?
 11 A. I don't recall if it was that bank.
 12 Q. Did that help to refresh your
 13 recollection as to what occurred at the meeting?
 14 A. Not much, it wasn't terribly detailed,
 15 from what I recall seeing.
 16 Q. Exhibit 19, which was previously marked,
 17 is that the document that you're referring to?
 18 MR. CANTOR: For what it's worth, you
 19 said Sumitomo.
 20 MR. DILLMAN: I did indeed. It was
 21 National C. Thank you.
 22 A. This is a Nat City memo. Yes, I believe
 23 this is the memo I saw.
 24 Q. Specifically Bates stamp ending 71, the
 25 bullet beginning October 23, 2008, is the portion

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1 commitment within that facility, they may be
 2 posturing in a meeting like that, and they may
 3 ultimately do something else.
 4 Q. Anything could happen.
 5 A. So, that was the reason I doubted what
 6 they were saying as to if they would step up to the
 7 full amount of Lehman.
 8 Q. You doubted, or you didn't necessarily
 9 take them at their word?
 10 A. I didn't necessarily take them at their
 11 word, which is a form of doubt to me.
 12 Q. Did you believe, leaving that meeting,
 13 that the retail lenders, other than Lehman, would
 14 ultimately step up and pay all of Lehman's
 15 commitment on the retail facility?
 16 A. I don't recall what I believed coming
 17 out of that meeting.
 18 Q. You did hear the retail lenders asking
 19 Fontainebleau as to whether or not Fontainebleau
 20 would be prepared to put in additional equity, did
 21 you not?
 22 A. I don't recall that specific discussion.
 23 Q. Were there discussions about
 24 Fontainebleau taking over the commitment on the
 25 retail facility?

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B. YUNKER

C E R T I F I C A T E

STATE OF NEW YORK)

:SS.

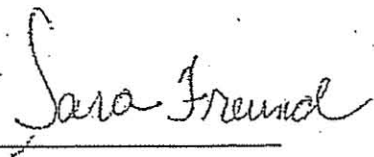
COUNTY OF KINGS)

I, SARA FREUND, a Notary Public
within and for the State of New York, do hereby
certify:

THAT BRET YUNKER, the witness whose
deposition is hereinbefore set forth, was duly
sworn by me and that such deposition is a true
record of the testimony given by such witness.

I further certify that I am not
related to any of the parties to this action by
blood or marriage; and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 11th day of March, 2011.



SARA FREUND