

Exhibit D

1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TEXAS

4 DATATREASURY CORPORATION,)
)
5 Plaintiff,)
)
6 VS.) NO. 2:06-CV-72(DF)
)
7 WELLS FARGO & COMPANY, ET AL.)
)
8 Defendants.)

9

10 *****

11 VIDEOTAPED ORAL DEPOSITION OF
12 JOHN GRAY
13 FEBRUARY 7, 2007

14 CONFIDENTIAL - FOR OUTSIDE COUNSEL ONLY

15 *****

16

17 On the 7th day of February, 2007, at 9:18 a.m., the
18 videotaped oral deposition of the above-named witness
19 was taken at the instance of the Plaintiff, DataTreasury
20 Corporation, before Michelle L. Munroe, Certified
21 Shorthand Reporter in and for the State of Texas, at the
22 offices of Ward & Smith, P.A., Two Hannover Square,
23 Fayetteville Street, Raleigh, North Carolina, pursuant
24 to Notice.

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A P P E A R A N C E S

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ALSO PRESENT:

Ms. Lauren Ragin, Video Technician
Ms. Brook Berry, Document Technician

1 A P P E A R A N C E S

(continued)

2

LIVENOTE CONNECTIONS VIA THE INTERNET:

3

David Tatem

Nita Hanson

4

Anthony Bruster

Dalton Young

5

Ben King

Jacala Hoffman

6

Ed Chin

Don Mullineau

7

Ed Hohn

Nick Nicholas

8

CiCi Williams

Sunja Smith

9

Kelli Hearne

David Curcio

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George Shipley

Alison Ross

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Karl Rupp

John Hiles

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09:18 1 P R O C E E D I N G S

09:18 2 THE VIDEOGRAPHER: We're on the record.

09:18 3 JOHN GRAY,

09:18 4 having been first duly sworn, testified as follows:

09:18 5 EXAMINATION

09:18 6 BY MR. BRUSTER:

09:20 7 Q. Good morning.

09:20 8 A. Good morning.

09:20 9 Q. Tell us your name, please.

09:20 10 A. My name is John Gray.

09:20 11 Q. Mr. Gray, tell us your address, both business

09:20 12 and personal.

09:20 13 A. My personal address is 2105 Chrisdale,

09:20 14 C-h-r-i-s-d-a-l-e, Court, Raleigh, North Carolina. ZIP

09:20 15 code is 27607. And my professional address is 4300 Six

09:20 16 Forks Road, Raleigh, North Carolina 27608.

09:20 17 Q. What do you for a living?

09:20 18 A. I am an employee of First Citizens Bank &

09:20 19 Trust Company.

09:20 20 Q. And what position do you hold with First

09:20 21 Citizens Bank & Trust?

09:20 22 A. I'm a senior vice president.

09:20 23 Q. Have you ever given a deposition before?

09:20 24 A. No, sir.

09:20 25 Q. Okay. You're doing an excellent job of

09:21 1 waiting until I finish asking questions before you start
09:21 2 answering. I'm going to try and show you the same
09:21 3 courtesy and wait until you're done answering before I
09:21 4 start asking. All that's going to help her because
09:21 5 she's typing down everything we say. Okay?

09:21 6 A. Okay.

09:21 7 Q. If you need a break for any reason, bathroom,
09:21 8 cell phone, errand, let us know. We'll be happy to
09:21 9 accommodate you? All right?

09:21 10 A. Thank you.

09:21 11 Q. If you don't understand any of my questions,
09:21 12 let me know and I'll try and rephrase into some form of
09:21 13 English that we can both comprehend. All right?

09:21 14 A. All right.

09:21 15 Q. Do you understand the testimony you're giving
09:21 16 here today has the same force and effect as if you're
09:21 17 testifying in the court room in Marshall, Texas?

09:21 18 A. Yes, sir.

09:21 19 Q. Do you understand you're sworn here to tell
09:21 20 the truth?

09:21 21 A. Yes, sir.

09:21 22 Q. Tell me what you do in your job as a vice
09:21 23 president of First Citizens Bank & Trust Company.

09:21 24 A. I'm senior vice president.

09:21 25 Q. Senior vice president. Excuse me.

09:21 1 A. I am -- my operational title is manager of
09:21 2 financial reporting. And I have responsibilities in
09:21 3 that position for overseeing all of our regulatory
09:21 4 reporting to the various agencies to which First
09:21 5 Citizens Bank & Trust Company and First Citizens
09:22 6 Bancshares, Inc. and all of our other related companies
09:22 7 are subject.

09:22 8 That includes the Securities & Exchange
09:22 9 Commission, the Federal Reserve, the Federal Deposit
09:22 10 Insurance Corporation, the Office of Thrift Supervision
09:22 11 and also the State banking agencies under which we are
09:22 12 subject.

09:22 13 In addition to that, I'm also responsible for
09:22 14 the bank's insurance program to include everything --
09:22 15 essentially everything except for employee benefits-type
09:22 16 insurance. I have been involved in mergers and
09:22 17 acquisitions, the up-front work related to those
09:22 18 transactions in the past. Those are the primaries.

09:22 19 Q. When you say you also have responsibilities
09:22 20 for the bank's insurance program for everything except
09:22 21 employee insurance, what does that entail? What parts
09:22 22 of the bank's insurance program do you have
09:22 23 responsibility for?

09:22 24 A. Responsible for research and purchases related
09:22 25 to our financial institution bonds, which has our

09:29 1 Trust Company.

09:29 2 Q. Do you know who pays the salaries of each of

09:29 3 those chief level executives you just listed?

09:29 4 A. All four of those gentlemen are employees of

09:29 5 and paid by First Citizens Bank & Trust Company. It

09:29 6 might be helpful to note though that there is a

09:29 7 management fee arrangement whereby part of their salary

09:29 8 is reimbursed to First Citizens Bank & Trust Company by

09:29 9 First Citizens BancShares.

09:29 10 Q. Tell me about that management fee agreement.

09:29 11 A. Well, there's not a formal agreement in place,

09:30 12 but there is a process by which we estimate the amount

09:30 13 of time that each person -- and it actually includes

09:30 14 more than those individuals, but the amount of time that

09:30 15 various people or departments dedicate to services for

09:30 16 companies other than the company that pays them. And

09:30 17 based on that estimate and their salary range or their

09:30 18 salary, there is a management fee that's paid by the

09:30 19 receiving company to the giving company.

09:30 20 And in that particular case, it's a payment by

09:30 21 First Citizens BancShares Inc. to First Citizens Bank &

09:30 22 Trust Company.

09:30 23 Q. Who else is -- you mentioned that those aren't

09:30 24 the only folks that subject to that management fee

09:30 25 arrangement.

09:30 1 Who else -- what other executives or officers

09:30 2 are subject to that arrangement?

09:30 3 A. I and the department I manage are. There's an

09:30 4 allocation of our expenses incurred to the different

09:31 5 companies that we provide the services for. Also, our

09:31 6 income tax department has a similar allocation.

09:31 7 In other areas of the bank -- is the question

09:31 8 particularly with respect to First Citizens BancShares

09:31 9 and First Citizens Bank & Trust Company?

09:31 10 Q. Yes, we can start there.

09:31 11 A. There is an accounting function allocation

09:31 12 that BancShares -- that First Citizens Bank & Trust

09:31 13 Company provides to Bancshares and BancShares reimburses

09:31 14 it for. To the best of my recollection, those are the

09:31 15 primary areas.

09:31 16 Q. And who is the executive of First Citizens

09:31 17 that's over the accounting function?

09:31 18 A. That is also an area that's managed by Ken

09:31 19 Black, the CFO.

09:31 20 Q. Is there a written agreement between First

09:31 21 Citizens BancShares, Inc. and First Citizens Bank &

09:31 22 Trust or any other subsidiary that reflects this process

09:32 23 by which First Citizens BancShares, Inc. reimburses the

09:32 24 subsidiaries for their executives's time?

09:32 25 A. No, sir.

09:32 1 Q. When did that process first get implemented at

09:32 2 First Citizens?

09:32 3 A. I do not recall it having been initiated after

09:32 4 I came to work in the corporate finance department. So

09:32 5 I believe it pre-existed my entry into the corporate

09:32 6 finance department in 1988.

09:32 7 Q. And there's just no written policy whatsoever

09:32 8 about this process?

09:32 9 A. Not between First Citizens BancShares and

09:32 10 First Citizens Bank & Trust Company, that's correct.

09:32 11 Q. What about between First Citizens BancShares

09:32 12 and any other company?

09:32 13 A. First Citizens BancShares does not have any

09:32 14 relationships such as this with any of the other

09:32 15 companies. There are no other companies providing

09:32 16 services to First Citizens BancShares.

09:32 17 Q. Do you know when this policy got started?

09:33 18 A. I don't.

09:33 19 Q. Who is the person that's in charge of this

09:33 20 reimbursement to the subsidiary?

09:33 21 A. I am the one who actually makes the

09:33 22 calculations, who accumulates the information and makes

09:33 23 those calculations. The information is then passed on

09:33 24 to someone in our accounting function, and they actually

09:33 25 handle the process of the exchange of funds between the

09:33 1 companies.

09:33 2 Q. How did you know how to start doing this

09:33 3 reimbursement calculation?

09:33 4 A. Based on earlier work papers that we had for

09:33 5 this function.

09:33 6 Q. When you say "earlier work papers," what are

09:33 7 you referring to?

09:33 8 A. Documents that had been prepared by someone

09:33 9 who had done this analysis prior to my involvement.

09:33 10 Q. When was the last time that you generated

09:33 11 documents that reflect this process?

09:33 12 A. We updated it in November or December of 2006

09:33 13 and initiated that update in 2007.

09:33 14 Q. We're here in February of 2007.

09:34 15 When you say you "initiated that update," what

09:34 16 do you mean by that?

09:34 17 A. We began applying the updated amounts that

09:34 18 were paid beginning either in January or February

09:34 19 of 2007, depending on the company.

09:34 20 Q. What do you mean "depending on the company?"

09:34 21 A. Well, most of the payments were updated

09:34 22 effective in January. There's one company that we have

09:34 23 a delayed billing procedure with them, so actually the

09:34 24 updated management fee will not begin until February.

09:34 25 Q. What company is that?

09:39 1 A. I don't recall the title of it.

09:39 2 Q. Do you create that schedule?

09:39 3 A. Yes, sir.

09:39 4 Q. You don't recall the title?

09:39 5 A. No, sir.

09:39 6 Q. When was the last time you created this
09:39 7 schedule?

09:40 8 A. It was revised during the months of November
09:40 9 and December 2006.

09:40 10 Q. So within the last 90 days?

09:40 11 A. Yes, sir.

09:40 12 Q. Do you know whether the management fee that

09:40 13 First Citizens BancShares, Inc. pays to First Citizens

09:40 14 Bank & Trust exceeds \$100,000 a month?

09:40 15 A. I believe it does.

09:40 16 Q. Does it exceed \$500,000 a month?

09:40 17 A. No, sir, it definitely does not.

09:40 18 Q. Does it exceed \$250,000 a month?

09:40 19 A. I do not believe so.

09:40 20 Q. Did you produce this schedule to your lawyers
09:40 21 as part of the document production in this case?

09:40 22 A. No, sir.

09:40 23 Q. Did you participate in any of the document
09:41 24 collection in this case?

09:41 25 A. Yes, sir.

09:45 1 place whereby First Citizens BancShares, Inc. has agreed
09:45 2 to pay the tax liability that's incurred by its
09:45 3 subsidiary without being reimbursed by its subsidiary
09:45 4 for that payment?

09:45 5 A. The payment is reimbursed by the subsidiary.
09:45 6 The subsidiary funds BancShares, and then BancShares
09:45 7 makes the remittance to the Treasury.

09:46 8 Q. Do First Citizens BancShares, Inc. and First
09:46 9 Citizens Bank & Trust share any other form of expenses
09:46 10 in the way you just talked about, the tax liability,
09:46 11 whereby the subsidiary is incurring an expense and
09:46 12 channeling money to the parent company to pay for it?

09:46 13 MR. RODRIGUEZ: Objection; form.

09:46 14 Q. You may answer.

09:46 15 A. Could you repeat the question, please?

09:46 16 Q. Sure. Are there any other types of expense
09:46 17 where the subsidiary is incurring the expense and is
09:46 18 providing money to the parent company where the parent
09:46 19 company is paying for it?

09:46 20 A. No, sir.

09:46 21 Q. Let's go back to the insurance scenario you
09:46 22 talked about earlier.

09:46 23 Insurance procurement is part of your job
09:46 24 responsibility, as I understand it; is that right?

09:46 25 A. Correct.

09:46 1 Q. And you mentioned like, for example, property
09:47 2 and liability coverage or workmen's comp coverage.

09:47 3 Does your department go negotiate -- when
09:47 4 policies are up for renewal, go negotiate with insurance
09:47 5 carriers to provide coverage for, for example, in the
09:47 6 property and liability context, for the branches that
09:47 7 are operated by First Citizens subsidiaries?

09:47 8 A. The negotiations for our insurance renewals
09:47 9 are actually either handled by the agent or the
09:47 10 consultant that we retain to assist us with that. So
09:47 11 they're the ones that are actually dealing directly with
09:47 12 the insurance carriers.

09:47 13 Q. Who is the consultant you retain to get -- for
09:47 14 insurance coverage purposes?

09:47 15 A. We use the firm McNeary Insurance Consulting.

09:47 16 Q. When you say "the agent," are you talking
09:47 17 about the actual agent of the insurance company?

09:47 18 A. No, the agent of our agency.

09:48 19 Q. Of that agency, McNeary?

09:48 20 A. No. McNeary is not an agency. They are a
09:48 21 consulting firm.

09:48 22 Q. Okay. Who is your agent?

09:48 23 A. Our agent is First Citizens Insurance
09:48 24 Services, which is a division of First Citizens Bank &
09:48 25 Trust Company.

09:48 1 Q. What role does First Citizens BancShares, Inc.

09:48 2 play in the insurance procurement process?

09:48 3 A. None.

09:48 4 Q. None?

09:48 5 A. None.

09:48 6 Q. Does First Citizens BancShares, Inc. sign any

09:48 7 policies of insurance, any contracts for insurance?

09:48 8 A. The policies are actually issued in the name

09:48 9 of First Citizens BancShares, Inc. as an efficient way

09:48 10 of covering -- allowing the coverage under those

09:48 11 policies to extend to all of the subsidiaries.

09:48 12 The named endorsement that we typically use on

09:48 13 our insurance company is First Citizens BancShares, Inc.

09:49 14 and its direct and indirect subsidiaries. And the

09:49 15 applications for those policies require signature of the

09:49 16 insured. And we typically have someone sign those

09:49 17 applications as -- in their official capacity as an

09:49 18 officer of First Citizens BancShares, Inc.

09:49 19 Q. Now, about 30 seconds ago I asked you what

09:49 20 role First Citizens BancShares, Inc. plays in the

09:49 21 insurance procurement process. Your answer was, None.

09:49 22 I asked you again, None, and you said, None.

09:49 23 And now you have just told us that the

09:49 24 policies are actually issued to First Citizens

09:49 25 BancShares, Inc. as the named insured, and that a First

10:57 1 A. Not on a stand-alone basis. It would be
10:57 2 reflected in consolidated financial statements of First
10:57 3 Citizens BancShares, Inc. but not to BancShares on a
10:57 4 stand-alone basis.

10:57 5 It would be reflected in -- to the extent that
10:57 6 fee enhanced the shareholders' equity of IronStone Bank,
10:57 7 it would be reflected as an increase in the investment
10:57 8 that First Citizens BancShares, Inc. has in IronStone
10:57 9 Bank.

10:57 10 Q. Does First Citizens BancShares, Inc. receive
10:57 11 dividends from IronStone Bank?

10:57 12 A. No, sir.

10:57 13 Q. Does it receive dividends from First Citizens
10:57 14 Bank & Trust?

10:57 15 A. First Citizens Bank does receive dividends
10:57 16 from First Citizens Bank & Trust Company.

10:57 17 Q. Did I ask the right question? Let me ask that
10:57 18 again.

10:57 19 Does First Citizens BancShares, Inc. receive
10:57 20 dividends from First Citizens Bank & Trust?

10:57 21 A. Yes, sir.

10:57 22 Q. Does First Citizens Bank & Trust receive
10:58 23 dividends from IronStone Bank?

10:58 24 A. No, sir.

10:58 25 Q. Does IronStone Bank dividend to anyone?

11:07 1 Q. Anyone else?

11:07 2 A. I feel the need to mention Gary Williams and
11:07 3 Tom Morrison -- Tom Morris as well.

11:07 4 Q. And their positions?

11:07 5 A. They are in our facilities management
11:07 6 department.

11:07 7 Q. Any other folks that are overlapping officers
11:07 8 of both companies?

11:07 9 A. None that I can recall.

11:07 10 Q. And the board of directors of First Citizens

11:07 11 Bank & Trust Company is composed entirely of individuals

11:08 12 who are also directors of First Citizens BancShares,

11:08 13 Inc. correct?

11:08 14 A. That is correct.

11:08 15 Q. How many times a year does the board of

11:08 16 directors of First Citizens BancShares, Inc. meet?

11:08 17 A. The board has four regular meetings that

11:08 18 occur. And then in addition to that, the board -- and

11:08 19 those are live meetings, in-person meetings. And then

11:08 20 in addition to that, there is a meeting scheduled each

11:08 21 quarter -- I beg your pardon.

11:08 22 For BancShares, there is a meeting of the

11:08 23 board that occurs prior to the filing of the 10-K where

11:08 24 the board -- the board has received a draft copy of the

11:08 25 10-K and receives the report of the audit committee with

11:08 1 respect to their review of the 10-K prior its filing.

11:09 2 Q. For discussion of the 10-K?

11:09 3 A. Right.

11:09 4 Q. Other than those five meetings, are there any
11:09 5 other regular meetings that the board of directors of

11:09 6 First Citizens BancShares, Inc. holds?

11:09 7 A. Those are the only regular meetings of the

11:09 8 board of directors.

11:09 9 Q. And how many times a year does the board of

11:09 10 directors of First Citizens Bank & Trust Company meet?

11:09 11 A. That board would convene four times. They

11:09 12 meet quarterly as well. And for the board of First

11:09 13 Citizens Bank & Trust Company, that would be it.

11:09 14 Q. What about the board of directors of IronStone

11:09 15 Bank, how often does it meet?

11:09 16 A. The -- they meet at least quarterly. Any of

11:09 17 these entities could have special meetings called as

11:09 18 needed, but there are four schedule meetings that occur

11:09 19 each quarter.

11:09 20 Q. When was the last time that the board of

11:09 21 directors of First Citizens BancShares, Inc. met?

11:10 22 A. It was the fourth Monday in June -- of

11:10 23 January 2007.

11:10 24 Q. Was that a quarterly meeting or prior to

11:10 25 filing the 10-K meeting?

11:10 1 A. That was a quarterly meeting.

11:10 2 Q. The first Monday in January?

11:10 4 Q. So that was like what, two weeks ago?

11:10 5 A. Seems like for ever. Yeah.

11:10 6 Q. Time flies when you're having fun.

11:10 7 When was the last meeting of the board of

11:10 8 directors of First Citizens Bank & Trust?

11:10 9 A. That board met the same day.

11:10 10 Q. The fourth Monday in January?

11:10 11 A. That's correct.

11:10 12 Q. When was the last board of directors meeting

11:10 13 of IronStone Bank?

11:10 14 A. That board met the same day as well.

11:10 15 Q. Do you know where the most recent board of

11:10 16 directors meeting was for First Citizens BancShares,

11:10 17 Inc.?

11:10 18 A. That board meeting was held at 4300 Six Forks

11:11 19 Road.

11:11 20 Q. And what about the most recent board of

11:11 21 directors meeting of First Citizens Bank & Trust

11:11 22 Company, where was it held?

11:11 23 A. At the same location.

11:11 24 Q. What about the most recent meeting of the

11:11 25 IronStone Bank board of directors, where was it held?

11:11 1 A. It was also held at 4300 Six Forks Road.

11:11 2 Q. What time was the board of directors meeting

11:11 3 of First Citizens BancShares, Inc. that occurred two

11:11 4 weeks ago at 4300 Six Forks Road?

11:11 5 A. 1:00 o'clock.

11:11 6 Q. What time was the board of directors meeting

11:11 7 for First Citizens Bank & Trust Company that met two

11:11 8 weeks ago?

11:11 9 A. It was also at 1:00 o'clock.

11:11 10 Q. What time was the board of directors meeting

11:11 11 for the IronStone Bank board of directors that met two

11:11 12 weeks ago at that same address?

11:11 13 A. I do not know the exact time they convened

11:11 14 that meeting. It followed the adjournment of the prior

11:11 15 meeting. I'm sure there was a period of break allowed

11:11 16 in there as well.

11:12 17 Q. Did you attend the board of directors meeting

11:12 18 that took place on that day?

11:12 19 A. No, sir.

11:12 20 Q. For any of those entities?

11:12 21 A. No, sir.

11:12 22 Q. Were minutes taken at that meeting?

11:12 23 A. Yes, sir.

11:12 24 Q. Have you seen the minutes of those meetings?

11:12 25 A. No, sir.

11:17 1 CRA committee, their board of directors?

11:17 2 A. I don't believe so.

11:17 3 Q. Is there any kind of, you know, name tag or

11:18 4 some sort of physical demarcation that these directors

11:18 5 take into the board of directors meetings with them to

11:18 6 show when they make a comment in the directors meeting,

11:18 7 if they're making that comment on behalf of First

11:18 8 Citizens BancShares, Inc. or on behalf of First Citizens

11:18 9 Bank & Trust?

11:18 10 A. I don't know.

11:18 11 Q. How many committees does the board of

11:18 12 directors of First Citizens BancShares, Inc. have?

11:18 13 A. Allow me to list them.

11:19 14 Q. Sure.

11:19 15 A. There's an audit committee. There's an

11:19 16 executive committee. There is a nominations committee.

11:19 17 There's an investment committee. There's also --

11:20 18 there's a compensation committee. I'm not at the moment

11:20 19 clear whether or not it is a committee of BancShares or

11:20 20 the First Citizens Bank & Trust Company board.

11:20 21 I believe it is a BancShares committee. And

11:20 22 even though BancShares does not have any employees that

11:20 23 are employed in the name of First Citizens BancShares,

11:20 24 Inc., it exists to ensure that the employment practices

11:20 25 are consistent across all the companies that do have

11:20 1 employees.

11:20 2 Q. Any other committees of the First Citizens

11:20 3 BancShares, Inc. board of directors?

11:20 4 A. None I can recall.

11:20 5 Q. So that's executive, nominations, investment,

11:21 6 compensation. And is there an audit committee?

11:21 7 A. Audit. If I didn't mention that, I should

11:21 8 have.

11:21 9 Q. Those five committees?

11:21 10 A. Yes, sir.

11:21 11 Q. Do you know what the committees are that are

11:21 12 comprised of the First Citizens Bank & Trust board of

11:21 13 directors?

11:21 14 A. There is also an executive committee. There's

11:21 15 an audit committee, compensation committee, CRA

11:21 16 committee, investment committee. Did I mention

11:21 17 compensation committee? There's a trust committee.

11:22 18 Q. What about an executive committee?

11:22 19 A. Yes, there is.

11:22 20 Q. So the same five committees that -- by title.

11:22 21 I mean, there's the same five named committees for the

11:22 22 First Citizens Bank & Trust board of directors as there

11:22 23 is for BancShares, plus there's a trust and a CRA

11:22 24 committee?

11:22 25 A. That's correct.

11:22 1 Q. Do you know whether or not the same

11:22 2 individuals serve on the executive committee for First

11:22 3 Citizens BancShares, Inc. that serve on the executive

11:22 4 committee for First Citizens Bank & Trust?

11:22 5 A. The same individuals serve on both of those

11:22 6 executive committees.

11:22 7 Q. What about for the nominations committee for

11:22 8 First Citizens BancShares, Inc., do those same

11:22 9 individuals serve on the nominations committee for First

11:22 10 Citizens Bank & Trust?

11:22 11 A. Yes, sir.

11:23 12 Q. What about for the audit committee for First

11:23 13 Citizens BancShares, Inc., do those same individuals

11:23 14 serve on the audit committee for First Citizens Bank &

11:23 15 Trust?

11:23 16 A. Yes, sir.

11:23 17 Q. And the investment committee of First Citizens

11:23 18 BancShares, Inc., do those same individuals serve on the

11:23 19 investment committee for the board of First Citizens

11:23 20 Bank & Trust?

11:23 21 A. To the best of my knowledge, yes.

11:23 22 Q. And the compensation committee, are those the

11:23 23 same individuals that comprise the boards for both of

11:23 24 those?

11:23 25 A. If BancShares has a compensation committee,

11:23 1 they are the same.

11:23 2 MR. RODRIGUEZ: When you hit a convenient

11:23 3 point, we can take a break.

11:23 4 MR. BRUSTER: Yes, let's take a break.

11:23 5 No problem.

11:23 6 THE VIDEOGRAPHER: We're off the record.

11:23 7 (Recess taken 11:23 to 11:35 a.m.)

11:23 8 THE VIDEOGRAPHER: We're back on the

11:35 9 record.

11:35 10 Q. Mr. Gray, we're back on the record after a

11:35 11 short break. We were talking when we left off about the

11:35 12 overlapping committee structure between the boards of

11:35 13 directors of First Citizens BancShares, Inc. and First

11:35 14 Citizens Bank & Trust Company. And you made a comment,

11:35 15 I believe, that at the most recent board meeting, there

11:35 16 was an authorization to empower Jim Hyler to conduct the

11:35 17 annual meetings of the wholly owned subsidiaries?

11:35 18 A. That's correct.

11:35 19 Q. And what is Mr. Hyler's position with First

11:35 20 Citizens BancShares, Inc.?

11:35 21 A. He is the vice chairman of First Citizens

11:35 22 BancShares, Inc.

11:35 23 Q. And why was he -- tell me the rationale behind

11:35 24 that authorization, if you know.

11:35 25 A. He's chief operating officer, and I suspect it

13:29 1 listed here to timely file their -- their required
13:29 2 reporting requirements.

13:29 3 Q. And he would have reviewed that as an officer
13:29 4 of First Citizens BancShares, Inc., correct?

13:29 5 A. Correct. To the extent -- yes, because that
13:29 6 relates to our proxy filing.

13:29 7 Q. Here is some discussion down here about the

13:30 8 board of directors and the committees we have been

13:30 9 talking about for a while. And the first committee

13:30 10 discussed here is the audit and compliance committee.

13:30 11 The first sentence notes, The audit and compliance

13:30 12 committee is a joint committee of our -- which is First

13:30 13 Citizens BancShares, Inc., correct?

13:30 14 A. Correct.

13:30 15 Q. -- "First Citizens Bank and IronStone Bank's

13:30 16 boards of directors;" is that correct?

13:30 17 A. Correct.

13:30 18 Q. Does that joint committee meet and discuss

13:30 19 business in the way that you described previously, a

13:30 20 joint meeting amongst all those directors?

13:30 21 A. Among the directors who comprise that board --

13:30 22 that committee.

13:30 23 Q. Correct.

13:30 24 A. Yes, sir.

13:30 25 Q. And there's no distinction drawn between which

13:30 1 entity they're acting on behalf of in the minutes of

13:30 2 those meetings, is there?

13:30 3 A. No, sir. There are some matters that they

13:31 4 review that are specific to a given institution. They

13:31 5 do review regulatory examination reports that are

13:31 6 specific to whatever entity is being examined by that

13:31 7 particular agency.

13:31 8 Q. You don't serve on any of these committees, do

13:31 9 you?

13:31 10 A. No, sir.

13:31 11 Q. Here on page 11, there's discussion of the

13:31 12 compensation committee, which we were wondering whether

13:31 13 or not it existed for First Citizens BancShares, Inc.

13:31 14 And this document says, "The compensation committee is a

13:31 15 joint committee of First Citizens Banks and our" --

13:31 16 meaning First Citizens BancShares, Inc.'s -- "board,"

13:31 17 correct?

13:31 18 A. Yes, sir.

13:31 19 Q. So there is, in fact, a joint compensation

13:31 20 committee between the parent company and the subsidiary,

13:31 21 correct?

13:31 22 A. Correct.

13:31 23 Q. That's an accurate statement?

13:32 24 A. Yes, sir.

13:32 25 Q. Okay. Here on page 13, there's a discussion

13:48 1 related to IronStone Bank.

13:48 2 Q. Has there ever been any instance, to your
13:48 3 knowledge, where First Citizens BancShares, Inc. has
13:48 4 paid money to Ward & Smith, P.A., for legal services
13:48 5 rendered on behalf of one of the two subsidiaries?

13:48 6 A. I believe that when we were in the early
13:49 7 stages of forming IronStone Bank back in 1997, matters
13:49 8 related to its establishment were billed to First
13:49 9 Citizens BancShares, Inc. Beyond that, I don't recall
13:49 10 any particular item that falls into those -- into that
13:49 11 circumstance -- into the situation you described.

13:49 12 Q. We may have already discussed this. But First
13:49 13 Citizens Bank & Trust Company makes dividend payments to
13:50 14 First Citizens BancShares, Inc., correct?

13:50 15 A. Yes, sir.

13:50 16 Q. Which is, in fact, the majority of the way
13:50 17 that First Citizens BancShares, Inc. recognizes revenue,
13:50 18 correct?

13:50 19 A. On a stand-alone basis, yes.

13:50 20 Q. What do you mean by that?

13:50 21 A. Looking at its revenue just -- not as part of
13:50 22 the consolidated financial group, but on a stand-alone
13:50 23 basis, the primary source of its income is -- in recent
13:50 24 years has been the dividends it has received from First
13:50 25 Citizens Bank & Trust Company.

13:50 1 Q. For example, for the last complete fiscal year

13:50 2 that the bank operated, do you know what the total

13:50 3 revenue that First Citizens BancShares, Inc. realized

13:50 4 was?

13:50 5 A. I don't recall. It's available in our 10-K.

13:50 6 I would be happy to find that.

13:50 7 Q. We have got it here. We're going to look at

13:50 8 it.

13:50 9 Do you recall approximately what it was?

13:50 10 A. No, sir.

13:50 11 Q. Do you recall what percentage of that revenue

13:50 12 came from First Citizens Bank & Trust Company from

13:50 13 dividends?

13:50 14 A. I don't remember the amount, the percentage.

13:50 15 Q. But your testimony is the majority of it is as

13:51 16 a result of First Citizens Bank & Trust Company?

13:51 17 A. My recollection is it was more than half.

13:51 18 Q. Does First Citizens BancShares, Inc. make any

13:51 19 loans to First Citizens Bank & Trust Company?

13:51 20 A. No.

13:51 21 Q. Does it enter into any, you know, credit

13:51 22 obligations --

13:51 23 A. No.

13:51 24 Q. -- with respect to First Citizens Bank &

13:51 25 Trust?

14:16 1 THE VIDEOGRAPHER: We're off the record.

14:16 2 (Recess taken 2:16 to 2:33 p.m.)

14:32 3 THE VIDEOGRAPHER: We're on the record.

14:33 4 (Exhibit No. 20 marked.)

14:33 5 MR. RODRIGUEZ: Before we begin, I just
14:33 6 want to make one designation under the protective order,
14:33 7 that the question and answer discussing the sale price
14:33 8 of American Guaranty, we designate that as for outside
14:33 9 counsel eyes only under the terms of the protective
14:33 10 order. We can provide the line and -- the page and line
14:33 11 numbers once the transcript is circulated.

14:34 12 Q. Mr. Gray, we're back on the record. I wanted
14:34 13 to hand you what I have marked as Exhibit 20, an actual
14:34 14 old school paper document here. We left off with some
14:34 15 discussion about Pacific Medical Limited Partnership.

14:34 16 MR. BRUSTER: Do you need another copy of
14:34 17 this? Do you have it?

14:34 18 MR. RODRIGUEZ: I have it.

14:34 19 Q. The document I handed you was given to me
14:34 20 before the deposition started this morning, so it
14:34 21 doesn't have a Bates stamp. I think counsel is going to
14:34 22 probably Bates stamp it and produce it again. The one I
14:34 23 have handed you is a copy of what was given to me.

14:34 24 Do you recognize this document, sir?

14:34 25 A. Yes, sir.

14:34 1 Q. Tell us what this is.

14:34 2 A. This is a printout of an inquiry that we made

14:34 3 against our customer information system to identify the

14:34 4 customer that upon inquiry we determined that had a

14:34 5 Texas address. This is the customer that had elected to

14:35 6 invest in the overnight master note agreement of First

14:35 7 Citizens BancShares, Inc. It is a customer of First

14:35 8 Citizens Bank & Trust Company who had made that

14:35 9 election.

14:35 10 Q. And when did you print -- did you print this

14:35 11 document out?

14:35 12 A. No, sir, one of my associates printed this.

14:35 13 Q. And do you know when this was printed out?

14:35 14 A. It was printed yesterday actually.

14:35 15 Q. And this document reflects a Texas Limited

14:35 16 Partnership and its investment in a master note that

14:35 17 First Citizens BancShares, Inc. is obligated on,

14:35 18 correct?

14:35 19 A. It reflects again, a customer that on our

14:35 20 customer information file had a Texas address. If you

14:35 21 recall our discussion about Mark Johnson having helped

14:35 22 me back when he was assisting me in the preparation of

14:35 23 the declaration, he had done an inquiry against, I

14:36 24 guess, the same system that this produced -- that was

14:36 25 produced -- or that this was extracted from.

14:36 1 And then based on that information I received
14:36 2 from him, Ruth Clark then provided me with the agreement
14:36 3 with that customer that we had previously provided to
14:36 4 you. But we recognized that we had not -- that that
14:36 5 document was actually addressed to someone in
14:36 6 Fayetteville, North Carolina, and that was not exactly
14:36 7 clear as to why we had produced that to you.

14:36 8 An this was attempted to -- an attempt to link
14:36 9 that customer to the Texas address.

14:36 10 Q. Is this an example of First Citizens
14:36 11 BancShares, Inc. conducting business in Texas?

14:36 12 A. No, sir. This is a customer of First Citizens
14:36 13 Bank & Trust Company that we had a relationship with in
14:36 14 Fayetteville, North Carolina. The relationship
14:36 15 actually, at least with respect to the master note
14:37 16 agreement, no longer exists. It was terminated some
14:37 17 time ago.

14:37 18 But the customer contact that we had was
14:37 19 between one of our bankers in Fayetteville and a cash
14:37 20 management representative with a customer in

14:37 22 customer designated this Austin address as the address
14:37 23 to -- I assume its banking statements were sent to this
14:37 24 address. I suspect that's the case, but I'm not sure.

14:37 25 Q. To the Texas address?

15:04 1 Q. Okay. Before you met with counsel or talked
15:04 2 with counsel about this request, did you review it to
15:04 3 consider -- to consider producing documents?

15:04 4 A. I don't recall.

15:04 5 Q. For example, documents that might be
15:04 6 responsive to that request would be board meeting
15:04 7 minutes that we have discussed earlier today, correct?

15:05 8 A. To the extent those board meetings include
15:05 9 officers, directors or employees of BancShares and
15:05 10 officers, directors and employees of First Citizens Bank
15:05 11 & Trust Company.

15:05 12 Q. Well, they're joint boards, aren't they?

15:05 13 A. Correct.

15:05 14 Q. I mean, when the board of directors of First
15:05 15 Citizens BancShares, Inc. is meeting, so is the board of
15:05 16 First Citizens Bank & Trust, correct?

15:05 17 A. Well, but the minutes of the meetings are
15:05 18 separate. So there are minutes that are maintained for
15:05 19 the meeting of the board of directors of First Citizens
15:06 20 BancShares, Inc. and separate meetings -- separate
15:06 21 meetings maintained -- separate minutes maintained for
15:06 22 the meeting of the board of directors of First Citizens
15:06 23 Bank & Trust Company.

15:06 24 Q. So that would be an example of documents you
15:06 25 guys have responsive to that request, right?

16:03 1 Citizens Bank & Trust, would it?

16:03 2 MR. RODRIGUEZ: Objection; form.

16:03 3 A. I can't answer that.

16:03 4 Q. I mean, does it state in there which entity
16:03 5 has made an unfunded loan commitment to a related party?

16:03 6 A. No, sir. But it is part of the consolidated
16:03 7 financial statement presentation for First Citizens
16:03 8 BancShares, Inc.

16:03 9 Q. I understand. It just doesn't say who made
16:03 10 those commitments, those off balance sheet commitments,
16:03 11 does it?

16:03 12 A. We do not differentiate between commitments
16:03 13 made by the different companies, again, because that's
16:03 14 not the requirement. The requirement is to present it
16:03 15 on a consolidated basis.

16:03 16 Q. Okay. Other than what we have talked about
16:04 17 here today, to your knowledge, has First Citizens
16:04 18 BancShares, Inc. either paid money or earned money to or
16:04 19 from directly persons or companies in the state of
16:04 20 Texas?

16:04 21 A. No, sir.

16:04 22 (Exhibit No. 26 marked.)

16:04 23 Q. I have marked as Exhibit 26 a document that

16:05 24 was recently produced to us.

16:05 25 Have you seen this document before?

16:05 1 A. Yes, sir.

16:05 2 Q. It's Bates stamped FCBS 01219. And it appears

16:05 3 to me to be an invoice from KPMG, the consulting firm,

16:05 4 correct?

16:05 5 A. That's correct, the accounting firm.

16:05 6 Q. Accounting firm. Excuse me.

16:05 7 It's addressed to First Citizens BancShares,

16:05 8 Inc., correct?

16:05 9 A. Yes, sir.

16:05 10 Q. And it says, Please remit to KPMG, LLP

16:05 11 department --it looks like 0613, P.O. Box 120001,

16:06 12 Dallas, Texas 75312, correct?

16:06 13 A. Correct.

16:06 14 Q. And the project number was final billing for

16:06 15 review of registration statement, consent issuances and

16:06 16 comfort letter procedures performed in connection with

16:06 17 trust preferred offering, right?

16:06 18 A. Yes, sir.

16:06 19 Q. For \$8,000?

16:06 20 A. That's correct.

16:06 21 Q. Did First Citizens BancShares, Inc. pay this

16:06 22 bill?

16:06 23 A. Yes, sir.

16:06 24 Q. Did it pay it in accordance with KPMG's

16:06 25 remittance requirements?

16:06 1 A. Could you please explain what remittance

16:06 2 requirements mean?

16:06 3 Q. In accordance with what it says, please remit

16:06 4 to, right there.

16:06 5 A. Yes, sir.

16:06 6 Q. So it paid KPMG this bill that was sent to

16:07 7 First Citizens BancShares, Inc.?

16:07 8 A. That is correct.

16:07 9 Q. And it paid it by sending a bill to Dallas,

16:07 10 Texas, sending a check to Dallas, Texas?

16:07 11 A. I believe it was remitted by check, yes, sir.

16:07 12 Q. About two minutes ago I asked you whether

16:07 13 other than what we have talked about today, to your

16:07 14 knowledge, has First Citizens BancShares, Inc. either

16:07 15 paid money or earned money to or from directly persons

16:07 16 or companies in the state of Texas and your answer was,

16:07 17 no, sir.

16:07 18 A. Have we not talked about this today?

16:07 19 Q. No, sir.

16:07 20 A. In that case, we have made this payment to a

16:07 21 company in the state of Texas.

16:07 22 Q. So this is --

16:07 23 A. And --

16:07 24 Q. -- clarification your change --

16:07 25 A. Yes, sir. I apologize for the --

16:07 1 Q. -- of previous testimony, right?

16:07 2 A. Yes, sir.

16:07 3 Q. How many other times have we talked about

16:07 4 things today where actual documents prove otherwise?

16:07 5 MR. RODRIGUEZ: Objection; form.

16:07 6 A. I'm aware of one other instance where we have

16:08 7 made payment to a company in the state of Texas.

16:08 8 Q. What is that?

16:08 10 Q. That payment was made directly by First

16:08 11 Citizens BancShares, Inc.?

16:08 12 A. Yes, sir.

16:08 13 Q. Do you think that paying people like this that

16:08 14 do business in Texas and First Citizens BancShares, Inc.

16:09 15 paying them is conducting business in Texas?

16:09 16 MR. RODRIGUEZ: Objection; form.

16:09 17 A. No, sir.

16:09 18 Q. Even though people from Texas are sending

16:09 19 First Citizens BancShares, Inc. direct bills, and the

16:09 20 company is turning around and paying them directly in

16:09 21 Texas, you don't believe that's conducting business in

16:09 22 Texas?

16:09 23 A. In this particular situation, the KPMG bill,

16:09 24 we had contact with members of KPMG in their Raleigh and

16:09 25 Charlotte offices, and I cannot explain why they asked

16:09 1 us to remit it to this Dallas, Texas address. But we

16:09 2 did, and for that reason we disclosed that to you.

16:09 3 Q. Is it your testimony that when First Citizens

16:09 4 BancShares, Inc. is directly billed by just like this, a

16:09 5 matter here that it turns around and pays and sends a

16:09 6 check to Dallas, Texas, that that's not conducting

16:10 7 business in Texas?

16:10 8 A. I do not recall having any contact with any

16:10 9 individual from Texas related to this matter. To the

16:10 10 best of my recollection, we handled -- or this

16:10 11 engagement was handled by members of the Raleigh and

16:10 12 Charlotte offices.

16:10 13 Q. Let me ask the question again. Do you not

16:10 14 consider being invoiced -- First Citizens BancShares,

16:10 15 Inc. being invoiced and First Citizens BancShares, Inc.

16:10 16 turning around and sending a check directly to Texas to

16:10 17 pay that invoice conducting business in Texas?

16:10 18 A. No, sir.

16:10 19 Q. Do you not consider that directing an activity

16:10 20 toward the state of Texas?

16:10 21 A. No, sir.

16:10 22 Q. Mailing a check?

16:10 23 A. We remitted as they requested us to do for the

16:10 24 services that were provided to us.

16:10 25 Q. Mailing a check to a company in the state of

16:22 1 MR. RODRIGUEZ: Pass the witness.

16:22 2 FURTHER EXAMINATION

16:22 3 BY MR. BRUSTER:

16:22 4 Q. Did you have a chance to visit with your
16:22 5 counsel before answering these last couple questions?

16:22 6 A. Yes, sir.

16:22 7 MR. BRUSTER: Nothing further.

16:22 8 THE VIDEOGRAPHER: We're off the record.

9 (Deposition concluded at 4:22 p.m.)

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1 DEPOSITION CHANGES

2 WITNESS: JOHN GRAY

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(Signature of the Witness)

THE STATE OF _____
COUNTY OF _____

Subscribed and sworn to before me by the said
witness, JOHN GRAY, on this the _____ day of
_____, 2007.

Notary Public in and for the
State of _____
County of _____

My commission expires: _____

1 STATE OF TEXAS)

2 COUNTY OF DALLAS)

3

4 I, Michelle L. Munroe, Certified Shorthand Reporter
5 in and for the State of Texas, certify that the
6 foregoing deposition of JOHN GRAY was reported
7 stenographically by me at the time and place indicated,
8 said witness having been placed under oath by me, and
9 that the deposition is a true record of the testimony
10 given by the witness.

11 That the amount of time used by each party at the
12 deposition is as follows:

13	Mr. Bruster	-	5 hours, 4 minutes
	Mr. Rodriguez	-	3 minutes

14

15 That pursuant to information given to the deposition
16 officer at the time said testimony was taken, the
17 following includes counsel for all parties of record:

18

19 FOR THE PLAINTIFF DATATREASURY CORPORATION:

20 Mr. Anthony Bruster
21 NIX PATTERSON & ROACH, LLP
22 2900 St. Michael Drive
23 Suite 500
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25

1 FOR THE DEFENDANTS FIRST CITIZENS BANCSHARES, INC. AND
2 FIRST CITIZENS BANK & TRUST COMPANY:

3 Mr. Fernando Rodriguez, Jr.

4 BAKER BOTTS, LLP

5 2001 Ross Avenue

6 Dallas, Texas 75201-2980

7

8 I further certify that I am neither counsel for nor
9 related to any party in this cause and am not
10 financially interested in its outcome.

11 Given under my hand on this the _____ day of
12 _____, 2007.

13

14

15

16 _____
Michelle L. Munroe, CSR No. 6011
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P.O. Box 1789
18 Longview, Texas 75606
903.758.2183 phone

20 My commission expires 12-31-07

21 Original deposition sent to Mr. Rodriguez on
22 _____, 2007 for signature.

23

24

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