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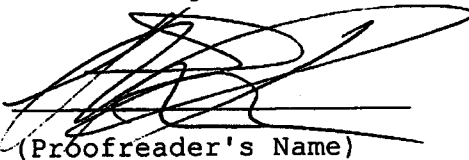
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PROOFREADER'S CERTIFICATE

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In The Matter of: OPTIMAL ECONOMICS CAPITAL PARTNERS
Witness: Patrick O'Neal Howard
File Number: FW-04043-A
Date: Wednesday, July 20, 2016
Location: Fort Worth, TX

This is to certify that I, Maria E. Paulsen,
(the undersigned), do hereby swear and affirm that the
attached proceedings before the U.S. Securities and Exchange
Commission were held according to the record and that this is
the original, complete, true and accurate transcript that has
been compared to the reporting or recording accomplished at
the hearing.


(Proofreader's Name)

7/25/10
(Date)

CERTIFICATE OF REPORTER

1
2 I, Barbara Wall, hereby certify that the foregoing
3 transcript consisting of 192 pages is a complete, true, and
4 accurate transcript of the investigative hearing indicated,
5 held on July 20, 2016, at Fort Worth, Texas, in Optimal
6 Economics Capital Partners. I further certify that this
7 proceeding was recorded by me, and that the foregoing
8 transcript has been prepared by me or under my direction.
9
10
11



Official Reporter

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THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
)
) File No. FW-04043-A
)
OPTIMAL ECONOMICS)
)
CAPITAL PARTNERS, LLC)

WITNESS: Patrick O'Neal Howard

PAGES: 412 through 575

PLACE: Securities and Exchange Commission
801 Cherry Street, 19th Floor
Fort Worth, Texas

DATE: Thursday, July 21, 2016

The above entitled matter came on for hearing, pursuant to notice, at 9:08 a.m.

Diversified Reporting Services, Inc.

(202) 467 9200

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1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 CATHERINE FLOYD, ESQ.

5 BARBARA L. GUNN, ASSISTANT REGIONAL DIRECTOR

6 TIM McCOLE, ESQ.

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24 and Investor Shulman

25

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1 PROCEEDINGS

2 MS. FLOYD: On the record at 9:08. It's

3 July 21, 2016. I am Catherine Floyd, and I'm joined by

4 my colleagues, Carol Stumbaugh, Barbara Gunn, and Timothy

5 McCole will join us as well throughout the day.

6 We are officers of the United States Securities

7 and Exchange Commission for the purpose of this

8 proceeding. We are today resuming the examination of

9 Patrick Howard which was adjourned on May 5, 2016.

10 Whereupon,

11 PATRICK O'NEAL HOWARD

12 was called as a witness and, having been first duly

13 sworn, was examined and testified as follows:

14 MS. FLOYD: Mr. Howard, are you represented by

15 counsel today?

16 THE WITNESS: Yes.

17 MS. FLOYD: Would counsel please identify

18 themselves.

19 MR. HOWELL: Barrett Howell, Ryan Meyer, and

20 Brandon McCarthy of K&L Gates.

21 MS. FLOYD: Testimony today is pursuant to a

22 Commission subpoena which has been previously marked as

23 Exhibit 2.

24 Mr. Howard, do you understand that you remain

25 under oath?

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1 THE WITNESS: Yes.

2 EXAMINATION

3 BY MS. FLOYD:

4 Q Is there anything that would prevent you from
5 giving full, complete, and truthful answers to my
6 questions today?

7 A No.

8 Q The same instructions we covered in the
9 beginning of the last two testimonies will apply today as
10 well. Do you have any questions?

11 A No.

12 Q And let the record reflect that a copy of the
13 formal order of investigation in this matter will be
14 available for examination during the course of this
15 proceeding.

16 I would like to start today off the record we
17 had a short discussion regarding the CFG II revised PPM
18 that was provided to the staff by Mr. Howard yesterday.
19 It came to our attention that it appears to be the same
20 document as Exhibit 20, so Mr. Howard will be getting us
21 the original CFG II PPM. Is that correct?

22 A That's correct.

23 Q If we could move on to the OE Ventures PPM.
24 I'm handing you what has already been marked as Exhibit
25 22. Do you recognize Exhibit 22?

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1 A Yes.

2 Q I know on May 5 we previously discussed a
3 little bit about this PPM, and I believe you testified
4 that yourself and Dovile drafted this PPM. Is that
5 correct?

6 A That's correct.

7 Q Has anyone else drafted or participated in the
8 drafting of the exhibit?

9 A Not this version, no.

10 Q Did you have assistance from counsel at all?

11 A Not in this version, no.

12 Q How many versions are there?

13 A They are currently working to update --
14 counsel, K&L Gates is currently on working on updating
15 this PPM now.

16 Q Great. So no investors have received the new
17 revised PPM. Correct?

18 A That's correct.

19 Q If we can just go over a few things on the PPM,
20 please. I notice it's a vastly different format than the
21 previous two PPMs. Is there a reason for that?
22 Formatting and like substance and formatted as you're
23 discussing more about the processes of OE Capital
24 Partners.

25 A Yes. we thought it was -- we wanted to make

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1 sure in this PPM that we put as much about our processes
2 as we possibly could. And so we just tried to put
3 everything that we could in the PPM.

4 Q Okay, great. On page 17 in Bates-numbered OEC
5 SEC 001320 who drafted this flow of funds chart?

6 A I believe that was a combination of Dovile and
7 myself.

8 Q Okay. And do you believe it to be accurate?

9 A Yes, I believe it to be accurate.

10 Q In the OE Capital Ventures LLC circle on the
11 right-hand side it appears that an OE investor invests
12 and their capital goes into the OE Capital Ventures LLC
13 account. Correct?

14 A Correct.

15 Q Is there any funds that are leaving OE Capital
16 Ventures LLC and going into OE Capital Partners account,
17 like overhead expenses?

18 A That is true.

19 Q Okay, so we're just missing a line here?

20 A From that perspective, yes.

21 Q Okay. Just want to make sure. And on page 29,
22 which is OEC SEC 001332, you currently added the current
23 portfolio bios. Is that correct?

24 A Let's see. That is correct.

25 Q Is it something you're going to be updating as

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1 you bring on additional portfolio companies?

2 A Yes.

3 Q On page 36, OEC SEC 001339, under Preferred
4 Return Quarterly Distributions it states -- and I
5 quote -- "First distribution of the investment will be
6 paid in the following quarter of OE Ventures, OE Capital
7 Ventures LLC receiving the minimum capital balance to
8 initiate the investment." So are you saying that
9 investors will get paid their 3 percent the following
10 quarter?

11 A Correct.

12 Q Okay. On page 41, OEC SEC 001344, under
13 Inaccuracy of Liquidity Influx, it says -- I quote -- "OE
14 Capital has been in operation for more than 12 months and
15 has already passed the minimum threshold needed to deploy
16 capital and continue operations." What do you mean by
17 this?

18 A There was, I believe in the CFG II PPM there
19 was a minimum threshold of capital needed to be raised in
20 order to just operate. I think it was like 500,000. And
21 so the intent there was to say we've already passed that
22 minimum threshold.

23 Q So the capital raised in CFG I, would that go
24 towards the minimum threshold as well?

25 A Correct. So all --

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1 Q So 900 plus 500? Because didn't you raise
2 \$900,000 in the first one?
3 A We raised \$900,000 for the first one. So it
4 would have gone towards that as well. So I'm -- I'll try
5 and make sure I say this sentence clearly. There was a
6 minimum amount of money needed just to get the team in
7 place and make sure that the team could operate and that
8 we had, you know, facilities, that kind of stuff. So the
9 attempt on that sentence was to say we've -- that's been
10 done, we've surpassed that threshold.

11 Q Okay. The team, you mean like OE Capital's
12 team, like you and Dovile and Tracy and --

13 A Yes, ma'am.

14 Q -- et cetera. Okay. And on page 47 at the
15 bottom, Secondary Market for Insurance, it makes a
16 reference again to real estate. At this point in time
17 did OE Capital own any real estate?

18 A No.

19 Q I know we went over some marketing materials
20 yesterday, and I kind of want to do just add a few
21 additional emails, and then I promise we'll move on. I'm
22 handing you what has been marked as Exhibit 40. It's a
23 string of emails, Bates-numbered OE SEC 031175.

24 (SEC Exhibit No. 40 was marked for
25 identification.)

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1 BY MS. FLOYD:

2 Q Do you recognize Exhibit 40?

3 A It's -- there -- it is an email that was sent
4 from Charles to me.

5 Q Okay. On February 8, 2016. Is that correct?

6 A That's correct.

7 Q Subject line says "Packet Template." What is
8 he referring to?

9 A I am assuming he's referring to a packet that
10 he had at C4 that they -- they may have been using at C4.

11 Q Okay. So yesterday we went through I believe
12 the right side of the packet was Exhibit 28, and it gave
13 several attachments looked like marketing materials. Is
14 that correct?

15 A Correct.

16 Q So down on the second half of the first page of
17 Exhibit 40 it says to Charles -- from Charles to Jackson
18 Clements, and in his email it says "left side of folder
19 all normal stock paper." I'm assuming that's the left
20 side of the investor marketing material packet. Would
21 that be safe to assume?

22 A Based on that, I would assume so as well.

23 Q Okay. The attachments, did you draft any of
24 the attachments to the email?

25 A I don't think I actually drafted any of these.

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1 Q Do you know who drafted the attachments?

2 A The first attachment looks familiar. I believe
3 that would have been Dovile and Chad Alberson. The
4 second attachment, that would have been -- that, I will
5 say that's a compilation of OE employees. I wouldn't
6 know exactly who all was involved. I might have even
7 been involved in that. I believe Dovile drafted the
8 Qualified versus Nonqualified Funds. I believe Dovile
9 along with maybe Chad or -- would have drafted the
10 Acceptable Investment Accounts. Guarantee versus Insure
11 would have probably been Dovile. The Index Annuity Rate
12 was not drafted by us. And neither was the Current
13 Interest Rates.

14 Q So it'd probably safe to assume they'd be C4,
15 the index annuities and current interest rates, and just
16 got their logo on top?

17 A That would be my assumption.

18 Q And, I'm sorry, the Market Comparison, did
19 we -- I think my attachments are out of order than yours.
20 So that would be you said OE Capital employees for that
21 one?

22 A Yeah, I would say a combination of OE Capital
23 employees for that one, yeah.

24 Q Got it. Okay. Thank you. And if you go again
25 to Guarantee versus Insure. Do you understand why this

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1 is added to the packet?

2 A I'm not for certain. I believe we already, we
3 did have a sheet called Guarantee Versus Insured
4 previously. I think this was an attempt to try to help
5 people understand the difference between the language
6 that was being used at the time, which was we couldn't
7 say guarantee, and some people were saying insure, I
8 think we were saying insure. I'm not sure we were saying
9 it in February, but I think we had moved away from that
10 language at this point.

11 Q Okay. So when you said private equity
12 guaranteed the return, what do you mean by that?

13 A So a lot of private equity firms, actually they
14 guarantee a certain return based on the secure interests
15 inside the company's investing. So, for example, if they
16 put on a debt, right, and they issue a debt and they
17 issue it as bonds, well, that's a security guarantee. So
18 you can say I guarantee 8 percent. If you don't issue
19 bonds, then you don't have any other kind of really
20 background or secured interest, then it becomes very
21 difficult to use the word "guarantee" from a financial
22 perspective.

23 Q When you say under the paragraph "Ultimate
24 Economics Insures Your Yield and How is that Different,"
25 when you say -- and I quote -- "We use our capital, our

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1 company capital to shield your money from risk in a
2 defined three-year time frame," what do you mean by that?

3 A So what we mean so if you look at our, look at
4 our investment strategy is investment capital goes in and
5 part of that capital goes into the investment assets or
6 the -- or inventoriable asset, some kind of bankable
7 asset for that money that has a defined value. Then what
8 we do is we pay the premiums of the life insurance. So
9 our capital now goes and pays the premium of the life
10 insurance, and that stop-loss helps provide additional
11 lines of security.

12 Q Okay. So you're saying investors' capital is
13 going into the portfolio companies, and in turn you're
14 buying life insurance policies on the key individuals of
15 the portfolio companies.

16 A So what I'm saying is that the investor capital
17 goes into the portfolio companies but the cost of that
18 life insurance ultimately OE pays. So we're actually
19 putting up money, so our capital will actually end up
20 paying the life insurance.

21 Q So where are you getting your capital from
22 that's separate from the investor capital?

23 A So once the returns come back, so there's -- I
24 want to be really clear on this question. There will --
25 there's two. Once the return, early on, so where we are

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1 back once you do get returns. Is that correct?

2 A That's correct.

3 Q And looking at the accessible investments
4 account, I think we looked at this chart a couple times
5 yesterday, but down below there's OE CP Benefits 20
6 percent. Is that accurate as average growth?

7 A Not historically. That would have -- that
8 would be based on forecast modeling.

9 Q Okay. And you don't -- is there anything in
10 here saying it's a forecast modeling? Disclaimer,
11 anything?

12 A I don't think there -- I don't think there is.

13 Q Okay. I'm going to hand you what has been
14 marked as Exhibit 41. Take a moment and look through it.
15 (SEC Exhibit No. 41 was marked for
16 identification.)

17 BY MS. FLOYD:

18 Q Do you recognize Exhibit 41?

19 A Yes.

20 Q And what is it?

21 A It's an agreement that we put together for
22 potential marketers.

23 Q What do you mean by marketers?

24 A So these were people outside of C4 that were --
25 that we would allow to market or refer investors.

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1 right now, as the returns come back we'll rebate all the,
2 any cost of that insurance back to the investors to make
3 sure that they've not paid anything. As we go forward,
4 as we create more profits in OE, we will just simply use
5 profits out of OE to pay for life insurance policies.

6 Q Okay. Can you say that first part again? I'm
7 trying to see if I understand this correctly.

8 A So as returns come back, so as we start driving
9 up the revenues in those companies --

10 Q Okay.

11 A -- and we participate in the top-line revenue,
12 so 10 percent of all revenue --

13 Q Sure.

14 A -- we'll get back, the first 12 percent goes to
15 the investor.

16 Q Okay.

17 A Then we start creating profit back to OE.

18 Q Okay.

19 A Then what we'll do is we'll take the cost of
20 the insurance and rebate that back as well.

21 Q Okay. So as of right now you're not really
22 getting any returns, so the investor's really covering
23 the insurance cost as of right now.

24 A As of right now.

25 Q And then you're eventually going to pay them

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1 Q Okay. And when did you start using this
2 agreement?

3 A Boy, the first time I think we may have -- the
4 very first person I believe was -- I can't remember his
5 name now. I want to say it would have been maybe
6 sometime around June or July of '15, but I'm not sure.

7 Q And how many have been signed, how many
8 marketers have you contracted with?

9 A I believe only one.

10 Q Only one person?

11 A Believe so.

12 Q Okay.

13 BY MS. STUMBAUGH:

14 Q Who is that?

15 A I was trying to remember his name. It's on the
16 tip of my tongue. Quincy.

17 BY MS. FLOYD:

18 Q Quincy?

19 A Quincy.

20 Q Is that his first name?

21 A That's his first name. Please don't ask me for
22 his last name.

23 Q We'll go with Quincy.

24 MS. STUMBAUGH: We'll go with Quincy.

25 BY MS. FLOYD:

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1 Q Who drafted this agreement?
 2 A I drafted it off of a template that I found.
 3 Q But you did not use it at all with C4 Benefits.
 4 Is that correct?
 5 A That is correct.
 6 BY MS. STUMBAUGH:
 7 Q Where did you find the template?
 8 A Online, internet.
 9 BY MS. FLOYD:
 10 Q Isn't the internet amazing? Scary but amazing.
 11 MR. MCCOLE They're going to put us out of
 12 business --
 13 MS. STUMBAUGH: Yeah.
 14 MR. MCCOLE: -- or guarantee to keep us in
 15 business.
 16 BY MS. FLOYD:
 17 Q It's like robot lawyers.
 18 A Again this was before I found my wonderful
 19 attorneys at K&L Gates.
 20 MS. FLOYD: So how much did they pay you?
 21 MR. HOWELL: It's on the record.
 22 (General laughter.)
 23 BY MS. FLOYD:
 24 Q Okay. We had talked quite a bit yesterday
 25 about training, and if memory serves me right you had two

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1 separate trainings. You had one face to face with Mr.
 2 Heinzelman and Mr. Clements. Right?
 3 A Correct.
 4 Q And you had the webinar or C4 had the webinar
 5 but OE Capital participated in the webinar?
 6 A I think Dovile did participate --
 7 Q Okay. Do you --
 8 A -- a little bit.
 9 Q Do -- a little bit, okay. Do you -- we showed
 10 you some slides, and I believe they're Exhibits 29
 11 through 31. Correct? Do you know if Ms. Dovile drafted
 12 those slides?
 13 A She did not draft those slides. However, there
 14 are pieces in there from other slides. The slide called
 15 The Key Method is one of our slides that we use in other
 16 presentations, the Risk Mitigation slide and the Horace
 17 Model slide.
 18 Q Okay.
 19 BY MS. STUMBAUGH:
 20 Q Which exhibit are you referring to there?
 21 A I'm sorry.
 22 BY MS. FLOYD:
 23 Q 29?
 24 A 29, yes.
 25 MS. STUMBAUGH: Thank you.

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1 BY MS. FLOYD:
 2 Q I think the -- your original exhibits -- I
 3 think we gave you Barrett's copies, but we'll go with it.
 4 A Yeah.
 5 Q Okay. So I'm going to hand you what has been
 6 marked as Exhibit 42 in a moment.
 7 (SEC Exhibit No. 42 was marked for
 8 identification.)
 9 BY MS. FLOYD:
 10 Q Okay. Exhibit 42 is Bates-numbered OE SEC
 11 030285. It's an email from Dovile to Mr. Heinzelman on
 12 January 19, 2016, you were carbon copied, and the subject
 13 line is "Series 1 Training Presentation." And she
 14 writes -- and I quote -- "For your review, PowerPoint
 15 presentation internal agenda for the training. Please
 16 let me know if I need to amend anything ASAP or if
 17 there's a flow omission got you. If you refer to the
 18 agenda, Charles and I have split the presentation."
 19 Actually the email continues on saying "Jacks, I'm
 20 thinking you will be my lead on the sales presentation."
 21 So the attachment appears to be, there's one
 22 that has an internal agenda and discusses a Dovile
 23 PowerPoint presentation, and it lists main points and has
 24 several points that she's planning on hitting. Also
 25 attached appears to be the exact same slide show as in

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1 Exhibit 29. Is that correct?
 2 A That does look like the same one.
 3 Q Okay. So would it be safe to assume that
 4 Dovile did create the training slides for the webinar for
 5 C4 Benefits?
 6 A In terms of actually putting the PowerPoint
 7 together? I would probably say so. I don't think she
 8 did all of the slides. So there are slides in here that
 9 are very familiar to me in terms of things that we've
 10 done in other presentations and then there's ones that
 11 are not familiar. I would assume that that content did
 12 not come from her.
 13 Q Okay.
 14 BY MS. STUMBAUGH:
 15 Q Which slides in Exhibit 42 are you referring
 16 to, when you say they didn't come from Dovile, that don't
 17 look familiar to you? We can refer to the numbers on the
 18 bottom if you want.
 19 A Okay. Just the last three numbers?
 20 Q Sure, please.
 21 A 289. 291. 300. 300 is not a part of our
 22 standard presentation. It looks like that slide would
 23 have been a combination of her and C4, is what I would
 24 assume anyway. And then 302.
 25 BY MS. FLOYD:

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1 Q Okay. So 291 says "Private Placement
2 Investing," says "royalty based finance, no debt, no
3 equity, we participate your revenues, we help companies
4 get to revenue, we have a portfolio, you are investing a
5 pool of companies." So "we" I'm assume is OE Capital.
6 Correct?

7 A That -- yes.

8 Q Is it possible Dovile helped C4 Benefits create
9 this slide?

10 A I would imagine, yes.

11 Q Okay. And if you look at page -- or 301 it
12 says "Who, How, Why, What." Have you seen this exact
13 slide used as a marketing material?

14 A I've seen this slide in our presentations to
15 current investors and maybe potential investors. I've
16 not seen it like in a -- any kind of sheet that would be
17 handed to investors.

18 Q Okay. I'm going to hand you what has been
19 labeled as Exhibit 43.

20 (SEC Exhibit No. 43 was marked for
21 identification.)

22 BY MS. FLOYD:

23 Q Exhibit 43 is an email; it's Bates-numbered OE
24 SEC 030525. It's from Dovile to Mr. Clements, cc'd Mr.
25 Heinzelman. You were not on this email chain -- or

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1 A But the rest of this is not. And so it seems
2 to me that this is kind of C4 language on what their
3 process needs to be if they were in front of a client.

4 Q What about 536, Miss Risk Mitigation? It says
5 "Asset facts investing inventory, milestone-funding. You
6 have to perform real estate and whole life insurance."
7 Is this something that OE Capital would have helped C4
8 Benefits draft?

9 A We might have, she might have helped them,
10 helped them draft the content of that. And she would
11 have had input I'm sure on 537 of what to say versus not.

12 BY MS. STUMBAUGH:

13 Q Why would Dovile be doing this presentation if
14 it's a C4 Benefits?

15 A So we were working obviously pretty close with
16 C4 on a lot of stuff, and, quite frankly, Jacks, they
17 don't have the skill set to really put together a
18 PowerPoint and Dovile's very helpful. And so I'm sure
19 she volunteered to put together all of the stuff so that
20 it could look good.

21 Q Well, it says -- I'm on the front page. "I
22 will do the presentation and record it if that works for
23 you."

24 A Yeah, I don't --

25 Q What does that mean?

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1 email. It's dated January 25, 2016.

2 Subject line is "Sales Presentation," and
3 there's an attachment "OE Agent Training Series 2 Sales
4 PowerPoint Presentation." And I quote, "Jacks, here's
5 the sales presentation. Sorry I did not have time to
6 write over the weekend. I'm adding a few images and
7 annotations, but want you be able to review it. Please
8 let me know if you want me to change anything or the
9 flow. I will do the presentation and record it if that
10 works for you. Dovile."

11 So would it be safe to assume that Dovile
12 created the Series 2 sales presentation PowerPoint
13 slides?

14 A Yeah, it looks like -- if I was to read that it
15 looks like to me she got a bunch of information from them
16 and put -- she actually constructed the PowerPoint. It's
17 one of her skill sets. As I look through the slides,
18 this is very, very C4 focused.

19 Q Okay. Do you recognize any of the slides that
20 would have come from OE Capital?

21 A I don't recognize anything in here that is in
22 any of our typical presentations except on 532. If you
23 look at the corner of 532, that is one of our slides that
24 we look -- we have in our standard presentation.

25 Q Okay.

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1 A That's a good question. If I remember, if I
2 remember correctly the trainings, I know Jackson Clements
3 did the lion share of them. Perhaps she was saying I
4 will -- she'll record it so he can hear the flow. I know
5 that she did participate in some of this training. I
6 don't think she participated in this particular piece.

7 BY MS. FLOYD:

8 Q What do you mean you don't think she
9 participated in that particular piece?

10 A I'm talking --

11 Q The Series 2?

12 A The -- yes, the Series 2. I don't know that
13 she actually gave this presentation. So I'm a little
14 confused on she's saying she will do the presentation.
15 I'm not quite sure what she meant by that.

16 Q Did she tell you that she was going to be doing
17 the presentations for your trainings? Did she let you
18 know?

19 A She did. But if you look back at --

20 Q Exhibit 42?

21 A Yes, Exhibit 42, she -- her name is on that one
22 if you follow those points that follow those slides. So
23 her name is on that particular one. That kind of makes
24 sense to me because that's talking more about us. Why
25 she would do this one does not make sense to me.

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1 Q Why wouldn't she do that one?
 2 A The Series 2?
 3 Q Correct.
 4 A This is more about C4 and their interaction
 5 with their clients. So I would assume -- and she even I
 6 think says on one of these I think, yeah. Because this
 7 is entitled Sales Presentation, and --
 8 Q Exhibit 30 --
 9 A I'm sorry.
 10 Q -- 3.
 11 A I'm sorry.
 12 Q Yeah.
 13 A Slow down.
 14 Q When you read the record and you have this,
 15 this and this --
 16 A And it's --
 17 Q -- it's going to confuse Barry and confuse
 18 myself.
 19 A On Exhibit 42 --
 20 Q Okay.
 21 A -- she says "Jacks, I am thinking you will be
 22 my lead on the sales presentation."
 23 Q Okay.
 24 A So I'm certainly thinking that this was done by
 25 Jacks, Exhibit 43 would have been presented by Jacks. It

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1 does make some sense since Exhibit 42 is, the lion's
 2 share is the inner workings of OE, that makes sense that
 3 Dovile actually did that one.
 4 Q Okay. I'm going to hand you what has been
 5 marked as Exhibit 44 in a moment.
 6 (SEC Exhibit No. 44 was marked for
 7 identification.)
 8 BY MS. FLOYD:
 9 Q Exhibit 44 is an email that's Bates-numbered OE
 10 SEC 031225. It's from Dovile to Mr. Clements and Mr.
 11 Heinzelman dated February 8, 2016. Subject line is
 12 "Series 3," and as an attachment it's "OE Agent Training
 13 Series 3 Paperwork Process PowerPoint Presentation." You
 14 were not on this email. Is that correct?
 15 A Correct.
 16 Q Okay. And the email from Dovile is -- I
 17 quote -- "I also made a PowerPoint but I will flip and
 18 show the regular document as well. I think the test is
 19 best to repeat Google forms but I am still trying to see
 20 how I can get it to be timed...Dovile." So it appears
 21 that she made the PowerPoint presentation for the Series
 22 3 paperwork process. Is that correct?
 23 A It appears that way.
 24 Q Okay. Are any of the PowerPoint slides
 25 something that OE would have not drafted or created or

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1 provided?
 2 A I think C4 would have had or let me just say
 3 Jackson would have had a lot of input on all of these
 4 slides from a process perspective.
 5 Q What do you think Dovile meant "I will flip and
 6 show the regular documents as well"? What do you think
 7 she meant by that? No idea?
 8 A No idea.
 9 Q What about the "test is best in Google forms,"
 10 do you have any idea what she's referring to there?
 11 A I think I can speculate on that.
 12 Q Okay.
 13 A Charles and Jacks wanted to do some level of
 14 tests to people prior to C4 giving that person a thumbs
 15 up. So I think they asked her how -- what would be the
 16 best way for them to administer some kind of tests, and I
 17 think she was answering that question.
 18 BY MS. STUMBAUGH:
 19 Q When you say tests you mean to people selling
 20 the product.
 21 A Marketing the product.
 22 Q Marketing.
 23 A Yeah.
 24 BY MS. FLOYD:
 25 Q And then more of a certification test.

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1 Correct?
 2 A I think that's what they were referring to
 3 there.
 4 Q I want to talk a little bit about OE Capital's
 5 investors. To-date -- and I suppose you don't know the
 6 exact amount -- how many investors does OE Capital have?
 7 And I apologize, we may have already asked this question
 8 but.
 9 A I don't know the exact number. I would say
 10 it's in the number realm of 80 or 90.
 11 Q Eighty or 90? Okay. And I think we talked a
 12 little bit about how much, how many investors OE Capital
 13 brought in. Was there a process OE Capital -- and I'm
 14 not talking about C4 Benefits, but OE Capital did to
 15 bring in in the investors?
 16 A The ones that we brought in?
 17 Q Correct, yes.
 18 A Our typical process for investors, most of the
 19 ones that we brought in have come through my mail work.
 20 So the typical process has been I would meet with them,
 21 help them understand kind of what we're doing, walk them
 22 through our process, walk them through what -- some of
 23 the companies that we're investing in, how revenue-based
 24 financing works, how the collateralize strategy works.
 25 And then if they were ready to go, if they wanted to

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1 invest, then -- and this was really early on -- then we
2 would -- I think for the most part we filled out
3 suitability agreements. I gave them a PPM, but then we
4 just filled out paperwork.

5 Q And so has that process changed throughout the
6 life span of OE Capital?

7 A The only part of that process that really has
8 changed from a OE Capital perspective is I don't really
9 sit down in front of a lot of investors face-to-face for
10 the first time anymore. So typically if that happens
11 it's coming either to Dovile or most of now any internal
12 capital that's being raised is raised through Ron Scherer
13 or Tico Martinez.

14 Q So initially when you said you would -- through
15 your network would you call up people, would you invite
16 people to an investor meet-and-greet? How would that
17 work?

18 A The initial, with me, I was just calling up my
19 friends, people that I already knew. Now what we do is
20 we'll -- we have a network of people, whether they're
21 current investors or just friends, and we'll host
22 investor events where there will be current investors
23 there and prospective investors, and we'll do a
24 educational kind of presentation on who we are.

25 Q Okay. So in the beginning would it be safe to

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1 Q Okay.

2 A So typically it's through an individual that
3 goes out and asks people to come.

4 Q So you would I guess reserve or rent a
5 conference room at a hotel and just provide, you'd
6 provide materials?

7 A We didn't provide materials for them to take
8 away.

9 Q Okay.

10 A We just had a presentation up and we would run
11 through the presentation. It would take 15 minutes, and
12 then other than it's meet and greet.

13 Q Okay. And then afterwards would they contact
14 yourself or Dovile for more additional information and
15 then go from there. Is that correct?

16 A That's correct.

17 Q Okay. What did you tell the investors at these
18 meet-and-greets?

19 A Exhibit I believe it was 42. That's not all of
20 the presentation but a large part of the presentation is
21 in that. I thought I saw another exhibit where I saw the
22 presentation but I don't see it.

23 Q Okay. So you'd use some if not most of these
24 slides, and you'd walk them through the slides and
25 describe OE Capital's process. Is that correct?

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1 assume those investors that you were face-to-face were
2 with the CFG I Fund? Because you mentioned a lot of
3 friends.

4 A Most of those were --

5 Q Okay.

6 A -- CFG I.

7 Q So investor -- I know we talked of this back in
8 May, but again it's two months ago, so I apologize. So
9 you had investor I guess it would be meet-and-greets; you
10 had at various hotels. Is that correct?

11 A Mostly hotels or business clubs, yes.

12 Q And you had, what, a few of them --

13 A We had --

14 Q -- throughout the year?

15 A We had a few of them throughout the year, yeah.

16 Q Okay. And so how would you advertise to these
17 investor meet-and-greets?

18 A The way we would advertise is through other
19 people. So we would send something like, say, to our
20 current investors and ask them to come and bring someone.
21 Or I'll give you a really good example. The one we held
22 in Houston we have a friend of the firm down there, his
23 name is Omar, and we asked Omar if he wouldn't mind
24 gathering up a few of his friends and bringing them out
25 to an investment presentation, and that's what he did.

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1 A That's correct.

2 Q Okay. What did you tell them about the
3 returns?

4 A We would tell them that there is a preferred 12
5 percent return, that that return, the return was
6 collateralized, that we had -- we were active strategy,
7 so we had people inside our company that were going into
8 those companies and really helping them. I'd normally
9 have the whole team there, so they'd get introduced to
10 Tracy, who has 20 plus years of experience in products,
11 taking products to market, Cristina, who's a -- who has a
12 background in forensic accounting, Dovile, who has a
13 background in marketing and neuroscience and psychology
14 and economics.

15 So we would walk through the team, help them
16 get real comfortable with our expertise and our ability
17 to deliver. And then finally we would walk them through
18 there's a, you know, there's a 12 percent preferred
19 return, it's a three-year commitment, and I believe
20 that's about it in terms of what we would tell them about
21 return. We might have said that there's a 80/20 split,
22 up to 18.4 per annual cap of 18.4.

23 Q Did you tell investors that OE Capital is a
24 fairly new company?

25 A Yes. So in every single one of those we always

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1 had a question-and-answer session, and it always came up,
 2 like how long have you been around. So we would always
 3 say we're really a new company. You know, at that point
 4 I would say either we're just -- we're less than a year
 5 old, now I say we're less than two years old, we're a
 6 year and a half. And so you got to take that into
 7 consideration.
 8 Q Have investors asked if you were actually
 9 paying the 12 percent?
 10 A I am sure they have.
 11 Q So the question-and-answer, would you be the
 12 mostly one answering them or would it be Dovile, or would
 13 it be a combination?
 14 A It would be a combination of mostly Dovile and
 15 I. Sometimes people would ask Tracy questions, sometimes
 16 people would ask Cristina questions.
 17 Q Okay. What is Cristina's role again?
 18 A She is director of portfolio operations. So
 19 she -- her job is to help us really do due diligence, do
 20 all the financial modeling on any new portfolio company,
 21 help us to understand liquidity needs coming up, and then
 22 really help us understand -- help us make sure we're on
 23 track. So she's the matrix person, making sure that
 24 we're on track to cover our ability to pay our
 25 distributions. And if we're not, then her job is to

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1 raise the red flags and then figure out how we either
 2 stop funding something or fix the issue.
 3 Q Okay. As far as after these meet-and-greets,
 4 they would contact Dovile or yourself for additional
 5 information. Correct?
 6 A Most of the time, yes.
 7 Q You said you had unaccredited investors for all
 8 three funds. Correct?
 9 A Correct.
 10 Q At any point did any of these unaccredited
 11 investors receive an audited financial?
 12 A From OE?
 13 Q Correct.
 14 A No, because we didn't have audited financials.
 15 Q Were any audited financials asked for by any of
 16 the investors, potential investors?
 17 A Oh, yeah. Yes.
 18 Q And what did you tell them?
 19 A We don't have audited financials.
 20 Q Did you tell them you were planning on getting
 21 an audited financial?
 22 A Yeah, I told them at the end. So any investors
 23 that asked for that last year, I told them our first year
 24 we're going to have a compilation done by our public
 25 accounting firm, and at the end of the second year we'll

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1 have the audited financials.
 2 Q Okay. And do you know which documents were
 3 provided to these potential investors at the time they
 4 spoke with Dovile? Because I think you testified
 5 yesterday, I just want to make sure I get my documents
 6 correct. You testified yesterday that they wouldn't
 7 receive the PPM until after they filled out the
 8 suitability questionnaire. Is that correct?
 9 A That's correct.
 10 Q So would they be -- so if I'm an investor and
 11 I'm interested in OE Capital and I go to a meet-and-greet
 12 and I'm still interested, I contact Dovile. What would
 13 Dovile provide to me?
 14 A In terms of documents?
 15 Q Correct.
 16 A More than likely not much until you filled out
 17 the investor suitability.
 18 Q Okay. So if I fill out the investor
 19 suitability, then what do I receive?
 20 A Then you would -- then the process is you're
 21 supposed to receive a PPM --
 22 Q Okay.
 23 A -- at that time.
 24 Q Okay. And I'm guessing a subscription
 25 agreement, partnership agreement. Am I missing anything

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1 else?
 2 A If it was 98 percent around money it's
 3 qualified dollars.
 4 Q Okay.
 5 A So you would receive the Midland forms as well.
 6 Q Okay. So I saw a lot of qualified and
 7 nonqualified in your documents that you provided to the
 8 staff. Can you please explain the difference between the
 9 two?
 10 A Sure. Qualified money is any money that's
 11 under a government tax-approved plan, like a IRA, 401(k),
 12 a SEP, anything like that that has a tax, a government
 13 tax-approved plan wrapped around those dollars as
 14 qualified.
 15 Q Okay.
 16 A We accept those dollars through Midland
 17 custodian, so people have to set up a self-directed IRA
 18 with Midland and then they instruct Midland on what -- on
 19 where to invest those dollars.
 20 Q Okay. So you mentioned Midland was your
 21 custodian. Was Midland always your custodian?
 22 A No.
 23 Q What was your custodian before Midland?
 24 A The initial custodian was Equity Trust.
 25 Q Okay. And why did you initially go with Equity

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1 Trust?

2 A I was, I think I was told -- if I remember

3 right I got the referral from someone who said they've

4 been around for a long time so, you know, go with them.

5 Q Okay. And so I'm assuming you started with

6 Equity Trust around spring of 2015. Is that correct?

7 A That's correct. It would have been -- Tracy

8 Alexander would have been the first person through Equity

9 Trust, so that was January 2015.

10 Q Okay.

11 A If I remember.

12 Q So then you switched over to Midland.

13 A Yes.

14 Q Why?

15 A We had an employee named Natalie Clair.

16 Q Okay.

17 A And Natalie had made some mistakes. And so

18 with those mistakes Equity Trust didn't feel really

19 comfortable with the business relationship, so we needed

20 to change. And so we changed and found Midland, and we

21 found them to be a very good partner.

22 Q Okay. And Natalie Clair is a former employee,

23 and I believe you testified that she altered some

24 subscription agreements, the investor information. Is

25 that correct?

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1 A That's correct.

2 Q Okay. Is that only, is that the only thing

3 that she did?

4 A To get her -- for her termination? Yes.

5 Q Correct. And so you terminated her but you

6 still wanted to go with a different custodian. Even

7 though you removed Ms. Clair from the equation you wanted

8 to move on to a new custodian. Correct?

9 A That's correct.

10 Q Okay. And so why did you pick Midland out of

11 all the other ones?

12 A Honestly, they were the most -- they were very,

13 very, very helpful, very customer-friendly to us. And

14 the other custodian we were looking at simultaneously was

15 Pensco, which is a great custodian but they were mostly

16 digital and we felt that that wasn't going to work very

17 well.

18 Q Because you had older clients?

19 A Yeah.

20 Q Okay. So you went with Midland. How did you

21 get to know Midland?

22 A Dovile found them I think just she had a list

23 of custodians, she just started picking up the phone and

24 calling them.

25 Q Okay.

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1 A And she found them and really liked them when

2 she talked to them and thought she wanted to give them a

3 try.

4 Q Okay. Where is Midland located?

5 A They have three offices, one in Chicago, two in

6 Florida.

7 Q Where in Florida?

8 A I think one is in Tampa, I think one is in

9 Orlando but I'm not sure.

10 Q Okay. And so if I'm an investor and Dovile

11 provided information to me, if it's qualified then I

12 would go through Midland. Is that correct?

13 A That's correct.

14 Q Okay. So what would be the process?

15 A And this is to the best of my knowledge.

16 Q Sure.

17 A The process is you would, the investor, you

18 would fill out the Midland paperwork. There's a lot of

19 questions in there that most investors need help with,

20 and so typically Dovile would help them fill out that

21 paperwork and then submit it to Midland. Midland will

22 give them -- open an account and then from there Midland

23 takes it. So Midland does everything else from that

24 perspective. Once they get an account open they go out,

25 they get the subscription, they do the subscription work.

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1 It's between Midland and the investor. OE is out of that

2 loop. And then Midland -- well, I think the process

3 actually is Midland actually sends off for the funds

4 first.

5 Q So they send out -- where do they send out the

6 funds first?

7 A Wherever the funds are located.

8 Q So if I have like an IRA at XYZ Company and I

9 want to transfer it over to Midland, Midland would

10 contact XYZ Company for my funds. Correct?

11 A That's correct.

12 Q And I would fill out the transfer forms.

13 A That's correct. The reason they do that is

14 they want to get the number that comes back right. So

15 the number that comes back isn't ever the exact number

16 that's on the transfer form, ever, ever, ever.

17 Q Of course.

18 A Of course. Once they do that, then they have

19 all the right information, and then they fill out the

20 subscription and do all the subscription work with the

21 client.

22 Q Okay. Are there fees involved?"

23 A Midland does have fees.

24 Q Okay. Does OE Capital cover those fees?

25 A OE Capital did cover those fees.

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1 Q Okay. But you no longer cover those fees.
 2 A We no longer cover those fees.
 3 Q As of when?
 4 A As of OE Ventures, OE Capital Ventures, so
 5 February 2016.
 6 Q Okay. I'm going to hand you what has been
 7 marked as Exhibit 45.
 8 (SEC Exhibit No. 45 was marked for
 9 identification.)
 10 BY MS. FLOYD:
 11 Q Take a moment and look through that.
 12 A (Perusing document.) Okay.
 13 Q Okay. Exhibit 45 is an email, and it's
 14 Bates-numbered OE SEC 021372. It's an email from Dovile
 15 to Mr. Clements, yourself, cc Mr. Heinzelman, dated
 16 September 8, 2015. Dovile appears to be discussing
 17 Midland's process and the current relationship with
 18 Midland. Is that correct?
 19 A Yeah, this would have been right when we first
 20 started the relationship.
 21 Q Okay. Now, it says, No. 1 -- and I quote --
 22 "OE PPM has been approved by Midland IRA and an account
 23 is waiting for money to move to them and then it will be
 24 released to you." What do you mean by the OE PPM has
 25 been approved?

Page 454

1 A Midland as well as any custodian has to approve
 2 the PPM before they'll on board us as a potential
 3 investment.
 4 Q Okay. And which PPM is Dovile referring to?
 5 A In this case it would have been CFG II.
 6 Q And it says No. 2, middle of the page -- and I
 7 quote -- "Their program usually goes like this. Submit
 8 an application, receive account number, get a pre-filled
 9 subscription with account number, doc sign online to fund
 10 the investment." "Submit an application," so I'm
 11 guessing that's a Midland IRA application. Correct?
 12 A I'm guessing that too, yeah.
 13 Q "Get a pre-filled subscription with account
 14 number." Do you understand what she's referring to?
 15 A I would -- so she's saying their program
 16 usually goes like this, you submit an ap, you get a
 17 receipt. You receive account, get a pre-filled
 18 subscription, so I'm assuming that they usually get a
 19 some kind of pre-filled subscription with some account
 20 number.
 21 Q Okay. So it's unrelated to OE documents.
 22 Correct?
 23 A I think so, this one, yeah.
 24 Q Okay. And then Dovile goes on to say "I
 25 will --" and I quote -- "I will need to submit the name

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1 of a client and they will give me an account number so
 2 they can pre-fill all the info in the subscription
 3 agreement and then DOL." Pre-fill, so she would fill out
 4 the subscription agreement for the investors. Is that
 5 correct?
 6 A That's what she's saying in this particular
 7 one, I think.
 8 Q Okay. Do you know if she was doing that for
 9 investors?
 10 A I don't.
 11 Q Okay. And "pre-fill all the info." Do you
 12 understand what she's referring to here?
 13 A I don't know. I'm assuming any information
 14 that needed to go on the application, the Midland
 15 application.
 16 Q Was it OE's goal to basically have the
 17 investors do as little as possible, the burden of doing a
 18 lot of paperwork?
 19 A I mean I think that's always our goal. I know
 20 that was also C4, the goal. Typically, you know, what
 21 you want to try to do is once you're in front of the
 22 client is make sure that you're getting everything that
 23 you possibly need so that the process goes smoothly, and
 24 I think this is what she was trying to say.
 25 I'll say this. I know that this -- it took

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1 them a few weeks to work out any kinks, so I don't think
 2 whatever she's describing here is not necessarily what
 3 ended up happening.
 4 Q Okay. That was just the initial process?
 5 A Correct.
 6 Q I'm going to hand you what has been marked as
 7 Exhibit 46.
 8 (SEC Exhibit No. 46 was marked for
 9 identification.)
 10 BY MS. FLOYD:
 11 Q Take a moment and look through that.
 12 A (Perusing document.)
 13 Q Exhibit 46, do you recognize this?
 14 A It's one of our subscription agreements.
 15 Q Okay. Exhibit 46 appears to be a subscription
 16 agreement for Karen, last name is S-T-A-H-L. She's one
 17 of your --
 18 A Stahl. Yes.
 19 Q She's one of your investors. Correct?
 20 A Correct.
 21 Q Okay. If you look throughout the document you
 22 see a purchaser's initials, and it says HM. And you see
 23 that same initials throughout the entire agreement.
 24 Correct?
 25 A Correct.

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1 Q Okay. At the last page, on page 8, signatures,
2 and I want to say this says Hally or Holly Marker,
3 something close to that. Is that correct?
4 A Yeah, I think something close to that.
5 Q Okay.
6 A I'm not quite sure what that is.
7 Q Are you aware that this same person filled out
8 several of OE Capital's subscription agreements for its
9 investors?
10 A Yes.
11 Q Okay. Who is that person?
12 A That is a -- that person is from Midland. It's
13 a Midland -- I believe it's the Midland GC, but I'm not
14 sure.
15 Q Okay. So how does this person know that is it
16 Ms. Stahl, am I saying it right?
17 A Uh-huh.
18 Q Stahl? Is accredited?
19 A Well, so if you look on page 2 of this
20 subscription this is actually -- what's actually
21 happening here is Midland is investing, so they are
22 marking all equity owners in the entity are accredited.
23 Q Okay.
24 A And so Midland is actually signing the
25 subscription agreement. And --

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1 Q So is Ms. Stahl -- is she -- did she work for
2 Midland?
3 A No. Ms. Stahl is an investor from somewhere
4 else, but she initials each of these. Down at the bottom
5 you see a KS.
6 Q Okay.
7 A But Midland actually invests as a trust or as a
8 custodian.
9 Q Okay. So Midland's the one signing off that
10 the investors are under Midland's group. Correct?
11 A That's correct.
12 Q Okay. Do you know how or what percentage of
13 your investors have gone through Midland IRA?
14 A At this point the vast majority. So all -- now
15 we did move any other, any accounts that were at Equity
16 Trust, we moved all of them to Midland. So now all of
17 our qualified dollars, which is 95 percent or more of our
18 fund, is at Midland, so Midland's actually our largest
19 investor.
20 Q Gotcha. Okay.
21 MS. FLOYD: Let's go off record at 10:15.
22 (A brief recess was taken.)
23 MS. FLOYD: Back on the record at 10:39.
24 COURT REPORTER: We're on the record.
25 MS. FLOYD: Okay. Before -- over the break did

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1 we have any substantive conversations regarding this
2 matter?
3 THE WITNESS: No.
4 MS. FLOYD: Okay.
5 BY MS. FLOYD:
6 Q We were talking about investors prior to the
7 break. Are you aware of any investors doing a refi
8 cash-out to invest in OE Capital?
9 A I'm not aware of that, no.
10 Q Okay. Has Ms. -- has Dovile ever talked to you
11 about C4 Benefits having investors cashing out?
12 A I can't recall her ever talking to me about
13 that, no.
14 BY MS. GUNN:
15 Q Were you aware of any efforts that C4 Benefits
16 may have had to encourage potential investors to do --
17 cash out refi's and invest the money?
18 A I am not. I am aware that that -- that is a --
19 that was something that Charles had brought up before
20 that they did in some other instances, having people cash
21 out refi and put it in something else. But I don't think
22 that that's ever been -- I'm not aware that it's ever
23 happened with OE.
24 BY MS. FLOYD:
25 Q I'm going to hand you what has been marked as

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1 Exhibit 47.
2 (SEC Exhibit No. 47 was marked for
3 identification.)
4 BY MS. FLOYD:
5 Q Please take a moment and look at it.
6 A (Perusing document.) Okay.
7 Q Okay. Exhibit 47 is Bates-numbered OE SEC
8 022168. It's an email chain between Mr. Heinzelman, Mr.
9 Clements, Dovile, and a potential investor by the name of
10 Rick Coxen. And the subject line is "Optimal Economics
11 Capital Group." It's dated September 18, 2015. You are
12 not a part of this email chain. Is that correct?
13 A That's correct.
14 Q Okay. The email appears to be initially an
15 email chain between Mr. Heinzelman and the potential
16 investor. Do you know if Rick Coxen -- Coxen is an
17 investor with OE Capital?
18 A I don't think he is.
19 Q Okay. Well, it appears to be a conversation in
20 one email, it's dated September 17, 2015, from Mr.
21 Heinzelman to Mr. Coxen, and I quote, "Hi, Rick. It was
22 great speaking with you, and thank you for your
23 permission to put your art work with the 15 percent going
24 to Michael J. Fox Foundation. Great cause.
25 "Attached are some of the information on the

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1 investment piece. It shows what and how they do what
2 they do, also, more importantly to me, how they safeguard
3 and mitigate against risk and loss. They even have an
4 outside forensic accountant audit their books every
5 quarter for extra peace of mind to the investor. Please
6 review this material and then email me back when might be
7 a good time to reconnect. Regards and best wishes,
8 Charles Heinzelman"

9 When he says "they have an outside forensic
10 accountant audit their books every quarter," is that
11 true?

12 A No. We have DiLucci, who performs a quarterly
13 compilation. Told him that a hundred times.

14 Q Okay. So is it DiLucci and DiLucci?

15 A Yes.

16 Q And those are your accountants. Correct?

17 A Our public accountants, yes.

18 Q Okay. And where are they located?

19 A I believe in Las Colinas.

20 Q Okay. And so they provide a quarterly
21 compilation?

22 A Every quarter they do a compilation.

23 Q Okay. And who receives that compilation?

24 A It goes to Cristina Cason and myself and
25 Dovile, and we actually do send that out, I believe, to

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1 Heinzelman about in the past he's had investors do
2 cash-outs. Is that correct?

3 A No, he -- I don't know if that's true or not.

4 He mentioned to me, he mentioned to me that they had some
5 of those ideas. We could not accept that capital.

6 There's no way.

7 Q Okay. Why not?

8 A It's, it just wouldn't be, it wouldn't be
9 smart, to be honest with you. All of a sudden someone
10 needs cash because they lost their job but it's tied up
11 for three years? That -- you don't take out that to
12 invest. I mean that's kind of a normal understanding of
13 financial -- we wouldn't have done that.

14 Q Is there a certain standard that OE Capital
15 abides by to -- for investors? So do they have to be
16 sophisticated?

17 A Yes.

18 Q Okay. So how do you know if C4/Mr. Heinzelman
19 is finding these type of sophisticated investors?

20 A I don't know how he's finding them.

21 Q Okay. So have you asked what -- how he finds
22 his clients and what type of clients he finds?

23 A My understanding is the way he finds his
24 clients is that they come from his current book of
25 business already.

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1 investors.

2 Q How often?

3 A When it comes out.

4 Q So every quarter you send a compilation to
5 investors.

6 A After it comes out, that's correct.

7 Q I don't believe we have a copy of those.

8 MS. FLOYD: I'll remind you at the end I don't
9 have any.

10 MR. HOWELL: Okay.

11 BY MS. FLOYD:

12 Q Okay. So as the email progresses they talk
13 about a cash-out refi. Are you familiar with a cash-out
14 refi?

15 A Do I know what one is?

16 Q Yes.

17 A Yes.

18 Q Okay. So the investors basically are taking
19 cash out of their home equity to invest in OE Capital.
20 So although you're not a part of this email. Dovile was.
21 Has Dovile ever, has she ever spoke to you regarding this
22 investor and how this investor is planning on bringing
23 the capital to OE Capital?

24 A No.

25 Q And you said you had a conversation with Mr.

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1 Q And so as long as they fill out the suitability
2 questionnaire, you're okay with that?

3 A Yes.

4 BY MS. GUNN:

5 Q Are you aware -- I think we looked at radio ads
6 yesterday, so were -- you were aware that he was, that C4
7 was using radio ads to attract new clients to them.
8 Correct?

9 A Correct. Yes.

10 Q So it wasn't just the existing book of
11 business, was it?

12 A Not from C4. From Charles specifically, he's
13 in Austin. There's no radio ads in Austin. So from
14 Charles specifically it was supposedly his current
15 clients.

16 Q Okay.

17 BY MS. FLOYD:

18 Q So when you say C4, it's more Mr. Clements down
19 in Florida. Correct?

20 A That -- correct.

21 Q Okay.

22 BY MS. GUNN:

23 Q Were you aware of any effort besides the radio
24 ads that either Mr. Heinzelman or C4 or Mr. Clements
25 made?

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1 A No.
 2 Q Okay.
 3 Q What about in terms of recruiting people to
 4 sell or to introduce people to the investment? Were you
 5 aware of any efforts by Mr. Heinzelman or Mr. Clements to
 6 recruit agents?
 7 A I know he sent out a blast email to a bunch of
 8 agents and advisors.
 9 Q When was that?
 10 A I believe it was either late 2015 or early
 11 2016.
 12 BY MS. FLOYD:
 13 Q Do you know where he got these agents' email
 14 contacts?
 15 A He worked with some marketer. That's what they
 16 do, so.
 17 Q They do blast emails?
 18 A To agents and advisors for recruiting purposes.
 19 Q Do you know who that marketer is?
 20 A Cannot remember a name, no.
 21 BY MS. GUNN:
 22 Q And, I'm sorry, was that Mr. Heinzelman who
 23 sent that out or had it sent out?
 24 A Yes.
 25 Q Do you have any understanding of what the

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1 content of that blast email was?
 2 A I don't exactly remember. I believe there were
 3 a few pieces that explained C4. I believe we looked at a
 4 earlier exhibit, I don't recall the number, where there
 5 was a fixed index annuity page. I believe that was part
 6 of that email.
 7 Q And do you know if as a result of that blast
 8 email or other efforts that he was able to recruit agents
 9 who would offer OE Capital investment?
 10 A At the time of that email was also when we were
 11 trying to make a determination on were we as OE going to
 12 be unregistered security and were we going to require
 13 everybody to be a Series 65 and register with an IRA or
 14 broker. We decided to -- obviously that we were going to
 15 make that requirement. And after that requirement I
 16 don't believe so, I don't believe that anybody came --
 17 went to him, but I am not sure about that.
 18 Q Okay. Other than the email that you described,
 19 are you aware of any other efforts to recruit agents by
 20 Mr. Heinzelman?
 21 A No, ma'am.
 22 Q Have you personally met any of the agents other
 23 than Mr. Clements and Mr. Heinzelman?
 24 A I've met someone -- I met Darren in Tampa.
 25 Q Okay. Did you ever attend any of the -- any

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1 agent events that C4 may have put on?
 2 A No.
 3 Q And that chart you're referring to, was that
 4 any of the charts in Exhibit 40?
 5 A Yes. Ending 181. I believe that was it.
 6 Q Okay. And that's Exhibit 40. Correct?
 7 A Correct.
 8 BY MS. GUNN:
 9 Q And just so I'm clear, are you saying that this
 10 chart or one very similar to it was a part of the blast
 11 email?
 12 A I believe so.
 13 Q Okay.
 14 BY MS. FLOYD:
 15 Q I'm going to hand you what has been marked as
 16 Exhibit 48.
 17 (SEC Exhibit No. 48 was marked for
 18 identification.)
 19 BY MS. FLOYD:
 20 Q Take a moment --
 21 BY MS. GUNN:
 22 Q Before we go any further, did you ever tell Mr.
 23 Heinzelman that you did not want him to offer or did not
 24 want him to use the cash-out refinances in connection
 25 with investments in OE Capital?

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1 A I don't know that I ever told him that I
 2 didn't -- I mean the conversation that we had was not
 3 about him actually doing it. It was -- he was just
 4 telling me that they have a lot of different programs and
 5 that was one. I mean we didn't have a substantive
 6 conversation on whether or not he should or should not do
 7 that with us.
 8 Q Okay.
 9 BY MS. FLOYD:
 10 Q Take a moment and look at Exhibit 48, please.
 11 A Yes. (Perusing document.)
 12 Q Exhibit 48 is Bates OE SEC 019016. It's an
 13 email chain between yourself and Mr. Heinzelman on May
 14 31, 2015. Do you recall this email exchange?
 15 A Vaguely I recall it, yes
 16 Q Okay. So let's start with the one on the
 17 bottom of the first page of the exhibit. It's from Mr.
 18 Heinzelman to yourself, subject line of Quick Question.
 19 And he writes -- and I quote -- I'm sorry, he writes --
 20 I'm sorry, one down below that one is from you to Mr.
 21 Heinzelman. And you write -- and I quote -- "You guys
 22 are basically selling 12 percent, correct? If I was to
 23 change the pricing to 12 percent minimum, 80/20 split,
 24 with annual cap of 20 percent, would that affect you at
 25 all?" What were you referring to?

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1 A So if you look at the time frame, May, we were
2 switching from I to II, or we had brought up II because I
3 was getting -- I was going to be capped, and I was also
4 looking at kind of the offering, the 12 percent and then
5 at that point it was a cap at 22.4. And while I thought,
6 you know, that's a really good deal for an investor, at
7 the end of the day it wasn't going to necessarily be a
8 real good deal for OE. So I was looking at changing the
9 pricing, and I just was asking him if I did it how would
10 it affect him and it wouldn't affect him.

11 Q So you're saying currently you have a 12
12 percent/ 20 percent but prior to that it was 12 percent
13 and 22 percent. Is that correct?

14 A Yeah. So the current is at 12 percent with a
15 80/20 split up to 20 percent, which actually nets the
16 investor down to a 18.4 return, right. The previous
17 pricing was 12 percent up to a net of 22.4 percent.

18 Q Okay.

19 BY MS. GUNN:

20 Q And what was the cap, was it 24?

21 A At that time it was 22.4, I believe.

22 BY MS. FLOYD:

23 Q Okay. So then in the middle of the email chain
24 it talks about Mr. Heinzelman coming to visit. I'm
25 assuming coming to visit OE Capital in Dallas. Is that

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1 me asking him about the change on the investor terms.
2 Alan Reno and Urshel brought up CFG I. They created
3 those numbers out of what I can best tell is thin air.
4 And so could we hit 12.4? Yeah. I mean if you look at
5 our models, sure. But that would leave it very, very
6 thin for us. And so I didn't think going forward that
7 that made a lot of sense.

8 Q What year were you planning on hitting the 22
9 percent?

10 A We were planning on hitting it in -- we were
11 planning on hitting it last year based on GanoLife at
12 this point.

13 Q And obviously you didn't have a relationship
14 with GanoLife and you did not hit the 22 percent. Is
15 that correct?

16 A We did not go forward with GanoLife, and we did
17 not hit the 22 percent.

18 Q Okay. And you said on the last line in your
19 email that you have lowered some internal costs, what do
20 you mean by that?

21 A I'm trying to remember what all that means.
22 Oh, I know what that means, I think. At this point I was
23 starting to become -- having a little bit more influence
24 on how things were run. By July is when we made pretty
25 much the full switch, July/August time frame. At this

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1 correct?

2 A That's correct.

3 Q Okay. On the top of the email it's from
4 yourself to Mr. Heinzelman -- and I quote -- "With the
5 new numbers we should break even in Q3. We will be
6 profitable by Q4 this year, at least E1 2016. We have
7 the capital to last for a long time without having to
8 worry about becoming profitable. But that pricing was
9 built on very unrealistic assumptions. Also we've
10 lowered some internal costs which will move us to
11 profitability much quicker." You drafted that email.
12 Correct?

13 A I did.

14 Q Okay. And what were you referring to?

15 A Well, that was, that email was based on a big
16 assumption at the time. At this point we had not yet
17 found the GanoLife issue with them hiding the million
18 dollars, and so that whole -- that model and that
19 forecasting was based on what we thought GanoLife would
20 do and subsequently where is it when we brought it on.
21 Obviously we did not go forward with GanoLife, so that
22 ended up not being -- not happening.

23 Q Okay. And so "the pricing was built on very
24 unrealistic assumptions," what were you referring to?

25 A So when Alan Reno -- so I'm referring back to

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1 point I'm -- I put both -- I put Urshel on or I asked
2 Urshel, didn't put him but asked him to take a standard
3 pay, which lowered some costs. At this point Alan was
4 gone, so Urshel was no longer paying him. And I was just
5 trying to get my hands wrapped around kind of
6 standardizing and creating a lower operating cost
7 overall. So I was just kind of moving into, okay, I need
8 to be a little bit more involved in how -- whatever this
9 operating's looking like, because it's -- we -- I don't
10 think we were in a very good position.

11 Q So you had mentioned that you got Urshel on a
12 standard pay. What was he being paid prior to that?

13 A Don't know.

14 Q What do you mean you don't know?

15 A So most of the money was being routed
16 through -- from an operational perspective a lot of the
17 money was being routed through Urshel's entity, IFP LLC.
18 I didn't have insight into that. So I don't know how
19 much he was paying himself or taking, so I asked him,
20 hey, let's make sure you're taking this amount.

21 Q Did you have any sort of accounting done at the
22 time? Did you have DiLucci & DiLucci at the time?

23 A No.

24 Q Did you have anyone internal that dealt with
25 the books and records?

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1 A Again not on that side. So at this point
2 Urshel was the manager of CFG I and IOP, which were the
3 concentration of the money was. So we were doing some
4 books on our Howard Capital, and Howard Capital books are
5 reflected in the compilation and everything that you
6 have. So Howard Capital, OE Capital, that's all
7 reflected there. And but Urshel did not have, he
8 certainly didn't have anybody that was really kind of
9 doing his books and making sure they were on top of all
10 of the costs.

11 Q So in May 31st, on May 31, 2015 CFG I was the
12 primary fund that was going on, there was no CFG II as of
13 that time period. Correct?

14 A That's correct. We were bringing up CFG II, so
15 CFG II was probably there. I don't know that we raised
16 money into it yet.

17 Q All right.

18 BY MS. GUNN:

19 Q In your initial email you use the phrase "you
20 guys are basically selling the 12 percent." What did you
21 man by that?

22 A As they were -- from what I was trying to
23 understand at that point is what they were talking to
24 their clients about, were they saying, hey, you're going
25 to get -- you have the possibility of getting 22.4 or

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1 were they just saying, hey, there's a 12 percent. So I
2 was just trying to an understanding of what they were
3 saying.

4 Q And then in this -- in the last email in the
5 exchange where you say "we have the capital to last for a
6 long time without having to worry about becoming
7 profitable," what were you referring to when you used the
8 word "capital"?

9 A Well, I was referring to the capital that we
10 were using, the push capital and the capital that we were
11 using to put the team in place and create the engine.

12 Q The investor funds. Correct?

13 A The investor funds that we were using from an
14 operating push perspective to create the engine and get
15 all of the pieces in place.

16 Q Thank you.

17 BY MS. FLOYD:

18 Q Have any investors gotten out of the three-year
19 commitment?

20 A Only one.

21 Q And who's that?

22 A Seth Shulman.

23 Q And why did he get out?

24 A My understanding is that he had gotten
25 diagnosed -- he became sick and really needed his money,

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1 so we decided to give him his money back less a penalty.

2 Q I'm going to hand you what has been marked as
3 Exhibit 49.

4 (SEC Exhibit No. 49 was marked for
5 identification.)

6 BY MS. FLOYD:

7 Q Take a moment and read through that, please.

8 A (Perusing document.) Okay.

9 Q Exhibit 49 is Bates-numbered OE SEC 032082.
10 It's an email chain between Mr. Heinzelman, Dovile, Mr.
11 Shulman, I believe that's the investor you had previously
12 referred to.

13 A Yes.

14 Q You are on part of it, so on page 3 you're cc'd
15 on Mr. Heinzelman's email, so you're on parts of the
16 email. And let's start from the beginning. So it looks
17 like on January 28, 2016, Mr. Shulman had wrote --
18 unfortunately it doesn't say who he wrote to but I'm
19 assuming it was definitely Mr. Heinzelman since he says
20 "Good morning, Charles." I believe basically he's asking
21 for his \$1500. He received his \$1500 check. Is that
22 correct?

23 A I think he received one and he had another one.

24 Q Okay. So would that be his 3 percent?

25 A Yes.

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1 Q Okay. So looks like the next email is Mr.
2 Heinzelman's contacting Mr. Shulman and basically
3 saying -- and I quote -- "Hi Seth. I contacted OE and
4 they are sending the additional disbursement. And shall
5 they send it to the same address or are you moving?
6 Brian mentioned something about that."

7 Now, on February 3rd Mr. Shulman writes to Mr.
8 Heinzelman -- I quote -- "I really appreciate that. Same
9 address is good," and he gives his address. It says "As
10 I know I have mentioned, I still have not returned to
11 work and a return of my investment would be very helpful.
12 I will be willing to pay an early termination fee. Have
13 you found out any information? Brian gave me the number
14 of someone to contact at OE. I will await your response
15 first."

16 Who is Brian?

17 A I don't know.

18 Q Okay. So it looks like he wants his money
19 back, and he currently is out of work. Is that correct?

20 A That's what it looks like there, yeah.

21 Q Okay. So then on page 4 Mr. Heinzelman
22 responds to Mr. Shulman on February 5th and he says --
23 and I quote -- "Hi Seth. The new distribution check of
24 \$1500 is being sent to this address. They will send you
25 a new form you need to fill out so they can process it.

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1 If you have a direct deposit, then they can deposit it
2 faster for you. Unfortunately, they cannot process an
3 early redemption as it conflicts with the PPM and
4 subscription agreement. They can continue to provide the
5 dividends quarterly to your bank account though. Regards
6 and best wishes, Charles Heinzelman."

7 Then on February 5th, the same day, Mr. Shulman
8 emails Charles -- and I quote -- "Charles, I am unclear
9 as to whether or not the check is being sent to me right
10 away or if first I have to fill out a form so the check
11 and all future distributions are paid to me. Besides the
12 fact that I haven't worked in close to two years and I
13 have had three hospitalizations and two ER visits in the
14 past 17 months, am I in need of my investment back? Let
15 me be less vague, although the reason listed above isn't
16 really vague as to why I'm looking for the return of my
17 investment.

18 "The first piece of mailing that I got from OE
19 Economics did not include a statement, and it looked like
20 a fourth grader had mailed it to me. I was concerned
21 immediately, so I brought the paperwork to my nephew's
22 mother in Florida who is a financial advisor with Chase
23 Bank. She told that it was unethical to promise a client
24 12 percent on their investment, and that I should get my
25 money back. So now the cards are on the table. Usually

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1 there is a penalty for an early withdrawal on most
2 investments. What do I have to do to get my money back?
3 Sincerely, Seth Shulman"

4 After that email, and I believe Mr. Heinzelman
5 responds to Mr. Shulman and you were carbon copied on
6 this email on the same day -- and I quote "Hi, Seth. I
7 believe the form needs to be signed first prior to
8 disbursement, and I'm cc'ing Patrick on this as well.
9 When we met and reviewed I thought you had told me you
10 were working as a therapist. This is the first I had
11 heard of you not working for two years. Anyways, I am
12 sorry to hear the issues.

13 "In regards to the lady at Chase, she's most
14 likely a registered rep or advisor and unfamiliar with
15 private equity offerings as this is commonplace in this
16 state. I am attaching another company that offers
17 similar returns but with much higher buy-in than is
18 offered through the investment advisor channel. If she
19 would like to call us and discuss the ethics of these
20 investments, then please have her reach out to me at the
21 below phone number.

22 "Also OE has had an independent audit of their
23 books and shall be provided that report once published
24 for full transparency. Hopefully that can quell some of
25 your and her concerns. I understand your issues and

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1 shall ask one last time, but as I mentioned before this,
2 this was a three-year commitment so I cannot guarantee a
3 favorable response, but I will do my best. Regards and
4 best wishes, Mr. Heinzelman."

5 Do you recall receiving that February 5th email
6 at 5:13 p.m.?

7 A I think so.

8 Q Okay. Did you have any discussions with Mr.
9 Heinzelman regarding this particular investor?

10 A I think I did.

11 Q And do you recall what the discussions were
12 about?

13 A I mean he, Charles --

14 Q Uh-huh.

15 A -- called me and explained kind of the
16 situation. I think I asked him, you know, kind of what's
17 the deal. And what's not captured in here that I
18 remember is that Mr. Shulman had got diagnosed with AIDS
19 or HIV. Charles was not aware of that; he was not until
20 Mr. Shulman told him, but he told me he wasn't aware that
21 he hadn't been working for two years.

22 And so after talking to Charles about it, I
23 felt it just kind of -- I mean, listen, if I was sick I
24 would probably want my money back and especially if I
25 hadn't worked. So I told him I thought it was in our

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1 best interest just to go ahead and charge him a fee, and
2 we would approve him getting his investment back.

3 Q Okay. So did Mr. Heinzelman find out before or
4 after the email that Mr. Shulman had HIV?

5 A I believe it was -- I'm not sure when he found
6 out. I believe it was after that email.

7 Q Okay.

8 A But I'm not sure.

9 Q Well, Mr. Shulman responds -- and I quote -- on
10 same day, February 5, 2016, "Charles, if I don't get my
11 full investment back including the proceeds, I will file
12 a complaint. I am insulted at the offer at a 15 percent
13 penalty fee. My address is" and he provides his address,
14 end quote.

15 So that same day Mr. Heinzelman -- so do you
16 recall when you had that conversation with Mr.
17 Heinzelman? Was it on February 5th or after?

18 A I don't recall. It probably was on that day.

19 Q All right. Well, Mr. Heinzelman responds to
20 Mr. Shulman's last email on February 5th, and he says --
21 I quote -- "Seth, this is a liquid investment, as I
22 explained previously. I have documented our meetings as
23 well as your signed application attesting to the
24 three-year period. OE is registered with the State of
25 Texas and are under no obligation to disburse prior to

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1 the end of the term. I will ask if they will lower the
2 clawback, but the fact they are liquid at all is a big
3 favor.

4 "I am positive that principal and proceeds
5 which were paid is not an option, as they have incurred
6 expenses. I will ask for 3 percent but no guarantees.
7 If this is not acceptable, let me know now, as I do not
8 want to go to bat again and get blasted by you as I did,
9 or threatened. This is out of my hands and doing what I
10 can. If you feel the need to complain, I will send you
11 to the right place."

12 So in Mr. Heinzelman's email it says here --
13 OE's registered with the State of Texas. Is that
14 correct?

15 A We have a Form D with OE Ventures. I mean our
16 LLC, OE LLC is registered with the State of Texas. But
17 the funds have Form Ds, and any -- from my understanding
18 if we need a blue-sky filing, K&L Gates will file those.

19 Q Okay. So in the same email Mr. Heinzelman
20 refers to -- and I quote -- "I am positive that principal
21 and proceeds which were paid is not an option, as they
22 have incurred expenses." What does he mean by that?

23 A I'm not -- I mean I'm not quite sure what he
24 means by that.

25 Q Ultimately OE Capital gave back Mr. Shulman's

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1 talked a little bit about the Chase lady, which wasn't a
2 big concern to me. I mean, we get that kind of stuff all
3 the time. My bigger concern was, you know, we were going
4 to set a precedent. Right? And so I wanted to make
5 sure, if we're going to set -- this is a precedent, so
6 let's make sure we're going to -- if we're going to do
7 this, let's set the right precedent.

8 So is it the right precedent that no matter
9 what your circumstances you will not get your principal
10 back, or is the right precedent that says, listen, you
11 have a life-threatening disease, you need your capital
12 back, we understand that, and so we'll be gracious about
13 it. That was our conversations.

14 Q In the email which is at the bottom of page
15 ends in -084 that Ms. Floyd read earlier -- this is the
16 one at 5:13 p.m. It's "Hi, Seth" and the second
17 paragraph addresses the lady at Chase.

18 A Uh-huh.

19 Q Do you see which one I'm talking about?

20 A Yes.

21 Q In that paragraph regarding the lady at Chase
22 he says also, "OE just had an independent audit of their
23 books and shall be providing that report once published
24 for full transparency."

25 Did you say anything to Mr. Heinzelman about

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1 investment. Correct?

2 A That's correct.

3 Q Minus a penalty. Correct?

4 A That's correct.

5 Q Okay. And Mr. Heinzelman last email to Dovile
6 says -- and I quote -- "Can we expedite to get rid of him
7 already?" So was he being reimbursed because he was
8 threatening to file a complaint?

9 A No. He was being reimbursed because he said he
10 had been out of work and he had contracted a disease, and
11 I decided, let's just give the guy his money back.

12 Q Okay.

13 A I've been really consistent on why he got
14 reimbursed.

15 BY MS. GUNN:

16 Q Other than discussing with Mr. Heinzelman
17 whether Mr. Shulman should be paid back and, if so, how
18 much, did you have any other discussions with him about,
19 you know, what the discussions with Mr. Shulman?

20 A I don't think I understand your question.

21 Q I guess what I'm trying to understand is you
22 were being copied on these emails. Did you discuss with
23 Mr. Heinzelman the content of what he said in any of the
24 emails to Mr. Shulman?

25 A I mean only to the perspective I think we

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1 his statement that OE had just had an independent audit
2 of their books?

3 A It was common knowledge that we were doing a
4 compilation. Charles knew that for -- since the end of
5 the year. So that was -- that's the compilation that
6 we've talked about several times.

7 Q Is a compilation the same as an audit?

8 A I've always used the word "compilation."

9 Q Is a compilation the same as an audit?

10 A No.

11 Q Okay. Did you talk to Mr. Heinzelman about
12 using the word "audit"?

13 A I've -- yeah. I've always -- whenever he's
14 used the word "audit," I've corrected him and said it's
15 a -- it's not an audit, it's a compilation.

16 Q Other than telling him that it's not an audit,
17 it's a compilation, did you say anything else to him such
18 as you can't use that term, for example?

19 A I'm sure I've had -- we've had dozens of
20 conversations about that.

21 BY MS. FLOYD:

22 Q Okay. I'm going to be handing you what has
23 been marked as Exhibit 50.

24 (SEC Exhibit No. 50 was marked for
25 identification.)

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1 BY MS. GUNN:
 2 Q Oh, before we move on to Exhibit 50, do you
 3 know if Mr. Shulman was accredited or unaccredited?
 4 A I can't recall.
 5 Q Thank you.
 6 BY MS. FLOYD:
 7 Q Exhibit 50 is an email chain between Mr.
 8 Heinzelman, Dovile, and I believe an investor named Susan
 9 Minor. Are you familiar with Susan Minor?
 10 A I know she's an investor in the fund, yes.
 11 Q Okay. And it's Bates-numbered OE SEC 023823,
 12 it's dated November 12, 2015, and the subject line is Re
 13 Question About 401(k) Account. Mr. -- Ms. Minor writes a
 14 long email to Mr. Heinzelman regarding about needing her
 15 money. She appears to have -- she's currently unemployed
 16 and is looking for a job, and it appears that she is in
 17 need of money. Is that correct?
 18 A That's what it appears.
 19 Q Okay. So Mr. Heinzelman responds to her and
 20 says, you know, I'm so sorry to hear that, basically I
 21 hope all goes well on the job hunting. He decides to cc
 22 Dovile to make sure she's getting her distribution
 23 checks. Is that correct?
 24 A Yes.
 25 Q Okay. Now, I understand you're not on this

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1 But the last email from Heinzelman to Dovile --
 2 and I quote -- "I did explain to her about the principal
 3 being locked in for three numerous times, three years
 4 numerous times with initial application. So let's as
 5 well." And that was on November 12, 2015. Do you recall
 6 having any conversation with Mr. Heinzelman about Ms.
 7 Minor?
 8 A I don't.
 9 Q Was Ms. Minor ever reimbursed her money or
 10 given any additional money?
 11 A I don't believe so, no.
 12 Q All right.
 13 BY MS. GUNN:
 14 Q What was the substance of your discussions with
 15 Dovile about Ms. Minor?
 16 A She just made me aware that she was asking for
 17 her money.
 18 Q Did you have discussions about whether or not
 19 it would be appropriate to refund her money?
 20 A I can't recall having that discussion with
 21 Dovile, but I mean my default position on that is no.
 22 Can't get your money back.
 23 BY MS. FLOYD:
 24 Q But you gave Mr. Shulman his money back.
 25 Correct?

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1 email chain. Has -- at anytime has Dovile discussed Ms.
 2 Minor to you or her situation to you?
 3 A I think she did discuss this to me briefly,
 4 yeah.
 5 Q Okay. When did she discuss Ms. Minor?
 6 A I would imagine it's around this time frame.
 7 Q Okay. So it appears on November 11, 2015, Ms.
 8 Minor emails to -- emails Dovile and basically says --
 9 and I quote -- "How about if I need to take more money
 10 out of my 401(k), how does that work? As I mentioned in
 11 my first message, I prefer to receive any funds prior to
 12 January 1st so they don't affect next year's cost of
 13 Obamacare. I have a job interview tomorrow, so I may not
 14 have to worry about any of this. But if I'm not employed
 15 by the end of the year I'm going to need money to
 16 continue to pay my mortgage and bills. Thank you,
 17 Susan."
 18 Dovile responds on the same day, November 11,
 19 2015 -- quoting -- "Let's talk about this tomorrow.
 20 Hopefully her job works out. The principal is locked in
 21 for three years." It doesn't say -- I'm sorry, Dovile's
 22 email doesn't say where it's going. I don't know if she
 23 means her job, I don't know if she's responding to Ms.
 24 Minor or not or if she's responding to you. It doesn't
 25 say in the email chain.

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1 A That is. That's correct.
 2 Q And he's the only exception?
 3 A Yes.
 4 Q Has any investors complained to you regarding
 5 their investments?
 6 A No.
 7 BY MS. GUNN:
 8 Q Have any other investors requested their money
 9 back?
 10 A Not that I know of.
 11 BY MS. FLOYD:
 12 Q If an investor were to request her money back,
 13 would they go to Dovile with this question?
 14 A Probably not. The way this works, and that's
 15 in any kind of advisor space, is they go to their advisor
 16 or agent.
 17 Q Okay.
 18 A So they would typically go to Charles or
 19 Jackson or whoever their advisor is.
 20 Q So in Ms. Minor and Mr. Shulman's case they
 21 both went to Mr. Heinzelman.
 22 A That's correct.
 23 Q And it appears Mr. Heinzelman goes to Dovile.
 24 Correct?
 25 A Correct.

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1 Q Would Mr. Heinzelman at all go to you?

2 A Probably not. Just because I tend to be hard
3 to get a hold of. And so he knows that Dovile really
4 runs all of that, and if there's some extraordinary
5 exception that she needs to bring to me she will.

6 Q And so if an investor requested her money back
7 and Dovile is aware of this, would she discuss this issue
8 with you?

9 A Only if she thought it was an extreme situation
10 or a unique situation for some reason.

11 Q And you would have the ultimate decision
12 whether you return money or not. Is that correct?

13 A Yes.

14 Q And speaking of ultimate decisions for as far
15 as PPMs or any marketing trails, would you -- for PPMs
16 you would review and you would be the ultimate decision
17 on whether the PPM was finalized. Correct?

18 A That's correct.

19 Q Thank you. I'm going to be handing you what
20 has been marked as Exhibit 51.

21 (SEC Exhibit No. 51 was marked for
22 identification.)

23 BY MS. FLOYD:

24 Q Take a moment and read through that.

25 A (Perusing document.)

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1 we'll get less on the back end after we take into
2 consideration operating costs.

3 On the forecast of returns, which I would still
4 say they probably aren't disclosed very properly, these
5 are still forecasted numbers, we do 18.4, so there's no
6 more the 20 percent average.

7 We did a little bit about the key method here.

8 We did the current portfolio holdings, which is -- which
9 means this is a living, breathing document. As we add
10 new companies or roll companies off, this will change.
11 And I think -- well, I'm sure there's other stuff, but
12 that's the gist of it.

13 Q So you said this is going to be an ongoing
14 thing. Currently you're removing Athletes Performance
15 Gear or changing it to TU, and you've added Unequal
16 Technologies or you're going to be. Are you planning on
17 reissuing a profile -- fund profile for July or August
18 2016?

19 A Yes, ma'am.

20 Q Okay. Now, going through this fund profile, on
21 the top left-hand corner you have your 12 percent annual
22 preferred return, shared profits, profile profits up
23 to -- portfolio profits up to 20 percent. Senior and
24 revenue stream, what do you mean by that?

25 A We earn top-line revenue. So as a company

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1 Q Do you recognize Exhibit 51?

2 A Yeah. It's -- I will call it a fund profile
3 sheet.

4 Q Okay. And it's Bates-numbered OEC SEC 001302
5 through 1303. The date on the left-hand corner says
6 1/17/16. I know yesterday we looked at one, it was
7 6/1/15. So this is an updated fund profile. Is that
8 correct?

9 A That's correct.

10 Q Okay. What changes have you made between the
11 two? What was the drastic changes you've made in this
12 fund profile?

13 A Quite a bit. We took -- we found a lot of the
14 insurance language to be confusing, so we took that out,
15 really concentrated the language on the collateralized
16 investments. We were looking at another offering, what
17 we were calling a series, a Series C, high net worth.
18 Since then we've decided not to go forward that offering,
19 actually, because nobody did it.

20 I think there's a little bit clearer disclosure
21 language here. You see on the second page that Cristina
22 and Dovile added -- we tried to become a little bit more
23 clearer on what that rebate is in terms of operating
24 costs, that, you know, investors are paid on 100 percent
25 of their investment, which by default means, you know,

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1 makes a dollar, the first payment comes to us.

2 Q Okay. What's an income option?

3 A It means the distribution option, quarterly
4 distribution option of 3 percent.

5 Q Even if it's qualified?

6 A Well, correct. So, for example, if the person
7 is retired and they roll over an IRA, then they can take
8 that option without a penalty.

9 Q Okay. So you're saying there's a growth on 100
10 percent of the investment. Yearly audit reports on
11 portfolio?

12 A That is correct. So starting 2016 there will
13 be annual audit reports.

14 Q On the portfolio companies or on OE Capital or
15 both?

16 A Both.

17 Q Okay. And is DiLucci & DiLucci going to be
18 doing this audit report?

19 A Yes.

20 Q So Series C you no longer --

21 BY MS. GUNN:

22 Q This is dated as of January 2016. Was there a
23 yearly audit report for 2015? There was not, there was
24 compilation. Right?

25 A There's a compilation.

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1 Q Okay.
 2 BY MS. FLOYD:
 3 Q You have previously testified that Series C was
 4 not going to happen. Is that correct?
 5 A That's correct.
 6 Q Okay.
 7 BY MS. GUNN:
 8 Q When did you make the determination Series C
 9 would not occur?
 10 A Honestly, I think Dovile and I talked about
 11 that probably three or four weeks ago.
 12 BY MS. FLOYD:
 13 Q The paragraph underneath Sales Charge -- and I
 14 quote -- "OE Capital Partners pays preferred return on
 15 100 percent of capital acquired. Therefore, OE
 16 surrenders the operating expenses out of company profits,
 17 not invested returns. This is not a common practice
 18 among financial institutions. It often shows up as a
 19 management fee or in expense ratios in competing firms."
 20 In smaller print it says "please see OE advantage graph
 21 on the next page."
 22 So what do you mean by OE surrenders the
 23 operating expenses out of the company's profits, not
 24 investor returns?
 25 A So if I can just give a quick example.

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1 Q Sure.
 2 A If an investor was to invest a hundred bucks
 3 and I had a 2 percent management fee, that means the
 4 investor's actually getting credited \$98 in that account
 5 and then the \$98 is what the return gets based off of.
 6 We don't do it that way. Right? So we take \$100. Now,
 7 we take a push, so let's call it a 2 percent push, just
 8 to keep the numbers be exact. So we take what we call an
 9 operating money out of that, which leaves 98 to get
 10 invested.
 11 However, when the returns come back we're going
 12 to pay returns on the full 100, which means at the end of
 13 the day when you start looking at profits, how much
 14 profitability the company or the investment company would
 15 take, well, we're taking less profit, because we're --
 16 part of our profit's going to make up that 2 percent
 17 push. So we're surrendering a piece of our profits to
 18 make that up.
 19 Q So you're initially taking the 2 percent and
 20 then you're paying it back once you get profits.
 21 A Yes.
 22 Q What happens if OE Capital doesn't get profits?
 23 A That's when we go liquidate assets.
 24 Q And that would involve --
 25 BY MS. GUNN:

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1 Q This doesn't say you surrender profits. It
 2 says surrenders the operating expenses. What does that
 3 mean?
 4 A Well, that's the amount, the expense amount out
 5 of our profits. So it's -- when a -- it's -- the
 6 operating expense is the amount that we would surrender
 7 out of our profits. So again if I had a \$100, I took 2
 8 percent to operate, and let's say it's a 14 percent
 9 return, then it wouldn't -- it would be the 12 percent
 10 plus the 2 percent. Right? So we would make sure that
 11 the investor is made whole on that 2 percent. And --
 12 Q That's not what this says. It says "surrenders
 13 the operating expenses out of company profits, not
 14 investor return."
 15 A Out of our company profits. The OE company
 16 profits.
 17 Q As of the date of this term sheet, which is
 18 January 1, 2016, had OE Capital had any profits?
 19 A No.
 20 Q Okay. So it wasn't really paying the expenses
 21 out of company profits at that point, was it.
 22 A It will. So as we --
 23 Q I'm asking what --
 24 A -- get profits --
 25 Q -- what actually happened in 2016.

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1 A No. So --
 2 Q 2015.
 3 A So no. So for 2015 we took the operating push,
 4 so it would be that 2 percent that I was just doing in my
 5 example, that's what we were using to operate on. As the
 6 returns come back we'll rebate that operating expense
 7 back.
 8 Q What do you mean by rebate it back?
 9 A We're due profits once -- when returns come
 10 back part of that, if the returns are big enough, are
 11 going to be OE profits.
 12 BY MS. FLOYD:
 13 Q So essentially you're borrowing the investor's
 14 returns until the company gets a profits and then you pay
 15 the returns back. Correct?
 16 A We're -- no, I wouldn't say borrowing the
 17 returns. We're using a bit of the capital to operate.
 18 Remember, we're operating in those portfolio companies.
 19 So that's human capital that's going into the portfolio
 20 companies to help them generate the return. However,
 21 again in the traditional and kind of -- traditional 2 and
 22 20 model of private equity or ventures with capital space
 23 you invest \$100, they take 2 percent of that out, and
 24 really you're going to get credited, your returns are
 25 going to get credit on \$98.

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1 The way that we're doing is you take \$100, we
 2 realize that there still has to be operating so we're
 3 going to operate let's say on that same 2 percent.
 4 However, the difference is we're going to give you the --
 5 your 12 percent back on the hundred dollars, not the 98.
 6 So what does that basically mean? It means that we're
 7 going to rebate back part of that -- our share of profits
 8 to make sure that we're covering the 2 percent that we
 9 used to operate.
 10 BY MS. GUNN:
 11 Q But you weren't using 2 percent to operate,
 12 were you? It's more than that, wasn't it?
 13 A Correct. I was just doing an example.
 14 Q Okay.
 15 BY MS. FLOYD:
 16 Q What is the percentage that OE Capital uses to
 17 operate?
 18 A We do a 10 percent push.
 19 Q Do you do any over 10 percent at all?
 20 A We -- so there's a 10 percent operating and
 21 then we have a 5 percent what we call financing fee that
 22 is applied to the portfolio companies. We take that to
 23 offset the cost of our capital that's in those portfolio
 24 companies, but they pay the full return on that 5
 25 percent. So to make it really easy for you, you can just

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1 say that the push ends up being between 10 to 15 percent.
 2 Q So the portfolio companies are paying a 5
 3 percent finance fee. Yes?
 4 A Correct.
 5 Q Okay. And that does not affect the investors
 6 because they're still being paid 100 percent plus the 12
 7 percent annual. Is that correct?
 8 A That's correct.
 9 Q But the -- what I recall from our previous
 10 testimony, portfolio companies aren't really paying that
 11 money, you're just taking it out. Is that correct?
 12 A They have to -- we're taking it out but they
 13 are responsible. So it's getting allotted to them as
 14 financing, so they're now responsible for paying that
 15 plus a return on it.
 16 Q Okay. So has any of the portfolio companies
 17 to-date paid that 5 percent financing fee?
 18 A You mean the returns on that 5 percent
 19 financing fee? Or have we captured that 5 percent?
 20 Q Correct.
 21 A We have captured that.
 22 BY MS. GUNN:
 23 Q How have you captured it?
 24 A We took 5 percent of the overall ask, or
 25 actually as the next tranche of funding goes in we

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1 allot -- let's say the next tranche is a hundred bucks,
 2 just to make the numbers easy. So we will finance a
 3 hundred bucks and then we would -- but on the books it
 4 will look like \$105, and five dollars will come to help
 5 offset the human capital that it's working with.
 6 Q All right. So essentially you, OE Capital is
 7 being advanced that 5 percent from the investors' funds.
 8 A That's not how it would characterize that 5
 9 percent. That 5 percent is a fee that's being charged to
 10 the portfolio companies. So the portfolio companies are
 11 responsible for returning that fee with returns. And
 12 then we're -- but instead of the portfolio company
 13 utilizing that for their own human capital, we are
 14 utilizing it to offset the cost of our human capital
 15 that's working in the portfolio company.
 16 BY MS. FLOYD:
 17 Q But the portfolio companies haven't paid that 5
 18 percent because they haven't paid any returns. Correct?
 19 A That's correct. But they --
 20 BY MS. GUNN:
 21 Q And so where's the 5 percent come from?
 22 A It's investor dollars that's being funded into
 23 the portfolio company.
 24 Q And the 5 percent, when it's payable, will come
 25 back to OE Capital. Correct?

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1 A That's -- it will come back to the fund and it
 2 will go to -- that will be part of the returns that will
 3 go to the investor and anything over 12 percent we'll
 4 share.
 5 BY MS. FLOYD:
 6 Q Is this disclosed to any of the investors?
 7 A The 5 percent?
 8 Q The 5 percent financing fee, yes.
 9 A No. That will be disclosed to the portfolio
 10 companies.
 11 Q Okay. But the investors are not aware that
 12 their money is being used to pay the 5 percent up front
 13 until the portfolio company pays the returns, including
 14 the 5 percent?
 15 A From an investor perspective, that's money that
 16 is being financed into -- that's money that's being
 17 financed into the company. Right? So if I now create a
 18 contract with ABC Company for a thousand dollars
 19 financing, and in that contract I say I'm going to charge
 20 you 5 percent, then it's \$1,050 of financing.
 21 Q So you're using investor money that goes
 22 towards the portfolio to finance that money. Correct?
 23 So OE Capital is taking the 5 percent from investor money
 24 that's supposed to go to the portfolio company. Correct?
 25 A That is allocated to the portfolio company as a

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1 fee, and we're utilizing it because we have people in
2 that portfolio company working it. So we're utilizing it
3 as an offset.
4 Q Okay. So but ultimately in the beginning
5 you're using investor funds to pay this 5 percent.
6 Correct?
7 A Correct.
8 Q Pay yourself. But is that -- that is disclosed
9 to investors?
10 A We disclose in the PPM the corporate use of
11 money, and I believe in the OE Venture's PPM that number
12 is I believe either 13.75 or 15 percent, can't remember.
13 Q Okay. Can you show me, please? And I believe
14 it's Exhibit 22.
15 A Right. It's page 28, number 331. If you look
16 down to the middle of the chart, you'll see corporate
17 expenses of 13.75 at a -- looks like at a high end or 20
18 percent at a low end. Or vice-versa, I'm sorry.
19 Q So essentially you're taking like a 15 percent.
20 Is that correct?
21 A Correct. Right now, yes.
22 Q And you're considering that as a corporate
23 expense. Correct?
24 A That is correct. The corporate -- but I'd like
25 to just make sure I clarify. The corporate expense is --

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1 and especially as we talk about this 5 percent, those
2 dollars are used to offset the cost of the human capital
3 that's working in the portfolio company. The -- okay.
4 So let me try to go through a deeper explanation.
5 When you're dealing with early stage growth
6 companies and venture capital firms, very, very few of
7 them have all of the human capital they need in order to
8 grow their business.
9 So we have a choice. We can either fund them
10 an extra 300- to \$500,000 a year so that they can go out
11 and maybe hire people that maybe have the opportunity to
12 grow it, or we can say, listen, why don't you use our
13 team. And it will be 5 percent of your cost, about 5
14 percent of your ask. So if it's a million dollars we're
15 going to charge you 50 grand and guess what, we're -- we
16 have a history of being able to take products like this
17 to market.
18 And so it makes sense, it makes sense for
19 everybody that -- around. The venture capital company is
20 not asking for more money, and it's not betting on human
21 capital that they're not sure it's going to work out.
22 If they were to raise that extra capital, it
23 would be additional equity that they would have to give
24 up to go raise that capital to pay for that human
25 capital. Instead we charge them 5 percent that they're

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1 willing to pay, they use our team, we go in, we build the
2 strategic plan and we help them execute, and it makes
3 sense for everybody involved.
4 Q So in the middle of the first note to Exhibit
5 51 again you have a chart. So you chart a minimum and
6 expected. And I believe the language below this chart,
7 the last sentence says -- and I quote -- "the fund's
8 minimum contracted performance threshold is 12 percent
9 annually; 18 percent is an expected average." Is that
10 still true today?
11 A In our -- yeah. So in our partnership
12 agreement with the investors it's a 12 percent prefer
13 yield. Over the next three years we still expect, based
14 on our modeling, at 18 percent.
15 Q Okay. How about someone who invested, say
16 Tracy Alexander, so she invested you say what, January
17 2015?
18 A Yes.
19 Q Has she received an 18 percent in her annual
20 first year return?
21 A No.
22 Q She got her 12 percent. Correct?
23 A Correct.
24 Q So the first year for some people isn't -- they
25 aren't receiving the expected 18 percent. Is that

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1 correct?
2 A Not for people -- not for past. So this will
3 be handed to -- that's correct, not for past potential
4 investors. So the first year they got 12 percent.
5 Q Okay.
6 A That's correct.
7 MR. HOWELL: Catherine, if you don't mind if I
8 just point out --
9 MS. FLOYD: Sure.
10 MR. HOWELL: -- two sentences right before this
11 sentence you read.
12 MS. FLOYD: Uh-huh.
13 MR. HOWELL: I mean it does say "performance
14 data represents future projected performance."
15 MS. FLOYD: Okay.
16 MR. HOWELL: "Current performance may differ
17 from performance shown."
18 MS. FLOYD: Okay.
19 MS. GUNN: Well, but it also doesn't say past
20 performance has differed.
21 BY MS. FLOYD:
22 Q And I believe the same numbers are on the fund
23 portfolio for June of 2015. Correct?
24 A That's a correct date. I don't think they were
25 the same numbers.

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1 Q You don't think they're the same?
 2 A I don't believe they're the same numbers. I
 3 believe those numbers are different.
 4 Q They were higher?
 5 A I believe the numbers there averaged at 20
 6 percent, not 18.4.
 7 Q Okay. So they're higher.
 8 A And I don't believe there's this -- there
 9 certainly wasn't these corporate projected returns.
 10 Q Again on page 1303 you have that pie chart with
 11 real estate numbers. And at this time you still do not
 12 have real estate. Correct?
 13 A We do not; we do not have real estate.
 14 BY MS. GUNN:
 15 Q I'm sorry. You may have addressed this
 16 yesterday, but could you explain -- and if you did, I
 17 apologize.
 18 But could you explain again to me the term
 19 stop-loss real estate? What does that mean?
 20 A As we -- I want to make sure I say this right
 21 because this -- it's not complicated, just I want to make
 22 sure I say it right. As we have excess liquidity in
 23 terms of looking at our capital planning, if we have
 24 excess liquidity -- let's make numbers easy; let's call
 25 it a million dollars.

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1 If we've got a million dollars and based on all
 2 of our planning that we can see we're just going to have
 3 an excess liquidity of a million dollars that we can put
 4 to work, well, what we might want to do with that million
 5 dollars is put it in something like real estate where we
 6 have the potential to get some level of dividend. It's
 7 probably not going to be the full 12 percent, but at
 8 least it's at work doing something.
 9 And then if we ever had a liquidity need, we
 10 could sell that real estate and turn it liquid pretty
 11 quickly. So again it will be another stop-loss measure.
 12 Q Okay. Thank you.
 13 MS. FLOYD: How about let's take a lunch break?
 14 We're off the record at 11:52.
 15 (Whereupon, at 11:52 a.m., a luncheon recess
 16 was taken.)
 17 AFTERNOON SESSION
 18 COURT REPORTER: We're on the record.
 19 MS. FLOYD: At 1:09.
 20 BY MS. FLOYD:
 21 Q Before lunch we were going through the fund
 22 profiles. Is that correct?
 23 A Yes.
 24 Q Okay. So we looked at a June 1, 2015 and a
 25 January 1, 2016. Are there any other fund profiles?

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1 A I don't think that one's been updated yet, so I
 2 would say no.
 3 Q So the January 1, 2016 is your latest one you
 4 have available.
 5 A I believe so.
 6 Q Were there any in between June and January?
 7 A I am not sure. I want to say there is, but I'm
 8 not sure about that.
 9 Q Okay.
 10 MS. FLOYD: Just for the record, I'm going to
 11 be asking for any fund profiles.
 12 MR. HOWELL: Okay. And I'm about to send you
 13 a DiLucci compilation report that is outside the -- or we
 14 were seeking outside the --
 15 MS. FLOYD: Annual report?
 16 MR. HOWELL: It's outside the subpoena date
 17 range, but we just got it just recently. It was just
 18 sent to me, so --
 19 MS. FLOYD: Okay
 20 MR. HOWELL: -- so I'm just going to flip that
 21 to you.
 22 MS. FLOYD: Okay. Thank you. And documents we
 23 ask for today we'll send you subpoenas, so you just keep
 24 track of everything.
 25 MR. HOWELL: Okay.

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1 MS. FLOYD: I appreciate that.
 2 MS. GUNN: You should go ahead and get started
 3 on it.
 4 BY MS. FLOYD:
 5 Q Okay. Also if you don't mind, could you please
 6 go to Exhibit 42. It's the Series 1 training, the email
 7 between Dovile and Mr. Heinzelman and you're cc'd.
 8 A Yes.
 9 Q Are you aware if these are the exact slides
 10 that Dovile used during the training?
 11 A I'm not aware if they're the exact slides from
 12 the training.
 13 Q Did she ever bring these slides to you to have
 14 you look at them before she used them in the training?
 15 A I don't recall ever looking at these prior to
 16 using them, her using them in the training.
 17 Q Would it be customary for her to have you sign
 18 off on making sure that she provides equal benefits?
 19 A So since this wasn't marketing materials, it
 20 was a training, it was a C4 training, that would have
 21 been outside of kind of our normal, what we normally did
 22 anyway. So I'm not sure she would have thought it was
 23 necessary for me to look at them. If as long as -- when
 24 I look at most of these slides in this particular
 25 document most of them were things that we had used

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1 already in our typical presentation.
 2 Q To investors.
 3 A Correct.
 4 BY MR. MCCOLE:
 5 Q Do you have any reason to believe there's a
 6 document attached to this email, the slides were not used
 7 by Dovile in the training?
 8 A I don't have a reason to believe that.
 9 MS. FLOYD: All right. Thank you. All right.
 10 BY MS. FLOYD:
 11 Q I'm handing you what has already been
 12 previously marked as Exhibit 25.
 13 MS. GUNN: What number was it?
 14 MS. FLOYD: Exhibit 25.
 15 BY MS. FLOYD:
 16 Q Okay? Do you recognize Exhibit 25?
 17 A Yeah, this is the annual report that we sent to
 18 investors for the end of 2015.
 19 Q Okay. And so investors, you mean current
 20 investors or potential investors?
 21 A Current investors.
 22 Q Did potential investors receive this as well?
 23 A No.
 24 Q And can you please basically walk us through
 25 the point of this annual report?

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1 A So the point of the annual report was just to
 2 kind of give our investors a snapshot look at what we'd
 3 accomplished in 2015 along with attaching the annual
 4 compilation or the compilation from DiLucci & DiLucci
 5 that they did.
 6 Q And who drafted Exhibit 25?
 7 A It's a combination. Almost the entire team had
 8 input. Myself, Dovile Soblinskas, Cristina Cason, Chad
 9 Alberson, Tracy Alexander, and I think that's it.
 10 Q Okay. And --
 11 BY MR. MCCOLE:
 12 Q Who had the final authority to approve the
 13 document before it went out?
 14 A I did.
 15 Q And did you approve it before it went out?
 16 A Yes.
 17 BY MS. FLOYD:
 18 Q And when did it go out?
 19 A This is dated March 15, 2016. So I think that
 20 probably was the date.
 21 Q And you previously testified that OE Capital
 22 provides compilations to investors each quarter. Is that
 23 correct?
 24 A Correct.
 25 Q So was this the first compilation -- I know the

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1 annual report has the compilation attached to it. Is
 2 that the first compilation investors received?
 3 A Correct. Yes.
 4 Q All right. If you look at Bates number 1264,
 5 can you please explain to us the overall financial
 6 summary. It's the total based-based valuation versus
 7 capital due to investors, the pie chart.
 8 A Yes.
 9 Q Would you please explain it?
 10 A So that pie chart is just a graph, a clear
 11 representation of an internal based-based valuation that
 12 we did at the end of 2015. So what that is is if you
 13 look at page 1265, there's a chart there that outlines
 14 an -- what -- most of the things that go into an
 15 based-based valuation. And so what this chart is is our
 16 internal review of the value of those assets relative to
 17 the amount, the total amount of capital raised from
 18 investors and due back.
 19 Q Who came up with this based-based valuation?
 20 A Do you mean the methodology?
 21 Q Correct.
 22 A Business minds -- based-based valuations have
 23 been around for decades.
 24 Q Okay.
 25 BY MS. STUMBAUGH:

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1 Q Who performed the asset-based valuation for OE?
 2 A A combination of me, Cristina Cason, and Dovile
 3 and perhaps Tracy Alexander along with our portfolio
 4 companies.
 5 BY MS. FLOYD:
 6 Q Okay. So can you please describe to us what
 7 you would calculate in your total asset-based valuation?
 8 A Inventory, any kind of inventory that was owned
 9 at the time, any kind of value in intellectual property,
 10 any kind of value in logos or trademarks or brands, any
 11 kind of value in any kind of other assets like computers,
 12 things of that nature. Contract values, so contracts
 13 that we could package up and resell, we could sell
 14 certain contracts, the value of those contracts. Any
 15 kind of patents that we had, any security interest to.
 16 Any kind of equipment. And I think that's about it.
 17 Q Okay. So you mentioned signed contracts.
 18 Correct?
 19 A Yes.
 20 Q How do you value a signed contract?
 21 A Well, so depending on the company, a signed
 22 contract is -- let's say I have a contract to deliver,
 23 you know, a million widgets to Company XY&Z, and for some
 24 reason I can't deliver those widgets. What I can do is I
 25 can take that contract and I can sell it to somebody that

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1 can deliver it. I can sell it potentially at a discount.
 2 Right?
 3 And so if that person wanted access, that
 4 Company B, my potential competitor really wanted access
 5 to Company A but they couldn't get it and I have them in
 6 my pocket, I can sell that contract. That's an asset.
 7 Q Okay. So according to page 1266, you have \$6.3
 8 million valued in it looks like --
 9 MS. STUMBAUGH: Signed contracts.
 10 BY MS. GUNN:
 11 Q -- signed contracts? Is that correct?
 12 A Yes. That looks like -- that's correct.
 13 Q So which contracts were you valuing, were you
 14 placing a value on for this particular chart?
 15 A Most of those were WHRZT! contracts.
 16 Q And how many projects does WHRZT! have?
 17 A A lot. Maybe 12, 13 contracts.
 18 Q With whom?
 19 A Companies like -- they're Big Tex, PJs, Red
 20 Neck, Meyer -- I'm running out of the names I know. But
 21 several other contracts with either distributors or
 22 dealers of trailers.
 23 Q And how do you know the value of this contract?
 24 A The CEO James Nalley and I got on the phone,
 25 and we talked through those contracts. We talked to the

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1 monetization, and he assessed values for us of what he
 2 thought those contracts were worth. We discounted those
 3 values.
 4 Q Who's he?
 5 A James Nalley, the CEO of WHRZT!.
 6 Q And he placed a value on those contracts?
 7 A Correct. He and I over a phone call. He told
 8 me what he thought those values would be worth, and then
 9 we discounted, we discounted that value and placed it
 10 here.
 11 Q Do you have an understanding of what his basis
 12 was for the value of those contracts?
 13 A Essentially kind of how much he thought over
 14 the next kind of three years he could sell through in
 15 terms of those contracts, like what they really would be
 16 worth, so a much, much, much larger number than that.
 17 Q So is the value that's included in this pie
 18 chart, was that the value of that contract at the time of
 19 March 2016?
 20 A It's the discounted value of those contracts.
 21 Q And how did you discount it?
 22 A We took his value and essentially cut it by
 23 about 50 to 60 percent.
 24 Q And do you have particular people that you
 25 would resell it to?

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1 A Those contracts?
 2 Q Yes.
 3 A I mean not at this point. I mean I didn't go
 4 do that research of who I would sell it to. I just know
 5 that those contracts can be sold.
 6 Q How do you know that?
 7 A Because they have value. I mean they were real
 8 contracts, monetizable contracts. This happens quite a
 9 bit in most businesses. I mean you can sell contracts
 10 that have value, and if somebody else wants them, you
 11 sell it at a discount that they couldn't get it to -- get
 12 to them.
 13 Q Have you sold contracts before?
 14 A No, I have not.
 15 Q Has Mr. Nalley sold contracts before?
 16 A I believe he has.
 17 Q You believe. Has he told you if he has or not?
 18 A I can't recall whether or not he's said those
 19 exact words. I mean we have dozens of conversations
 20 every week.
 21 Q And these contracts, what do they consist of,
 22 selling his products?
 23 A Yes.
 24 Q And the contracts are with big sellers like
 25 BJ's and --

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1 A PJ's.
 2 Q I'm sorry, with PJ's?
 3 A They are a distributor of trailers.
 4 Q Okay. Thank you.
 5 BY MS. STUMBAUGH:
 6 Q Do these contracts give WHRZT! the right to
 7 sell them if they can't perform under the contract?
 8 A To sell the contract?
 9 Q Yes. Does it give WHRZT! the right to
 10 substitute somebody else then to perform the contract
 11 with PJ's or whoever?
 12 A Absolutely.
 13 BY MS. FLOYD:
 14 Q You've seen these contracts.
 15 A I've not seen them all, no.
 16 Q So how do you know that they are able to sell
 17 the contract?
 18 A So the contracts, the contract allows WHRZT! to
 19 perform or sell their product into these particular
 20 companies. And so if WHRZT! can't perform that, then
 21 what you do is you have WHRZT! sell it -- let me back up.
 22 The question would be why would WHRZT! be able? Because
 23 so what clearly Red Neck is saying is that, hey, we're
 24 going to order X number of these units on a monthly basis
 25 or annual basis, period. So we like your product and

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1 we're going to order it. And that's what those contracts
2 say.

3 So now the question is, well, what wouldn't --
4 why wouldn't WHRZT! be able to deliver them then. Well,
5 it's because they would either run out of the ability or
6 not have the capacity to produce the unit that Red Neck
7 wants to buy. And so what they would do as they would
8 liquidate their company is they would take that contract
9 along with the IP, the patents, and everything else to
10 produce the unit and sell it to someone who does have the
11 capacity to produce the unit.

12 Q And how does the value of these contracts being
13 sold, like how does he value that? Does he take the
14 value of the contract itself as of the date of the
15 contract and then just take a discount?

16 A I believe he's taking what he believes the
17 future value of those contracts will be. So it's not
18 only the value today but future value of those contracts.
19 So as he sells more into them, what -- how do -- what are
20 those values going to be.

21 BY MS. STUMBAUGH:

22 Q And how does the value -- how do you -- from
23 the number Mr. Nalley has assigned to the contract, you
24 said you discounted it. How do you determine what its
25 value is to OE Capital?

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1 A Well, his value, what he would assume as his
2 value and future value over the next three years, that's
3 the real value to OE Capital. Because we have security
4 rights to those assets contractually. So his value would
5 be our value. If there was -- so this is if there's a
6 liquidation event.

7 BY MS. FLOYD:

8 Q So could OE Capital sell those contracts?

9 A We would end up having security rights, and
10 then we could go in and sell those contracts.
11 Essentially what we're talking about, because the
12 contracts constitute the business, the contracts
13 constitute his ability to put these products into the
14 business. Right?

15 BY MS. GUNN:

16 Q Why -- and the sale of the contracts would be
17 in connection with a liquidity event. Is that correct?

18 A If needed, that's correct.

19 Q Okay. So his business would have had a problem
20 such that they needed to sell a contract and dissolve?

21 A That's correct.

22 Q Okay. And wouldn't the proceeds from those
23 contracts be subject to any other creditors you might
24 have?

25 A If he had other creditors and if they were

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1 senior to us, yes.

2 Q Okay. Do you have a security interest in the
3 entire value of the contracts?

4 A We do.

5 BY MS. FLOYD:

6 Q Besides WHRZT! what other contracts are part of
7 this 6.3 million?

8 A I believe the only other contract is one from
9 RivaCare.

10 Q And how do you value the RivaCare contract?

11 A It is based on a membership with AAA, the AAA,
12 what do you call those things, chapters. And so what we
13 did is we did kind of a very glossary, well, you know,
14 what if we could get -- if we sold in -- for example, a
15 nickel, a nickel per member, what does that equal out in
16 terms of a potential revenue projection, and then
17 discount that number from that.

18 Q So you're saying a RivaCare had a contract with
19 AAA?

20 A Well, the contracts were with Aon --

21 Q What's Aon?

22 A -- who owns AAA. Aon's a big insurance
23 reseller company and they own the AAA memberships.

24 Q So what's the contract for?

25 A To provide RivaCare teledot services for the

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1 AAA members.

2 Q And how do you value that contract? Again just
3 divide five cents per membership?

4 A So that's how we would value a contract like
5 that. So what we would say is okay, Aon, we'll roll out
6 the Services to every -- or AAA. Everybody will get a
7 service for a nickel, for example. And once that service
8 gets -- I'm sorry. Now that we have that agreement --
9 because the service actually itself costs \$29 per member.
10 So we could go in at a discount and say, well, we can
11 offer it for a nickel. Q So how many members does
12 RivaCare have right now?

13 A How many members does RivaCare itself have.

14 Q Correct.

15 A I'm not sure what that number is.

16 Q So is it up and going, is it active?

17 A It is active.

18 Q As of what date?

19 A It's active as of -- technically they've kind
20 of live I guess since April or May.

21 Q Of 2015.

22 A 2016.

23 Q Okay.

24 A They are acquiring members now. The Aon
25 contract is in place, and we are now looking at the

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1 rollout to Aon.
 2 Q So they don't -- as of right now they don't
 3 have any members. They don't have -- the contract is not
 4 active so there's no rollout. Right? Correct?
 5 A The contract's in place but there are no --
 6 we've not yet rolled it out to Aon.
 7 BY MS. STUMBAUGH:
 8 Q Was the contract in place December 31, '15?
 9 A It was.
 10 Q As of the annual report?
 11 A It was.
 12 BY MS. FLOYD:
 13 Q Did you have any third parties review these
 14 contracts to verify the valuation of each one?
 15 A No.
 16 Q Do you have any plans to have a third party to
 17 review these contracts for value?
 18 A So as part of a annual audit, so part of a
 19 annual audit is a, in this sector is a portfolio company
 20 valuation. So they'll do an asset-based valuation like
 21 this, which this is standard. You can go research that,
 22 this is a very standard in asset-based valuation
 23 methodology. So the auditors will go, they will do a
 24 methodology like this with every portfolio company, wrap
 25 that all into what we would call an annual audit report.

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1 BY MR. McCOLE:
 2 Q What auditors have you used in the past for
 3 this?
 4 A Well, DiLucci & DiLucci are our public
 5 accounting firm. They will do -- we have not used
 6 auditors. We have used them for compilations. So they
 7 did this compilation attached to this report, they do our
 8 quarterly compilations, and they'll do our annual audits.
 9 BY MS. STUMBAUGH:
 10 Q Who keeps the books for you? Is it someone
 11 internally to OE or is it DiLucci?
 12 A It is DiLucci.
 13 Q So they're your bookkeeper and your
 14 compilation, and they're going to perform your audit as
 15 well?
 16 A They keep our books and the portfolio
 17 companies' books, and they will perform the audit.
 18 BY MR. McCOLE:
 19 Q Have any audits been performed on OE Capital?
 20 A No. Only compilations.
 21 BY MS. FLOYD:
 22 Q Why not?
 23 A Well, there wasn't very much to audit yet. So
 24 when we talked to DiLucci their recommendation was let's
 25 do a compilation and then at the end of the year 2016

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1 we'll do an audit.
 2 BY MS. STUMBAUGH:
 3 Q Do you have an engagement letter with DiLucci
 4 to perform the audit for 2016?
 5 A For 2016?
 6 Q Yes. That coming audit.
 7 A Not yet. We've not signed that engagement
 8 letter.
 9 Q Do you have an engagement partner with DiLucci?
 10 A I don't understand that question.
 11 Q Who's your contact at DiLucci? Who do you deal
 12 with on an ongoing basis?
 13 A Her name is Jasmine.
 14 BY MS. FLOYD:
 15 Q Do you have a last name?
 16 A DiLucci.
 17 Q So it's actually a DiLucci?
 18 A Yes.
 19 Q How big DiLucci & DiLucci?
 20 A I think they have seven or eight employees.
 21 BY MS. GUNN:
 22 Q Are you aware of whether or not they have any
 23 other private equity clients?
 24 A What I'm aware of is one of the principals,
 25 Nina, has 30 years worth of experience at E -- no, KPMG.

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1 She has 30 years worth experience, some at KPMG, I think
 2 some at -- certainly on her own dealing with venture
 3 capital and private equity, which is the reason we
 4 decided to engage with them. She has a lot of experience
 5 in private equity.
 6 Q This is Nina?
 7 A Correct.
 8 Q And what is Nina's last name?
 9 A DiLucci.
 10 BY MR. McCOLE:
 11 Q Can I go back for just a moment to the 25-page
 12 1266 with the pie chart there. Do you have that in front
 13 of you?
 14 A Yes.
 15 Q Do you see the 6.3 million portion of the pie
 16 chart at the very top?
 17 A Yes.
 18 Q And that \$6.3 million there, it's for signed
 19 contracts. Right?
 20 A That's correct.
 21 Q What percentage of the 6.3 million are WHRZT!
 22 contracts?
 23 A I don't know that number off the top of my
 24 head.
 25 Q What would you estimate would be that number?

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1 A Fifty percent.
 2 Q Fifty percent would be WHRZT!?
 3 A Fifty, 60. I don't know. You're asking me to
 4 speculate. I don't know.
 5 Q But your best guess as you sit here right now
 6 is somewhere between 50 to 60 percent of the \$6.3 million
 7 would be WHRZT! contracts. Is that correct?
 8 A Correct.
 9 BY MS. FLOYD:
 10 Q So the other 40 percent would be the RivaCare
 11 contracts?
 12 A Yes.
 13 BY MR. McCOLE:
 14 Q And none of those contracts have been evaluated
 15 by an independent third party. Is that correct?
 16 A That's correct.
 17 BY MR. HOWELL:
 18 Q Do you mind if I ask a question just about the
 19 signed contract value just to make sure I understand.
 20 Because it sounded like what you were talking about was
 21 limited specifically to a liquidation event. But I
 22 thought that it was also looked at from a potential
 23 acquisition value perspective. So that if for say
 24 whereas it was to be purchased by someone else, then --
 25 well, I guess maybe that is a liquidation event or change

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1 of control event. But the contract would have value as
 2 an ongoing concern to whoever it was that was acquiring
 3 the business.
 4 A That is correct. That value would be a lot
 5 higher than this one. So you are correct. So any time
 6 there's a potential M&A opportunity, those contracts are
 7 definitely a part of the deal. That's why they're buying
 8 the company because of their sales and ability to do
 9 revenue. And those values would literally be higher than
 10 this because they would have a multiple -- they would
 11 literally be looking at potential future value of all of
 12 those, and they would assign a certain multiple for that.
 13 And that's how -- why companies get sold for a lot more
 14 than what they're actually worth.
 15 BY MR. McCOLE:
 16 Q But under that scenario that you just described
 17 wherein, for example, WHRZT! would be purchased by
 18 another company or by another ownership group, WHRZT!
 19 would still be intact. Correct?
 20 A No. All depends on the deal.
 21 BY MS. FLOYD:
 22 Q You have \$300,000 of patents. Which patents
 23 are you referring to?
 24 A Those are WHRZT! patents.
 25 Q And you have a percentage, ownership percentage

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1 of the patents?
 2 A We have a security interest in those patents.
 3 Q Is that spelled out in the contract between you
 4 and WHRZT!?
 5 A So in a section of that WHRZT!, of the contract
 6 it states that we have a security interest in all the
 7 assets of the company.
 8 Q How about inventory, that's \$39,000? What's
 9 encompassed with that?
 10 A The \$39,000 there at that point was mostly
 11 WHRZT! and there was, I believe there was some FPOA
 12 inventory. There was definitely FPOA inventory at that
 13 point.
 14 Q Did you include the water bottles from APT?
 15 A At that point we hadn't purchased them so
 16 they're not included.
 17 Q What about the 400,000 for trademarks and
 18 copyrights?
 19 A That is WHRZT! and that is Tu. Mostly WHRZT!
 20 Tu didn't really have much of a value at that point. And
 21 there was at that point FPOA actually did have a value to
 22 it, so there's a little bit of FPOA, mostly that's WHRZT!
 23 and FPOA.
 24 Q Does FPOA still have value?
 25 A Yes.

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1 Q On page 1268 again it looks like a chart that
 2 lists each asset and the totals, and it has an OE Capital
 3 Partners risk meter. What is this meter?
 4 A All it says is at the end of the day if we were
 5 forced to go out and liquidate every single asset that we
 6 had what is our relative risk to be able to return
 7 principal plus -- I think this, is I think this one here
 8 just is -- this is really net to principal. I think this
 9 is just relating net to principal here.
 10 Q So how do you resolve the score of 1.73, a risk
 11 score?
 12 A If you take 4.37 and divide it into 7.59,
 13 you'll get approximately 1.73.
 14 Q And why do you feel the need to include this
 15 into your annual report?
 16 A Well, because what we talk about to our
 17 investors is that we have collateralized positions in the
 18 company, and those collateralized positions give us a
 19 level of security to mitigate against risk in the case of
 20 some liquidation type of event. And so this is just
 21 saying based on our valuation, this is where we stand.
 22 BY MS. STUMBAUGH:
 23 Q If you could look in Exhibit 25 on page 12, and
 24 it ends in Bates number 1273. I think you want to go
 25 back a page.

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1 A Oh.
 2 Q At the top of this page where it reads
 3 Independent Auditor's Report, and we had a discussion
 4 earlier today about DiLucci & DiLucci and now they did
 5 not perform an audit for 2015. Why would you include
 6 this header here on page 12?
 7 A Yeah, we should have said Independent
 8 Compilations Report, because right under that it says
 9 "Please find the attached PF Independent Compilation
 10 Report for 2015 compiled by DiLucci & DiLucci." And I
 11 even believe I said in my letter here -- (Perusing
 12 document.) I thought I remembered writing that --
 13 Q Are you looking at page 1 of Exhibit 25, Bates
 14 number 1262?
 15 A Yes. I'm sorry, it's in page 2, Bates 1263,
 16 Executive Summary. "OE Capital Partners is pleased to
 17 release this first annual report for Fiscal Year ending
 18 December 31, 2015. This financial report was done in
 19 conjunction with DiLucci & DiLucci, Certified Public
 20 Accountants. Enclosed as an appendix to this document
 21 you will find a compilation that was completed for the
 22 fiscal year ending December 2015."
 23 I'm going to skip the next sentence. "A
 24 compilation is not an audit and should not be seen as
 25 one. However, a compilation does ensure the proper

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1 A Yes.
 2 Q That's \$6.3 million. Right?
 3 A Correct.
 4 Q Now, is that \$6.3 million, is that a
 5 liquidation value?
 6 A That is a liquidation value.
 7 Q Okay. How did you arrive at that liquidation
 8 value for those contracts??
 9 A So we took the value that we arrived for any of
 10 those contracts, be it WHRZT1, be it RivaCare, and then
 11 we discounted that value by 50 to 60 percent.
 12 Q And you -- and that discount you believe
 13 properly assigns a liquidation value to those contracts?
 14 A I believe so.
 15 Q And what is the basis of your belief?
 16 A Based on conversations that I had with Mr.
 17 Nalley about -- from the perspective of, okay, if we
 18 needed to package these up and then go sell them, what
 19 can we sell them for.
 20 Q Okay. So one basis if your conversation with
 21 Mr. Nalley. Correct?
 22 A Correct.
 23 Q What if any other bases do you have for that
 24 liquidation value?
 25 A Other than just what I know about the industry

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1 direction of cash flows and overall current financial
 2 position."
 3 And so I missed that, I missed that one
 4 heading, but we put in there several times that this --
 5 that a compilation is not --
 6 Q On page 2 where you read "this financial report
 7 is done in conjunction with DiLucci & DiLucci, Certified
 8 Public Accountants," did DiLucci & DiLucci review any of
 9 this report other than the compilation that's attached,
 10 starting at page 1274?
 11 A No. We did the report, they did the
 12 compilation. That's the combination.
 13 BY MR. McCOLE:
 14 Q If I could take you back to page 7, which is
 15 Bates 1258, it's the one with the risk meter on it. Do
 16 you have that in front of you?
 17 A Yes.
 18 Q As I understand your earlier testimony, you
 19 indicated that this risk score had to do with a scenario
 20 in which if the company had to liquidate, this would be
 21 the risk at that point. Is that correct?
 22 A Correct.
 23 Q Okay. And the overwhelming majority of the
 24 value of the assets is in the line item signed contracts.
 25 Do you see that?

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1 and the sector itself, and how it's been done by other
 2 companies in the past, that's it.
 3 Q So the two components of the value, the
 4 liquidation value are your conversation with Mr. Nalley.
 5 Correct? And your knowledge of the market for these
 6 kinds of contracts. Would that be accurate?
 7 A That's accurate.
 8 Q And there are no other bases for the
 9 liquidation assigned, excuse me, the liquidation value
 10 assigned. Is that right?
 11 A That's correct.
 12 BY MS. STUMBAUGH:
 13 Q If you'll flip to Exhibit 25 to compilation
 14 report? We'll start with Bates 1275. This is a -- is
 15 this the balance sheet for OE Capital Partners as of
 16 December 31, 2015?
 17 A Yes.
 18 Q Let's walk through some of the items here. So
 19 cash, is this cash held in bank accounts?
 20 A Yes.
 21 Q And which bank accounts is it made up of?
 22 A To my knowledge, this would be all of the bank
 23 accounts, so combined.
 24 Q Does this include the bank accounts for Howard
 25 Capital Holdings?

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1 A I believe -- yes, I would have.
 2 Q The next line where it says capital for
 3 operating expenses, what is that?
 4 A I believe that's how they've labeled any of the
 5 capital that we use to -- for the operating expenses for
 6 OE, including the capital that we really use to -- in the
 7 beginning to really build the team out and make sure that
 8 the engine was in place.
 9 Q How would that be an asset to OE Capital
 10 Partners? If that -- it seems like that's money that you
 11 used from investors.
 12 A DiLucci -- so DiLucci helped really helped us
 13 figure out how things should be booked. And DiLucci and
 14 Cristina worked very clearly together on this, so I'm not
 15 quite sure from their perspective of why that would be an
 16 asset.
 17 Q The next line for business investment, so 1.6
 18 million. Is that the -- are those the investments in
 19 portfolio companies?
 20 A At that time and date?
 21 Q Right.
 22 A Yes.
 23 MS. GUNN: Just to walk back for a minute?
 24 MS. STUMBAUGH: Sure.
 25 BY MS. GUNN:

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1 Q On the line item capital for operating
 2 expenses, just so I'm sure I understand this, does that
 3 mean this is capital that has already been expended on
 4 operating expenses?
 5 A I believe so.
 6 Q Thank you.
 7 BY MS. STUMBAUGH:
 8 Q Okay, a little further down, about halfway
 9 under current liabilities, you show \$3,000 in preferred
 10 returns payable to investors. What is that made up of,
 11 if you know?
 12 A It seems like we had revenue captures of
 13 \$3,000 at that point.
 14 BY MS. GUNN:
 15 Q Who was that from?
 16 A I'm not sure. My guess is -- my total guess is
 17 FPOA.
 18 BY MS. STUMBAUGH:
 19 Q Okay. So if you look to the next page on the
 20 compilation report, which is Bates 1276, this is -- is
 21 this the income statement for OE Capital Partners?
 22 A This will be -- I'm sorry.
 23 Q That's okay. And is this from inception, which
 24 would be March 2, 2015, to December 31, 2015?
 25 A That's correct.

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1 Q The first line on here, consulting fees, are
 2 these the fees we talked about yesterday for Wharton
 3 Brooks?
 4 A Yes, ma'am.
 5 BY MS. GUNN:
 6 Q Okay. If the 3,000 that you identified under
 7 the preferred returns payable to investments represents
 8 revenue capture, why is that not listed as revenue on the
 9 income statement on the next page, 1276?
 10 A So to the best of my understanding on how
 11 DiLucci has helped us set it up, so money due back to the
 12 investors -- so the total due back is a liability.
 13 Right? It shows up as a liability. So it's money owed
 14 to them.
 15 Q Okay. So that's actually the 12 percent
 16 return? Is that what you're saying?
 17 A Okay, I don't understand that part of your
 18 question.
 19 Q I'm sorry, I interrupted you. Go ahead and
 20 answer, finish your answer.
 21 A Okay. Thank you. So to the best of my
 22 knowledge, what DiLucci as revenues come back in, it --
 23 they get -- instead of getting booked as a revenue to us,
 24 they'll get booked as kind of a return to the investor,
 25 so it's almost like paying off a debt because we owe that

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1 money. And then anything net above the money that we owe
 2 to them now shows up as revenues because that's over and
 3 above the money that we owe back.
 4 Q Is there anything on either the balance sheet
 5 or the income statement that represents the 12 percent
 6 that's your minimum that the investors are supposed to
 7 receive?
 8 A Well, it looks like in expenses there is a
 9 preferred return paid to investors.
 10 Q Not talking about the actual cash out the door.
 11 I mean the obligation to the other investors.
 12 A Oh, that in terms of the 12 percent obligation?
 13 I'm not sure. I have to ask Cristina where that's, where
 14 that is.
 15 Q Okay. Thank you.
 16 BY MS. STUMBAUGH:
 17 Q So on the income statement on Bates 1276, the
 18 line item you just referred to, the preferred returns
 19 paid to investors, it shows \$63,012. Is it your --
 20 what's your understanding as to what that represents?
 21 A I believe that would have been -- would have
 22 represented cash out to the distribution to investors.
 23 Q So this would be the 12 percent return.
 24 A Only to investors that were taking their
 25 distributions liquid.

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1 Q So the ones who decided to roll over their
2 distributions and to reinvest it, that's not reflected on
3 here.

4 A Right, that would -- and I don't think that
5 would be invested -- reflected on an income statement.

6 BY MS. GUNN:

7 Q Is it reflected on the balance sheet?

8 A I'm not sure. I think it should be. But I
9 would have to talk to DiLucci and figure -- for them to
10 help us figure out where they are calculating and
11 reflecting that.

12 BY MS. FLOYD:

13 Q What documents did OE Capital provide DiLucci &
14 DiLucci to put this compilation together?

15 A All of our financials. They have access to all
16 of our QuickBooks. They actually do them.

17 Q But on page 1274 it says "we do not audit or
18 review the financial statements." Is that true?

19 A Well, I mean I think that's a, kind of a
20 standard language for a compilation. But they have
21 access to all of our books.

22 BY MS. STUMBAUGH:

23 Q Okay, I found the income statement at Bates
24 1276. If you look at the total operating expenses,
25 that -- what does that represent in total? Is this the

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1 dollars that went into 51 was really used to put this
2 together. It was used to build it out.

3 And so since, what I can say is since
4 September, August/September time frame we have stuck very
5 closely to the 10 to 15 percent push. Most of the
6 dollars that you're looking at here were early start-up
7 capital before we got some of the things cleaned up.

8 MS. FLOYD: Why don't we go ahead and take a
9 break at 1:56 p.m.

10 (A brief recess was taken.)

11 MS. FLOYD: It's 2:11.

12 COURT REPORTER: We're on the record.

13 MS. FLOYD: Thank you.

14 BY MS. FLOYD:

15 Q I'm going to hand you what has already been
16 previously marked as Exhibit 11. You may take a look at
17 it.

18 A Okay. (Perusing document.)

19 Q Do you recognize Exhibit 11?

20 A Yes.

21 Q All right. I may have already asked these
22 questions, so I apologize if I have or not. This is,
23 Exhibit 11 is the financial projections for WHRZT!. Is
24 that correct?

25 A That's correct.

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1 overhead and start-up costs related to --

2 A This is --

3 Q -- OE Capital?

4 A Yes, ma'am. This is the overhead, the start-up
5 costs. There's definitely labor, all of that stuff is
6 all encompassed in that document.

7 Q If I look at that amount of a \$1,094,000, and
8 then if I just back out the 63,000 of the preferred
9 returns paid to investors, it's about a million and 30
10 thousand of expenses. Does that sound about right?

11 A I would that that probably sounds about
12 correct.

13 Q If I compare that million 30 thousand dollars
14 to the prior page, the balance sheet, with the capital
15 received from investors, the capital received from
16 investors is 4.3 million. That looks like it's about a
17 24 percent spend of the investor funds. And we spoke
18 before lunch about a 10 to 15 percent push. So how do
19 you explain the discrepancy there?

20 A So the way that I explain that is there is
21 some, there are some dollars in there that went to
22 Insured Liquidity Partners LLC that I can't really
23 explain where those dollars went. And I would also
24 explain that in the way that a lot of the dollars that
25 went in, in fact most of the, I would say most of the

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1 Q Okay. As of today, how much revenue have you
2 used from WHRZT!?

3 A I don't know the exact number.

4 Q Okay. When did you start receiving revenue
5 from WHRZT!?

6 A If I remember they actually started generating
7 a little bit of revenue in January. I think Cristina
8 recognized that. I think she started getting something
9 from them around May or June time frame.

10 Q Okay.

11 BY MR. McCOLE:

12 Q Of 2016?

13 A 2016.

14 Q So they began to generate revenue in January
15 2016?

16 A Correct.

17 Q And you began to receive payments from them in
18 May, the May time frame 2016?

19 A That's correct.

20 BY MS. FLOYD:

21 Q So according to Exhibit 11, I believe you were
22 supposed to start getting revenue in October 2015. Is
23 that correct?

24 A That's -- sorry. That's correct.

25 Q And that did not happen.

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1 A No.
 2 Q And you did not receive revenue in November
 3 2015. Is that correct?
 4 A That's correct.
 5 Q And you did not receive revenue in December of
 6 2015. Is that correct?
 7 A That's correct.
 8 Q So for 2015 you didn't receive any revenue from
 9 WHRZT!. Correct?
 10 A Correct.
 11 Q What was the reason why you did not receive
 12 revenue?
 13 A WHRZT! was a little late actually getting on
 14 the market, and so there were -- there's a couple
 15 certifications based on their product that they needed to
 16 get done prior to being able to go on the market. One of
 17 those certifications is through Verizon. So since the
 18 data package traveled over the Verizon 2G bandwidth, they
 19 had to get certifications from Verizon.
 20 Well, Verizon had a little problem in terms of
 21 a restriction that they did not know that was on their 2G
 22 bandwidth, and they had to fix it. So it took WHRZT! a
 23 lot longer to get through that certification process and
 24 actually push into the market than they had anticipated.
 25 Q So the annual report for Exhibit 25, you

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1 do know is that we were late getting the market, so these
 2 numbers actually got pushed back, because it's kind of a
 3 cascading effect. Right? So since he was late getting
 4 the market, then his real ramp-up got pushed back as
 5 well.
 6 BY MS. GUNN:
 7 Q How far back had they been pushed?
 8 A That's a good question. So they are, I would
 9 consider, about, let's see -- I would say they're a solid
 10 two to two and a half quarters behind.
 11 Q So six to eight months?
 12 A Yes, ma'am. Can I can very easily clarify why.
 13 Because we talk to them all the time.
 14 BY MR. McCOLE:
 15 Q Please do, please do.
 16 A There's two specific products that WHRZT! has
 17 out to the dealerships. One of them is -- I apologize,
 18 I'm going to get technical for a second. And this is as
 19 technical as I can get with this product. But one of
 20 them is built into the breaker box of a trailer, the
 21 other one's built into a junction box of a trailer.
 22 They're essentially the same thing, it's just a matter of
 23 the model of trailers.
 24 He went to market -- he thought -- I'm going to
 25 get these confused. He thought the junction box was the

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1 have -- you put a value for 6.3 million for signed
 2 contracts. Is that correct?
 3 A That's correct.
 4 Q And you said a portion of that was for WHRZT!'s
 5 contracts. Correct?
 6 A That's correct.
 7 Q Did you and/or McNally or -- I keep calling him
 8 McNally -- Mr. Nalley take that into effect, that -- the
 9 fact he couldn't produce for his contracts as of the end
 10 of December 31, 2015?
 11 A Well, at that point he could produce.
 12 Q He could produce.
 13 A Yeah. It just -- so these numbers are pushed,
 14 but at December, the end of December he could produce.
 15 Q And did he produce in 2015?
 16 A He produced something, because he started
 17 generating some kind of revenues. He was not only
 18 producing, he was selling something, because he started
 19 generating some kinds of revenues as --
 20 Q But for --
 21 A -- of the first of January.
 22 Q -- the entire 2015 he only produced for that
 23 one month. Is that correct?
 24 A I'm not sure about that. I'm not sure if he
 25 was producing for that one month or two months. What I

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1 bigger one in the market. He thought that one was going
 2 to create the most demand. So he went out and got -- and
 3 did everything that he needed to do to get the junction
 4 box done first and started pushing it out. Well, it ends
 5 up everybody was waiting for the breaker box. So he had
 6 all these signed contracts but he needed to produce the
 7 different product first, the breaker box versus the
 8 junction box, or vice-versa.
 9 And so that's the reason he kind of end up --
 10 he essentially didn't get the right product out quick
 11 enough, and so he slipped a little bit in doing that.
 12 The contracts were there, the orders were there, he just
 13 couldn't fulfill them. And so now he's back on track
 14 because he's got the breaker box plus two or three other
 15 products that are -- that distributors are asking for and
 16 now he's starting to ramp up where we expected him to be.
 17 Q So he's currently able to fulfill his
 18 obligations under the contracts?
 19 A I believe our discussion is -- we're actually
 20 having a meeting with him this week to make sure that as
 21 of this month he is able to meet his obligations.
 22 Q Do you have any reason to believe that he's not
 23 able to meet his obligations under the contract as you
 24 sit here right now?
 25 A No.

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1 Q You have no reason to believe that?

2 A No.

3 Q Then why is an additional verification with him

4 necessary?

5 A We meet with all the portfolio companies

6 weekly.

7 Q And that will be a topic of discussion in that

8 weekly meeting?

9 A Yes, sir.

10 BY MS. GUNN:

11 Q What's your understanding of what distributors

12 are required to do under the contracts they have with

13 WHRZT!? Are they required to order a certain number of

14 product?

15 A I believe it is -- well, it is dependent on the

16 distributor. So there's different contracts with

17 different distributors.

18 Q Right. And each one has a different provision

19 I assume. Correct?

20 A I assume so too, yes.

21 Q Okay. So what I'm trying to understand is

22 whether under these various contracts the distributors

23 are obligated to purchase a certain amount of product.

24 A Some of them are, yes. Some of them are not.

25 Q Okay. How many of them are obligated to

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1 purchase product?

2 A I'm not sure.

3 Q And how much are they obligated to purchase?

4 A I'm not sure of that either.

5 BY MS. FLOYD:

6 Q Have you seen these contracts?

7 A No -- I've seen one of them. I have seen one

8 of them.

9 Q So when you were placing a value on these

10 contracts with Mr. Nalley, you never asked to see the

11 contracts?

12 A I did not, no.

13 Q Did -- has Ms. Alexander seen the contracts?

14 A I don't know. You have to ask her.

15 Q So you are funding a company who has contracts

16 that you've never seen before. Is that correct?

17 A That's correct.

18 Q Earlier in your testimony yesterday you had

19 mentioned Vince De La Torre.

20 A Yes.

21 Q Is that correct, is that his name?

22 A That is correct.

23 Q He no longer works for OE Capital. Is that

24 correct?

25 A That's correct.

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1 Q Why not?

2 A He felt that he -- I mean our exact

3 conversation was he didn't feel like he was bringing in

4 the value that he was -- that his base salary was

5 covering, and he wasn't sure that he could bring that

6 value, and he decided to go back and work as a broker in

7 the health insurance industry.

8 Q So he believed he didn't bring value. Is that

9 correct?

10 A That's correct.

11 BY MS. GUNN:

12 Q And I'm sorry, so he's back to being a broker.

13 Is that what you said?

14 A For health insurance.

15 BY MS. FLOYD:

16 Q And when did he leave?

17 A I believe he left -- I remember when his

18 wedding was, because he left like three weeks before his

19 wedding, so I think it was in May.

20 Q May of 2016?

21 A Yes.

22 Q Have any other employees left OE Capital?

23 A No.

24 Q Going back to Natalie Clair for one second.

25 You testified that you terminated her -- did she have an

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1 employment contract, Ms. Clair?

2 A I think I did have an employment contract with

3 her.

4 Q So you terminated the employment contract with

5 her. Is that correct?

6 A That's correct.

7 Q And your basis was again for terminating her?

8 A The basis was that she made changes to

9 subscription agreements of investors without the

10 investor's authorization.

11 Q And when did you let her go?

12 A September 2015.

13 Q Did Ms. Clair file a sexual harassment lawsuit

14 against OE Capital?

15 A She did.

16 Q And what was the outcome?

17 A A settlement.

18 Q And what was the settlement?

19 A I think it was \$10,000.

20 Q And how was the settlement paid?

21 A OE paid the settlement. I'm not sure if that's

22 the answer to your question.

23 Q Which account?

24 A Capital Partners.

25 BY MS. STUMBAUGH:

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1 Q When was that paid?
 2 A Oh, that's this month, recently.
 3 BY MS. FLOYD:
 4 Q So July?
 5 A Yes.
 6 Q And you said you parted ways with Urshel. When
 7 was that?
 8 A September 2015.
 9 Q You parted ways -- is one of the reasons sexual
 10 harassment, or is that the reason?
 11 A That's the major reason. Can I clarify that?
 12 Q Sure.
 13 A There's two major reasons. That was definitely
 14 the leading one, and the second one was he transferred
 15 money to One Direct Marketing without a signed piece of
 16 paper, and so we -- plus he had made a number of mishaps
 17 over the course of, you know, a few months. He --
 18 there's the sexual harassment issue, there was the issue
 19 of funding a potential portfolio company but he did not
 20 have any -- a signed agreement in place.
 21 He advanced money to a different employee in
 22 anticipation of funding GanoLife. Of course that funding
 23 never happened, because we found them hiding a million
 24 dollars off book. But we -- and then obviously couldn't
 25 recoup the advance of that money.

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1 So there was just several things that kind of
 2 one on top of each other we decided that this was just
 3 not the best fit for him.
 4 Q And you said he advanced money to a different
 5 employee. Was that -- I'm going to butcher her name, is
 6 it -- you know what it is. That's okay, it's a lot of --
 7 yeah.
 8 A It is. Khensa Bangert.
 9 Q Kenza?
 10 A K-H-E-N-S-A Bangert.
 11 Q Okay. Thank you.
 12 BY MS. GUNN:
 13 Q Just a point of clarification. You said "we"
 14 decided. Who besides yourself was in on that decision
 15 and that process?
 16 A Oh. By we I was meaning Urshel and I.
 17 Q Okay.
 18 BY MS. FLOYD:
 19 Q Did you ever receive that money back from
 20 Khensa?
 21 A I did not.
 22 Q Have you ever used investor proceeds for
 23 personal expenses?
 24 A Investor proceeds?
 25 Q Uh-huh.

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1 A No.
 2 Q Have you used any OE capital for personal
 3 expenses?
 4 A So I did put some money down for a BMW, but I
 5 then classified that as salary expense for myself.
 6 Q What's a salary expense?
 7 A So I included it as part of my salary.
 8 Q Have you ever paid off a collection agency
 9 using OE Capital's accounts?
 10 A Did that too, yes. And I also included that as
 11 a salary expense.
 12 Q What other salary expenses have you used
 13 besides the BMW and the collection agency?
 14 A To my memory, that's it. Everything else has
 15 just come out as salary or a distribution.
 16 Q You don't have any other examples?
 17 A No.
 18 BY MS. GUNN:
 19 Q What type of distribution are you referring to?
 20 A Outside of my salary, so potential -- like K-1
 21 distribution.
 22 Q Have you had any K-1 distributions?
 23 A No. I think DiLucci coded everything as
 24 salary.
 25 BY MS. FLOYD:

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1 Q Have you used OE Capital funds to buy out
 2 Urshel Metcalf?
 3 A Yes. So I would call it -- because Urshel did
 4 not really have any or much interest in OE, but he did
 5 set up CFG I, CFG II, he had complete access to
 6 everything, including the bank accounts, we agreed -- or
 7 I agreed that what he -- what we would do is fund a
 8 nonprofit for him. It could be advantageous for the
 9 investors as a tax deduction. And his duties were
 10 supposed to be to go out, educate potential companies and
 11 the general public about alternative investments.
 12 One of the -- I think the biggest things that
 13 the opportunities that I saw is that he was linking up at
 14 that time -- and by that time I mean this was last fall
 15 so it was the October time frame of 2015 -- with a
 16 nonprofit organization called Honor, Courage, and
 17 Commitment in Dallas, which is a nonprofit organization
 18 that is dedicated to building entrepreneurs out of
 19 veterans.
 20 The thought was that we could fund Urshel's
 21 nonprofit to work very closely with that nonprofit, help
 22 them find and cultivate potential veterans -- Urshel was
 23 a veteran; Urshel is a veteran, I should say -- help them
 24 find and cultivate potential veterans, and then as they
 25 did that, they could then present those veteran-based

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1 businesses as potentials for capitalization through OE or
 2 any network relationship that we would have. I thought
 3 it was a really good idea. I was pretty excited about
 4 it. Unfortunately, Urshel has not really followed
 5 through with that commitment.
 6 Q So do you have any idea what he's done with the
 7 money within that nonprofit that was created?
 8 A I do not know.
 9 Q Does Urshel Metcalf still have access to OE
 10 Capital's bank records or the I guess CFG bank records?
 11 A He has access to the account. The accounts are
 12 empty. I'm working with the banker now to take him off,
 13 but it's a lot of hoops to jump through, because I have
 14 to get Urshel to change the status of the filings with
 15 the State. So there's a lot of hoops to jump through to
 16 do that. He has no access to OE Ventures or OE Capital
 17 Partners.
 18 Q Other than some salary expenses and money to
 19 Urshel Metcalf, are there any outside expenses that are
 20 unrelated to OE that's coming out of OE's accounts?
 21 A No.
 22 Q I assume you're paying attorney fees.
 23 A Yes.
 24 Q Which account are the attorney fees coming out
 25 of?

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1 A OE Capital Partners' operating account.
 2 BY MR. MCCOLE:
 3 Q What was the name of the charity, Urshel's
 4 charity?
 5 A I know the initials; I can't remember all the
 6 names. FFOL.
 7 Q FFOL?
 8 A Yes.
 9 Q Is it like a -- one of those IRS tax-deductible
 10 charities?
 11 A I believe that's how he's set it up.
 12 Q Okay. Did that charity FFOL provide a
 13 statement to OE Capital reflecting the donation that OE
 14 Capital made to FFOL?
 15 A Not that I'm aware of.
 16 Q Okay. And when was the donation made?
 17 A It's been made monthly since September of 2015.
 18 Q Okay. Was that donation or any portion thereof
 19 reflected on OE Capital's tax returns for 2015?
 20 A It's -- the tax returns are being worked on now
 21 by DiLucci, but my belief is, yes, it will be reflected.
 22 Q What documents will OE Capital rely on to
 23 substantiate its assertion that it donated money to FFOL?
 24 A Cristina Cason has asked Urshel -- and I don't
 25 know if she's received them, she may have -- for the

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1 formation documents for the nonprofit.
 2 BY MS. FLOYD:
 3 Q Are you continuing to make payments to the FFOL
 4 account?
 5 A Our last payment will be September 2016.
 6 Q Okay. And how much total would you have paid
 7 this account?
 8 A \$150,000.
 9 BY MR. MCCOLE:
 10 Q So is it your understanding that OE Capital has
 11 now a copy of the FFOL creation documents?
 12 A I don't know that we have. I know that
 13 Cristina's asked for them.
 14 Q Do you know what the FF stands for in FFOL?
 15 A One second, I can probably get that name.
 16 Q Is it the Foundation for Optimal Living?
 17 A That's it.
 18 Q So why the two Fs, do you know?
 19 MS. GUNN: "Foundation for"
 20 MS. FLOYD: Oh, sorry. It's been a long day.
 21 BY MR. MCCOLE:
 22 Q So Urshel's charity is the Foundation For
 23 Optimal Living?
 24 A Yes.
 25 Q Okay.

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1 BY MS. STUMBAUGH:
 2 Q Do your investors receive any sort of annual
 3 tax statements from OE Capital?
 4 A So any investor who is not in a qualified
 5 account that has taken a distribution receives the
 6 appropriate tax documents sent to them from DiLucci.
 7 Q How many investors is that, approximately? A
 8 pretty small number?
 9 A Yeah, it's a handful. I can probably -- don't
 10 hold me to this, but I'm counting in my head right now,
 11 and I think it's about probably seven or eight.
 12 Q Thank you.
 13 A I got to clarify a statement to that, too.
 14 Q Sure.
 15 A There is one investor, I believe that's Mr.
 16 Heinzelman, who -- he gets -- he's in retirement. He
 17 gets his distribution from Midland. And so we send
 18 Midland his distribution, Midland sends him with his --
 19 his distribution with the appropriate tax documents.
 20 Q And when you refer to Mr. Heinzelman, that's
 21 not the same Mr. Heinzelman we've talked about earlier
 22 today as being part of C4.
 23 A It's his father.
 24 Q Okay. I just wanted to clarify that.
 25 MS. FLOYD: Just a few housekeeping, Barrett --

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1 MR. HOWELL: Yes, ma'am.
 2 MS. FLOYD: Are you ready?
 3 MR. HOWELL: Yes.
 4 MS. FLOYD: And we'll subpoena so you can have
 5 a list.
 6 MR. HOWELL: Okay.
 7 MS. FLOYD: And I'll make sure to send it to
 8 Becca and Ryan.
 9 MR. HOWELL: Okay. Thanks for rubbing that in.
 10 MS. FLOYD: Life insurance policies for the key
 11 men of the portfolio -- or women. Statements FOR the
 12 subaccounts. I believe these are with the Green Bank.
 13 Correct?
 14 MR. HOWARD: Yes.
 15 MR. HOWELL: Statements to which account?
 16 MS. FLOYD: The Green Bank. You pointed to
 17 one.
 18 MR. HOWARD: It's under Ventures.
 19 MS. FLOYD: Okay. We need updated investor
 20 statements; revenue capture from anyone; compilations,
 21 because they were quarterly; fund profiles, I believe we
 22 already have the June and the January; anything other
 23 than June and January; updated project plans. And we'd
 24 like to see those contracts WHRZT! has, and any sort of
 25 documentation of how they calculated the value.

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1 MR. McCOLE: Can we make that all of the
 2 contracts that are included within this -- the --
 3 MS. FLOYD: 6.3?
 4 MR. McCOLE: Yeah, where it says on page 5 of
 5 Exhibit 25 -- all of the signed contracts that are
 6 referred to there.
 7 MS. FLOYD: And if you can get some sort of
 8 liquidator values that Mr. Howard had described, too.
 9 MS. STUMBAUGH: As it relates to APG.
 10 MR. HOWELL: Okay.
 11 MS. FLOYD: And again I'll put it in document
 12 form, but if you could start --
 13 MR. HOWELL: Right.
 14 MS. FLOYD: -- that would be fantastic.
 15 MR. McCOLE: Oh, I'm sorry; one more thing.
 16 The FFOL formation documents and any documents incident
 17 to your agreement with Urshel to make that donation to
 18 FFOL.
 19 For example, as I recall your testimony, you
 20 indicated that he had certain duties in connection with
 21 that that he was going to do reaching out to other
 22 veterans and things such as that.
 23 To the extent any of that was written down,
 24 we'd like those documents as well.
 25 MS. FLOYD: All right. We're going to take a

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1 quick break.
 2 MR. HOWARD: Okay.
 3 MR. HOWELL: Oh, yeah, that's a good point. I
 4 think we had on the list yesterday the stock certificates
 5 for Unequal.
 6 MS. FLOYD: Yes.
 7 MS. GUNN: Yes. Thank you.
 8 MR. HOWELL: You're welcome.
 9 MS. FLOYD: All right. We're going to take a
 10 quick break and see what else we've got. We're pretty
 11 close to the end.
 12 MR. HOWELL: Okay, great.
 13 MS. FLOYD: Off the record at 2:39.
 14 (A brief recess was taken.)
 15 MS. FLOYD: Back on the record at 2:50.
 16 BY MR. McCOLE:
 17 Q If we could, I'd like to turn your attention
 18 back to Exhibit Number 25. Do you have Exhibit Number 25
 19 in front of you?
 20 A Yes.
 21 Q If you'll turn to page 7, which is Bates number
 22 1268?
 23 A Okay.
 24 Q This page was signed asset -- excuse me --
 25 signed contracts among OE Capital's assets. Correct?

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1 A Correct.
 2 Q And the value there is \$6.3 million. Right?
 3 A That's correct.
 4 Q Now, if you flip over to Bates number 1275,
 5 which is part of the compilation --
 6 A Yes.
 7 Q -- do you see that page? Now, this page is an
 8 asset -- also purports to have a list of OE Capital's
 9 assets. Correct?
 10 A Correct.
 11 Q Now, why is it that the \$6.3 million in signed
 12 contracts is not among the assets listed in the
 13 compilation on page 1275?
 14 A Because the compilation is not an audit. The
 15 only way they will get the value of those contracts is if
 16 they have -- they actually have to do a real audit and
 17 determine all of those values and then put them in.
 18 So this is simply a compilation of all of the
 19 books and financials that they have access to. It is not
 20 an audit report where they're going to go in and do
 21 audit, deep audit, deep dives through all the portfolio
 22 companies to get the value of the inventory, the
 23 contracts, any other assets, and then put them all on one
 24 sheet.
 25 Q Okay. But in doing the compilation, one of the

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1 things they were supposed to do was to compile a list of
2 all of the company's assets. Correct?

3 A All -- they're only supposed to compile company
4 assets as related to the books and the things that they
5 have access to.

6 Q Okay. So the books that they had access to did
7 not reflect the \$6.3 million value for the contracts?

8 A That is correct, because it is not an audited
9 number at this point.

10 Q Okay. So you provided DiLucci books that did
11 not contain a listing of those contracts among OE
12 Capital's assets. Is that correct?

13 A What we provided DiLucci is access to anything
14 they ask for in order to complete the compilation.
15 Signed contracts is not a part of a compilation, it's
16 only a part of an audit. So --

17 Q Did they ask for a listing of OE Capital's
18 assets?

19 A They only asked for -- they only asked for
20 everything they had already had access to. Outside of
21 that, it would have been an audit, and we did not
22 contract them for audit at the end of 2015, only at the
23 end of 2016. So --

24 Q Now --

25 A -- we wouldn't -- sorry.

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1 of assets, then I will believe that -- and I don't know
2 all of the GAAP standards for auditing. But I will
3 believe that if it's not validated somehow and now it's
4 represented as a true value on their books, that that
5 would be misleading.

6 Q Okay. They didn't audit cash either, did they?

7 A In our bank accounts?

8 Q Correct.

9 A They have access to them.

10 Q But they didn't audit cash. Correct?

11 A They didn't audit anything. But --

12 Q Right. But cash is listed among the assets on
13 the balance sheet. Correct?

14 A Yes.

15 Q But they did not audit it, this line item cash
16 on this balance sheet, did they.

17 A They did not audit it.

18 Q Okay. So, in other words, assets can be
19 included on the balance sheet without being audited.
20 Correct?

21 A If you look at that definition of audit. But
22 those assets that you're talking about in terms of the
23 signed contracts are an imputed value. Cash is a -- cash
24 is cash. If I got a hundred dollars in my bank account,
25 I got a hundred dollars in my bank account.

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1 Q At the -- as of December 31, 2015, it was your
2 understanding that OE Capital owned assets in the form of
3 signed contracts valued at \$6.3 million. Correct?

4 A That's correct.

5 Q Okay. Why did you withhold that information
6 from DiLucci so that -- when DiLucci was performing its
7 compilation work?

8 A We did not withhold any information from
9 DiLucci. They had access to anything they needed to have
10 in order to complete the compilation.

11 Q When you got the compilation from DiLucci, what
12 was your reaction to seeing that among the balance sheet
13 information there was nothing reflecting the \$6.3 million
14 in contracts that you considered to be among the assets
15 of OE Capital?

16 A I don't think I was surprised, because it's not
17 a audited number. And so in order to go into a balance
18 sheet it needs to be an audited number. It's not an
19 audited numbers.

20 Q What is it -- what's the basis of your belief
21 that in order for it to be -- to go into the balance
22 sheet it needs to be an audited number?

23 A Well, because again when you start looking at
24 the books, right, in terms of the true value, which is
25 what this represents, real cash in, cash out, true value

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1 If I say this piece of paper is worth a
2 thousand dollars and you say it's \$800, well, we need to
3 now -- if we're going to include that as part of a
4 standard financials we need something that tells us what
5 that piece of paper is really valued. That's the way
6 that I look at it.

7 And so what we, again, said to DiLucci, you
8 have access to whatever you need to have in order to
9 produce the compilation properly. You have access to
10 anything in the portfolio companies, you tell us what you
11 need to do your audit because we're not auditors, and --
12 or your compilation, sorry. You tell us what you need
13 and you have access to anything you need. And this is
14 what they produced.

15 Q Okay. So DiLucci on their compilation, they
16 came up with an asset list on the balance sheet.
17 Correct?

18 A Yes.

19 Q And it did not include the contract value.
20 Right?

21 A Correct.

22 Q Yet on page 1268 of your annual report OE
23 Capital does list signed contracts among its assets. How
24 do you account for that discrepancy?

25 A We don't list cash or any other assets. All

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1 we're doing at that point is saying if we had to go out
2 and liquidate at this point --
3 Q Wait a minute. When you say we don't list cash
4 or any other assets, what are you talking about?
5 A Inside that 6.3 million dollar number, inside
6 the asset-based valuations we don't list cash, we don't
7 list anything that DiLucci lists.
8 Q Okay. Did you ever explain to DiLucci that you
9 consider these contracts to have a value of \$6.3 million?
10 A No. I don't know why I would have.
11 Q You wanted DiLucci in its compilation to
12 provide a complete and accurate representation of what
13 the company's assets were. Correct?
14 A No. I wanted DiLucci to do a proper job of
15 simulating a compilation, whatever that means. It's not
16 up to me to tell them how to do a compilation. To me,
17 that would be improper. So if they needed access to
18 anything to do a compilation, they would have had it.
19 Their term to me is, Patrick, that's not a
20 compilation, that's an audit, that's something different.
21 So they had -- again they had access to do whatever they
22 needed to do to do a thorough, proper compilation.
23 Q The information that they got to create the
24 compilation came from your QuickBooks. Correct?
25 A I believe so.

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1 Q Okay. So the signed contracts that are listed
2 on page 1268 as having a 6.3 million dollars value, those
3 contracts were not listed among the assets within
4 QuickBooks. Correct?
5 A That is correct.
6 Q Why not?
7 A Well, I don't understand why you think we would
8 list those assets in QuickBooks. It's a liquidation
9 value --
10 Q Well, your annual report --
11 A -- that we would have security interest in.
12 Q Your annual report is reporting to your
13 investors that OE Capital has \$6.3 million in signed
14 contracts among its assets. Correct?
15 A That's right.
16 Q Now --
17 A As a liquidation value. I mean -- let me
18 clarify it like this. Which value should I use? Should
19 I use the liquidation value? Should I use the value that
20 if we -- they actually sell and it's much higher than the
21 liquidation value? Should I use some value in between?
22 Should I use the future value of those dollars? Which
23 value exactly should I use if I'm going to actually put
24 it on a financial statement? That's why it's not there.
25 BY MS. FLOYD:

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1 Q So you're unsure about the value of these
2 contracts in the financial statement, but you're okay
3 with the value on your annual report?
4 A It is a liquidation value on the annual report.
5 I mean I'm not sure that anybody on -- in a venture
6 capital space would say, okay, I'm going to put the
7 liquidation value on a compilation on a annual report.
8 Now, from an audit perspective I don't think
9 that would still show up potentially in an -- on the
10 balance sheet of a company, but from an audit it would
11 show up from a here's the audited value of all of the
12 interests that a company owns.
13 A balance sheet is a statement in a time of a
14 financial -- of a particular financial deal. The
15 ownership interest that I have is a security interest.
16 And so I don't think -- I mean again if DiLucci, who
17 performed this, had told me this is what we need, they
18 had access to it. So this is them saying this is a
19 proper compilation.
20 BY MR. McCOLE:
21 Q You kept the 6.3 million dollar value for the
22 signed contracts off your books. Correct?
23 A Correct.
24 BY MS. FLOYD:
25 Q Besides CFG I, CFG II and OE Ventures, are

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1 there any other new funds, any other funds?
2 A No.
3 Q Are there plans to have any other funds?
4 A None.
5 Q In the past you've used Sidley & Austin, the
6 law firm of Sidley & Austin. Is that correct?
7 A Correct.
8 Q Okay. And they provided advice to you. Is
9 that correct?
10 A Yes.
11 Q Was it pertaining to the Urshel Metcalf
12 situation?
13 A Yes, they did.
14 Q Other than the Urshel Metcalf situation did
15 they provide any other legal advice?
16 A They did our first financing agreement.
17 Q For which company?
18 A WHRZT!.
19 Q Anything else?
20 A They provided some initial insight and advice
21 on IP protection.
22 Q Anything else?
23 A I think that's it.
24 Q How about the Natalie Clair situation?
25 A Oh. That's what I meant by the Urshel Metcalf

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1 issue.
 2 Q All right. Okay. Including the sexual
 3 harassment lawsuit –
 4 A Yes.
 5 Q – or claim issue?
 6 A Yes, ma'am.
 7 Q All right. You used Darryl Cleveland's
 8 services as well. Correct?
 9 A Yes.
 10 Q Okay. And what issues did you consult with him
 11 on?
 12 A Mostly he did the contracts for APG, FPOA.
 13 What am I missing here. So they did WHRZTI, he did FPOA
 14 and APG.
 15 Q RivaCare?
 16 A RivaCare. And then we had – he helped me
 17 understand a little better around the marketing fee.
 18 Q The exemption issue?
 19 A The exemption issue.
 20 Q How do you know Mr. Cleveland?
 21 A I was introduced to him through a personal
 22 friend.
 23 Q Did this personal friend work for you in any
 24 form?
 25 A Not when I met him, but she did work for me for

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1 two weeks.
 2 Q Do you have her name?
 3 A I forgot about her. Yes. Her name is Andrea
 4 Venezzio, V-E-N-E-Z-Z-I-O.
 5 Q And what was her role at the company when she
 6 worked for you?
 7 A She came in and she did a little – she was a
 8 recruiter, so she helped us recruit for one of the
 9 portfolio companies.
 10 Q Is she an investor as well?
 11 A She is.
 12 Q Prior to K&L Gates were there any other
 13 attorneys you consulted with other than Sidley & Austin
 14 and Mr. Cleveland?
 15 A No.
 16 MS. FLOYD: Any questions?
 17 MR. McCOLE: Yes, I'm sorry. Back to Exhibit
 18 25.
 19 MS. FLOYD: Took a break and –
 20 MR. McCOLE: Yes.
 21 BY MR. McCOLE:
 22 Q Have you ever given a copy of Exhibit 25, the
 23 annual report, to DiLucci?
 24 A I don't know the answer to that question.
 25 Q What would you have to do to find out the

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1 answer to that question?
 2 A Cristina may have given a copy to them. That's
 3 who works with them.
 4 Q Okay.
 5 A Cristina Cason.
 6 Q Who if anyone else at OE Capital might have
 7 given a copy of Exhibit 25 to DiLucci?
 8 A If it wasn't Cristina, it would have been
 9 Dovile or myself. I don't remember sending them a copy.
 10 Cristina may have.
 11 Q Did you instruct anyone to give a copy of
 12 Exhibit 25 to DiLucci?
 13 A I don't recall instructing anybody to do that.
 14 Q Okay. Prior to distributing the annual report,
 15 Exhibit 25, to investors did you obtain DiLucci's
 16 permission to include DiLucci's compilation report in
 17 Exhibit 25?
 18 A DiLucci knew we were sending it to investors.
 19 Q What – how do you know that?
 20 A We had a conversation about it way prior to
 21 them doing the compilation.
 22 Q Okay.
 23 BY MS. FLOYD:
 24 Q Who at DiLucci & DiLucci did you have this
 25 conversation with?

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1 A Nina and Jasmine.
 2 BY MR. McCOLE:
 3 Q Who are the parties to that conversation?
 4 A Cristina, Patrick, Nina, and Jasmine.
 5 Q When did it take place?
 6 A Sometime 2015 when we hired DiLucci. I can't
 7 remember when we hired them. Fall time frame, winter
 8 2015.
 9 Q And you explained to Jasmine I guess that you
 10 intended to include their compilation in your annual
 11 report?
 12 A Yes.
 13 Q And what was the response from DiLucci?
 14 A It was okay.
 15 Q So they gave you permission to include it, the
 16 compilation, in your annual report?
 17 A Yes.
 18 Q Prior to the annual report being issued to
 19 investors, did you show a copy of it to DiLucci?
 20 A I didn't. Cristina may have. I don't know.
 21 Q Did you instruct anyone to show a copy of the
 22 annual report to DiLucci before distributing it to
 23 investors?
 24 A No.
 25 BY MS. FLOYD:

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1 Q Do you have documentation at OE Capital that
2 shows the value of these contracts?
3 A Outside of the annual report?
4 Q So if DiLucci & DiLucci actually did a full-on
5 audit, would they be able to discover the value of these
6 contracts?
7 A If DiLucci & DiLucci did a full-on audit, they
8 would go into each portfolio company and value the
9 contracts themselves or hire whoever they would deem
10 necessary to value those contracts.
11 MS. FLOYD: Mr. Howard, we have no further
12 questions for you at this time. We may have to call you
13 again to testify in this investment. Should it be
14 necessary, we'll contact K&L Gates, Mr. Howell.
15 Actually, Mr. Howard, do you wish to add
16 anything to your testimony?
17 THE WITNESS: No.
18 MS. FLOYD: Mr. Howell, anyone else, would you
19 guys like to ask any clarification questions?
20 MR. HOWELL: No, ma'am.
21 MS. FLOYD: Okay. This hearing is adjourned.
22 We are off record.
23 (Whereupon, at 3:10 p.m., the examination was
24 concluded.)
25 *****

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1 PROOFREADER'S CERTIFICATE
2
3 In the Matter of: OPTIMAL ECONOMICS
4 CAPITAL PARTNERS, LLC
5 Witness: Patrick O'Neal Howard
6 File Number: FW-04043-A
7 Date: Thursday, July 21, 2016
8 Location: Fort Worth, Texas
9
10 This is to certify that I, Donna S. Raya,
11 (the undersigned), do hereby swear and affirm that the
12 attached proceedings before the U.S. Securities and
13 Exchange Commission were held according to the record and
14 that this is the original, complete, true and accurate
15 transcript that has been compared to the reporting or
16 recording accomplished at the hearing.
17
18 _____
19 (Proofreader's Name) (Date)
20
21
22
23
24
25

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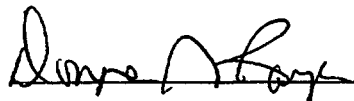
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95 458:17					
98 448:2					
494:4,5,9					
496:25					
497:5					

PROOFREADER'S CERTIFICATE

In the Matter of: OPTIMAL ECONOMICS
CAPITAL PARTNERS, LLC
Witness: Patrick O'Neal Howard
File Number: FW-04043-A
Date: Thursday, July 21, 2016
Location: Fort Worth, Texas

This is to certify that I, Donna S. Raya,
(the undersigned), do hereby swear and affirm that the
attached proceedings before the U.S. Securities and
Exchange Commission were held according to the record and
that this is the original, complete, true and accurate
transcript that has been compared to the reporting or
recording accomplished at the hearing.


(Proofreader's Name)

7/27/16
(Date)

CERTIFICATE OF REPORTER

1

2 I, Barbara Wall, hereby certify that the foregoing
3 transcript consisting of 62 pages is a complete, true, and
4 accurate transcript of the investigative hearing indicated,
5 held on July 21, 2016, at Fort Worth, Texas, in Optimal
6 Economics Capital Partners. I further certify that this
7 proceeding was recorded by me, and that the foregoing
8 transcript has been prepared by me or under my direction.

9

10

11

Barbara Wall

Official Reporter

Page 1

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. FW-04043-A
OPTIMAL ECONOMICS CAPITAL)
PARTNERS, LLC)

WITNESS: Charles Heinzelman, IV

PAGES: 1 through 228

PLACE: Securities and Exchange Commission

801 Cherry Street

19th Floor

Fort Worth, TX 76102

DATE: Wednesday, August 31, 2016

The above-entitled matter came on for hearing,
pursuant to notice, at 9:09 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

Page 2

Page 4

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 CATHERINE FLOYD

5 BARBARA GUNN

6 CAROL STUMBAUGH

7 TIMOTHY MCCOLE

8 Division of Enforcement

9 Securities and Exchange Commission

10 801 Cherry Street

11 19th Floor

12 Fort Worth, TX 76102

13 817-900-2638

14

15 On behalf of the Witness:

16 EDWIN B. KAGAN

17 Edwin B. Kagan, PA

18 2709 Rocky Point Drive

19 Suite 102

20 Tampa, FL 33607

21 813-281-5609

22

23

24

25

1 PROCEEDINGS

2 MS. FLOYD: We're on the record, August 31st,

3 2016 at 9:09 a.m. at the SEC office in Fort Worth, Texas.

4 I will now place the witness under oath. Please raise your

5 right hand.

6 (The witness was sworn.)

7 Whereupon

8 CHARLES HEINZELMAN, IV,

9 was called as a witness, and having being first duly sworn,

10 was examined and testified as follows:

11 EXAMINATION

12 BY MS. FLOYD:

13 Q Please state and spell your full name for the record.

14 A Charles William Heinzelman, IV. C-h-a-r-l-e-s

15 W-i-l-l-i-a-m H-e-i-n-z-e-l-m-a-n, I-V.

16 Q Mr. Heinzelman, my name is Catherine Floyd. And with

17 me today are Barbara Gunn, Carol Stumbaugh and Timothy McCole.

18 We are officers of the United States Securities and Exchange

19 Commission for purposes of this proceeding. This is an

20 investigation by the Commission -- by the Commission of Optimal

21 Economics Capital Partners, LLC, FW-4043, to determine whether

22 there have been violations of certain provisions of the federal

23 securities laws.

24 However, the facts developed in this matter

25 might constitute violations of other federal or state, civil or

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Page 5

1 CONTENTS

2

3 WITNESS:

EXAMINATION

4 Charles Heinzelman, IV

4

5

6 EXHIBITS DESCRIPTION

IDENTIFIED

7 52 Subpoena 6

8 53 Subpoena 7

9 54 Subpoena 16

10 55 May 26, 2016 email 14

11 56 Subpoena 15

12 57 Background questionnaire 27

13 58 Sales and marketing materials 112

14 59 Email 73

15 60 May 18, 2015 email 101

16 61 List of investors 139

17 62 July 27, 2016 email 153

18 63 Advertisement on Linked In 213

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1 criminal laws. Prior to the opening of the record I gave you a

2 copy of the Formal Order of Investigation. The Formal Order

3 will be available for your examination during the course of

4 this proceeding. Mr. Heinzelman, have you had an opportunity

5 to review the Formal Order?

6 A I have.

7 Q Prior to the opening of the record you were provided

8 with a copy of the Commission's Supplemental Information Form

9 1662. A copy of that has been marked as Exhibit 1. Do you

10 have any questions regarding Exhibit 1?

11 A I do not.

12 Q Okay.

13 It will be available for your review during

14 this proceeding. And then, of course, you can talk to your

15 attorney if you have any questions regarding Exhibit 1. Do you

16 understand that the statutes that are set forth in Exhibit 1

17 provide criminal penalties for knowingly providing false

18 testimony or knowingly using false documents in connection with

19 this investigation?

20 A I do.

21 Q Okay. Mr. Heinzelman, are you represented by

22 counsel?

23 A I am.

24 MS. FLOYD: Would counsel please identify

25 himself?

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1 MR. KAGAN: My name is Edwin Kagan. My firm is
2 Edwin B. Kagan, PA. I represent Mr. Heinzelman. I also
3 represent C4 Benefits Group, Inc. and Trajan Income LLP or
4 LLC.
5 MS. FLOYD: Mr. Kagan, are you representing Mr.
6 Heinzelman as his counsel today?
7 MR. KAGAN: I am.
8 (SEC Exhibit 52 was marked
9 for identification.)
10 Q Okay. I am going to be marking as Exhibit 52 a
11 subpoena dated August 9th, 2016. Please take a moment and look
12 at that.
13 A This looks familiar.
14 THE WITNESS: Is this part the first one? I
15 thought this was separated not all together that I just
16 turned in, the background questionnaire.
17 MR. KAGAN: That's what it is.
18 THE WITNESS: Okay. But was that on the
19 original one? That part, yeah. I don't remember this part,
20 educational history and all that. Could have been.
21 MR. KAGAN: It was there.
22 THE WITNESS: It was there.
23 Q Is Exhibit 52 a copy of the subpoena pursuant to
24 which you are appearing here today?
25 A It appears to be.

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1 (SEC Exhibit 53 was marked
2 for identification.)
3 Q Okay. I am going to introduce a subpoena dated May
4 25th, 2016 marked as Exhibit 53. Please take a moment and look
5 at that.
6 A This does not look familiar.
7 Q This does not look familiar?
8 A No, and I can tell you why.
9 Q Okay.
10 A The address is incorrect.
11 Q Okay.
12 A That was sent to my father.
13 Q Okay. Let me go ahead and get off the record and get
14 the actual one that --
15 A Okay.
16 Q -- was the right one.
17 MS. FLOYD: Off the record at 9:13.
18 (A break ensued from 9:13 a.m. to 9:22 a.m.)
19 MS. FLOYD: Back on the record at 9:22.
20 MS. FLOYD: Mr. Kagan.
21 MR. KAGAN: Okay. You don't want to --
22 MS. FLOYD: Yeah. Please go ahead.
23 MR. KAGAN: I had a statement that I wanted to
24 put on the record on behalf of my client, Mr. Heinzelman. It's
25 a little bit easier for me to read this statement. I request

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1 on behalf of Mr. Heinzelman to have access to the staff's copy
2 of the transcript of any testimony that he gives here today
3 and to purchase a copy of that transcript if I wish. And I
4 request in connection therewith to have access to copies of any
5 exhibits that are referred to in the testimony. I will not
6 consider the testimony complete or binding until I have had an
7 opportunity to review the transcript and correct it and
8 supplement it in any manner that may be necessary after it is
9 transcribed. With respect to the Freedom of Information Act
10 and a list of routine uses that you have just provided to Mr.
11 Heinzelman, I make a formal request on the record that no
12 testimony provided by Mr. Heinzelman or documents provided by
13 C4 Benefits Group or Trajan Income in this private
14 investigation be granted to third parties pursuant to the
15 Freedom of Information Act unless I am given at least 10 days
16 prior notice and an opportunity first to object to the
17 Commission granting the Freedom of Information Act request and
18 if necessary to seek a protective order in the Court. I object
19 to the use by the Commission as stated -- as stated in the list
20 of routine uses of any material that would result in
21 information gathered in this private investigation being made
22 public without being -- and that's either given to the press,
23 given to members of Congress, legislators, without giving me an
24 opportunity to determine whether a protective order should be
25 sought. There will be detailed questioning today, I assume,

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1 about the business and financial affairs of C4 Benefits Group
2 and Trajan Income and Mr. Heinzelman. And we consider many of
3 these matters sensitive and confidential, and they could
4 jeopardize these companies, as well as Mr. Heinzelman even more
5 than just the existence of the investigation already has.
6 Securities Act 5310 specifically states the staff in its
7 discretion may advise prospective defendants or respondents of
8 the general nature of its investigation including the indicated
9 violations as they pertain to them and the amount of time that
10 may be available for preparing a Wells submission. Pursuant to
11 Securities Act 5310 I would like to be apprised on the record
12 whether or not Mr. Heinzelman is a target of any contemplated
13 enforcement action whether it's civil, criminal, administrative
14 or otherwise. If C4 Benefits Group, Trajan Income or Mr.
15 Heinzelman is a prospective defendant or respondent, I would
16 like you to exercise your discretion reasonably and not
17 arbitrarily and advise me at this time of the general nature of
18 your investigation including specifically the indicated
19 violations as they may pertain to C4 Benefits Group, Trajan
20 Income or Mr. Heinzelman. If C4 Benefits Group, Trajan Income
21 or Mr. Heinzelman is a prospective defendant or respondent,
22 that fact may well influence the content of the legal advice
23 that I give to those entities as well as to Mr. Heinzelman
24 throughout the course of the investigation. Therefore, if C4
25 Benefits Group, Trajan Income or Mr. Heinzelman are to have

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1 effective representation in this proceeding, it is important to
 2 know at this time if any of them is being viewed as a target or
 3 not. I want this to be considered a formal standing request.
 4 If at any time the staff of the Commission determines that C4
 5 Benefits Group, Trajan Income or Mr. Heinzelman is a
 6 prospective defendant or respondent, I respectfully request
 7 pursuant to Securities Act Release 5310 to be so told of the
 8 nature of the indicated violations in sufficient time to permit
 9 preparation of a Wells committee submission. Is the staff
 10 prepared at this time to tell me whether or not Mr. Heinzelman,
 11 C4 Benefits Group or Trajan Income is the target of an
 12 enforcement action, whether it's civil, criminal,
 13 administrative or otherwise?

14 MS. GUNN: At this point the staff, as you know,
 15 the Commission does not have subjects or targets. We have
 16 witnesses. And at the conclusion of an investigation we make a
 17 determination of whether or not the federal securities laws
 18 have been violated, and if so, who has violated them and what
 19 charges are appropriate. So the answer is we don't have
 20 targets. So we're not -- we can't inform you that we have
 21 targets -- that he's a target because we don't have them. We
 22 don't make those designations. I think you have heard that a
 23 few --

24 MR. KAGAN: Yes.

25 MS. GUNN: -- hundred times before.

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1 provided, I will not regard that as a waiver of the privilege
 2 as to the SEC or any third party. It is my position that in
 3 the event of an inadequate production of a privileged document
 4 or testimony regarding a privileged matter, the Commission or
 5 any third party cannot make the claim later that a waiver of
 6 the privilege has occurred.

7 MS. GUNN: I think it's our policy that we
 8 take -- if there's been an inadvertent production, we're not
 9 willing to make a blanket undertaking of the kind that you have
 10 given us. You have stated your position and made that on the
 11 record. We certainly will listen. It is not our intent to in
 12 any way incur on the attorney-client privilege. And, you know,
 13 we will listen to any objection you have in that regard and --
 14 and, you know, work something out at that point. In terms of
 15 the testimony transcript, the -- as you know you can order a
 16 copy of the transcript. And we will make a -- a form available
 17 for you to do so. You know, again, we will -- if for some
 18 reason the transcript were to be withheld, you would be
 19 informed of that. I don't anticipate that that would be an
 20 issue, but it is a possibility. We will follow the routine
 21 uses that are in the Form 1662 that is a part of the record as
 22 Exhibit Number 1. And to the extent that you have -- are
 23 making a FOIA request regarding the transcript and the contents
 24 of the transcript or the documents, you need to do that in a
 25 letter separately and provide that to the FOIA office. And in

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1 MR. KAGAN: I also request to be apprised
 2 whether or not the staff has any discussions with the FBI, the
 3 Department of Justice or any U.S. Attorney's office or any
 4 other enforcement agency outside of the SEC respecting this
 5 matter or C4 Benefits Group, Trajan Income or Mr. Heinzelman.
 6 If such conversations occur in the future, I request to be so
 7 notified.

8 MS. GUNN: We can't undertake to -- to notify
 9 you of how we're conducting our investigation. If -- if that
 10 is an issue that you -- You should assume that there is
 11 criminal interest in the matter.

12 MR. KAGAN: I know that the list of routine uses
 13 does permit the SEC to communicate as well as turn over
 14 documents that they receive in an investigation to other
 15 agencies including criminal enforcement agencies. I guess my
 16 question or my statement goes more whether or not that has
 17 occurred at this point. And what you are saying is I should
 18 assume that there is criminal interest in this matter --

19 MS. GUNN: You should do so.

20 MR. KAGAN: -- criminal enforcement interest.

21 Okay. Finally, Mr. Heinzelman has not been authorized by any
 22 other person or entity to waive any attorney-client privilege
 23 or other privilege recognized in the federal courts. Nor does
 24 Mr. Heinzelman intend to waive any such privilege he may
 25 himself have. If privileged materials have been inadvertently

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1 terms of a Wells submission, you have made your request on the
 2 record.

3 MR. MCCOLE: With regard to your concern about
 4 the transcript of today's proceedings not being considered
 5 complete and so on after you have had -- until after Mr.
 6 Heinzelman has had an opportunity to review, it's -- it's the
 7 SEC's position that, you know, the transcript will be, you
 8 know, complete and able to be used for all SEC purposes.
 9 However -- And for whatever purposes are outlined in the 1662.
 10 However, given your testimony regarding reviewing the
 11 transcript, I would encourage you to -- to get a copy of the
 12 transcript and purchase one if need be to review the
 13 transcript. And if you determine that there are any errors,
 14 omissions or so forth in the transcript, to bring that to our
 15 attention. Now, that's not -- that's not to say that the
 16 Commission would otherwise consider the transcript not
 17 operative until you -- until you do that. Nevertheless, I
 18 would encourage you to do that.

19 MR. KAGAN: I understand, and I assume before I
 20 leave today I will be furnished with a copy of an order form --

21 MS. FLOYD: Correct.

22 MR. KAGAN: -- in order to acquire the
 23 transcript.

24 MS. FLOYD: Absolutely.

25 MR. KAGAN: Okay. Thank you.

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1 Q Mr. Heinzelman, back to Exhibit 53. You do not
2 recognize Exhibit 53. Is that correct?
3 A No.
4 Q Have you ever received Exhibit 53?
5 A No.
6 (SEC Exhibit 55 was was marked
7 for identification.)
8 Q I am going to be marking on the record as Exhibit 55.
9 This is an e-mail from yourself to myself on May 26, 2016 at
10 4:08 p.m. Its subject matter is Optimal Economics Capital
11 Economics, LLC FW-4043. It's an e-mail from yourself letting
12 me know that you had received the UPS package that was mailed
13 to your father.
14 A To my father's address. He had that -- He says I
15 have contact -- or I've got this one right here, but I had
16 already received a separate. If I remember correctly, and
17 again, I am going back in a little bit of time.
18 Q Sure. Sure.
19 A I have had a lot of stuff going on here.
20 Q Okay.
21 A But he told me he had that. So I'm just saying, hey,
22 we have this. I didn't have this in my hands, but he had it at
23 his house. He lives five miles from me.
24 Q Okay.
25 A I didn't need a copy of this. I had already talked

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1 to Ed. And I assumed that you guys were going to be contacting
2 him on that as well, but he told me he had a copy of this.
3 Q Okay. He as in your father?
4 A My father, correct.
5 Q Okay. We sent two subpoenas, one to this address,
6 one to an address located at 4801 Spicewood Springs Road --
7 A Correct.
8 Q -- which came back returned.
9 A Okay.
10 Q So those are the only two addresses we have sent this
11 specific subpoena.
12 A Okay. The one at 4801 that was sent back returned.
13 Q That's our knowledge, yes.
14 A Okay. Because I received a copy of that one from
15 Mark Hughes there.
16 Q Okay.
17 A That was actually scanned and e-mailed to me.
18 Q Okay. Well, I'll go ahead and mark this as Exhibit
19 56.
20 (SEC Exhibit 56 was was marked
21 for identification.)
22 A Okay.
23 Q It's a document subpoena dated May 23rd, 2016 to C4
24 Benefits Group. Is Exhibit 56 something you recognize?
25 A I do only because I know that they scanned that and

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1 sent that to me. He said I inadvertently opened up your mail
2 and this was in there. And he sent this over to me in a
3 scan.
4 Q Okay. So between Exhibit 56 and 53 you have received
5 a copy of a document subpoena for C4?
6 A I have. As a matter of fact, I believe this is the
7 one I sent over to you. I forwarded one. I think it was a
8 forward from their scan.
9 Q Okay.
10 A It went to -- Yeah.
11 (SEC Exhibit 54 was was marked
12 for identification.)
13 Q Okay. And I am going to introduce Exhibit 54. It's
14 a document subpoena dated June 6, 2016 to Trajan Income, LLC.
15 Do you recognize Exhibit 54?
16 A I do.
17 Q Okay. Now Exhibits 54, 53 and 56, all call for you
18 to produce documents related to this investigation. Have you
19 tendered to the staff all documents called for by this -- these
20 subpoenas?
21 A I granted authorization to Ed and his staff there for
22 all requested documents including e-mails, files and bank
23 records.
24 MR. KAGAN: Not all documents responsive to the
25 subpoena have been turned over. All documents with the

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1 exception of e-mails that were in Mr. Heinzelman's sent mailbox
2 and Mr. Clements' sent mailbox have not been turned over. The
3 reason for that is for each of those people there are over 3500
4 e-mails in their sent mailbox. Neither me nor my staff has had
5 the time, energy, desire to review 35 e-mails -- 35 -- over
6 3500 e-mails to determine which ones are OE related or are
7 responsive to this subpoena. All other e-mails in the in
8 mailbox because the in mailbox is both for Mr. Heinzelman and
9 for Mr. Clements have directories. Those directories
10 specifically identify e-mails that relate to this matter and
11 that are responsive. All of those e-mails have been turned
12 over. If you're interested in the e-mails that are in the sent
13 mailbox of both Mr. Heinzelman and Mr. Clements, it would take
14 my staff and me several months to go through those e-mails to
15 determine which ones are responsive and then to actually format
16 those e-mails and attachments, as well as the e-mails and turn
17 them over. We have not had adequate time as of the date today
18 to do that. So all other documents responsive to the subpoenas
19 have been turned over. All other documents including text
20 messages, but like I said, there's one section of documents
21 that has not been turned over yet. And some of those e-mails
22 that are in the sent mailbox are also in chains of e-mails that
23 were in the in mailboxes. But I can't say that every e-mail
24 that's responsive to this subpoena has been turned over. He's
25 granted me access to his Gmail, which is where it is, but

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1 frankly, my law firm would have to actually stop operating and
2 not be able to represent other clients in order for us to make
3 that determination.

4 MS. GUNN: Have you done any like key word
5 searches in the sent mailbox to determine if there are any
6 e-mails in there?

7 MR. KAGAN: Absolutely. There are e-mails in
8 there.

9 MS. GUNN: Okay. Have you -- have you pulled
10 those out that you found?

11 MR. KAGAN: I have not pulled those out because
12 if you put the word OE in, for instance, there are going to be
13 e-mails that show, but I can't say for sure that that
14 constitutes all of the e-mails that are in the sent mailbox
15 that are responsive to the subpoenas. I put certain words in
16 like Howard, Patrick. There's hundreds of them.

17 MS. GUNN: Uh-huh.

18 MR. KAGAN: And we have already turned over
19 6,000 pages. If you would grant us additional time, we can try
20 to -- we can endeavor to get you those e-mails. I can say that
21 ones that have specific key words and phrases, I can get you,
22 but then I can't make the statement that that constitutes all
23 of the e-mails responsive to the subpoena.

24 MS. GUNN: Okay. During the course of the day
25 we will discuss among ourselves how we want you to address the

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1 under subpoena.

2 MR. KAGAN: Yes.

3 MS. GUNN: Obviously they should be preserved.

4 And we will come up with a plan for you to address it.

5 MR. KAGAN: Thank you.

6 Q Besides the e-mails, can you describe for me the
7 search that was conducted for responsive documents and who
8 conducted the search?

9 A Well, mostly I was going to say it was done by the
10 law firm. Again, I granted them access to all my files, my
11 documents, all that. Any marketing materials that I had, I
12 provided via e-mail to Ed, but everything else I granted them
13 access to so they could pull the information and provide that
14 to you.

15 Q So you had everything electronic. Is that correct?

16 A Correct.

17 Q Okay. So no hard copies of documents?

18 A None that I can -- I mean I don't think there was any
19 pure hard document copies there. I mean PDFs on -- but they
20 were on-line as well.

21 Q Okay.

22 A Okay.

23 Q Okay. Thank you. Have you withheld any documents
24 called for -- called for by the subpoena other than the e-mails
25 in the sent box?

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1 issue, but obviously we believe there are responsive documents
2 likely in the sent mailbox that we're going to want to get, at
3 least those which can be identified.

4 MR. KAGAN: Not likely. There are.

5 MS. GUNN: Yeah.

6 MR. KAGAN: It's just a timing issue. This
7 takes a tremendous amount of time. It was easier in the inbox
8 because there was specific directories that related to the
9 matters in the subpoenas. So we just took everything in those
10 directories.

11 MS. GUNN: Uh-huh.

12 MR. KAGAN: The sent mailboxes, and I have the
13 same problem. I don't divide my e-mails in my sent mailbox
14 into directories, so they just keep piling in. Now, one thing
15 I think we can say is that there were no e-mails that would
16 delete it from the sent mailbox. That all of the e-mails are
17 there. However, it's just too much because it not only
18 involves identifying and reviewing the e-mails, it also
19 involves PDFing them and taking the attachments. And that
20 takes an awful lot of time. And it's not that we're -- we
21 don't want to turn these over. It's just that we haven't had
22 adequate time enough to do it.

23 MS. GUNN: Okay. As I said, we will confer
24 amongst ourselves and get back to you with a plan on how you
25 can deal with this. These -- these are documents that are

Page 21

1 A No.

2 Q Do you know of any documents that are responsible --
3 responsive to the request that haven't been provided or have
4 been lost, destroyed or otherwise disposed of?

5 A Not other than the sent e-mails.

6 Q Okay. Thank you. Have you testified before?

7 A In mock court.

8 Q In mock court.

9 A Which doesn't count.

10 Q Okay. Depends on which mock court you're in,
11 probably things are a little different.

12 A Sure.

13 Q But here at the SEC we have to my left we have a
14 court reporter. So during the day when I ask a question, just
15 if you could let me finish my question or any of our questions
16 before answering it. And we will try our hardest to do the
17 same. No uh-huh, no shaking of the head. Yes or no would
18 be -- be helpful to our court reporter because she can't --
19 It's going to be hard for her to write down head shaking and
20 uh-huh. So --

21 A Understood.

22 Q If you need to take any break whatsoever, just holler
23 and we will go off the record. I will take breaks probably
24 every hour or so, you know, just to get some air or use the
25 restrooms. Also exhibits, do not remove these exhibits from

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1 the room. Especially you, do not remove these exhibits from
2 the room. And let me see what else we have. And if there is a
3 question or questions that you don't understand, please let me
4 know and I will rephrase it. Most likely I will probably
5 rephrase it before it even comes out of my mouth. So are you
6 on any medication or drugs that would impair you from
7 testifying here truthfully and accurately today?

8 A No, I am not.

9 Q Okay. Can you think of any reason why you cannot
10 testify truthfully and accurately to the best of your knowledge
11 today?

12 A No, I cannot.

13 Q Did you talk to anyone about you testifying here
14 today?

15 A Yes, I did.

16 Q Who did you talk to?

17 A My father. I spoke to Mr. Kagan, of course, here.

18 Q Sure.

19 A Talked to a couple of my friends who were church
20 members. They are praying right now. So --

21 Q Okay. What about Mr. Clements, is he aware that
22 you're testifying?

23 A Yes. He is aware I'm testifying here.

24 Q How about Mr. Howard?

25 A He is.

Page 23

1 Q Okay.

2 A I -- I -- Actually I am going to take that back, if
3 I can. I don't know if he knows I am testifying here or not.
4 I did let him know that, you know, I was like it would have
5 been nice if I had gotten a head's up from you on some certain
6 things. You know, I can't speak to you going forward because I
7 have been requested information from you all. I don't think he
8 knows that I am here today or that I am providing testimony on
9 this.

10 Q And when did you have this conversation with Mr.
11 Howard?

12 A Somewhere between receiving the second subpoena for
13 Trajan Income, this one here --

14 Q Okay.

15 A -- and the -- the past month in that time frame. So
16 I would say to the best of my recollection sometime probably in
17 July.

18 Q Okay.

19 A They were asking me about -- You know, they were
20 looking at some different raises and things like. And I just
21 had to let them know that I can't talk to them. I don't want
22 e-mails. I don't want calls and text messages from them. I've
23 got my hands full.

24 Q Okay. And when you mean different raises, you mean
25 they were asking you to raise additional capital for OE

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1 Capital?

2 A Yes. They were looking at a new company that they
3 wanted to start funding.

4 Q Okay. Do you recall the name of that company?

5 A The name, no, but I know what they do. I can't
6 remember the name exactly.

7 Q What do they do?

8 A It was the Kevlar -- It's like a Kevlar form of
9 company to help with sports apparel, things such as concussions
10 and injuries and things like that.

11 Q Would that be Unequal Technologies?

12 A Unequal Technologies. There you go. Thank you. I
13 keep wanting to say Under Armour, but I knew that was not it.

14 Q Okay. Thank you. And your conversation with Mr.
15 Howard, was that in July of 2016?

16 A Ish.

17 Q Ish.

18 A Again, with everything going on on this here, the
19 exact time and date I am not sure, but I do know we had a
20 conversation about that. If people have been asking me about
21 them, I am referring them directly to OE. I am not talking on
22 that end at all.

23 Q Okay. Besides Mr. Howard, have you talked to -- I am
24 just going to call her Dovila. I think that would be easier.

25 A Dovile.

Page 25

1 Q Dovila. Her last name I will probably butcher, but
2 have you spoken to Ms. Dovila since you received the
3 subpoenas?

4 A Via e-mail referring a client to her with a question
5 on a statement.

6 Q Okay. And that's it?

7 A That's it. I have not talked to her on the phone or
8 anything like that. My last conversation with her was voice to
9 voice kind of thing was a very long time ago.

10 Q So besides some church friends, Mr. Clements, your
11 attorney, is there anyone else that knows that you're
12 testifying here today?

13 A My ex-wife.

14 Q Okay.

15 A Because she the kids. I was supposed to have the
16 kids this week, so she has them there.

17 Q Got it. Okay. Anybody else?

18 A Not -- not that I am aware of unless they share that
19 information, but my father is usually pretty good. I don't
20 even think my mother knows.

21 Q Okay. Thank you. Did you do anything to prepare for
22 your testimony here today?

23 A Yes.

24 Q What did you do?

25 A I met with Mr. Kagan. We reviewed some stuff

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1 yesterday, you know, obviously in the preparation of documents,
 2 and, you know, we do that there as well.
 3 Q Okay. Okay. Great.
 4 MS. FLOYD: Let's go off the record at 9:47 a.m.
 5 (A break ensued from 9:47 a.m. to 9:52 a.m.)
 6 MS. FLOYD: Back on the record at 9:52.
 7 Q During the break we had no substantive conversations
 8 regarding this investigation, correct?
 9 A I did with my attorney.
 10 Q With -- with us?
 11 A No. No.
 12 Q Okay. Thank you. You had some additional
 13 information you wanted to add?
 14 A Yes. As soon as you walked out I completely --
 15 Stormie Jones, my admin, knows because she helped with, you
 16 know, providing e-mail access that I think we have turned those
 17 over already Stormie's e-mails.
 18 MR. KAGAN: Yes.
 19 A Yeah. You have as well. So she obviously knows.
 20 She's the one who received the fax and sent that off to me. So
 21 she -- she knows what's going on, my administrative assistant.
 22 So I believe that's everybody. If someone else pops up in my
 23 head, I'll let you know, but yeah.
 24 Q Does Ms. Jones, does she work for C4 Benefits?
 25 A Yes. She's my -- my personal administrative

Page 27

1 assistant.
 2 (SEC Exhibit 57 was marked
 3 for identification.)
 4 Q Okay. Great. Thank you. Okay. I am going to hand
 5 you what has been marked as Exhibit 57. Please take a moment
 6 and look through it.
 7 A I do apologize for the penmanship.
 8 Q We have some questions regarding your penmanship.
 9 A I do my best. Some of it I can barely read myself.
 10 Okay.
 11 Q Okay. Do you recognize Exhibit 57?
 12 A I do.
 13 Q What is it?
 14 A It's a background questionnaire.
 15 Q Are the answers that you provided in the
 16 questionnaire true and correct?
 17 A To the best of my knowledge at that time, yes.
 18 Q And as you sit here today, is there anything you need
 19 to add or change the information in Exhibit 57?
 20 A Not that jumps out at me.
 21 Q Do you adopt for purposes of your testimony all the
 22 statements contained in Exhibit 57?
 23 A I'm sorry. Say that first part again.
 24 Q Do you adopt for the purposes of your testimony all
 25 the statements contained in Exhibit 57?

Page 28

1 A I do.
 2 Q Okay. Great. There are several things I wanted to
 3 walk through with you in Exhibit 57. Page two, item 10, I am
 4 having a little bit of a hard time reading your handwriting.
 5 A Yeah. You guys don't provide a lot of space --
 6 Q I know.
 7 A -- in your stuff there, so I did the best I could.
 8 Q Okay. So can you kind of walk us through the names?
 9 A Absolutely.
 10 Q Thank you.
 11 A For personal, CharlesHeinzelman@hotmail.com, I think
 12 I think I had that since the -- you know, the advent of the
 13 internet. That's been there forever. I have a Facebook
 14 account Charles Heinzelman. I have an Instagram account that I
 15 started. I have a teenage daughter. So my friends told me I
 16 needed to be on Instagram. Still haven't done snapchat or
 17 anything. I'm not sure how to do that yet. But it's brand
 18 new, the Instagram one.
 19 Q Is that the name of the Instagram underneath it?
 20 A Yes. That's what it shows when I -- I pull it up.
 21 Q What does that say?
 22 A CHeinzelman4.
 23 Q Okay. Thank you. Okay. And then you have a
 24 Linked-In account for business?
 25 A Yeah. Oh, I have got one more personal account.

Page 29

1 It's Drew, B as in boy, F as in Frank, D as in Dodd, 10 at
 2 Gmail dot com.
 3 Q And you said one month. So you just had it for one
 4 month. Is that correct?
 5 A The Instagram was one month.
 6 Q Got it.
 7 A Yeah. That should all be together on that section
 8 right there.
 9 Q Okay. Thank you.
 10 A And then on business I had the Linked In account. We
 11 also have a C4 Benefits Group Facebook page. And then I have
 12 two e-mails, CharlesHeinzelman@C4BG.com and
 13 CHeinzelman@C4BG.com. CharlesHeinzelman@C4BG.com is the one I
 14 use for the RIA IAR business. And then the other one is
 15 strictly for the -- the other business, C4 Benefits Group.
 16 Q My next question was going to ask if you had anything
 17 for Trajan Income. But you use the CHeinzelman@C4BG.com?
 18 A Correct.
 19 Q Thank you.
 20 A And the very top it's all -- You were asking for the
 21 carrier on it. My internet and my cell phone is all AT&T.
 22 Q Okay.
 23 A It's AT&T Uverse.
 24 Q Okay. On page four, number 15 --
 25 A Uh-huh.

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1 Q — it asks are you now or have you ever been a
2 beneficial owner directly or indirectly of any private held
3 company.
4 A Uh-huh.
5 Q And you said yes.
6 A Yes. C4 Benefits Group is an S corporation.
7 Q Okay. And the first one you had marked as AP
8 Financial.
9 A Correct.
10 Q Which was changed to Financial Foundation Group?
11 A Correct. Uh-huh.
12 Q And you had that from July 2002 to November 2010. Is
13 that correct?
14 A Correct.
15 Q What is the business purpose of — should we just
16 call it Financial —
17 A Financial Foundation Group.
18 Q Yeah. Or FFG.
19 A Yeah. FFG as well.
20 Q Okay.
21 A It was really just a — an insurance agency for lack
22 of a better word. We started off beginning securities based,
23 limited securities, Series 6, 63 business.
24 Q Okay. And did you — did you own this company?
25 A I was a part owner.

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1 Q Part owner. Who was the other owner?
2 A There were two other owners.
3 Q Okay.
4 A Ken Perrin, Jeff Junior. That's his last name.
5 Q His last name is Junior?
6 A Yes. Yeah. All the time. Uh-huh.
7 Q I had to ask.
8 A He had a son and did not name him Jeff Junior
9 Junior.
10 Q That would be unfortunate. Okay. And so the status,
11 is it closed?
12 A No.
13 Q Okay.
14 A I left that organization. And that is still in
15 operation with Ken Perrin.
16 Q Okay. And you have no connection whatsoever today?
17 A No. As of November of 2010.
18 Q Okay. Was — was it just the three of you work there
19 or how big was the company?
20 A There were three. It fluctuated. We brought in new
21 reps, hired, trained, licensed them. It — it fluctuated. In
22 the beginning it was the three of us. I think at our high
23 point we had plus or minus 150-ish registered reps.
24 Q Okay. Then moving down to C4 Benefits. So you
25 started C4 Benefits November of 2010, correct?

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1 A Correct.
2 Q And then prior to it being called C4 Benefits, it was
3 call Trajan Insurance, correct?
4 A Correct.
5 Q Okay. Trajan Insurance Services?
6 A Yes.
7 Q Okay. And you changed the name to C4 Benefits
8 Group?
9 A No one could pronounce Trajan.
10 Q Am I saying it wrong? Is it Trajan?
11 A No. It is Trajan.
12 Q Okay.
13 A But yeah, I spoke at a women's events one time, and
14 they misspelled it up there. And we were talking about
15 protecting assets. So that was not —
16 Q Gotcha.
17 A — the most comfortable thing to — I know. So after
18 that I decided it was time to change the name.
19 Q But then you have an RIA named Trajan Income?
20 A Yes. I am sure we're going to get to the RIA stuff
21 later, but yes.
22 Q All right. So C4 Benefits, we will get to more
23 detail about C4 Benefits in a little bit, but — so then now
24 you have Trajan Income, LLC?
25 A Correct.

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1 Q Okay. And you started that in August of 2012?
2 A Correct.
3 Q And how many employees works for Trajan?
4 A Zero. Just myself.
5 Q Okay. So one?
6 A So no — Well, yes. Besides myself, yes.
7 Q Okay.
8 (Reporter conversation.)
9 Q And so you own Trajan Income, LLC?
10 A I do.
11 Q Okay. Moving on to item 17, securities accounts. I
12 notice on number three you list OECP.
13 A Uh-huh.
14 Q I am guessing that means Optimal Economics Capital
15 Partners. Is that correct?
16 A Yes.
17 Q What kind of account do you have with OE?
18 A Same thing as the clients.
19 Q Could you —
20 A Partner. A PPM.
21 Q A PPM?
22 A Uh-huh.
23 Q Okay. So did you invest in OE Capital?
24 A I did. I — I provided them funds to invest those
25 funds, yes.

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1 Q Okay. So you are a client of OE Capital?
 2 A I am.
 3 Q Okay. Do you know how much is in your account
 4 currently?
 5 A I provided them \$100,000.
 6 Q When did you provide this \$100,000?
 7 A That is a good question. I don't know the exact
 8 date. I can find that out for you though.
 9 Q Year? 2015?
 10 A Oh. It was 2016.
 11 Q '16. Okay.
 12 A Yes.
 13 Q Was it earlier in the year, mid-year?
 14 A It was -- it was sometime in the second quarter.
 15 Q Okay. Thank you.
 16 A Because I am supposed to receive my first
 17 distribution, full distribution in September.
 18 Q Gotcha. And you list Patrick Howard as your
 19 broker?
 20 A Uh-huh. I wasn't sure how to put that. So I figured
 21 that was --
 22 Q That's your go-to person at OE Capital?
 23 A Yes.
 24 Q And for purposes of the testimony, instead of calling
 25 it Optimal Economics Capital Partners, I am going to say OE

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1 Capital.
 2 A That's fine.
 3 Q Make it slightly easier on everybody. Okay. Thank
 4 you. On page five, on 21, banking accounts --
 5 A Uh-huh.
 6 Q -- you have a C4 Benefits Group. And you have four
 7 accounts. It says checking, checking, savings --
 8 A Money market.
 9 Q Money market. Okay. People abbreviate it different
 10 -- abbreviate it differently, so I just want to make sure.
 11 Okay.
 12 EXAMINATION
 13 BY MR. MCCOLE:
 14 Q A quick question back about your \$100,000 investment
 15 with OE.
 16 A Yes.
 17 Q The \$100,000, was that your personal money?
 18 A It was.
 19 EXAMINATION
 20 BY MS. FLOYD:
 21 Q And which fund did you invest in?
 22 A I am not sure what the title of that fund name. I am
 23 not sure how to answer that question. Can you ask that a
 24 different way?
 25 Q Did you receive a PPM?

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1 A I did receive a PPM. I think we provided that.
 2 MR. KAGAN: She's asking you for the name.
 3 A I know, and I -- I cannot remember the name --
 4 Q Okay.
 5 A -- of that exact fund.
 6 Q Would it be CFG2, or would it be Optimal -- Optimal
 7 --
 8 MS. STUMBAUGH: OE Capital.
 9 Q Yes. Correct. Thank you.
 10 A I believe it's the second, but I cannot say for
 11 certain.
 12 Q Okay. Okay. Thank you. You are a licensed
 13 attorney. Is that correct?
 14 A No.
 15 Q You're no longer a licensed attorney?
 16 A I have not been a licensed attorney for two
 17 decades.
 18 Q Okay. So it's inactive or --
 19 A Correct.
 20 Q Now, on page nine on item 31, you list several
 21 licenses. Are these licenses active, other than the Arizona
 22 Bar? Obviously that's inactive, but how about your Series 6
 23 and Series 63?
 24 A If they are active, they are close to falling off.
 25 Q The two year mark, correct?

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1 A Yes. With the two year period of time drop-off. I
 2 believe I provided -- Well, it didn't show up on that for some
 3 reason, but on the broker check it will show you, the FINRA
 4 broker check.
 5 Q Okay. So jumping ahead to -- it's a page you
 6 attached to your background questionnaire. And it says current
 7 registrations. And you said this broker is not currently
 8 registered with any firm. What were you referring to?
 9 A I wasn't. That's a cut and paste directly off of the
 10 from the -- from the FINRA site, the FINRA broker check.
 11 Q Okay.
 12 A I cut and paste that in there.
 13 Q Okay. So this broker is you.
 14 A Correct.
 15 Q I am assuming that means you are not currently
 16 registered with any firm?
 17 A Correct.
 18 Q So you haven't been registered since July of 2014,
 19 correct?
 20 A Correct.
 21 Q And you were registered with Ameritas Investment
 22 Corp.?
 23 A Yes.
 24 Q And that's based in Austin, Texas?
 25 A No.

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1 Q No. Okay. So with is Ameritas based in?
 2 A Lincoln, Nebraska.
 3 Q Okay. And so they just have a branch in Austin,
 4 Texas?
 5 A Yes.
 6 Q And you worked for the one in Austin, Texas?
 7 A Yes.
 8 Q Going back to page nine, employment history, and I
 9 kind of want to work backwards to the current. On page 11, if
 10 you want to jump to page 11, it says Simmons Capital Management
 11 Corp. You worked there October '95 to July 2002. Is that
 12 correct?
 13 A Yes. The name is Simmers, S-i-m-m-e-r-s.
 14 Q Okay.
 15 A I apologize.
 16 Q That's an R. Okay. Good. That's why we ask.
 17 A That is why I provided that to cut the page back here
 18 because I thought -- It's the very bottom one, Simmers Capital
 19 Management Corporation. And it has those dates aligned with
 20 that as well.
 21 Q Gotcha. Okay. And what did you do for Simmers?
 22 A I was recruited. Took the Series 6, 63 and insurance
 23 exam and sold variable life, variable annuity mutual funds.
 24 Q Okay. And what was your title?
 25 A It progressed. Initially it was financial advisor.

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1 Then they changed that. By the time I left there it was
 2 vice-president.
 3 Q Okay. And so prior to Simmers you worked as -- I
 4 believe your resume' is estate planning, correct?
 5 A Attorney.
 6 Q Attorney, but in estate planning?
 7 A That was what Larry -- Edmond Anderson, he went by
 8 Larry. That was his focal point. That's what I thought I was
 9 going to be brought in as.
 10 Q Okay.
 11 A I ended up more working on the personal injury. So I
 12 did not stay there very long.
 13 Q Okay. So what brought you into the financial world
 14 going from being an attorney to Simmers?
 15 A I did not want to be an attorney. No offense to
 16 anybody here. After my first year I did not want to.
 17 Q Okay.
 18 A I went to law school because I wanted to work in
 19 family law and work with abused children, abused women. I
 20 learned very early on that I couldn't do that. I was too
 21 empathetic. And so I wanted to leave. My mother convinced me
 22 to stay. I finished. I did not take the bar exam in Ohio. I
 23 didn't have any intention to do that. No one is from Ohio,
 24 right?
 25 Q No.

Page 40

1 A Okay. I was in Ohio for seven years. I could not
 2 wait to get out of Ohio, so I moved to Arizona. My parents
 3 were there. She convinced me to take the bar exam. I did. It
 4 was not what my passion was. My passion has always been more
 5 helping people or numbers. I was always good at numbers. And
 6 so someone told me to go interview here. I did, and I thought
 7 it would be a good fit.
 8 Q Okay. So you stayed at Simmers for several years.
 9 And then you moved on to Financial Foundation Group which
 10 we will shorten to FFG?
 11 A Correct. It was AP Financial at that time.
 12 Q Sure. And you were at AP Financial slash FFG from
 13 July 2002 to October 2010, correct?
 14 A Correct. In that range. October or November.
 15 Q And what did you do for AP Financial and FFG?
 16 A I was a part owner. We really focused on hiring and
 17 training sales people.
 18 Q Did you sell yourself or did you just train people to
 19 sell?
 20 A I did sell as well.
 21 Q Did you sell the entire time you were there?
 22 A No.
 23 Q So what portion of the eight years that you were
 24 there, what portion did you primarily sell as a sales rep
 25 versus training sales reps?

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1 A As a percentage?
 2 Q Correct.
 3 A Sold I would say less than five percent.
 4 Q Okay. And what kind of securities products did you
 5 sell?
 6 A Variable life, variable annuity, control fund,
 7 limited securities.
 8 Q Okay. So you left in October 2010, and you moved on
 9 to C4 Benefits Group. Is that correct?
 10 A 2010, 2000-- Yeah. October or November of 2010.
 11 Q Okay. Is it -- is it C4 Benefits Group, Inc. or is
 12 it C4 Benefits Group, LLC?
 13 A Inc.
 14 Q Inc. Okay. Thank you. And are you one of the
 15 owners of C4 Benefits Group?
 16 A I am.
 17 Q Are you the only owner?
 18 A Currently, no.
 19 Q Who is the other owner?
 20 A Jackson Clements.
 21 Q And has Mr. Clements been working for C4 Benefits
 22 since inception?
 23 A No.
 24 Q When did he start?
 25 A Approximately three years ago.

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- 1 Q Okay. So before Mr. Clements were there any other
2 employees?
3 A As employee are we talking statutory? Are we talking
4 1099? No one on payroll.
5 Q Okay.
6 EXAMINATION
7 BY MS. GUNN:
8 Q Were there other independent contractors for C4—
9 A Yes.
10 Q — for example? How many?
11 A Again, it's — there's attrition. A dozen plus or
12 minus, I would say, approximately.
13 Q At one time or over time for the dozen?
14 A That actually might be over time.
15 Q Okay.
16 A We never had a very large staff of — of producing
17 agents.
18 Q When Mr. Clements join C4 Benefits, did he become an
19 owner at that time or at some subsequent point?
20 A Subsequent point.
21 Q When was that?
22 A Last year.
23 Q Okay.
24 A Approximately the middle —
25 Q 2015?

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- 1 A Yes.
2 Q Okay. Approximately?
3 A Approximate mid-year of last year.
4 Q Okay. And what is his percentage of ownership?
5 A 25 percent.
6 Q Okay. And do you remain the 75 percent owner?
7 A I do.
8 Q Okay. And other than yourself and now Mr. Clements
9 have there ever been any other owners of C4 Benefits?
10 A No.
11 Q Okay. At one point you had identified a Stormie
12 Jones as your administrative assistant at C4.
13 A Yes.
14 Q Is she actually an employee or is she also an
15 independent contractor?
16 A She is an employee.
17 Q Okay. And how long has she been with the firm?
18 A The beginning of this year.
19 Q So —
20 A Approximately February.
21 Q 2016?
22 A Yes.
23 Q Okay. And before she joined the firm did you have an
24 administrative assistant?
25 A I did not.

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- 1 Q Okay. Thank you.
2 EXAMINATION
3 BY MS. FLOYD:
4 Q Besides Ms. Jones and Mr. Clements, do you have any
5 other employees?
6 A Statutory employees.
7 Q Correct.
8 A No.
9 Q Okay. What is the business function of C4 Benefits
10 Group?
11 A Provide insurance through clientele. We act as a
12 producing IMO, Insurance Marketing Organization, or FMO,
13 depending upon who we speak with. I have always called
14 ourselves an IMO, Insurance Marketing Organization. Some
15 people refer to FMO as a Financial Marketing Organization.
16 Q Thank you.
17 A On the question of payroll, I do have my ex getting a
18 payroll, but she does not work for the company. I just split
19 my pay. So I am not sure if I should amend the answer or not
20 on that, but she's not an employee, but she does get payroll
21 just as part of our divorce decree.
22 Q Okay. And when did you guys get divorced?
23 A Officially April, I think, 6th. It was the beginning
24 of April of this year whenever my health insurance renewed
25 because I kept her on the health insurance until then.

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- 1 Q Besides insurance products do you sell anything else
2 at C4 Benefits?
3 A That is the question for you to decide. I don't mean
4 to be flippant, but I mean —
5 Q Sure. Besides insurance products, what other types
6 of products or areas of products do you sell to clients?
7 A We don't.
8 Q You don't?
9 A It's all insurance based.
10 EXAMINATION
11 BY MS. GUNN:
12 Q Do you market any other products besides insurance?
13 A Optimal Economics Capital Partners PPM. And that
14 was — If you're asking current, your verbiage you used there,
15 I just want to make sure you said are we.
16 Q I don't think I was precise.
17 A Okay.
18 Q Are you currently offering any —
19 A Okay.
20 Q — marketing any other products besides insurance?
21 A No.
22 Q Have you in the past two years?
23 A Yes, ma'am.
24 Q Okay. And is that the OE Capital products?
25 A It is, ma'am.

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1 Q Besides OE Capital products and the insurance
2 products, are there other products that your firm has offered
3 in the last two years?

4 A No.

5 EXAMINATION

6 BY MS. FLOYD:

7 Q How are you compensated by C4 Benefits?

8 A Salary.

9 Q What's your salary?

10 A \$10,000 a month that is split 5,000 and 5,000.

11 Q Do you receive bonuses?

12 A No.

13 Q Do you have an unemployment contract with C4
14 Benefits?

15 A I am the owner.

16 Q So that would be a no?

17 A No.

18 Q Does Mr. Clements have an employment contract?

19 A We have a contract through our PEO who handles our
20 payroll and our health insurance there. There's a contract on
21 that side, but between C4 Benefits Group and Jackson Clements,
22 we don't have a direct employment contract. We do have an
23 ownership documents as well though.

24 Q What -- what is the terms of its ownership
25 contract?

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1 Q Any bonuses for Ms. Jones?

2 A No.

3 Q I may have asked this question already, but Mr.
4 Clements, what's his annual salary?

5 A That is a good question. I don't know the exact
6 number on that.

7 Q Okay.

8 A I know at the end of the year between shareholder
9 distribution and salary it should be an average of 7500 a
10 month, where mine should be an average of 10,000 minus my
11 ex's.

12 Q Okay. And your contract employees, how are they
13 paid?

14 A By commission.

15 Q What's the commission based off of?

16 A Production. Production.

17 Q Percentage of the production?

18 A Yes.

19 Q What's the percentage?

20 A Depends upon how well they're performing. It is
21 incentive based. It's approximately 50 percent of the streets
22 of whatever the insurance product pays.

23 Q Currently how many contract employees do you have as
24 of today?

25 A That are receiving commission?

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1 A He receives 25 percent of the company.

2 Q Anything else?

3 A No.

4 Q And how are you paid? Are you --

5 A I am paid salary. It runs through our payroll PEO
6 which is Trinet. I am paid on the 10th and 25th of every
7 month. And then we also do a shareholder distribution on a
8 portion of it of my 5,000. Her 5,000, my ex's, flows directly
9 through payroll. Mine, I believe it's 3,000 flows through
10 there, and then we do a \$2,000 shareholder distribution.

11 Q Okay. Does Mr. Clements receive a salary bonus?

12 A Salary or bonus?

13 Q Salary bonus.

14 A Yeah. He receives a salary.

15 Q And what about a bonus?

16 A And then he receives his portion of ownership in the
17 shareholder distribution. And that was per our CPA on that
18 part. We have to take equal distributions based upon
19 ownership.

20 Q Okay. Thank you.

21 A We are an S Corp. if that helps on that part there.

22 Q How about Ms. Jones, is she paid a salary?

23 A She is.

24 Q And how much is her salary?

25 A 2500 a month. 1250 a pay period.

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1 Q Correct.

2 A I would say --

3 Q You can do a ballpark. You don't have to say 15.

4 A I am trying to be as -- I'm trying to give you exact
5 answers and everything. Plus or minus 10. Some very
6 sporadic.

7 Q So you have some there are consistently active, and
8 you have some that are dormant?

9 A Absolutely.

10 Q Okay. Thank you.

11 EXAMINATION

12 BY MS. STUMBAUGH:

13 Q You said that the agents got 50 percent of the street
14 of what the insurance products are paid.

15 A Correct.

16 Q What would they get for the OECP items?

17 A Approximately the same. I mean we try and keep it
18 very simple on that basis.

19 EXAMINATION

20 BY MS. FLOYD:

21 Q Okay. So I want to start talking about OE Capital.
22 How do you know OE Capital?

23 A I met them through an upline of ours.

24 Q I'm sorry?

25 A I met them through an upline on our insurance and

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1 securities business.
 2 Q Okay. Do you recall when?
 3 A Yes. I -- We met them the beginning of 2015.
 4 EXAMINATION
 5 BY MR. MCCOLE:
 6 Q What is an upline?
 7 A Oh, I'm sorry. It is like in the hierarchy side on
 8 insurance, it's very similar to like a securities office. I
 9 met them through a branch manager, if you will.
 10 Q Who?
 11 A Coordinated Financial Group.
 12 Q Say it again.
 13 A Coordinated. Coordinated Financial Group, CFG.
 14 Q Okay. Who at Coordinated Financial Group made that
 15 introduction?
 16 A Mark Hughes.
 17 EXAMINATION
 18 BY MS. FLOYD:
 19 Q Does Mark Hughes own CFG?
 20 A He and/or his father, David Hughes, does.
 21 Q And did OE Capital do business with CFG?
 22 A I don't know. I know they were in the process of
 23 getting to that point.
 24 Q Okay. And so how do you know CFG?
 25 A I was working with Coordinated Financial Group which

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1 is a branch office for a Ameritas where I also put my
 2 securities license for a bit. And they brought me on board to
 3 help them on the recruiting side for the insurance portion of
 4 the business.
 5 Q And when did they bring you on board?
 6 A That would be approximately the beginning of 2014 or
 7 the end of 2013. I believe I did my paperwork then. And then
 8 we moved and hung the licenses on the securities side the
 9 beginning of 2014.
 10 Q So Amer -- Is it Ameritas?
 11 A Ameritas.
 12 Q Ameritas is the securities branch of CFG. Is that
 13 correct?
 14 A Correct.
 15 Q Okay. Thank you.
 16 A They have a securities portion and they have an
 17 insurance portion of that branch office or that agency.
 18 Q Okay. And so what part did you work in? Did you
 19 work in the securities part or the insurance part or both?
 20 A I really focused more on the insurance. I put my
 21 licenses there because I had a substantial number of variable
 22 life and variable annuity clients that needed servicing.
 23 Unfortunately you can't do block transfers from one
 24 broker-dealer to another anymore. So we were going to send off
 25 individual letters to the clients and move those accounts over

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1 one by one. That became very tedious very quickly. So I kind
 2 of just left that side and really focused more on the
 3 recruiting aspect for them, so the insurance side for them.
 4 Q So recruiting, you're recruiting new agents,
 5 insurance agents?
 6 A Correct. Or existing insurance agents.
 7 Q Okay. And do you still do that today?
 8 A Work for Ameritas?
 9 Q For CFG.
 10 A No.
 11 Q Okay.
 12 EXAMINATION
 13 BY MS. GUNN:
 14 Q When did you stop doing that?
 15 A I would say approximately June of this year.
 16 EXAMINATION
 17 BY MS. FLOYD:
 18 Q And why did you stop?
 19 A Many reasons. Mainly it was a lot of overpromise
 20 underdeliver. They were supposed to provide support for the
 21 recruiting assistance on that side. A lot of times he would
 22 bring things to the table, but then I found out later on it
 23 wasn't quite the way I thought it was supposed to be or that he
 24 explained it the first time.
 25 Q And when you say he, do you mean Mark Hughes?

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1 A Mark Hughes.
 2 Q Could you give us an example of what he would promise
 3 and wasn't quite what you thought it was?
 4 A I can give you -- Yes. Assistance on the recruiting.
 5 He was going to help with recruiting ads and marketing to
 6 different organizations out there that were unwinding parts of
 7 their business such as New England Financial being purchased by
 8 Met Life and they were going through a commission reduction.
 9 So a lot of their agents were leaving. They were going to
 10 assist on marketing to them to see if this would be an
 11 opportunity to work with us there. That did not come to
 12 fruition. A lot of -- Some of the Capital or the OE Capital
 13 partners, that's -- that's a big part of it as well.
 14 Q What do you mean by that?
 15 A We were introduced to OE Capital Partners through
 16 Coordinated Financial. We were led to believe a lot of things
 17 that I am guessing because I am sitting here right now were not
 18 accurate. So a lot of those things.
 19 Q Were you worried about OE Capital's products prior to
 20 today or prior to the subpoenas?
 21 A Can we delve into worried a bit more?
 22 Q Okay. Sure. Did you have a concern? Did you have
 23 an issue with OE's products prior to the subpoenas?
 24 A We would question certain things and then be provided
 25 information. Worried as it relates to what's going on right

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1 now, I would say not until March of this year.
 2 Q What happened in March of this year?
 3 A We had a subpoena. So obviously that opens your eyes
 4 quite a bit.

5 Q Subpoena from which agency?

6 A State of Florida.

7 Q And they were requesting information regarding
 8 your —

9 A OE Capital Partners --

10 Q Okay.

11 A -- and our business dealings on that side.

12 EXAMINATION

13 BY MR. MCCOLE:

14 Q You indicated earlier that you were led to believe a
 15 lot of things about OE Capital. OE Capital. OE Capital.
 16 Excuse me. What were those things that you were led to
 17 believe?

18 A We were led to believe, and I am saying we as in C4
 19 Benefits Group, myself, also Jackson Clements, he was there for
 20 parts of the meeting, not all of the meetings, but parts of the
 21 meetings, that they were vetted more than they were. That
 22 everything that they said as far as the registration and the
 23 sales limit material and who could sell their product to, you
 24 know, the background of the organization, what it is they do,
 25 how they operate their business.

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1 Q What did they say with regard to -- Well, what did
 2 they lead you to believe with regard to registration issues?

3 A Well, with regard to what they told us on that was
 4 that you did not have to have a securities license to sell this
 5 product. It was built really for insurance agents to work with
 6 or you didn't have to be an insurance agent. You just didn't
 7 have to have a securities license to work with this product.

8 Q Who told you that?

9 A Mark Hughes.

10 EXAMINATION

11 BY MS. FLOYD:

12 Q Did you ask why?

13 A I did.

14 Q And what was his response?

15 A He said that they had an exemption and that we didn't
 16 need to be securities licensed to represent it because of the
 17 exemption.

18 Q Which exemption did he mention?

19 A He did not. He may have mentioned it, but I cannot
 20 tell you. This was in a verbal conversation at that point in
 21 time with him. I cannot tell you what that was or was not in
 22 our first meeting there.

23 EXAMINATION

24 BY MR. MCCOLE:

25 Q How did he characterize the nature of the product?

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1 A As a royalty based revenue recapture. And the
 2 example that was given to us that stuck with me was on Shark
 3 Tank. They can buy into the company as a part owner and equity
 4 position, or they can buy a royalty based revenue stream.

5 Q Did he characterize it as insurance?

6 A No.

7 Q What, if any, category did he place this product
 8 in?

9 A I don't know that he placed this in a category
 10 specifically.

11 Q Did he call it securities?

12 A I -- I am not sure if he called it a security. I
 13 don't think the word security came out of his mouth.

14 Q But he referred to an exemption, a securities
 15 exemption, correct?

16 A I believe so.

17 Q Okay. And what, if any, basis did he provide for the
 18 assertion that it was -- that there was a securities exemption
 19 that applied to the product?

20 A Just from their vetting.

21 Q Whose vetting?

22 A Mark Hughes, the agency, the Hughes agency. And I
 23 was also led to believe that Ameritas, the broker-dealer, was
 24 looking into that as well.

25 EXAMINATION

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1 BY MS. FLOYD:

2 Q How were you led to believe that?

3 A They told me.

4 Q Mr. Hughes told you that?

5 A Correct. That they were doing that. They were
 6 looking at -- I guess the best way to do it is if you have
 7 background on this because it might make a little bit more
 8 sense.

9 Q Please.

10 A Mark Hughes is the securities point in the office.
 11 So he signs off on the business and submits that and
 12 everything. He's on the securities side. But they also have
 13 the insurance portion of the business. He was looking at this
 14 for his insurance agents to be able to work with. And at the
 15 same time he was going to because he's on the securities side
 16 presenting this to Ameritas, another broker-dealer, that they
 17 could offer this on their platform.

18 Q Okay.

19 A And so we were led to believe that they had vetted
 20 this out. I found out later on that was not quite the case.

21 Q Okay. So you were led to believe that they had
 22 vetted OE Capital's product, correct?

23 A Back then it was called Insured Liquidity Partners.
 24 And they also had OE Capital as well. So it was kind of two
 25 entities --

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1 Q Okay.
 2 A -- operating there.
 3 Q So what -- what led you to believe that they had
 4 vetted the company?
 5 A The conversations I had.
 6 Q Okay. And do you recall specifically the
 7 conversations you had?
 8 A I remember sitting in his office, him talking about
 9 that with me. That -- I remember that every week the members
 10 of OE Capital would come into the office, and they would sit in
 11 the conference room with Mark Hughes and David Hughes for
 12 extended periods of time. By extended I would say a couple
 13 hours every time. And then also what led me to believe that is
 14 Mark on April 24th, I think that's the date, I am fairly
 15 certain that's the date, invited and encouraged me to invite
 16 insurance agents to a meet and greet with OE Capital management
 17 to present this product to them.
 18 Q You say April of 2015, correct?
 19 A Correct. April -- I believe it was April 24th, 2015.
 20 It's in that time frame.
 21 Q Okay. And so who in OE's group came to these
 22 meetings?
 23 A In the meetings in the conference rooms there?
 24 Q Correct.
 25 A I don't know everybody. I know Patrick Howard was

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1 there. And I do know that there were usually two females
 2 there. This is before I met them. I would see them just in
 3 passing. And it had -- it was glass, but it had blinds in it
 4 so you would just see bits and pieces. I know Patrick Howard
 5 was there because I ran into him in the bathroom one time and
 6 just, you know, said hi. But there were two females. I
 7 believe Dovile Soblinskas was one of them.
 8 (Reporter clarification.)
 9 A I'm going to do my best. Dovile Soblinsaks. I
 10 believe she was one of the ones there. And I am not sure who
 11 the other person would have been. Sometimes there may have
 12 been four people there, but I am not sure who else was there.
 13 Q So OE would have these meetings with CFG, but you
 14 would not be present at the meetings?
 15 A Correct.
 16 Q Okay. So what were you doing at CFG? Were you
 17 working at CFG?
 18 A Yes. I was -- I was -- I had an office there. I
 19 would recruit. You know, I would do reports, things like that,
 20 but I was not involved in that aspect of it.
 21 Q How often did these meetings occur?
 22 A A couple times a month. And it was always on the
 23 same day.
 24 Q Which day was that?
 25 A I believe it was on a Wednesday. And the reason I

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1 believe that is that's usually when I had a networking meeting
 2 and I would go out of the office. So I would see them in
 3 passing.
 4 Q And when did these meetings start?
 5 A I am not sure. The beginning of 2015, but the exact
 6 month I am not sure. It just -- You know, they would have
 7 meetings in there with people, but it's when I saw the same
 8 people in there consistently on the same time that I started,
 9 you know, starting to take notice versus just seeing people in
 10 passing.
 11 Q So then you mentioned on April 24, 2015 you were
 12 invited to this meeting along with other insurance agents,
 13 correct?
 14 A Correct. And some of them were securities licensed
 15 people too, but the vast majority that they were looking at
 16 were insurance agents.
 17 Q And who invited you to this meeting?
 18 A Mark Hughes.
 19 Q And did you go?
 20 A I did go.
 21 Q Okay. Who else besides yourself went?
 22 A I was there. Jackson Clements, I flew him in to sit
 23 in there as well as Mark's behest. Mark Hughes, David Hughes,
 24 agents I didn't know because they worked directly for the
 25 Hughes Agency. Some of them were from Houston to East Texas.

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1 Q Did you recruit any agents to come to this meeting?
 2 A I had Jackson Clements there.
 3 Q Okay.
 4 A I sent out some to some agents that I knew at Mark's,
 5 you know, behalf, but the only person that I had that showed up
 6 that I had invited was Jackson Clements.
 7 EXAMINATION
 8 BY MR. MCCOLE:
 9 Q So Mark encouraged you to invite agents as well?
 10 A Yes.
 11 EXAMINATION
 12 BY MS. FLOYD:
 13 Q And what occurred during the meeting?
 14 A They talked about who they were, what they were
 15 doing.
 16 EXAMINATION
 17 BY MS. GUNN:
 18 Q Who is they?
 19 A I'm sorry. Optimal Economics Capital Partners. It
 20 was started off with Urshel Metcalf. He spoke initially for
 21 about an hour and 20 minutes. Patrick -- Yes. Patrick jumped
 22 in because I think he could see everybody's eyes were glazing
 23 over. He came in and kind of put a summary bow on it, if you
 24 will. And he just reiterated that, you know, you do not need
 25 to be licensed to sell this product. You do need to be

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1 certified. And the certification had to be done by the fund
2 company, which was Insured Liquidity OE Capital Partners. And
3 then after that they did a little breakup meet and greet, if
4 you will. Patrick and Dovile were in one room. Urshel was in
5 a different room. And they had Natalie Claire, C-l-a-i-r-e,
6 and Christina Cason, C-a-s-o-n, were also there. They were at
7 the bar area in the kitchen area. They had hired a food
8 provider staff. They did barbecue, I think. And they also had
9 a bartender and an open bar there. And so they were able to
10 talk to all the agents or registered representatives depending
11 upon their licensing and get more information. Jackson and I
12 spent a good portion of that free time there talking directly
13 with Patrick Howard and Mark Hughes and Dovile Soblinskas.
14 We will just call her Dovile.

EXAMINATION

BY MS. FLOYD:

17 Q Please. Thank you. And this meeting occurred in CFG
18 offices in Austin, correct?
19 A No.
20 Q Okay. Where did it occur?
21 A It was in a privately rented house in the Lake Travis
22 area just passed the damn.
23 Q And roughly how many people were there?
24 A 20 plus or minus. I would say that's about right.
25 Q Okay. And --

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1 A That's not just agents. That's including the people
2 from OE Capital Partners.
3 Q And what were you told about OE Capital Partners
4 products?
5 A That they would handle, you know, they would provide
6 us -- We asked for marketing material, approved marketing
7 material. They gave us a brochure as well. I believe that's
8 some of the documents that we have provided to you already.
9 They would provide more marketing material for us. You know,
10 if we had commission questions, we would have to talk to Mark
11 Hughes because that's who it was going to flow through. You
12 know, they would -- we told them about some of the things that
13 we were looking at doing as far as growing the organization
14 inside Ameritas. Part of my responsibilities were recruiting
15 side. They said they could help assist with that as well.
16 Q Did OE Capital talk about the returns during this
17 meeting?
18 A Yes.
19 Q And what did they say?
20 A That they were looking at being able to provide a
21 return of 12 percent back to the clients on an annual basis.
22 And that was also in the marketing pieces that they provided to
23 us.
24 Q Did they explain how they were going to back that 12
25 percent to each client each year?

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1 A They did, but I wouldn't say how they backed it.
2 Q Or how they -- how they --
3 A They attained it.
4 Q Maintained it, yes.
5 A The way they attained that was they were buying a
6 percentage of revenue from existing companies to help them grow
7 and expand their operation. The example they would use is if
8 you took a company and they were producing revenues, but they
9 needed more revenues to grow and expand, they could fund that
10 for them and help them basically double their business, but to
11 do that they would recapture the first, you know, percentage of
12 dollars that are generated. So every time company A would do a
13 sale, let's say, for a dollar, they would take the first cut
14 from that. And then what was left over would go back to that
15 company to run as far as their cash flow and things, but they
16 would provided them funding at certain times as long as they
17 were meeting certain benchmarks to allow that company to
18 continue to grow and expand and bring in, you know, a eco
19 system to help them do that as well.
20 Q Now, at the time of the meeting did they talk about
21 which companies that they were already investing in?
22 A Not that I remember. And I don't believe that was
23 part of the sales pieces they provided us there.
24 Q Did they say that they had already invested in
25 certain companies?

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1 A I do not believe so.
2 Q Okay. So this was their model, but they hadn't
3 started their model, correct?
4 A I don't know if they had started their model or not.
5 They were just explaining who they were and the product and how
6 they operated and -- and what we could make as far as
7 commission based.
8 Q And what was the commission?
9 A They wanted us to talk directly to Mark Hughes on
10 that, but Mark gave them the okay to say it. And it was four
11 percent. They were giving Mark five percent, four percent to
12 the agent. So really Mark's override on it was the difference,
13 so one percent there.
14 Q And the marketing materials you received, do you
15 recall what they consisted of, what type of marketing materials
16 you received at the actual meeting?
17 A It was a -- I don't want to call it a tri-fold, but
18 it was one that you would open up and then you could open up a
19 sleeve and a sleeve again. And it just explains who they were,
20 12 percent, a couple other features on there explaining about
21 how they, you know, they were a disruptive economic company.
22 EXAMINATION
23 BY MR. MCCOLE:
24 Q So would it be accurate to say that the investors in
25 OE Capital --

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- 1 A Uh-huh.
- 2 Q -- stood to receive a share of a revenue stream from
- 3 the company in which OE Capital invested?
- 4 A No.
- 5 Q Okay. How --
- 6 A The way they explained that to us at least or the way
- 7 I understood that, the answer to that would be no.
- 8 Q What was your understanding?
- 9 A My understanding was the client was going to get
- 10 three percent a quarter, 12 percent a year over a three year
- 11 period of time. If there was excess after the first year, that
- 12 was going to be split between the investor and OE Capital
- 13 Partners, and then there's a third piece that after three years
- 14 there's an exit strategy. And that would be a true
- 15 profitability, and they would receive a portion of that.
- 16 Q What was the exit strategy?
- 17 A After three years the royalty based system stopped,
- 18 and the company that was funded does not have to have a
- 19 percentage of their royalty or their revenues go to OE Capital
- 20 anymore. I guess really it hit their numbers, their mark of
- 21 what they were looking for.
- 22 Q Okay. So -- But the 12 percent that goes to the
- 23 client --
- 24 A Uh-huh.
- 25 Q -- what's the source of that 12 percent?

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- 1 A That came from OE Capital's portion of the royalties
- 2 received or the revenue -- revenue share capture.
- 3 Q Okay. So the revenue comes into OE Capital from
- 4 where?
- 5 A Correct. From sales that that company did. Revenue
- 6 that was generated by that company.
- 7 Q Okay. So from --
- 8 A The company they funded.
- 9 Q So it comes from the company into which OE Capital
- 10 invested the money, correct?
- 11 A Correct.
- 12 Q Okay. And that gives OE Capital a right to receive a
- 13 portion of that company's revenues, correct?
- 14 A Correct.
- 15 Q And then when that portion of the company's revenues
- 16 comes into OE Capital --
- 17 A Uh-huh.
- 18 Q -- OE Capital passes a portion along to the investor,
- 19 correct?
- 20 A Correct.
- 21 Q And that -- that portion that is passed along to the
- 22 investor constitutes the amount of money that will ultimately
- 23 make up the 12 percent that that customer has been promised,
- 24 correct?
- 25 A Correct. They were promised a certain number, 12

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- 1 percent here. But it wasn't -- it was based upon them
- 2 recapturing that revenue, but it wasn't a percentage of that
- 3 revenue. That revenue could be a higher, lower number, but
- 4 they were still getting that same 12 percent.
- 5 Q But it's -- but it's a share of the revenue though,
- 6 correct?
- 7 A Correct. Correct.
- 8 EXAMINATION
- 9 BY MS. FLOYD:
- 10 Q So during this meeting you had several discussions
- 11 with OE Capital?
- 12 A Uh-huh.
- 13 Q Did you have questions for OE Capital?
- 14 A We did.
- 15 Q Do you recall what questions you had?
- 16 A Yes. The biggest questions we had were on the
- 17 compliance side is who would run pieces through for compliance.
- 18 Our background, we always run it through the home office or the
- 19 carrier. If it's a -- if it's an insurance based product. And
- 20 he said, you know, initially run it through me, you know. He
- 21 was the president and CEO of OE Capital. He said run it
- 22 through me until we have our own person.
- 23 MS. GUNN: This time he is Patrick Howard?
- 24 THE WITNESS: I'm sorry. Yes. I am sorry.
- 25 Yes. Patrick Howard.

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- 1 MS. GUNN: Thank you.
- 2 A Yeah. That was in our discussions with Patrick and
- 3 Dovile.
- 4 Q So you would run through -- what exactly would you
- 5 run through with Mr. Howard?
- 6 A Any pieces that would be client or agent facing.
- 7 Q Okay. So any marketing materials?
- 8 A Correct.
- 9 Q Okay. And did you have any other questions besides
- 10 compliance based with Mr. Howard?
- 11 A Time was limited. And there were other agents there
- 12 that they wanted to speak to and things like that. So no.
- 13 Q Okay. So the meeting is over. What does C4 Benefits
- 14 do after the meeting?
- 15 A Well, the next day?
- 16 Q What was the next step with OE Capital?
- 17 A The next step after that was going through a
- 18 certification process. Mark Hughes sent out an e-mail I
- 19 believe it was after that meeting, but before the middle of
- 20 May, so it was in the beginning of May, I believe, but it was
- 21 about a meeting for the people who could not attend that meet
- 22 and greet with EO, but also to talk about the certification
- 23 process with OE to move forward to represent their product.
- 24 You could not sell their product until you were certified by
- 25 them.

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1 Q And certification, was there any sort of materials
2 you were provided to study for the certification program?
3 A For us personally, no. It evolved into that
4 though.
5 Q Okay. So were you personally certified by OE Capital
6 to sell their products?
7 A I was.
8 Q And how were you certified?
9 A I was certified by our discussions back and forth and
10 them asking questions about how the product worked.
11 Q So they would just simply ask what percentage do
12 clients get each year?
13 A Correct.
14 Q And you would say 12 percent?
15 A Correct.
16 Q So it was like a verbal quiz?
17 A It was at that point in time, yes.
18 Q And who did you have this verbal quiz with at OE
19 Capital?
20 A That was with Patrick Howard.
21 Q Okay. Did Mr. Clements have the same quiz with OE
22 Capital?
23 A I believe so because he was certified, but I am not
24 sure.
25 Q Okay.

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1 A I can't answer that one.
2 Q Once you became certified did you do any due
3 diligence on the actual company?
4 A I did a little bit after the fact. I relied a lot on
5 the upline because it's always been my protocol on that. I did
6 receive a phone call from Mark Hughes on a Wednesday. And it
7 was the beginning of May saying that Ameritas, the
8 broker-dealer, could not put this on their platform because
9 because this is a new start-up company. They don't have the
10 track record and --
11 MS. STUMBAUGH: This is May of 2015?
12 THE WITNESS: Correct. And when that occurred I
13 started doing a little bit more on the due diligence on their
14 background.
15 Q Okay. So let me see if I get this right. So in May
16 of 2015 you received an e-mail from Mark Hughes saying --
17 A No.
18 Q I'm sorry.
19 A A phone call.
20 Q A phone call.
21 A Yes.
22 Q A phone call. Thank you. So you received a phone
23 call from Mark Hughes claiming that Ameritas could not put OE
24 Capital's product on their platform, correct?
25 A Yes.

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1 Q Okay. So then you started personally doing due
2 diligence on the company?
3 A Correct.
4 Q Okay. What kind of due diligence did you do?
5 A I had Darren Williams who used to be -- he's a sales
6 agent in our Tampa, Florida office. He used to be a PI. And
7 he did some background checks on Urshel, Patrick. I'm sorry.
8 Urshel Metcalf, Patrick Howard, Dovile Soblinskas, the people
9 that we had met and had names for.
10 Q Okay. And what did these background checks reveal?
11 A That Urshel Metcalf had a warrant, arrest warrant for
12 a moving violation. That Patrick Howard had a disclosure on
13 his CRD through a FINRA background check. And that I believe
14 Dovile came back clean. And she did work for the Democratic
15 national party in Illinois and was in charge of the fund
16 raising there. So hers came back fine. We did question
17 Patrick more on his background and also on Urshel. Urshel
18 Metcalf was more of the motivational person, if you will.
19 Patrick Howard was more of the, I guess the brains behind the
20 operation on that part. And Patrick provided us -- Patrick
21 Howard provided us some of the answers that we were looking
22 for. And it seemed to make sense on that side. But we had
23 known early on about that time that -- that they were new. It
24 became more of a surprise to me that Ameritas had said that,
25 because I was led to believe that they had already been vetted

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1 on that part as part of the part with Mark Hughes.
2 (SEC Exhibit 59 was was marked
3 for identification.)
4 Q Okay. I am going to hand you what has been marked as
5 Exhibit 59. Take a moment and look through it.
6 A Uh-huh.
7 Q Exhibit 59 --
8 A Uh-huh.
9 Q -- is an e-mail chain, Bates numbered C4 Benefits
10 Group SEC 003409 through 3414. It's an e-mail chain between
11 Patrick Heinzelman --
12 A Uh-huh.
13 Q -- Charlie Heinzelman, a CHeinzelman@C4BG --
14 A Uh-huh.
15 Q -- and a JSheinzelman@hotmail.com.
16 A Uh-huh.
17 Q Do you recognize Exhibit 59?
18 A I do.
19 Q Okay. And the caption is analysis of Pete's
20 opportunity. Who is Pete?
21 A That is myself.
22 Q Okay. And who is else on -- who else is on this
23 e-mail?
24 A Patrick Heinzelman is my middle brother. I am the
25 oldest. My father is Charlie Heinzelman. And the youngest, JS

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1 is Jeff Scott Heinzelman. He goes by Scott.
 2 Q Okay. So it's Pete, Patrick, Jeff, correct?
 3 A Correct.
 4 Q And your father, Charlie?
 5 A Correct.
 6 Q And the analysis of Pete's opportunity, do you recall
 7 what Patrick was referring to?
 8 A Yes.
 9 Q Please explain.
 10 A The piece that was handed -- the pieces that were
 11 handed out to us by OE Capital Management, I sent that to my
 12 father, I sent that to my brother to look at to help with, you
 13 know, looking into them, you know, getting a feel for my father
 14 because he's been in the private equity world before. He
 15 worked with Stonebridge, a private equity company there. So I
 16 was getting some information on that. My brother, Patrick, he
 17 is really good with numbers, but he also fills in gaps. So
 18 sometimes he gets -- He's slightly manic depressive and in a
 19 manic state he will go through things like this. My father and
 20 I were including him in on this trying to keep him focused on
 21 different things than were going on in his life on a personal
 22 basis.
 23 Q Okay. So in the e-mail, the top part of 3409 it says
 24 first pass analysis. And then it says Equitas?
 25 A Equitas Capital.

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1 Q Equitas Capital. Who is Equitas Capital?
 2 A On an RIA, third party money manager platform, it's
 3 one of the companies they did something very similar to what OE
 4 Capital was doing. I was looking at them through our RIA. I
 5 had materials on them as well. They were -- they were -- I was
 6 introduced to the materials by some of the advisors, SAS.
 7 They have a whole bunch of different companies that are third
 8 party money managers that you can utilize for an RIA. So I
 9 provided him some materials on that saying here's a company
 10 that does something very similar that we're going to provide a
 11 percentage over a course of anywhere from one year to a four
 12 year lock-up, if you will, of funds. And they were going to
 13 provide anywhere from seven to 11 percent back to the client on
 14 an annual basis. So it was very similar in feel. And it was
 15 also on the -- their approved platform, but it was for
 16 accredited investors only.
 17 Q Okay. And so that was separate from Insured
 18 Liquidity?
 19 A It is. This is just something I came across, and I
 20 said it looks very similar to what Insured Liquidity OE Capital
 21 Partners was doing.
 22 Q Okay. And then you -- then Patrick starts talking
 23 about Insured Liquidity.
 24 A Uh-huh.
 25 Q And he says he only saw four companies under

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1 management. Do you have an understanding of where he saw
 2 this?
 3 A I believe it may have been in a marketing piece or it
 4 could have been on a website. I am not sure exactly where this
 5 came from. It does look familiar. But I am not sure where he
 6 got the information. I did provide him, again, the sales and
 7 marketing pieces that OE provided. It could have been on
 8 those.
 9 Q Okay. And so the four companies listed,
 10 Ganolife.com, Guy, Coordinated Financial Group and Pinnacle
 11 Estate Properties, are those the four companies he's referring
 12 to in the e-mail?
 13 A I believe so.
 14 Q Okay. And in Coordinated Financial Group, the last
 15 sentence, and I quote, this company will provide the whole life
 16 policies on key employees that get funded and managed by --
 17 managed by Insurance Liquidity, period, end quotes.
 18 A Uh-huh.
 19 Q What does he mean by that?
 20 A I -- It's tough to say what he means by things like
 21 that. I can only tell you what I think he means by that.
 22 Q Okay. What is your understanding.
 23 A My understanding on that is that as part of OE
 24 Capital Partners means of mitigating risk to investors is they
 25 were to buy life insurance on the owners of the companies that

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1 they funded.
 2 Q Okay.
 3 A And Coordinated Financial Group obviously being an
 4 insurance agency as well was able to write the whole life
 5 policies on those.
 6 Q And further down, and I quote, I am not an expert on
 7 the insurance aspect and use of this funds reduced risk,
 8 period. I had conversation with Pete as to how they will use
 9 two billion in whole life assets to protect the investment,
 10 period. If that plays out, comma, the 10 million fund they are
 11 raising seems less risky, period. Of course, comma, I do not
 12 see language as to how many funds are being backed by the whole
 13 life cash assets, comma, and I did not read this -- did not
 14 read where this 10 million fund is backed by the two billion,
 15 period, end quote. What is your understanding of what your
 16 brother was referring to here?
 17 A When I explained this to my brother and my father, I
 18 was explaining to them just what OE Capital had told me. They
 19 were going to buy life insurance on these individuals cash
 20 value life insurance. It's an asset, that they were going to
 21 pay it off in like a five pay or seven pay or something like
 22 that. So it was fully funded after that period of time. And
 23 that they could use that as an asset if they needed to -- to,
 24 you know, to liquidate or to sell as a BOLI, Business Owned
 25 Life Insurance, if they needed to raise revenues for whatever

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1 reason.

2 Q Okay.

3 A The two billion dollar number, I am not sure where

4 that came from. It doesn't stand out to me, but I mean it

5 could have been something that they were talking about, you

6 know, hey, eventually when we get to this point, we'll have,

7 you know, over a certain period of time something like that,

8 but I -- I am guessing there. I don't know where that number

9 comes from.

10 EXAMINATION

11 BY MR. MCCOLE:

12 Q When you refer to a five pay and seven pay, what's

13 that?

14 A On whole life.

15 Q What is that?

16 A What that means is instead of paying premiums for 30,

17 40 years, you can pay extra premiums over a shorter period of

18 time and pay that all off. So you really got a paid-up

19 policy.

20 Q So what is a five pay?

21 A You do it over a five year period of time.

22 Q And seven would be over a seven --

23 A A seven year period of time, yes.

24 Q So he was -- You were under the belief that maybe OE

25 Capital was going to do a five or a seven pay for this

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1 insurance?

2 A Correct.

3 Q What led you to believe that?

4 A They did. They told us that, and Mark Hughes told us

5 that as well.

6 Q When you say they --

7 A I'm sorry. Yes. OE Capital Partners, Patrick

8 Howard.

9 Q Okay. Patrick Howard told you that they were going

10 to have a five pay or seven pay on the whole life policies?

11 A That's the way they were going to fund these. And

12 Urshel Walker -- I am sorry -- Metcalf said that as well.

13 MS. FLOYD: I made that -- I made that mistake

14 before, so don't feel bad.

15 Q But also Mark Hughes confirmed that?

16 A Yes, he did. One of my first experiences on that

17 which led me to believe that's what they were doing is one of

18 the initial companies they were going to fund. And I don't

19 remember the name of the company, but I remember the

20 circumstances it involved. The policy came back declined

21 because he had health issues. And if I remember correctly, and

22 it's the beginning of 2015, I believe it was high blood

23 pressure and diabetes. I believe that's what it was. And the

24 reason I remember that at all is because the company was a

25 health supplement company. And I just said, well, that's kind

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1 of ironic.

2 Q Did OE Capital invest in that company?

3 A They did not. I do not know why. My guess was

4 because they couldn't get the life insurance on the -- on that

5 person.

6 Q What was that person's name?

7 A I have no idea.

8 EXAMINATION

9 BY MS. FLOYD:

10 Q Could that have been Ganolife since they are an herb

11 supplement drink?

12 A It could be, but I can't be 100 percent positive, but

13 I do remember that conversation, and it was a supplement

14 company.

15 EXAMINATION

16 BY MS. GUNN:

17 Q With who?

18 A With Mark Hughes.

19 Q Okay. So Mark Hughes told you that the -- the

20 insurance policy was declined?

21 A Correct.

22 Q Okay.

23 A And I had a feeling of frustration from him just

24 because it was like we submitted all this work and it got

25 declined.

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1 EXAMINATION

2 BY MS. FLOYD:

3 Q On the paragraph I just read, it says a 10 million

4 dollar fund. Which fund is that?

5 A I do not know.

6 Q And then on the second page on page 3410, Patrick

7 refers to a company called Heinzelman Holding Group, LLC. What

8 is that?

9 A That is no entity at all. He was -- What he was

10 talking about there is if we aggregate our monies together, you

11 could buy things such as a car wash or do other business

12 opportunities out there, but then he was just running numbers

13 based upon if the Heinzelman boys as he would call it, my

14 brothers and my father and myself, aggregate our own money

15 together and did something with it. This is what that would

16 look like. And then he does a projection analysis.

17 Q So on page 3412, e-mail on May 12, 2015 from yourself

18 to your father.

19 A Uh-huh.

20 Q And, in fact, the e-mail above that on May 12, 2015,

21 11:03 a.m. was from your father to yourself.

22 A Uh-huh.

23 Q It says and I quote, just got around to reading this

24 e-mail from Patrick, period. Should be I be concerned,

25 question mark.

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- 1 A Correct.
- 2 Q End quote. So your dad was concerned, correct?
- 3 A Uh-huh.
- 4 Q And what was he concerned about?
- 5 A He was concerned about the numbers.
- 6 Q What about the numbers?
- 7 A About -- Let's see. That being a start-up and are
- 8 they going to be able to provide returns immediately if
- 9 they're, you know, the start-up phase. Are they going to be
- 10 able to generate the income necessary to pay out on the
- 11 start-up phase.
- 12 Q And did you have the same concern?
- 13 A I did not only because we knew, you know, what they
- 14 were trying to do. You know, again, I was thinking that
- 15 they had companies -- They were not buying into brand-new
- 16 companies but existing companies that they would be able to
- 17 capture revenue from immediately. These companies here that my
- 18 brother was even discussing, Ganolife was already in existence.
- 19 So they're -- they have an income stream. They're just looking
- 20 to grow and expand their base of operation. So if they funded
- 21 him -- if they funded a company today after the contract has
- 22 been signed, that very next day they would start receiving
- 23 revenue from that company.
- 24 Q And that's how Mr. Howard discussed his product?
- 25 A Correct.

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- 1 Q And where did you acquire this understanding to
- 2 convey to your brother and father?
- 3 A From Optimal Economics Capital Partners.
- 4 Q Who specifically there?
- 5 A Patrick Howard. At this point in time it also could
- 6 have been Patrick Howard and Urshel Metcalf because I would
- 7 speak to both of them.
- 8 EXAMINATION
- 9 BY MS. GUNN:
- 10 Q So by using the term securities designated branch,
- 11 were you meaning that OE Capital was the firm that was going to
- 12 identify potential investments and evaluate them?
- 13 A Yes. Investments being companies to fund, yes.
- 14 Q Okay.
- 15 EXAMINATION
- 16 BY MR. MCCOLE:
- 17 Q But -- but what -- what securities would be involved
- 18 in the transaction?
- 19 A I don't know. That -- that's the -- that's the
- 20 terminology that was given to me on that. I don't -- When I --
- 21 When I use the word securities here to the best of my, you
- 22 know, going back, you know, a year and a half or a year and
- 23 quarter and looking at this, I don't think I was thinking along
- 24 the lines or trying to imply along the lines of a, you know, a
- 25 broker-dealer kind of securities transactional business. They

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- 1 EXAMINATION
- 2 BY MR. MCCOLE:
- 3 Q On page 3411 on Exhibit 59, you indicate in an e-mail
- 4 dated April 20th, 2015 that Optimal Economics Capital Partners
- 5 is the securities designated branch for this. 3411.
- 6 A Oh, okay. I see it. Okay. Yes.
- 7 Q Do you see that?
- 8 A Yes.
- 9 Q You say there a few lines into the April -- second
- 10 half of the page --
- 11 A Uh-huh.
- 12 Q -- in your e-mail it looks like to your --
- 13 A To my brother.
- 14 Q To your brother.
- 15 A Yeah. To the same group, yes.
- 16 Q Yeah. You are saying Optimal -- Optimal Economics
- 17 Capital Partners is the securities designated branch for this
- 18 as well. What did you mean by that?
- 19 A There were two entities, Insured Liquidity which
- 20 handled the -- the insurance agents, and that's where the funds
- 21 were and things. Optimal Economics Capital Partners were the
- 22 ones -- the company that dealt with the funding of the other
- 23 companies and handled, you know, the due diligence, the
- 24 background, the auditing of these companies to see if that's
- 25 who they were going to invest in or not.

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- 1 were the ones who were going to be handling, you know, the --
- 2 the registration of the non-registration or what have you of
- 3 the business. They were more the -- They were -- And again,
- 4 this is the way it was explained to me. There's two parts of
- 5 the company. You have got the insured liquidity part which
- 6 handles the investor side of it. And then you have OE Capital
- 7 Partners. They are the ones who handled the interactions and
- 8 such with the companies that they were funding. So what I am
- 9 talking about with the securities designated branch is that
- 10 they were the ones who were going to handle all the
- 11 registration. They were the ones who were going to handle
- 12 making sure all the documents were filed, the company was set
- 13 up, that the contracts were enforced with the company that they
- 14 were funding, that the revenues were being received.
- 15 Q And Insured Liquidity was -- was pretty much the -- a
- 16 part of that organization designed to attract insurance agents
- 17 in order to sell the product, correct?
- 18 A Correct.
- 19 Q In order to sell the product to investors, right?
- 20 A Correct. Yeah.
- 21 Q And -- and that product though, even though this is
- 22 called Insured Liquidity, that product was not sold as
- 23 insurance, was it?
- 24 A No. No. They were using insurance agents as the
- 25 marketing force. They were not selling it as an insurance