

1 IN THE UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF TEXAS
 2 DALLAS DIVISION

3 SECURITIES AND EXCHANGE *
 COMMISSION, *
 4 *
 Plaintiff, *
 5 *
 VS. *
 6 *
 BENJAMIN FRANKLIN COOK, *
 7 individually and dba *
 DENNEL FINANCE LIMITED, * C.A. NO. 399 CV0571-R
 8 GERALD LEE PATE, *
 ELLSWORTH WAYNE McLAWS, *
 9 and ALAN CLAGG, *
 *
 10 Defendants. *
 *
 11 and *
 *
 12 FPC-I LIMITED PARTNERSHIP, *
 SAMUEL LIMITED PARTNERSHIP, *
 13 ALLIANCE INVESTMENT CORP., *
 CORNERSTONE MANAGEMENT, LLC, *
 14 INTERNATIONAL BUSINESS *
 CONSULTANTS LIMITED, *
 15 HIGHLANDER LIMITED PARTNERSHIP,*
 and C. KELLY OLSEN, *
 16 *
 Defendants Solely *
 17 for Purposes of *
 Equitable Relief *

18

19

20 *****

21 ORAL DEPOSITION OF ANTHONY J. MARTELLA

22 *****

23

24

25

1 ANSWERS AND DEPOSITION OF ANTHONY J. MARTELLA,

2 produced as a witness at the instance of the Receiver,

3 Lawrence J. Warfield, taken in the above-styled and

4 -numbered cause on March 16, 2000, at 10:15 o'clock

5 a.m., before DON R. WILLIS, a Certified Shorthand

6 Reporter in and for the State of Texas, in the offices

7 of Scheef & Stone, L.L.P., located at 5956 Sherry

8 Lane, Suite 1400, in the City of Dallas, County of

9 Dallas and State of Texas, in accordance with the

10 Federal Rules of Civil Procedure.

1 APPEARANCES

2

3 MR. JEFFREY B. NORRIS

Division of Enforcement

4 U.S. Securities and Exchange Commission

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5 19th Floor

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6

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7

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9 Dallas, Texas 75225

10 BY: MR. KELLY M. CRAWFORD

11 APPEARING FOR THE RECEIVER

LAWRENCE J. WARFIELD

12

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15 APPEARING FOR THE WITNESS

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1 PROCEEDINGS

2 MR. CRAWFORD: It's taken pursuant to the

3 Federal Rules of Civil Procedure.

4 I will state that we've had --

5 Mr. Martella is appearing in his individual capacity

6 today in response to a subpoena that was served upon

7 him in this lawsuit. And as I understand it,

8 Mr. Martella is also appearing as the corporate

9 representative of M&M Engraving, is that correct?

10 MR. WARD: That's correct.

11 MR. CRAWFORD: Since Mr. Martella is
12 appearing in both capacities, we have agreed that the
13 depositions noticed for Mr. Martella individually and
14 for M&M Engraving will just run concurrently.

15 MR. WARD: That's correct.

16

17 ANTHONY J. MARTELLA,
18 the witness hereinbefore named, being first duly
19 cautioned and sworn to tell the truth, the whole
20 truth, and nothing but the truth, testified as
21 follows:

22 EXAMINATION BY RECEIVER

23 LAWRENCE J. WARFIELD

24 BY MR. CRAWFORD:

25 Q. Good morning, Mr. Martella.

1 A. Good morning.

2 Q. Would you please state your full name and
3 address for the record?

4 A. Anthony Jodie, J-o-d-i-e, Martella. I
5 live at 3905 Flintridge Drive in Irving, Texas. I go
6 by Tony.

7 Q. Tony, my name is Kelly Crawford. We just
8 met a few minutes ago, and I am one of the attorneys
9 representing Lawrence Warfield, who has been appointed
10 the Receiver in a lawsuit that has been brought by the
11 Securities and Exchange Commission against Benjamin
12 Cook and others. Do you understand that?

13 A. Yes.

14 Q. Have you ever had your deposition taken
15 before?

16 A. I don't think I've had any taken.

17 Q. Do you understand that your testimony
18 here today is under oath just as if you were sitting

19 in front of Judge Buchmeyer or a jury?

20 A. Yes.

21 Q. And do you understand that you have an

22 obligation to tell the truth?

23 A. Yes.

24 Q. During the course of this deposition, I

25 will ask you a number of questions, and if at any time

9

1 I ask you a question that you do not understand, if

2 you would please let me know that you don't understand

3 it and I will try to rephrase it. Otherwise, when you

4 answer the question, I will assume that you have

5 understood the question. Can you agree to that?

6 A. Okay.

7 Q. And because you're appearing both in your

8 individual capacity and as the corporate

9 representative of M&M Engraving, any time I ask a

10 question that refers to you or ask whether you know

11 something, or for purposes of this deposition, the
12 word "you" shall mean you in your individual capacity
13 and in your capacity as an officer, shareholder,
14 director of M&M Engraving, or in your capacity as the
15 trustee of any trust or beneficiary of any trust, or
16 in your capacity as a partner of any partnership.

17 A. Okay.

18 Q. Have you discussed your deposition with
19 anybody?

20 A. Yes.

21 Q. Who have you discussed it with?

22 A. My attorney, Ken Ward.

23 Q. Anybody else besides Mr. Ward?

24 A. My sister, my cousin. I mean I'm not
25 sure what you mean by I've discussed it with them.

10

1 I've told them I'm coming to town.

2 Q. Right. And that's what I mean.

3 A. Friends. I mean no one of any concern.

4 Q. Have you discussed the substance of

5 your testimony of what you would testify about today

6 with anybody other than Mr. Ward, your attorney?

7 A. No. We haven't really had time. You-all

8 have not given me enough time to talk to anybody.

9 Q. When did you retain Mr. Ward to be your

10 attorney?

11 A. I don't know if it was in January? I

12 believe it was January.

13 Q. What's your fee arrangement with Mr.

14 Ward?

15 A. Well, as I understand it, he's

16 representing the investors, and that's what I am. I'm

17 an investor in this program.

18 Q. So what compensation are you paying

19 Mr. Ward for his representation?

20 A. I haven't discussed that with him yet.

21 Q. One thing that's important, Tony, for the
22 deposition to help the court reporter is to let me
23 finish my question first before you give a response,
24 because it's difficult for him to record both of us at
25 the same time.

11

1 MR. CRAWFORD: Let's mark this as Exhibit
2 1.

3 (Exhibit 1 marked.)

4 Q. Tony, I'm going to hand you what's been
5 marked as Exhibit 1, which is a copy of the Notice of
6 Subpoena Duces Tecum that was served upon you
7 individually. Do you recall receiving this from the
8 process server?

9 A. Yes.

10 Q. And attached to the subpoena, it requests
11 you to produce certain documents. Did you bring with
12 you today documents that are responsive to that

13 request?

14 A. Yes.

15 Q. Do you have those with you today?

16 A. Yes.

17 Q. Okay. For the record, you've just handed

18 me a stack of documents on -- let me ask you, is this

19 stack of documents that you've handed to me all

20 documents that you have in your possession that are

21 responsive to the documents that were requested in

22 Exhibit 1?

23 A. As far as I understand it, yes.

24 MR. CRAWFORD: Let's go off the record.

25 (Off-the-record discussion.)

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12

MARTELLA

3-16-00

1 MR. CRAWFORD: Let's go back on the

2 record.

3 Q. (By Mr. Crawford) Mr. Martella, would

4 you rather me refer to you as Tony?

5 A. Tony is fine.

6 Q Tony, I'm going to mark collectively,

7 we'll just mark all of these as Exhibit 2. And what

8 we're going to do is we'll have copies made of these

9 originals and the copies will be marked as Exhibit 2

10 after the deposition.

11 A. But I will get to bring those back with

12 me?

13 Q. Yes, sir. Yes, sir.

14 I'm going to hand you what I've marked,

15 copies of which will be marked as Exhibit 2, and these

16 are documents that you've just handed to me in

17 response to the subpoena duces tecum, which appear to

18 represent letters from Mr. Cook and monthly statements

19 regarding investments made by M&M Engraving or the

20 pension, M&M Pension Fund, is that correct? Is that

21 what those documents represent?

22 A. Yes. Can I ask a question?

23 Q. Sure.

24 A. Tell we what duces tecum means.

25 MR. WARD: I'm not sure anybody knows.

13

1 MR. HARRIS: It means --

2 MR. CRAWFORD: Just probably a Latin

3 expression.

4 MR. HARRIS: You don't give them to us,

5 we'll take them. No.

6 MR. WARD: That's not bad. That's not

7 bad.

8 THE WITNESS: Okay.

9 MR. CRAWFORD: No. What it means -- it

10 means that it's a request that you bring documents,

11 okay?

12 Q. (By Mr. Crawford) Now I'm handing you a

13 copy of which will be marked as Exhibit 3, and ask if

14 this is a package you received from Denel Finance

15 Limited regarding an investment to be made by M&M

16 Engraving in the Denel Investment Program.

17 A. Yes.

18 Q. Okay. And now I'll hand to you what you

19 have turned over to me, and a copy of which will be

20 marked as Exhibit 4, and ask you if this is a package

21 you received from Denel Finance Limited regarding an

22 investment in the Denel Finance Program.

23 A. Yes.

24 Q. And Exhibits 2, 3 and 4, then, represent

25 all documents in your possession that are responsive

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14

MARTELLA

3-16-00

1 to the subpoena, which has been marked as Exhibit 1,

2 is that correct?

3 A. That's correct.

4 MR. CRAWFORD: Let's mark this as Exhibit

5 5.

6 (Exhibit 5 marked.)

7 Q. I hand you what's been marked as Exhibit

8 5, which is a copy of another notice of subpoena duces

9 tecum on, it's directed to M&M Engraving and served

10 upon you by the process server. Do you recall

11 receiving that?

12 A. Yes.

13 Q. And that exhibit also requests the

14 representative of M&M Engraving to produce documents

15 within its possession that are responsive to the

16 request. Do you have any additional documents, other

17 than what you've already produced today, that are

18 responsive to that request?

19 A. No.

20 Q. Okay, Tony. I have got a few questions

21 just about your background. Where did you attend high

22 school?

23 A. Kimball High School in Dallas.

24 Q. And did you graduate?

25 A. Yes.

15

1 Q. What year did you graduate?

2 A. 1970.

3 Q. Did you attend any college after high

4 school?

5 A. Texas Tech.

6 Q. Did you obtain a degree from Texas Tech?

7 A. Yes.

8 Q. What year?

9 A. I think the diploma says '77. I left

10 Tech in '74 with one course to take, and I finally

11 took it in '77 and got it.

12 Q. What's your degree in?

13 A. Mechanical engineering.

14 Q. Have you had any other postgraduate

15 studies?

16 A. No.

17 Q. What's your current occupation?

18 A. Business owner.

19 Q. Okay.

20 A. I have a manufacturing company.

21 Q. And that's M&M Engraving?

22 A. M&M Engraving.

23 Q. What does M&M Engraving do?

24 A. Machine and sheet metal work.

25 Q. Does it engrave?

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16

MARTELLA

3-16-00

1 A. Well, on nameplates and front panels for

2 the aerospace and the electronic industry, yes, we do

3 some engraving.

4 Q. And where is the primary office of M&M

5 Engraving?

6 A. Grand Prarie, Texas.

7 Q. Does M&M Engraving have any other

8 offices?

9 A. No.

10 Q. Has M&M Engraving had any offices

11 overseas at any time?

12 A. No.

13 Q. How long have you been a business owner

14 with M&M Engraving?

15 A. I bought the business in 1986.

16 Q. Are you married?

17 A. Yes.

18 Q. And what's your wife's name?

19 A. Terry.

20 Q. How long have you been married? You

21 might get in trouble on this one.

22 A. 18 years. This year will be 18 years.

23 Q. And do you-all have any children?

24 A. We have three.

25 Q. Do you know Benjamin Cook?

17

1 A. Yes.

2 Q. How long have you known Mr. Cook?

3 A. I believe approximately nine years.

4 Q. And how is it that you first met

5 Mr. Cook?

6 A. I met him through business with M&M

7 Engraving.

8 Q. What business with M&M Engraving?

9 A. He purchased an item we had for sale.

10 Q. What was that?

11 A. A Universal wet concentrator.

12 Q. What does that do?

13 A. Concentrates ore.

14 Q. Why would one want to concentrate ore?

15 A. If you knew anything about the mining

16 industry, you don't process all the dirt. You

17 concentrate the dirt to get the precious metals to a

18 smaller amount. Then you process that smaller amount

19 of dirt so you don't have to process all of it. This

20 is a fast way to concentrate it so you can process the

21 smaller amount of ore.

22 That's the best explanation I can think

23 of quickly.

24 Q. Do you consider -- was Mr. Cook

25 introduced to you by somebody or did he just show up

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1 one day at the shop?

2 A. He called me on the phone.

3 Q. Do you consider Mr. Cook a personal

4 friend of yours?

5 A. Yes, I do.

6 Q. Has he ever been to your house?

7 A. No.

8 Q. Aside from selling Mr. Cook some

9 equipment from M&M Engraving, have you conducted any

10 other business with Mr. Cook?

11 A. Yes.

12 Q. What other business have you conducted

13 with Mr. Cook?

14 A. An investment in this program.

15 Q. Investment in the Dannel Investment

16 Program?

17 A. Yes.

18 Q. Have you conducted any other business

19 with Mr. Cook besides that?

20 A. Probably I have.

21 Q. Do you recall what that is?

22 A. I've made loans to Mr. Cook.

23 Q. What was the purpose of making loans to

24 Mr. Cook?

25 A. He needed the money. I don't know the

19

1 specific uses that he used it for.

2 Q. Did Mr. Cook repay those loans?

3 A. Some of them, yes; some of them, no.

4 Q. As we sit here today, are there some

5 loans that you made to Mr. Cook that have not been

6 repaid?

7 A. Yes.

8 Q. And what amount is still owing to you by

9 Mr. Cook? If you don't know exactly, a rough

10 estimate.

11 A. I really don't know even how to guess.

12 Maybe 100,000.

13 Q. Were those loans secured by any property?

14 A. I believe one of them may have been on

15 his house.

16 Q. Was that loan that was on his house

17 repaid to you?

18 A. I don't know that -- I don't know that

19 that particular note was paid.

20 Q. You don't know one way or the other?

21 A. Not without looking at the notes, and Ben

22 has the notes.

23 Q. Oh, you don't have possession of the

24 notes?

25 A. No. He kept all the records on that.

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1 Q. So you lent him money and Mr. Cook
2 executed notes, but you don't have the notes, is that
3 correct?

4 A. Not at this time I don't, no. I signed
5 them and sent them back to him.

6 Q. Do you know whether or not you have a
7 lien, currently have a lien on Mr. Cook's house?

8 A. Do I know? No. I don't know for sure.

9 Q. Okay. What other business have you
10 conducted with Mr. Cook besides the Dannel Investment
11 Program, selling him a piece of machinery, and making
12 loans to him?

13 A. That's all I can think of.

14 Q. When was the last time you talked to
15 Mr. Cook?

16 A. I believe I talked to him in October,
17 possibly November.

18 Q. Is it your testimony that you've had no

19 conversations with Mr. Cook since October or November?

20 A. That I can recall.

21 Q. And what was -- what did you and Mr.

22 Cook discuss in October or November?

23 A. That's when he was incarcerated, and we

24 talked about the place he's being held and how,

25 basically, we would like this case to be over with.

21

1 Q. And what did he tell you?

2 A. He said he's trying to get it solved, and

3 we can go on with our lives.

4 Q. Did this conversation occur while he was

5 in prison, or where did it occur?

6 A. Yeah. While he was in, being held in

7 Oklahoma, I believe.

8 Q. Okay. Have you visited Mr. Cook since

9 he's been in Seagoville?

10 A. No. I've been told you cannot visit him.

11 Q. So you went up to Oklahoma to visit

12 Mr. Cook?

13 A. No. This was over the phone.

14 Q. Oh, it was over the telephone. Okay.

15 When was the last time that you saw

16 Mr. Cook in person?

17 A. January the 19th, I believe.

18 Q. Was that at the court hearing?

19 A. Yes.

20 Q. Okay. Prior to January 19th, when was

21 the last time you saw Mr. Cook in person?

22 A. The court hearing before that. Do you

23 mean before he was incarcerated?

24 Q. Well, outside of seeing him in court,

25 when was the last time you saw Mr. Cook?

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1 A. Approximately April of '99.

2 Q. And what was the occasion of that
3 meeting?

4 A. He came to Dallas to talk with his
5 attorneys, and I picked him up at the airport and took
6 him to his attorneys, and then I picked him up from
7 his attorneys and took him back to the airport.

8 Q. Was Mr. Cook flying on a commercial
9 flight or did he have a private plane?

10 A. Commercial flight.

11 Q. What did you and Mr. Cook discuss at that
12 time?

13 A. Well, he told me that he had been served.
14 I guess you would call it served. I don't know if I'm
15 using the right terminology. He had been served with
16 a case and he was talking with his attorneys and
17 trying to get it solved.

18 Q. Did he tell you how it is that he's

19 trying to solve or resolve the case?

20 A. I don't know what you mean "how it is."

21 Q. Well, you've testified that Mr. Cook told

22 you on two different occasions, one when you were with

23 him taking him from the airport and then another time

24 over the telephone from when you talked to him when he

25 was in Oklahoma that Mr. Cook has said that he's

23

1 trying to resolve the case. And my question is, did

2 he tell you how it is he's trying to resolve the case?

3 A. It's hard to recall exactly what we

4 talked about and how his strategy was, no. I don't

5 know that he told me how he was going to solve it. He

6 just said they are working on it to get it solved, and

7 we talked about how the SEC has frozen all the

8 accounts, and he can't really do anything until he

9 gets that settled.

10 Q. Did he mention what accounts he said that

11 the SEC had frozen?

12 A. Yeah. Every account he had.

13 Q. Did he tell you that he had enough money

14 to repay the investors in the Dannel Investment

15 Program?

16 A. You know, I can't recall if he told me

17 that or if I've read that like on the Internet or

18 heard it from several different people.

19 Q. Well, you have money invested in the

20 Dannel Investment Program, is that correct?

21 A. That's correct.

22 Q. And are you concerned about that money?

23 A. As long as you-all are holding it, yes.

24 Q. Okay. Well, let me ask you this. Would

25 you like to get your money back?

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1 A. Yeah, sure.

2 Q. Okay. And if you're concerned about

3 getting your money back, did you ever ask Mr. Cook if

4 you were ever going to be able to get your money back?

5 A. Not directly.

6 Q. You never asked Mr. Cook, am I ever going

7 to be able to get my money back.

8 A. Not directly, because I know if it was up

9 to Ben, I would get my money back.

10 Q. And why is it that you say that?

11 A. From knowing him this long, I know he

12 would -- he does not take money from people that he

13 cannot pay back. He was very concerned about that.

14 Q. And what is the basis for your statement

15 that you know that?

16 A. My friendship with Ben. I mean --

17 Q. Is there any -- anything other than your

18 friendship with Ben Cook that is giving you an
19 assurance that you're going to get your money back if
20 it was up to Ben Cook?

21 A. I don't know that there's any -- no,
22 there's not.

23 Q. Did he ever tell you where the money is
24 located that he would have to pay you back?

25 A. No.

25

1 Q. So if I understand you correctly, what
2 you're telling me is that you have money invested with
3 Mr. Cook, and that simply because you've known Mr.
4 Cook for several years, you believe, based on that
5 friendship alone, that if it were up to him, he will
6 pay you back, is that correct?

7 A. Yes.

8 Q. And do you know, as we sit here today, if
9 Mr. Cook has possession or control of enough money to
10 pay you back?

11 A. I know that -- I do not know that.

12 Q. So despite the fact that you don't know

13 whether Mr. Cook has a penny to his name, you still

14 believe he has the means to pay you back. Is that

15 your testimony?

16 A. I'm not sure what you mean by means to

17 pay me back. I think he would make it possible to

18 have me paid back.

19 Q. And how is it that he would do that?

20 A. Through his workings. I don't know how

21 he will do it, but I still believe that he would be

22 able to do that.

23 Q. Has he ever mentioned to you that he has

24 -- that any money exists overseas that he has

25 possession or control of?

ALLEN, HARRIS, SHAW (214) 520-0333 DALLAS, TEXAS

1 A. Other than in these documents, no.

2 Q. And the documents you're pointing to, the
3 two folders regarding the Denel Investment Program
4 that you turned over today that have been marked as
5 Exhibits 3 and 4, correct?

6 A. Correct.

7 Q. And in those documents, isn't it correct
8 that there are representations made that your money
9 that's invested in those programs will be placed
10 overseas, is that correct?

11 A. I believe that's correct.

12 Q. And other than the documents, what's
13 stated in the documents, has Mr. Cook provided you
14 with any evidence whatsoever to indicate to you that
15 your money invested in the Denel Program was ever
16 sent overseas?

17 A. Any evidence? No.

18 Q. Has Mr. Cook at any time asked you to
19 assist him in the transfer of his assets since he has
20 been incarcerated?

21 A. No.

22 Q. Has he asked you to assist him in the
23 transfer of any of his assets since this lawsuit was
24 filed in March of 1999?

25 A. I'm not sure what you mean transfer of

27

1 assets. I paid an attorney and he repaid me.

2 Q. Who did you pay?

3 A. I'm not sure of the firm. It was Robert
4 Mowery.

5 Q. And that's at Locke Purnell?

6 A. Maybe that is, yeah.

7 Q. Where did you get Mr. Mowery's name?

8 A. That was Ben. Ben gave that to me.

9 Q. And why did he ask you -- what was your

10 understanding as to why he asked you to pay money to

11 Mr. Mowery?

12 A. They required a retainer. I took him a

13 check so he would start on the case.

14 Q. How much was the retainer?

15 A. \$10,000.

16 Q. Was the check made payable directly from

17 you to Liddell Sapp, Locke Liddell Sapp?

18 A. Yes.

19 Q. And then is it your testimony that after

20 you paid that retainer, Mr. Cook then paid you back

21 the \$10,000 that you paid for the retainer?

22 A. I had money wired to my account, yes.

23 Q. And was that money wired to your account

24 at the instruction of Mr. Cook?

25 A. I'm assuming that.

1 Q. Where did the money come from that was

2 wired into your account?

3 A. I don't know. It just shows up in my

4 bank statement as a wire.

5 Q. When was the -- when did you receive this

6 wire transfer?

7 A. I believe that was back in April,

8 approximately.

9 Q. How long after you paid the retainer to

10 Locke Liddell Sapp was it before you received the wire

11 transfer from Mr. Cook?

12 A. I never said it was from Mr. Cook. I

13 received a wire transfer approximately two to three

14 weeks later.

15 Q. Did you talk to any other person besides

16 Mr. Cook about the loan you were making to him for

17 payment of the legal fee retainer?

18 A. No.

19 Q. Did you talk to any other person

20 regarding repayment of that loan?

21 A. I don't recall talking to anybody about

22 it.

23 Q. Okay. Other than making a loan to

24 Mr. Cook for the payment of this retainer to Locke

25 Liddell Sapp, have you provided any other assistance

29

1 to Mr. Cook since this lawsuit was filed?

2 A. Yes.

3 Q. Okay. And what other assistance is that?

4 A. Getting court documents for other

5 attorneys, doing some mailings, basic stuff like that.

6 Q. You've made a loan to Mr. Cook. You've

7 picked him up and transported him from the airport,

8 correct?

9 A. Correct.

10 Q. And then you said you did some mailings

11 for Mr. Cook?

12 A. Yes.

13 Q. And mailings of what?

14 A. Legal papers.

15 Q. Legal papers signed by Mr. Cook?

16 A. I believe they were signed by Mr. Cook.

17 Q. And did Mr. Cook ask you to mail these or

18 did somebody else ask you to mail these?

19 A. Somebody else did.

20 Q. And who is that person?

21 A. Liz, Elizabeth.

22 Q. Elizabeth Danaker?

23 A. I believe that's her last name.

24 Q. And what did she ask you to do,

25 specifically?

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1 A. Pick up these documents from a notary
2 public and take them to the post office and mail them.
3 Oh, and I made copies of the document and had that
4 notarized.

5 MR. CRAWFORD: We'll mark this as Exhibit
6 6.

7 (Exhibit 6 marked.)

8 MR. NORRIS: Can we take a three-minute
9 break?

10 MR. CRAWFORD: All right. We'll take a
11 break.

12 (Brief Recess.)

13 MR. CRAWFORD: All right. We're back on
14 the record.

15 Q. (By Mr. Crawford) Tony, do you
16 understand even though we went off the record, you're
17 still under oath?

18 A. Yes.

19 Q. Okay. I am going to hand to you what is

20 marked as Exhibit 7, I'm sorry, Exhibit 6, which is

21 entitled Actual And Constructive Notice Of Compulsory

22 Counterclaim, directed to me. Have you seen that

23 document before?

24 MR. WARD: Make sure you look through the

25 whole thing, too.

31

1 A. Yes.

2 Q. What is this document?

3 A. I don't know.

4 Q. This is your signature that appears on

5 the page immediately prior to a copy of the docket?

6 A. Show it to me. It's not in there.

7 Oh, there it is. I looked for it and I

8 didn't see it.

9 Q. I'll hand you, it's part of the Exhibit

10 6, a document that appears to bear your signature

11 that's included in this exhibit, and it's a Copy

12 Certification By Document Custodian?

13 A. Yes.

14 Q Is that your signature?

15 A. Yes, it is.

16 Q. And why is it that you signed this?

17 A. So, from my understanding, this was to

18 make it more of a legal document, that I was

19 certifying that that is a true copy of the docket.

20 Q. Who asked you to sign this document?

21 A. Liz.

22 Q. Liz Danaker?

23 A. Yes.

24 Q. The following page appears to be a copy

25 of the docket in the SEC versus Cook case, is that

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1 correct?

2 A. Yes.

3 Q. And was this certified copy of the docket

4 obtained by you?

5 A. Yes.

6 Q. The docket also appears to have a

7 signature of Benjamin Cook. Do you recognize that as

8 Mr. Cook's signature?

9 A. That looks like it.

10 Q. Did you obtain the document, or was it

11 your understanding when you were obtaining a copy of

12 the docket in this case that you were doing so for the

13 benefit of your friend, Mr. Cook?

14 A. Yes.

15 Q. And when you signed the Certification By

16 Document Custodian, again, were you doing that for

17 your friend, Mr. Cook, to assist him?

18 A. Yes.

19 Q. And then if you'll turn to page 11 of 12,

20 the beginning, there again appears to be a signature

21 of Benjamin Franklin Cook, III. Do you recognize that

22 as Mr. Cook's signature?

23 A. Yes.

24 Q. Now, after you obtained the docket from

25 the court, did you take the certified copy of the

33

1 docket to Mr. Cook for him to sign this?

2 A. No, I didn't.

3 Q. Do you know who obtained that signature

4 from Mr. Cook?

5 A. No, I don't.

6 Q. And then did you then mail this document

7 out to various people?

8 A. I put it in the envelope and took it to

9 the post office, yes.

10 (Exhibit 7 marked.)

11 Q. Now I'll hand you what has been marked as

12 Exhibit 7, and entitled Actual And Constructive

13 Notice, and I'll direct you to the last page of that

14 exhibit, and ask you if that is your signature.

15 A. Yes, it is.

16 Q. Did you sign this before a notary public?

17 A. Yes, I did.

18 Q. And again, was it your understanding that

19 your purpose in signing this document was to try to

20 make this document a legal document?

21 A. I don't know if it would make it a legal

22 document, but it would be something on those lines,

23 yes.

24 Q. Who is David Gomez?

25 A. He's a notary at the bank where I have

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1 him notarize my signature.

2 Q. What bank is that?

3 A. Chase Bank.

4 Q. Who is Jane Clark, whose name appears on

5 the preceding page?

6 A. She is a notary.

7 Q. Do you know, have you ever met Ms.

8 Clark?

9 A. Yes, I have.

10 Q. Where is she a notary at?

11 A. Dallas.

12 Q. Who does she work for?

13 A. I don't know the name of her company.

14 Q. What does she do? Is she a secretary?

15 A. She's a notary -- I know her as a notary

16 public. I don't know what she does.

17 Q. Is she associated in any way with

18 Elizabeth Danaker?

19 A. Not that I know of.

20 Q. Did you go to her office at any time?

21 A. Yes.

22 Q. Okay. And who asked you to go to Ms.

23 Clark's office?

24 A. Liz.

25 Q. Does Ms. Clark know Mr. Cook?

35

1 A. She's -- I don't know what she knows. I

2 mean I think she's met him.

3 Q. Well, why is it that, or what was your

4 understanding as to how Ms. Clark was involved when

5 you went to her office?

6 A. She took some of these documents -- oh.

7 Q. Go ahead.

8 A. To get Ben to sign them. She was allowed

9 in to get him to get his signature, from what I

10 understand.

11 Q. Allowed in the prison?

12 A. Right.

13 Q. And who told you that?

14 A. She did.

15 Q. That's Ms. Clark, correct?

16 A. Yeah.

17 Q. Do you know if Ms. Danaker has visited

18 Mr. Cook while he's been in prison?

19 A. I think she has.

20 Q. On the third page of this document, is

21 that the signature of Mr. Cook?

22 A. You keep asking me that, and, you know,

23 I'm not a -- I don't know how to answer that. That

24 looks like it is.

25 Q. Well, do you have any reason to believe

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1 that that's not his signature?

2 A. No. That's what I mean. That's why I

3 believe it is. I think that would be his signature.

4 Q. And you've seen Mr. Cook's signature on

5 other letters and things to you, is that correct?

6 A. Well, on -- yes.

7 (Exhibit 8 marked.)

8 Q. Let me hand to you what's been marked as

9 Exhibit B, which is entitled Non-Negotiable Actual And

10 Constructive Notice. I'm sorry, Exhibit 8. It's

11 entitled Non-Negotiable Actual And Constructive

12 Notice. And ask if you've seen that document before.

13 A. Yes.

14 Q. Is that your signature that appears on

15 the last page of the document?

16 A. Yes.

17 Q. And did you sign this, then, in the

18 presence of a notary public at Chase Bank?

19 A. Yes.

20 Q. And again, was your purpose in signing

21 this document for the purpose of trying to make it a

22 legal document?

23 A. My purpose was to help Ben Cook.

24 Q. And did you believe that you would be

25 helping Mr. Cook by, in your opinion, making this a

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MARTELLA

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1 legal document by signing this document?

2 A. I don't know that I would make it a legal

3 document by doing that, but I thought by my signature

4 on that, it would help, yes.

5 Q. To your knowledge, was this document ever

6 filed with the State of Washington?

7 A. From my understanding, it was.

8 Q. Okay. Do you know if this document was

9 filed in any other jurisdiction?

10 A. No.

11 Q. Did you assist in the mailing of this

12 document?

13 A. I don't know that I did on this document.

14 Q. You don't know one way or the other?

15 A. Right.

16 Q. You don't recall?

17 A. I don't recall mailing this document, no.

18 Q. Okay. Do you know who did mail that

19 document?

20 A. No.

21 Q. Did you assist in the mailing of the

22 document that has been marked as Exhibit 7?

23 A. Would you show me what they were mailed

24 in? I can't recall.

25 MR. CRAWFORD: I'll hand to -- let's mark

1 this as Exhibit 9.

2 (Exhibit 9 marked.)

3 Q. I will hand to you what's been marked as

4 Exhibit 9, which I will represent represents the

5 envelope that was received by me from, with a return

6 address of Benjamin Franklin Cook, in which one of

7 those documents was contained, and ask if you recall

8 mailing, assisting in the mailing of that envelope.

9 A. I don't believe this one I did.

10 MR. CRAWFORD: Okay. Let's mark this as

11 Exhibit 10.

12 (Exhibit 10 marked.)

13 Q. Tony, I'll hand to you what's been marked

14 as Exhibit 10, which I will represent is another

15 envelope I received from Express Mail containing one

16 of those exhibits, and ask if you participated in the

17 mailing of that envelope.

18 A. Yes. I believe that's the one I've

19 testified that I already have.

20 Q. And is that your handwriting that appears

21 on the address column on the front of the exhibit that

22 has my name?

23 A. No.

24 Q. Do you know whose handwriting that is?

25 A. No.

39

1 Q. Looking back at Exhibit 8, the second

2 page refers to Mr. Cook, and has an address of South

3 Decatur Boulevard in Las Vegas, Nevada. Do you know

4 whose address that is?

5 A. No.

6 Q. Have you ever been to that address?

7 A. No.

8 Q. Who were these documents that we've

9 marked as Exhibits 6, 7 and 8 mailed to?

10 A. How can I answer? There was like 28 of

11 them. I don't know who they were all mailed to. I

12 didn't make the list up.

13 Q. Who made the list of who they were to be

14 mailed to?

15 A. I don't know.

16 Q. Was it your understanding that the people

17 to whom they were directed were people whom Mr. Cook

18 considered to be adversaries of him?

19 A. No.

20 Q. How was it that the names to whom these

21 documents were directed came about?

22 A. They were sent to me already made up.

23 Q. Well, you testified earlier that you

24 thought by signing these documents and helping in the

25 mailing of at least some of these documents that you

1 were helping your friend, Ben Cook, right?

2 A. Right.

3 Q. And how is it that you believe you were
4 helping Mr. Cook by signing these documents and
5 mailing them out?

6 A. Because I still think Ben can help the
7 investors get all of their money back, but not while
8 the SEC is interfering in keeping him incarcerated.

9 Q. And so is it your testimony that you
10 believe by helping Mr. Cook in sending these documents
11 out that it would cause the SEC to stop prosecuting
12 Mr. Cook?

13 A. Not stop prosecuting him, but bring the
14 case to a close so we can get on with business.

15 Q. Was it your intent in helping your
16 friend, Mr. Cook, that by helping with the preparation
17 and sending out of these documents that it might

18 expedite the release of Mr. Cook from prison?

19 A. I was hoping that. Now, I don't know

20 that it would, but sure, I want him out.

21 Q. And you thought that these might help

22 that, is that correct?

23 A. Yeah. But, now, let me say. I did not

24 prepare any of these documents.

25 Q. Is it your understanding that --

41

1 A. I mean --

2 Q. -- that since Mr. Cook signed these

3 documents that they were prepared at his request?

4 A. I don't know that he would request it. I

5 mean I would think an attorney would have sent it to

6 him. I don't know how they were prepared. That's

7 what I'm trying to say. I did not -- I'm not in the

8 legal business. I didn't prepare any of this, other

9 than obtaining copies. And how they were drawn up, I

10 have no idea.

11 Q. Well, when you were signing these

12 documents and assisting in the mailing, you saw that

13 Mr. Cook had signed these documents, correct?

14 A. Yes.

15 Q. And when you signed these and assisted in

16 the mailing, did you believe that Mr. Cook also wanted

17 these documents to go out?

18 A. Well, sure he did.

19 Q. Have you ever heard of a person by the

20 name of Lonnie Smith?

21 A. Lonnie who?

22 Q. Lonnie Smith?

23 A. I don't believe it's Smith.

24 Q. Okay. What is it?

25 A. It's Schmitz.

1 Q. Schmitz? Who is Lonnie Schmitz?

2 A. I understand he's a paralegal helping

3 Ben.

4 Q. Have you met Mr. Schmitz?

5 A. Yes.

6 Q. Where does he live?

7 A. California.

8 Q. When did you meet Mr. Schmitz?

9 A. Was it when? At one of the hearings.

10 Q. The hearing of January?

11 A. It may have been December.

12 Q. And did you talk to Mr. Schmitz when you

13 met him?

14 A. Yes.

15 Q. Did you talk to him at the courthouse?

16 A. Yes.

17 Q. How long did you talk?

18 A. 10, 15 minutes.

19 Q. What did Mr. Schmitz tell you?

20 A. I cannot really recall. We just, in

21 general, talked about the case.

22 Q. What do you recall talking about the

23 case?

24 A. About how we needed to get it solved so

25 everyone could get their money back.

43

1 Q. And did Mr. Schmitz lead you to believe

2 that if Mr. Cook were let go out of prison that he

3 would be able to get everybody's money back?

4 A. I don't know that he did, no.

5 Q. Was it your understanding, or do you have

6 an opinion that if Mr. Cook were released from prison

7 that he would be able to get everybody's money back?

8 A. My opinion, yes.

9 Q. And if Mr. Cook were released from prison

10 and had no restraints from the SEC, how is it that

11 Mr. Cook will get your money back?

12 A. Exactly, I have no idea, but I still feel

13 that the money is somehow in the program and can be

14 returned.

15 Q. And the basis for your belief, as I

16 understand it, is simply your friendship with

17 Mr. Cook, is that correct?

18 A. That's correct.

19 Q. And you have no other basis for your

20 belief that the money is still in the program, other

21 than you're friends with Mr. Cook.

22 A. If you're talking about written evidence,

23 no.

24 Q. Well, have you heard anything from

25 anybody that would suggest that money is still in the

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1 program somewhere?

2 A. Well, I've read on the Internet, the

3 bulletin board on the Internet. I read that a lot. A

4 lot of people seem to think that it's there. I still

5 think the money is somewhere and can be returned, yes.

6 Q. And the basis for your belief is your

7 friendship with Mr. Cook and what you've read on the

8 Internet, is that correct?

9 A. Yeah.

10 Q. What specifically have you read on the

11 Internet that leads you to believe that the money is

12 still in the program?

13 A. It seems to me that letters written on

14 the bulletin board have said that.

15 Q. And do you know who's the author of those

16 letters?

17 A. No.

18 Q. For all you know, it could be somebody
19 who's not even an investor in this program, correct?

20 A. For all I know, it could be you.

21 Q. Right. For all you know, it could be
22 Bill Clinton, is that correct?

23 A. Right. It could be anybody.

24 MR. NORRIS: Off the record.

25 (Off-the-record discussion.)

45

1 MR. CRAWFORD: Let's go back on the
2 record.

3 Q. (By Mr. Crawford) Was it your
4 understanding, Tony, I'm not asking if anybody told
5 you this, but was it your understanding when you
6 prepared or -- strike that. Let me strike that.

7 Tony, when you -- is it your
8 understanding when you signed what we've marked as
9 Exhibits 6, 7 and 8 that Mr. Cook had picked the

10 persons to whom those pleadings would be directed?

11 A. It's not my understanding at all.

12 Q. Then what is your understanding?

13 A. I have no idea who and why they were sent

14 out.

15 Q. Did you have any discussions with anybody

16 regarding why these documents should be sent out and

17 to whom they should be sent out to?

18 A. No. Because I still don't understand

19 them myself.

20 Q. But I believe you testified earlier that

21 when you did sign these documents and sent them out,

22 you wanted to do it to help Mr. Cook, because you

23 believed that that might expedite his release from

24 prison, is that correct?

25 A. Yes, would release, or expedite his

1 release, but also help the case come to a conclusion.

2 Q. And isn't it true that these documents

3 were sent to witnesses who had chosen to cooperate

4 with the SEC?

5 A. I don't know that.

6 Q. And isn't it true that these documents

7 were sent to Judge Buchmeyer?

8 A. I believe Buchmeyer was one that got one,

9 yes.

10 Q. Isn't it true that these documents were

11 sent to officials with the SEC, including Mr. Norris?

12 A. I believe so, yes.

13 Q. And isn't it true that these documents

14 were directed to the Receiver and the Receiver's

15 attorneys, including me in this case?

16 A. I believe so, yes.

17 Q. Have you had any other discussions with

18 Lonnie Schmitz other than your 10-minute conversation

19 with him at the courthouse?

20 A. Yes.

21 Q. What other conversations have you had

22 with him?

23 A. I've asked him about the status of the

24 writ of habeas corpus.

25 Q. When did you ask him about that?

47

1 A. I guess that was in -- it was filed in

2 December or January.

3 Q. Is it your understanding that Mr. Schmitz

4 prepared the writ of habeas corpus?

5 A. I don't know who prepared it.

6 MR. CRAWFORD: Let's go off the record.

7 (Off-the-record discussion.)

8 MR. CRAWFORD: Back on the record.

9 Q. (By Mr. Crawford) And as I understand

10 it, Mr. Schmitz is providing legal advice to Mr. Cook

11 in this case, is that correct?

12 A. You may understand that. I don't.

13 Q. I thought you said he was a paralegal who
14 was advising Mr. Cook.

15 A. I said he's a paralegal. Now, I don't
16 know what he is doing for Mr. Cook.

17 Q. Well, do you have an understanding that
18 he is assisting Mr. Cook?

19 A. In what way?

20 Q. In any way.

21 A. Well, yeah, like I'm assisting him, too.

22 Q. Well, how is Mr. Schmitz assisting
23 Mr. Cook?

24 A. Probably -- I don't really know. I mean
25 I know he's a paralegal, so that would make me think

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1 he's giving him some legal advice, but I don't know

2 what he's doing. I haven't seen what he's sent to

3 Ben.

4 Q. Do you know if he has participated or

5 assisted in the preparation of the exhibits that we've

6 marked as Exhibits 6, 7 and 8?

7 A. I don't know that. I don't believe he

8 is.

9 Q. And do you know if he's assisted or had

10 any role whatsoever in the writ of habeas corpus?

11 A. I think he had some role in that. I

12 don't know that for sure.

13 Q. Well, you called him to inquire about

14 status of the writ of habeas corpus, correct?

15 A. Yeah.

16 Q. Okay. Well, isn't it true that you must

17 have known that he had something to do with the writ

18 of habeas corpus if you decided to call him, correct?

19 A. I knew he may know something about the

20 status of it, and that's why I called him.

21 Q. And how is it that you knew he knew

22 anything about the writ of habeas corpus?

23 A. At the hearing, that's what we talked

24 about.

25 Q. Did he tell you at the hearing that he

49

1 was filing a writ of habeas corpus?

2 A. I don't know that he said he was filing

3 it. He said one would be filed.

4 Q. What else did he tell you about filing a

5 writ of habeas corpus?

6 A. That they're not very well understood,

7 but they are a good way to do some legal processes. I

8 don't remember exactly.

9 Q. When you called him to ask about the writ

10 of habeas corpus, what did he tell you?

11 A. He's saying that they haven't paid much

12 attention to them.

13 Q. Who's the "they?"

14 A. The court, or I guess the judicial

15 system.

16 Q. Do you know if Mr. Schmitz has been out

17 to the prison to visit Mr. Cook?

18 A. I don't know that. It's my understanding

19 no one can go and visit Ben unless they're next of

20 kin.

21 Q. And who's given you that understanding?

22 A. The prison. I called them.

23 Q. And who did you ask at the prison?

24 A. Whoever answered the telephone.

25 Q. Has Mr. Schmitz given you any opinion

1 about this lawsuit by the SEC?

2 A. We've talked about it, and yeah, I'm sure

3 we discussed our, each of our opinions, yes.

4 Q. And what was his opinion that he

5 expressed to you?

6 A. From what I recall, he didn't think that

7 there should be a lawsuit, same as I do.

8 Q. And why is that?

9 A. Because I cannot see any harm done until

10 the SEC came in and stopped it.

11 Q. What did Mr. Schmitz say about the Denzel

12 Program?

13 A. I don't know that he said a lot about the

14 program. He talked more about the lawsuit.

15 Q. Okay. What did he say about the lawsuit?

16 A. I've already told you what I can recall.

17 Q. I'm going to have you look back at

18 Exhibit 5, and attached to Exhibit 5 is a list of what

19 we've entitled Receivership Assets. Do you see that?

20 A. Yes.

21 Q. For your information, this is the

22 definition of receivership assets that the Receiver

23 has been ordered and authorized by the court to

24 retrieve in this lawsuit, and I'd like to go through

25 this with you.

51

1 A. Okay.

2 Q. Do you know the location of any property

3 that is owned by, controlled by, or held in the name

4 of Benjamin Franklin Cook?

5 A. Yeah.

6 Q. Okay. What property?

7 A. His home.

8 Q. Okay. Anything other than his home?

9 A. No.

10 Q. Do you know the location of any property

11 owned by, or controlled by, or held in the name of

12 Dannel Finance Limited?

13 A. You know, they had an office on

14 Darlington Road. I believe I've seen an address, and

15 that's all.

16 Q. And when I ask you these questions, I'd

17 like you to let me know if you've heard anything from

18 anybody, not whether you actually know about the

19 existence or not. I'd like to know as well if anybody

20 has told you about the existence of any assets, which

21 would include bank accounts or property, real property

22 or personal property.

23 Have you ever talked to Mr. Gerald Pate?

24 A. Yes.

25 Q. And isn't it true that you told Mr. Pate

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1 that Ben Cook was a friend of yours and that he
2 shouldn't worry, because all the money would be repaid
3 to the investors?

4 A. Yeah. I probably told him that.

5 Q. Do you have any knowledge or have you
6 heard of the location of any property owned by,
7 controlled by, or held in the name of Gerald Pate?

8 A. No.

9 Q. Have you ever met Wayne McLaws?

10 A. Yes.

11 Q. When did you first meet Mr. McLaws?

12 A. Sometime in '98. Maybe July,
13 approximately.

14 Q. Where did you meet Mr. Pate, or Mr.
15 McLaws? I'm sorry.

16 A. In Phoenix.

17 Q. Was that at a meeting to discuss the

18 Dannel Program?

19 A. Yes.

20 (Exhibit 11 marked.)

21 Q I'll hand you what's been marked as

22 Exhibit 11, which is a list of attendees at a meeting

23 in Phoenix, Arizona of July 10th of 1998 that includes

24 your name on this list. Do you recall attending such

25 a meeting?

53

1 A. Yes.

2 Q. And is Terry Martella, is that your wife?

3 A. Yes.

4 Q. Was she with you at the meeting?

5 A. Yes.

6 Q. And is this a meeting that you refer to

7 that you met Mr. Wayne McLaws?

8 A. I met him at that meeting, yes. I'm not

9 saying that's the first time, but I met him there.

10 Q. You had met Mr. McLaws prior to that
11 time?

12 A. Possibly. I don't know. Like I say, it
13 was around July. I don't know exactly. I don't
14 remember if I was there before that or not, but this
15 could possibly have been the first time.

16 Q. Okay. And have you met with Mr. McLaws
17 since that meeting in July of 1998?

18 A. Yeah. At, I believe, another meeting,
19 and then he came here for the hearing in January.

20 Q. Have you met with Mr. McLaws since the
21 hearing in January?

22 A. No.

23 Q. Do you have any knowledge or have you
24 heard of any property that is owned by, controlled by,
25 or held in the name of Mr. McLaws?

1 A. No.

2 Q. Are you familiar with Alan Clagg?

3 A. I've met Alan at this meeting.

4 Q. This is the same meeting in July of 1998?

5 A. Yes.

6 Q. And do you recall meeting with Mr. Clagg

7 after that meeting in July of 1998?

8 A. I don't recall meeting him after the

9 meeting. It was during the meeting.

10 Q. Have you seen Mr. Clagg since this

11 meeting in July of 1998?

12 A. No.

13 Q. Are you aware of any property or have you

14 heard of any property owned by, controlled by, or held

15 in the name of Mr. Clagg?

16 A. No.

17 Q. Are you familiar with a partnership

18 called FPC-1 Limited Partnership?

19 A. I've heard of it.

20 Q. Where have you heard of it from?

21 A. I believe at one of these meetings, and

22 then the court documents that I've been looking --

23 that I've received.

24 Q. Okay. And is it your understanding that

25 FPC-1 Limited Partnership is an entity that is

55

1 controlled by Mr. Cook?

2 A. No.

3 Q. What is your understanding as to who

4 controls that partnership?

5 A. I don't know who controls it.

6 Q. Have you heard of, or do you know of any

7 property that is owned by, controlled by, or held in

8 the name of FPC-1 Limited Partnership?

9 A. No.

10 Q. Have you heard of the Samuel Limited

11 Partnership?

12 A. Through the court papers is all.

13 Q. Have you heard of Alliance Investment

14 Corporation?

15 A. Alliance? Yes.

16 Q. And you've had dealings with Alliance for

17 quite some time, is that correct?

18 A. Yes.

19 Q. And who controls Alliance, in your

20 opinion?

21 A. From my understanding, that was one of

22 Ben's companies well before Dannel Finance.

23 Q. And you and M&M Engraving actually

24 invested money with Alliance Investment, or through

25 Alliance Investment Corp., is that correct?

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1 A. No. I don't know that I invested with.

2 I loaned money to.

3 Q. And does Alliance Investment Corp. owe

4 you or M&M Engraving any money --

5 A. Yes.

6 Q. -- on those loans?

7 And do you know the balance of how much

8 is owing on those loans?

9 A. Not really.

10 Q. Do you know of any property or have you

11 heard of any property that is owned by, controlled by,

12 or held in the name of Alliance Investment Corp.?

13 A. No.

14 Q. Are you familiar with Cornerstone

15 Management?

16 A. No.

17 Q. Are you familiar with International

18 Business Consultants Limited?

19 A. I've heard the name. I think that was a

20 company that Ben had.

21 Q. Are you familiar with a company called

22 Highlander Limited Partnership?

23 A. No.

24 Q. What I'd like you to do now, if you can,

25 just to sort of expedite things, is look at paragraph

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1 five on this list of receivership assets, and there's

2 a number of different entities and persons that are

3 listed there. And if you would take a moment and go

4 through there and let me know if you've heard of or

5 are aware of any of those entities.

6 A. Well, I see Clagg Family Trust, Clagg

7 Insurance. I'm assuming those are Alan Clagg's.

8 Collateral Equity, yes, I've heard of them. Teri

9 Cook. Dunhil Financial I've heard of. Dorothy Groves

10 McLaws is Wayne's wife. Tri-Venture Group I've heard

11 of. And that's about it.

12 Q. Okay. So in paragraph five, the ones

13 that you've heard are Collateral Equity Corporation,

14 Teri Cook, Dunhil Financial, Dorothy McLaws,

15 Tri-Venture, and Clagg Family Trust and Clagg

16 Insurance Services.

17 A. Right.

18 Q. Have you done any business with any of

19 these persons or entities?

20 A. Seem like Tri-Venture Group at one time,

21 I made a loan to, and we moved it over to Collateral

22 Equity.

23 Q. Okay. Do you have any current business

24 relationships with Tri-Venture?

25 A. I don't know that it's still in business.

1 Q. So the answer is no?

2 A. So yeah, I'm assuming no.

3 Q. Does Tri-Venture owe you any money?

4 A. Like I say, I think we switched it over

5 to Collateral Equity, so I can't be certain that it's

6 in that name or which name. It's one of the two.

7 Q. Dunhil Financial, have you done any

8 business with Dunhil Financial?

9 A. No. I've just seen a card with that name

10 on it.

11 Q. You saw a card with the name on it?

12 A. A business card.

13 Q. Okay. Who gave you the business card, if

14 you recall?

15 A. I believe it was Ben.

16 Q. And Collateral Equity Corporation, you've

17 made loans to them, is that correct?

18 A. Yes.

19 Q. Have you sold any product to Collateral

20 Equity Corporation?

21 A. I don't believe so. I mean I don't know

22 who I sold the wet concentrator to.

23 (Exhibit 12 marked.)

24 Q. I'll hand you what's been marked as

25 Exhibit 12, which is a document entitled Trust

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1 Information Sheet. It refers to a trust in the name

2 of Seagram Downs Trust, the trustee as Collateral

3 Equity Trust, and the beneficiary as Tony Martella.

4 Are you familiar with this trust?

5 A. No.

6 Q. Have you ever been the beneficiary of any

7 trust?

8 A. Yes.

9 Q. What trusts have you been the beneficiary

10 of?

11 A. My father's.

12 Q. What was the name of your father's?

13 A. Estate of Anthony J. Martella.

14 Q. Any other trusts besides your father's

15 trust that you've been a beneficiary of?

16 A. Not that I can really remember.

17 Q. So is it your testimony you've never been

18 the beneficiary of a trust named Seagram Downs Trust?

19 A. This is the first time I've heard of

20 Seagram Downs Trust. So my answer would be yes.

21 Q. Do you know if Collateral Equity Trust

22 has ever served as a trustee of a trust?

23 A. I don't know that.

24 Q. Have you ever seen this document before?

25 A. No.

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1 (Exhibit 13 marked.)

2 Q. Tony, I'll hand you what's been marked as

3 Exhibit 13, which is a United Parcel Service invoice.

4 Looks like it's written in some foreign language, but

5 refers to M&M Engraving at the top. Have you seen

6 this document before?

7 A. No. Not this document.

8 Q. Do you have any idea what this document

9 is referring to?

10 A. Well, I see it says VCR and ladies mink

11 coat.

12 Q. Do you know if M&M Engraving was ever

13 involved in the shipment of a VCR and ladies mink

14 coat?

15 A. M&M Engraving wasn't involved in the

16 shipment. I allowed Ben to use my account to ship

17 things from Switzerland to here, but I wasn't involved

18 in the shipment, other than allowing him to use my
19 account so he could do it more expediently.

20 Q. And these were statements that were made
21 from the United States overseas, is that correct?

22 A. I don't know.

23 MR. WARD: I think it's the opposite.

24 A. I thought it was from there to here. I
25 don't know.

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1 Q. This was an account, though, that was
2 used by Mr. Cook for shipments overseas?

3 A. He used my account, yes.

4 Q. Why was he using your account rather than
5 doing it in his own name or in the name of one of his
6 own entities?

7 A. Because I was paying the bills as a loan
8 and he would repay me later, I think, from what I can
9 recall that far back.

10 Q. Do you know a person by the name of

11 Patricia Arton?

12 A. I've spoke with her, yes. I know of her.

13 Q. What do you know about Patricia Arton?

14 A. She's a very good typist.

15 Q. Does she work for Mr. Cook, or did she

16 work for Mr. Cook?

17 A. She was associated with him. I don't

18 know if she was working for him, but I know she was

19 associated somehow, and how the association is, I'm

20 not clear.

21 Q. Did she type things for you or Mr. Cook?

22 A. She never typed anything for me that I

23 can recall. I think -- that's why I think she's a

24 good typist is because I think Ben would have her type

25 stuff up.

1 MR. CRAWFORD: Let's mark this as 14.

2 (Exhibit 14 marked.)

3 Q. Let me hand you what's been marked as

4 Exhibit 14, which is another similar invoice in the

5 name of M&M Engraving that refers to, it looks like

6 the shipment of some toys. And again, was this

7 reflecting shipments that were made by Mr. Cook using

8 your account?

9 A. Would you ask me that again?

10 Q. Were these -- does this reflect shipments

11 that were made by Mr. Cook using your account?

12 A. From the document you handed me, it

13 appears that way. I don't know.

14 Q. Was Mr. Cook living overseas at this

15 time, or was he in the United States?

16 A. In '94, I believe he was overseas in

17 Geneva.

18 Q. He was living in Geneva?

19 A. I believe.

20 Q. Do you know what the account number was

21 that Mr. Cook was using?

22 A. That's what I was trying to figure out

23 here. My account number ends with a 183, I believe.

24 I can't remember, and I don't see it on here, so I

25 don't know what this really is.

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1 Q. Have you ever heard of a person by the

2 name of M. Roukos, R-o-u-k-o-s?

3 A. No.

4 Q. Never heard that name before?

5 A. No.

6 Q. What was your understanding of what

7 Mr. Cook was doing in Switzerland when he was over

8 there?

9 A. My understand -- well, part of my

10 understanding was he was trying to get a program set

11 up.

12 Q. An investment program set up?

13 A. Yes.

14 Q. Did you know Mr. Cook before he went over

15 to Switzerland in 1994?

16 A. Yes.

17 (Exhibit 15 marked.)

18 Q. Did Mr. Cook ever talk to you about an

19 international blacklist?

20 A. Well, I'm not real sure what an

21 international blacklist is you're referring to. Now,

22 is that in the banking industry?

23 Q. Well, or in the investment industry.

24 Let's just say that. That's a little bit broader.

25 A. Well, I understood that if you do certain

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1 transactions, then you could be put on a blacklist in
2 Europe or overseas and not be able to transact
3 business with the banks there.

4 Q. And what kind of transactions would you
5 have to do to be put on the blacklist? What was your
6 understanding?

7 A. I don't know exactly. Things that the
8 banks didn't like. If you went in and lied to them or
9 you went and represented documents that were not true,
10 you would be blacklisted.

11 Q. Who would prepare the blacklist, was it
12 your understanding?

13 A. The bankers.

14 Q. Who told you this information about the
15 blacklist?

16 A. I don't know who told me, if I read it
17 off the Internet, or if I talked with Ben about it, or

18 if I talked to other friends about it. I've talked to
19 many, many people over the years about these type of
20 investments.

21 Q. Would it not surprise you if you had
22 talked to Mr. Cook about it?

23 A. No.

24 Q. Let me hand you what's been marked as
25 Exhibit 15, which is entitled International Black

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1 List, and ask if you've seen this list before.

2 A. No, I haven't.

3 Q. Did Mr. Cook tell you whether he was ever
4 put on an international blacklist?

5 A. No.

6 Q. Do you recognize any of the names on this
7 blacklist?

8 A. That's what I was trying to do. I was
9 trying to recognize some of them. I don't see any

10 that I know.

11 MR. WARD: Off the record.

12 (Lunch Recess.)

13 MR. CRAWFORD: We're ready to go back on

14 the record.

15 Q. (By Mr. Crawford) Tony, I had a couple

16 of questions, follow up on what we talked about

17 earlier. Jane Clark, who signed Exhibits 6, 7 and 8,

18 I believe you testified that you understood that she

19 had visited Mr. Cook in prison? Is that your

20 understanding?

21 A. She took these documents and got him to

22 sign them. If that's considered a visit, yes.

23 Q. Is she related to Mr. Cook, to your

24 knowledge?

25 A. Not that I know of.

1 Q. I thought you had testified earlier that
2 they told you that only immediate family could visit
3 with Mr. Cook.

4 A. Well, other than attorneys, and she's a
5 notary, so maybe she got in under the aspects of being
6 a notary.

7 Q. What was the name of the office that she
8 works at?

9 A. I don't know. It's over off of
10 Mockingbird and Central, in that area.

11 Q. Is it her own business, or is it for a
12 law firm? Does she work for a law firm?

13 A. No. I don't think it's a law firm.

14 Q. You don't recall the name of her
15 business?

16 A. No. Because it wasn't written on the
17 door. It's Suite 100.

18 Q. Okay. Do you know if Mr. Cook has

19 provided Ms. Clark with any money?

20 A. I don't know that.

21 Q. Have you ever heard that?

22 A. No.

23 Q. Do you know if, or have you heard that

24 Mr. Cook is having a passport, new passport prepared?

25 A. A new passport? No.

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1 Q. Well, have you heard that Mr. Cook is

2 having any type of a passport prepared?

3 A. No.

4 Q. Have you ever traveled overseas with

5 Mr. Cook?

6 A. No.

7 Q. Now, we were talking about your

8 assistance of Mr. Cook since this lawsuit was filed,

9 and we've covered you picking him up at the airport,

10 you loaning him money for the retainer to the law

11 firm, and signing and mailing the documents that have
12 been identified as Exhibits 6, 7 and 8. Aside from
13 those activities, have you provided any other
14 assistance to Mr. Cook since the lawsuit was filed?

15 A. No.

16 Q. Has Mr. Cook or any of his associates
17 ever mentioned any offshore accounts that either he or
18 somebody connected with the Denzel Program has access
19 to?

20 A. That's hard to answer. I don't know of
21 any offshore accounts that Denzel has. So we may have
22 discussed the thing before, but I don't remember
23 anybody telling me about any offshore accounts. I
24 mean in the program, there's supposed to be offshore
25 accounts. That's the only offshore accounts that I

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1 know of.

2 Q. Any discussions since the lawsuit was

3 filed about the existence or nonexistence of any

4 offshore accounts?

5 A. No.

6 Q. You've not been a party to any

7 discussions?

8 A. Well, now, I'm sure I've mentioned that I

9 still think there's some accounts offshore. Now, I

10 mean as far as specific accounts, no. In general,

11 probably, but nothing about any specifics. Just

12 speculation, yes.

13 Q. Okay. And the speculation, again, is

14 based on what you've read on the Internet and in your

15 own personal friendship?

16 A. Right.

17 Q. I will tell you, Tony, that one of the

18 Receiver's jobs is to try to recover receivership
19 assets, and the receivership assets that are to be
20 recovered are then subject to the jurisdiction of the
21 court and are then to be distributed to the claimants,
22 the investors.

23 A. And when will that happen?

24 Q. And what I'm asking for you to do today
25 under oath is to provide me with any information that

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1 you have that would help the Receiver locate and
2 retrieve those assets.

3 A. And that's what I've tried to do, but
4 other than the money I've put in there, I don't know
5 of any assets that -- I mean why would I know of any?
6 I don't know of any.

7 Q. Okay. If we can finish going through
8 this list on receivership assets that you have before
9 you, I think that was part of Exhibit 5. And we had

10 gone through the persons or entities that you had any
11 familiarity with in paragraph five, and we've talked
12 about your dealings with Collateral Equity
13 Corporation. Are you aware of any assets that are
14 owned, controlled by, or held in the name of
15 Collateral Equity Corporation?

16 A. No.

17 Q. Has anybody told you of any property that
18 might be owned by, controlled by, or held in the name
19 of Collateral Equity Corporation?

20 A. Not that I can recall.

21 Q. Have you had any dealings since the
22 lawsuit started with Collateral Equity Corporation?

23 A. No.

24 Q. Have you ever met Teri Cook?

25 A. Yes.

1 Q. When did you meet Ms. Cook for the first
2 time?

3 A. It was, again, I believe it was around
4 July of 1998.

5 Q. And that would have been at the meeting
6 that you attended with regarding the Dannel Program
7 that was referenced on Exhibit 11?

8 A. I believe so, yes.

9 Q. Did you understand at that time that she
10 was married to Mr. Cook?

11 A. That was my understanding, yes.

12 Q. Okay. Have you had any conversations
13 with Teri Cook since that time in July of 1998?

14 A. No.

15 Q. Are you aware of any property that is
16 owned by, controlled by, or held in the name of Teri
17 Cook?

18 A. No.

19 Q. Have you heard of any property that might
20 be owned by her or controlled by her or held in her
21 name?

22 A. Teri Cook?

23 Q. Yes.

24 A. No.

25 Q. Have you heard of Mr. Cook transferring

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1 any property that he owns to Teri Cook?

2 A. If they were married, I thought -- was

3 Nevada not a community state law? I don't know of any

4 that they transferred, no.

5 Q. And the Clagg Family Trust and Clagg

6 Insurance Services, have you heard of, or do you know

7 of any property that is owned by that entity or

8 controlled by that entity or held in the name of that

9 entity?

10 A. No. I just say I recognize that name as

11 being Alan's. I don't know the company or any of

12 their dealings.

13 Q. And with Dorothy McLaws, do you know of

14 any property owned by her or controlled by her or held

15 in her name?

16 A. No.

17 Q. Have you ever met C. Kelly Olsen?

18 A. Yes.

19 Q. When did you first meet Mr. Olsen?

20 A. It's around this same meeting.

21 Q. And again, that's the July 1998 meeting

22 that's referenced on Exhibit 11?

23 A. Yes.

24 Q. Since that meeting, have you had any

25 conversations or any meetings with Mr. Olsen?

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1 A. No.

2 Q. Are you aware of any property that is

3 owned by C. Kelly Olsen or in his name or controlled

4 in his name?

5 A. No, I'm not.

6 Q. Have you ever met a person by the name of

7 David Edwards?

8 A. No.

9 Q. Have you ever heard of Mr. Edwards?

10 A. I've heard of him through the court

11 records.

12 Q. Have you ever heard of Research

13 Development, Inc., or RDI?

14 A. No.

15 Q. Have you ever heard of Pacific

16 International?

17 A. No.

18 Q. Have you ever heard of Mr. Cook
19 participating in or working on any type of a trading
20 program while he's been in prison?

21 A. No.

22 Q. Have you heard of Mr. Cook participating
23 in or working on a trading program since the lawsuit
24 was filed, other than the Dannel Program?

25 A. Other -- no.

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1 Q. Has anybody told you that Mr. Cook or
2 somebody acting on the behalf of Mr. Cook was trying
3 to raise money from other trading programs to pay back
4 the investors in the Dannel Program?

5 A. I've never heard that.

6 (Exhibit 16 marked.)

7 Q. I hand you what's been marked as Exhibit
8 16, and ask if that's your signature at the bottom.

9 A. It appears it is, yes.

10 Q. And this is addressed to Patsy. Who

11 would Patsy be?

12 A. I believe that's Arton is her last name?

13 You asked me about her earlier. It's that Patsy.

14 Q. And this references a list of outstanding

15 loans, is that correct?

16 A. Right.

17 Q. Are those loans made by you or M&M

18 Engraving to Mr. Cook?

19 A. Yes. Well, to Mr. Cook or Collateral

20 Trust.

21 Q. Collateral Equity Corporation?

22 A. Yes.

23 Q. What is the reference -- in the first

24 column, I take it, is that the date of the loan?

25 A. I believe that is.

1 Q. And in the middle column, is that the
2 amount of the loan or the amount of the payment?

3 A. Yes. The amount of the loan.

4 Q. And then on the right-hand side, what is
5 the reference to Caliber and Mellon?

6 A. I believe that was the banks that I sent
7 it to.

8 Q. What was your understanding of how
9 Mr. Cook or Collateral Equity Corporation was using
10 this money that you were loaning to them?

11 A. I wasn't real sure on what he was using
12 the money for. He would call me and say I need some
13 money, and I would loan it to him.

14 (Exhibit 17 marked.)

15 Q. I hand you what's been marked as Exhibit
16 17, and ask if you can identify this.

17 A. This looks like a copy of a promissory
18 note that I made with Ben.

19 Q. And it references up on the upper
20 left-hand column, Lot 19. Is that the security for
21 the note?

22 A. I guess so.

23 Q. Okay. Has this note been repaid?

24 A. The principal was. I think there's still
25 some interest due.

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1 Q. Now, it's your testimony that Mr. Cook is
2 in possession of the original of this note?

3 A. I believe he has the original, yes.

4 (Exhibit 18 marked.)

5 Q. I'll hand you what's been marked as
6 Exhibit 18, which appears to be the first page of a
7 Deed Of Trust And Assignment Of Rents naming M&M
8 Engraving Employee Pension Plan as the beneficiary.
9 Do you recall this document?

10 A. Yes.

11 Q. Is this deed of trust to secure a loan

12 that was made by the pension fund to Collateral Equity

13 Corporation?

14 A. Yes.

15 Q. And where is this property located?

16 A. I think it's northern Arizona near St.

17 Johns, from what I recall.

18 Q. Is it your understanding that Collateral

19 Equity Corporation owns that real property?

20 A. It was my understanding it was purchasing

21 it. I don't know that it owned it.

22 Q. Do you know if it ever did purchase that

23 property?

24 A. I know that's what the loan, part of the

25 loan was for was to secure that property, but I don't

1 know the disposition of it now. Is that the right

2 word?

3 Q. Well, do you know if the Employee Pension

4 Plan And Trust has a lien on that property?

5 A. Well, I say he paid the principal back,

6 so I was under the understanding that this was not

7 valid anymore. I mean he's secured the -- he made the

8 payment back, so we don't have the security any

9 longer.

10 Q. To your knowledge, has the M&M Engraving

11 Employee Pension Plan And Trust executed a release of

12 this deed of trust?

13 A. Well, no, not to my knowledge.

14 (Exhibit 19 marked.)

15 Q I'll hand you what's been marked as

16 Exhibit 19, which is a letter from Ben Cook on Dannel

17 Finance Limited stationery dated May 7th, 1996,

18 addressed to you. Do you recall receiving this

19 letter?

20 A. I can remember vaguely this letter, yes.

21 Q. The letterhead refers at the top to an

22 office in Geneva, Switzerland. Have you ever been to

23 the Dennel office in Geneva, Switzerland?

24 A. No.

25 Q. Then it refers, also, to an office in

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1 Tortola, British Virgin Islands. Have you ever been

2 to that office?

3 A. No.

4 Q. Do you have any knowledge as to whether

5 Dennel Finance has ever had an office in Geneva,

6 Switzerland and Tortola, British Virgin Islands?

7 A. Not other than what's represented on the

8 letterhead.

9 Q. The letter refers to, it says, "In reply

10 to all correspondence, please use our TCRN #." And

11 then it has a DFL number. Do you know what that DFL

12 number represents?

13 A. A document number, maybe? No, I don't

14 know.

15 Q. Do you know if that referred to a Dannel

16 Finance Limited number?

17 A. I don't know.

18 Q. Okay.

19 A. That was Dannel's numbering system, and I

20 don't know how that was set up.

21 Q. Do you recall having any dealings with

22 Sharon Shae Vaughn?

23 A. I believe I talked to her once on the

24 phone, but I never really had any dealings, other than

25 maybe I did get some -- I can't remember if I got some

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1 correspondence from her or not.

2 Q. Do you recall making an investment

3 through Ben Cook in 1996?

4 A. No.

5 Q. Do you recall why it is that you received

6 this letter?

7 A. From what I recall, Ben was trying to

8 work with Sharon Vaughn to get a program set up, but

9 she didn't have one, so we didn't do anything.

10 Q. Who was Sharon Vaughn working for?

11 A. I don't know.

12 Q. Was it your understanding that Mr. Cook

13 was trying to raise money for an investment program in

14 May of 1996?

15 A. I don't think he was trying to raise

16 money for it then. He was trying to get an investment

17 program set up, from my recollection.

18 Q. Is it your testimony that he already had

19 the money? He was just trying to invest it?

20 A. No.

21 Q. When you say he was trying to get a

22 program set up, what do you mean?

23 A. That's what I understand a lot of these

24 programs are shams. People raise the money, say they

25 have a program set up, they get the money, and it

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1 doesn't work. Ben was just the opposite. He would

2 get his program set up before he raised any money.

3 Q. And so what did he do to set up the

4 program in May of 1996?

5 A. He would look at all of the documents to

6 make sure that the transactions would happen, from my

7 understanding.

8 Q. And is your understanding based on what

9 Mr. Cook told you?

10 A. Yeah.

11 (Exhibit 20 marked.)

12 Q. Let me hand you what's been marked as

13 Exhibit 20. It's a copy of a letter from Mr. Cook to

14 you dated May 9th, 1996, regarding money that he has

15 raised and has verbal commitments for. Do you recall

16 receiving this letter?

17 A. I don't recall receiving it on that date,

18 but it looks like I did.

19 Q. Does this letter reference the same

20 program that you mentioned earlier that Mr. Cook was

21 trying to put together?

22 A. I have no idea.

23 Q. You don't have any recollection of this

24 letter?

25 A. No. I really don't. This particular

1 letter, no.

2 Q. When Mr. Cook is referencing to being up
3 to about 1.3 million and having verbal commitments for
4 up to a total of three million dollars, what did you
5 understand that to mean when you received that letter?

6 A. I understood it that he had people ready
7 to invest into a program, but he would not let them
8 invest into it until he did the due diligence and made
9 sure the programs would work.

10 Q. And is this a program that you were
11 considering investing in?

12 A. Yes.

13 (Exhibit 21 marked.)

14 Q. I'll hand you what's been marked as
15 Exhibit 21. It purports to be a letter from Mr. Cook
16 to you dated May 21st of 1996 referencing a Short Term
17 High Yield Investment Financial Program. Do you
18 recall receiving this letter?

19 A. This is approximately four years ago.

20 There again, it looks like I did. I don't recall this

21 particular letter, but I'm sure I did receive it then.

22 Q. What was the Trust Management Group?

23 A. Trust --

24 MR. WARD: If you know.

25 A. I don't know.

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1 Q. Was it your understanding that that was a

2 company Mr. Cook was affiliated with?

3 A. That's what I would say it was, yeah.

4 Q. And do you recall Mr. Cook talking to you

5 in May of 1996 about a short-term investment program?

6 A. In general, yes.

7 Q. And did you or M&M Engraving ever invest

8 in a short-term program in May of 1996?

9 A. No.

10 (Exhibit 22 marked.)

11 Q. Let me hand you what's been marked as

12 Exhibit 22, and ask if you recall receiving this fax

13 from Mr. Cook.

14 A. I think I recall this. Do you have the

15 rest of the documents that it refers to?

16 Q. No. I'm just focusing on this right now.

17 A. Well, I mean like this is just the cover

18 sheet of something he sent me. And that's why it may

19 be hard for me to remember what all these are,

20 because, you know, there may have been three or four

21 pages to this.

22 Q. Do you recall --

23 A. But I think I remember this.

24 Q. Do you recall Mr. Cook talking to you

25 about an IPO package involving Tire Recycling

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1 Technology?

2 A. A little bit, yes.

3 Q. What do you recall about that IPO

4 package?

5 A. Said that that company was going to be a

6 real good company, and they were trying to put an IPO

7 together and get it started, and I believe they're in

8 Florida.

9 Q. And did he ask you to invest in that IPO?

10 A. No. Because I don't know that it ever

11 went public.

12 Q. Okay. Was the investment going to be

13 made by Alliance Investment Corporation?

14 A. I don't know what investment we're

15 talking about.

16 Q. Okay. In the very first paragraph, it

17 says, The Monthly Activity Report and the Interest

18 Statements indicate AIC's overall effectiveness with

19 regard to our regional projections for 1997.

20 And Mr. Cook is sending this to you,

21 correct?

22 A. Yeah.

23 Q. And AIC stands for Alliance Investments

24 Corporation?

25 A. Oh, I was going to ask you what that was.

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1 I guess that would make sense it does.

2 Q. And had you or M&M Engraving invested in

3 Alliance Investments Corporation?

4 A. I don't know I invested in it. I loaned

5 it money.

6 Q. And is that why he was sending you

7 statements regarding AIC's effectiveness?

8 A. I'm assuming that was why.

9 Q. Do you know if Tire Recycling Technology,

10 Inc. ever did go public?

11 A. No, I don't.

12 Q. You don't know one way or the other?

13 A. I don't know one way or the other.

14 Q. There's a reference there to Georgio, the

15 offering package will be prepared for Georgio to

16 present to his offshore investors. Do you know who

17 Georgio is?

18 A. I think he was someone with TRT.

19 Q. Then there's a reference in the fifth

20 paragraph to a Campbell and Mello. Do you know who

21 those persons are?

22 A. I don't recall that at all.

23 Q. Do you recall what Bridge Capital

24 Investments Fund is?

25 A. I believe Bridge Capital Investments was

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1 someone that would fund start-up companies or money to
2 fund start-up companies. I'm not real sure.

3 Q. Did Mr. Cook have any monies invested
4 with the Bridge Capital Investment Group, to your
5 knowledge?

6 A. I don't know of any.

7 (Exhibit 23 marked.)

8 Q. I'll hand you what's been marked as
9 Exhibit 23, which appears to be a copy of a check from
10 Alliance Investments Corporation to you dated 12-31-97
11 for \$5,000. Do you recall receiving that check?

12 A. Yeah.

13 Q. Do you know what that was paid to you
14 for?

15 A. Christmas gift.

16 Q. Did Mr. Cook give you any other Christmas
17 gifts besides \$5,000?

18 A. A basket with stuff in it.

19 Q. Any other Christmas gifts?

20 A. No.

21 Q. You invested, or change that. The M&M

22 Pension Trust invested money with the Dannel Program,

23 correct?

24 A. Correct.

25 Q. And is it true that they invested

85

1 \$150,000?

2 A. Yes.

3 Q. Do you recall when that investment was

4 made?

5 A. I'll guess at April '98. That's -- I

6 don't remember exactly.

7 Q. And did you understand that your, or the

8 investment of \$150,000 by the M&M Pension Trust would

9 receive a return?

10 A. Yes.

11 Q. And what did you -- what amount was that

12 return that you believed you would receive?

13 A. I think for that was two percent per

14 month.

15 Q. Two percent on the principal amount of

16 \$150,000 per month?

17 A. I believe that was it.

18 Q. And then after your investment, or I

19 guess I keep saying "your," the investment of M&M

20 Pension Trust, did M&M Pension Trust receive any money

21 from the Denzel Program?

22 A. Yeah. As interest, yes.

23 Q. Is it your testimony they received

24 monthly payments that you considered to be interest?

25 A. Yes.

1 Q. And did it receive those payments each
2 month after the investment up until the lawsuit was
3 filed?

4 A. Yes.

5 Q. Did M&M Pension Trust ever receive a
6 return of the principal amount of the investment?

7 A. No.

8 Q. And then M&M Engraving made two
9 investments in the Dannel Program, correct?

10 A. Correct.

11 Q. And one investment was for 80,000?

12 A. The first one, yes.

13 Q. And when was that made?

14 A. I believe about April of '98.

15 Q. And was it your understanding when these
16 investments were made that the principal amount of
17 your investment would be or could be, at your request,
18 returned to you after the expiration of one year?

19 A. Yes.

20 Q. Who told you that your principal would be
21 returned to you at your request upon the expiration of
22 one year?

23 A. That was in the documents.

24 Q. And those were the documents that were
25 given to you by Mr. Cook?

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1 A. Dannel Finance.

2 Q. And are those the documents that you
3 brought today that we marked as Exhibits 2 and 3?

4 A. Yes.

5 Q. Who actually gave you those folders?

6 A. The Federal Express mail.

7 Q. And where did they come from?

8 A. Dannel Finance.

9 Q. Were your dealings in the Dannel Finance
10 Program and your investments directly with Mr. Cook,

11 or were they with somebody else?

12 A. No. They were directly with Mr. Cook.

13 Q. With respect to the \$80,000 investment

14 made by M&M Engraving, what did you understand to be

15 the rate of return that you had received on that

16 investment?

17 A. Eight percent per month.

18 Q. And was that based on what Mr. Cook told

19 you or as set forth in the documents?

20 A. Yes.

21 Q. And after the investment of the \$80,000,

22 did you receive each month an amount equal to eight

23 percent of the principal?

24 A. Yes.

25 Q. And that amount was received each month

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1 up until the lawsuit was filed?

2 A. Yes.

3 Q. Has the \$80,000 investment been returned

4 to you?

5 A. No.

6 Q. Do you know if the money that you

7 received each month came out of the original \$80,000

8 that you invested in the program?

9 A. No. I don't know how I would know that.

10 Q. You don't know one way or the other,

11 correct?

12 A. Correct.

13 Q. And the same thing with the \$150,000

14 invested on behalf of the M&M Pension Trust, correct?

15 A. Correct.

16 Q. Okay. And then M&M Engraving also had a

17 \$100,000 investment in the Dannel Program.

18 A. Correct.

19 Q. And when was that \$100,000 investment

20 made?

21 A. It was after the first one, sometime in

22 '98. I don't know exactly when. It's in the

23 documents I brought in this morning.

24 (Exhibit 24 marked.)

25 Q. I hand you what's been marked as Exhibit

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1 24, which is a letter dated May 19th of '98 from Ben

2 Cook to you with a draft stamp on it. Do you recall

3 receiving that document?

4 A. I don't recall receiving this one.

5 Q. Okay. Do you recall whether that

6 \$100,000 investment was made on August 11th or around

7 August of 1998?

8 A. This is dated May the 19th. That's why I

9 don't recall this one, because I didn't make -- that I

10 recall that I didn't make a --

11 Q. If you look at the -- later on in the

12 document, it refers to a date of August 11th.

13 A. Well, like I say, I don't recall

14 receiving this letter, so I mean maybe August was when

15 I made, that sounds about right, that I made the

16 100,000.

17 Q. I'm just trying to find out the date that

18 you made the investment.

19 A. Yeah.

20 Q. Let me see if this helps out.

21 A. Well, if you look at the --

22 Q. This might help out.

23 MR. CRAWFORD: Let's mark this.

24 (Exhibit 25 marked.)

25 Q. I hand you this Funds Transfer Request,

1 and ask if that's your signature at the bottom.

2 A. It appears that it is, yes.

3 Q. And this is for \$100,000 to transfer from

4 the M&M Engraving account to Dannel Finance, is that

5 correct?

6 A. It looks that way.

7 Q. And is it your belief that this money

8 that is then transferred on August 27th of 1998 is the

9 money that was invested in the Dannel Program?

10 A. Yes.

11 Q. And after the investment of that money in

12 the Dannel Program, what was your understanding of the

13 rate of return that you would receive on that money?

14 A. Eight percent per month.

15 Q. And after that investment and up until

16 the time the lawsuit was filed, did M&M Engraving

17 receive eight percent on the principal amount each

18 month?

19 A. Yes, it did.

20 Q. And then on February 12th, M&M Engraving

21 returned -- received a return of the \$100,000

22 investment, isn't that correct?

23 A. Return of investment? No.

24 MR. CRAWFORD: Let me mark this as

25 Exhibit 26.

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1 (Exhibit 26 marked.)

2 Q I hand you what's been marked as Exhibit

3 26, which is a copy of a check that was written from

4 Alliance Investments Corporation to M&M Engraving &

5 Manufacturing dated February 12th, 1999 in the amount

6 of \$100,000. Do you recall receiving this check?

7 A. You know, I don't see my stamp on the

8 back of it, but it seems like I received it.

9 Q. Well, do you think you would remember if

10 you received \$100,000? I think I would.

11 A. I did receive \$100,000. I'm trying to
12 remember if this was the check that I received it on.

13 Q. Did you receive a cashier's check, by
14 chance, for \$100,000?

15 A. I don't recall, because I got checks for
16 my interest, and I don't remember how they were
17 written, if they were checks like this or if they were
18 cashier's checks.

19 Q. Do you recall receiving \$100,000 in
20 February of 1999?

21 A. I think so.

22 Q. And isn't it true that \$100,000
23 represented a return of the principal amount of the
24 investment by M&M Engraving in the Dannel Program?

25 A. No. No.

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1 Q. What did that money represent?

2 A. Payment for loans that I had outstanding.

3 This has nothing to do with Denel. It said Alliance

4 Investment Corporation.

5 Q. Were the loans that you're referencing,

6 were they in default at the time that this payment was

7 made?

8 A. Probably, technically, yes, but --

9 Q. Had you made demand upon Alliance

10 Investments Corporation or Mr. Cook to pay the loans?

11 A. No, not formally.

12 Q. Do you know why it is that Mr. Cook chose

13 to pay these loans off to you in February 12th of

14 1999?

15 A. I mean I don't know why. He owed me

16 money and he said he would pay me back, and that's

17 what he was doing.

18 Q. Did you have any conversations with him

19 prior to receiving this check or receiving \$100,000

20 regarding him making that payment to you?

21 A. Well, I'm sure he called and told me he

22 was going to send me the check, yes.

23 Q. And did he tell you in that same

24 conversation that he had been served with a subpoena

25 from the SEC investigating the Dannel Program?

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1 A. Not in February.

2 Q. Did he tell you that in January?

3 A. No.

4 Q. Did he tell it to you at any time that he

5 had been served with a subpoena from the SEC

6 investigating the Dannel Program?

7 A. Yeah.

8 Q. When did he tell you that?

9 A. Was it March or April? I don't remember.

10 It was sometime after it was served.

11 Q. Did Mr. Cook tell you that the SEC was
12 investigating the Dannel Program and he wanted to make
13 sure that he got you repaid before the SEC siezed the
14 money?

15 A. No. I didn't know the SEC was
16 investigating him at this time.

17 Q. Did Mr. Cook tell you why it was that he
18 chose this particular date to pay off loans that had
19 existed since 1993?

20 A. They didn't all exist since 1993. I
21 don't remember what this -- which one this, or like I
22 say, he kept track of them. And no, I mean I don't
23 know why on that date he did it. He was repaying the
24 loan, as far as I knew.

25 Q. And did he send to you when you received

1 this check or along with this check or the money an
2 accounting of how this money was being applied to the
3 notes?

4 A. I don't recall getting one.

5 Q. Well, internally in your own books and
6 records, have you applied this \$100,000 to the notes?

7 A. Yes.

8 Q. Who actually made the accounting entries?

9 A. I had on my check statements, I write
10 what they are before I give them to my accountant.

11 Q. So you made statements on the check and
12 then gave that to your accountant? Is that your
13 testimony?

14 A. Yeah. I wrote on there paid by
15 Collateral Equity Corporation, or whatever, payment on
16 account is the way I would put on the bank records.

17 Q. And do you know how they were applied to
18 the notes?

19 A. No. You mean as far as which notes were

20 paid off first?

21 Q. Yes, sir.

22 A. No. I don't know exactly.

23 Q. Who would know that?

24 A. Ben would.

25 Q. When was the last time you had received

95

1 any payment on any of these notes prior to February

2 12th of 1999?

3 A. I don't recall exactly. I know I got

4 another payment. Well, that may have been through the

5 pension plan, which I referred to earlier that

6 payment. Then I've got one back -- I had -- I

7 borrowed 40,000 and he paid that back. But I can't

8 recall the exact dates.

9 Q. You said you borrowed \$40,000?

10 A. (Witness nods head.)

11 Q. You did?

12 A. Yes.

13 Q. Oh. Who did you borrow the 40,000 from?

14 A. Chase Bank.

15 Q. Oh, okay. And then Mr. Cook paid that

16 back?

17 A. Yeah.

18 Q. When did that occur?

19 A. That was probably like in '95, back then.

20 Q. Well, prior to the payment of the

21 \$100,000 in February of 1999, had you received any

22 payments on those loans in the last six months?

23 A. In the last six months? I don't recall

24 of one.

25 Q. Are you aware of any document that shows

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1 how that \$100,000 was applied to the notes?

2 A. Not unless Ben has one.

3 Q. Have you received any payments from Ben

4 Cook or Alliance or Dannel Finance or any of the

5 entities that Mr. Cook is a part of since February

6 12th of 1999?

7 A. I think the -- did we get a payment,

8 interest payment on the program in February? If we

9 did, I would have gotten one of that. But other than

10 that, no, because they came out on the 15th, 16th.

11 Q. Okay. Other than you possibly got an

12 interest payment in February on the Dannel Program

13 investments, correct?

14 A. Correct.

15 Q. And other than those, have you received

16 any other money from Ben Cook, Alliance Investments,

17 Dannel Finance, or any other entity that Mr. Cook is a

18 part of since that time?

19 A. Not that I can remember.

20 Q. Well, you testified earlier that you had

21 loaned some money to Mr. Cook for the attorney, and

22 then you were repaid that, correct?

23 A. Yeah. Well, that, yeah. I got that

24 back. I already testified to that. But yeah, he

25 repaid that.

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1 Q. Anything else besides that loan that you

2 made?

3 A. Not that I can recall.

4 Q. Have you received any property, real

5 property or personal property or gifts from Mr. Cook

6 or any of his associates or any of the companies that

7 he's a part of since March 16th of 1999?

8 A. No.

9 Q. Did you fly out to Phoenix to meet with

10 Mr. Cook in February of 1999?

11 A. I flew up there not necessarily to meet

12 with him, but to see him. I mean I went to Phoenix in

13 February.

14 Q. And what was the purpose of seeing Mr.

15 Cook in February?

16 A. I was sick, and he was sending me to a

17 doctor that he knew.

18 Q. And did you discuss the Dannel Program at

19 all in February of 1999?

20 A. I'm sure we did.

21 Q. And what do you recall him telling you

22 about the program?

23 A. He said it was going real good.

24 (Exhibit 27 marked.)

25 Q. Let me hand you what's been marked

1 Exhibit 27, which is a copy of a bank stub from
2 Alliance Investments Corporation dated February 15,
3 1999, showing a transfer of \$3,000 to you. Do you
4 recall receiving \$3,000 from Alliance Investments
5 Corporation?

6 A. That's not a transfer.

7 Q. What is that?

8 A. That looks like a check stub.

9 Q. That's what I said. It was a check stub.

10 A. Oh, okay. I recall receiving this.

11 Q. Okay. What was the \$3,000 for?

12 A. That was not -- you can see it was not
13 cashed. There's no check there, is there? It was
14 made out in error. I sent it back.

15 Q. And why did you -- what was the error?

16 A. It wasn't supposed to be made to me.

17 Q. Who was it supposed to be made to?

18 A. M&M Engraving.

19 Q. Was this money supposed to represent a
20 repayment of the loans?

21 A. Part of the interest from the program.

22 Q. Did you have any discussions with Mr.
23 Cook in January or February of 1999 about the loans
24 being not paid for a long time and the need to get
25 them brought up and brought current?

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1 A. I never said much about it. Ben would
2 remark about it occasionally.

3 (Exhibit 28 marked.)

4 Q. I hand to you what's been marked as
5 Exhibit 28, and ask if this is your signature.

6 A. Yes.

7 Q. Okay. And did you type this up?

8 A. Yes, I did.

9 Q. Okay. And did you write the words to
10 this, or was this provided to you?

11 A. Some of them. Both ways.

12 Q. Who provided you the words to put in this

13 letter besides yourself?

14 A. It was a form letter sent out by

15 somebody, and I will guess it was Sandy, a lady by the

16 name of Sandy.

17 Q. Sandy Matthews?

18 A. Yeah.

19 Q. And then you took that form letter and

20 typed it up yourself and signed it and then mailed it

21 to Judge Buchmeyer, is that correct?

22 A. That's correct.

23 Q. And was this mailed on or about January

24 14th of 2000?

25 A. Yeah.

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1 Q. Which part of this letter did you write

2 yourself?

3 A. I think number four. And I don't recall

4 what the original one said, but I know I feel like the

5 investors are not -- I feel like the investors are not

6 being treated fairly.

7 Q. Okay. So number four is what you wrote

8 yourself that you recall?

9 A. From what I recall, yeah.

10 Q. Okay. In the first, number one, you say

11 you do not feel that Mr. Warfield's actions are in

12 your best interest, correct?

13 A. Correct.

14 Q. And what specific actions is it that

15 Mr. Warfield has taken that you contend are not in

16 your best interests?

17 A. The main actions are his expenses. I

18 think he's overcharging us tremendously.

19 Q. How much is he overcharging the

20 investors?

21 A. Well, I can't tell you how much he's

22 overcharging, because I don't know how much totally he

23 has charged, but I feel like \$43,000 invoice for one

24 month's work is an overcharge for someone that is

25 supposed to be charging \$125 an hour. I didn't know

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1 he was working 24 hours a day, 31 days a month on it.

2 Q. Do you know what work was done for the

3 hours that were billed?

4 A. No. That's why I say, we need an

5 accounting of what was done.

6 Q. Have you seen the accounting that's been

7 posted on the Receiver's Web site?

8 A. On the Receiver's Web site?

9 Q. Yes, sir.

10 A. No. I've seen the amounts from the
11 docket.

12 Q. Have you taken the time -- you had a
13 complete copy of the docket, correct?

14 A. Yes.

15 MR. WARD: No. Up to a certain date in
16 February.

17 A. Well, complete at that time.

18 Q. Have you obtained a copy of any of the
19 accountings that had been filed by the Receiver in
20 this case that list all the expenses that have been
21 incurred, all the fees that have been paid, and all
22 the income that has been received?

23 A. No, I haven't seen anything like that.

24 Q. You have not -- you have not looked at
25 any of the accountings that have been filed with the

1 court. Is that your testimony?

2 A. Other than what I've seen on the docket,

3 right.

4 Q. Well, the accountings will show up on the

5 docket. And my question to you is, have you looked at

6 the actual accountings that have been filed with the

7 court and that are of public record?

8 A. No. But the ones I've seen have not

9 shown an accounting. It's shown an amount that was

10 paid to him, or he requested, but I have not seen an

11 accounting.

12 Q. I'm not talking about fee petitions or

13 orders of proving fee petitions. I'm talking about

14 accountings that have been filed by the Receiver in

15 this action.

16 A. Okay. No, I have not seen those.

17 Q. Number three, you say, "An accounting of

18 how Mr. Warfield has amassed such enormous fees and

19 collected value worth less than those fees." Do you
20 know the total amount that Mr. Warfield has collected
21 as a result of his efforts to date?

22 A. Well, I -- the way I perceive it was
23 probably different than the way it's presented,
24 because from what I understand in Arizona, when they
25 first went in, they are the ones that collected most

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1 all the stuff that was auctioned off. Mr. Warfield
2 didn't collect that. It was put in his lap. Now, if
3 you're going to include that into his total amount,
4 then it might look like a lot. But I don't consider
5 that as being something that he went out and got. I
6 considered that being dropped in his lap. So no, I
7 haven't really seen the amounts either way.

8 Q. So how much is it that you contend the
9 State of Arizona is responsible for collecting?

10 A. Probably 90 percent.

11 Q. What's the dollar figure?

12 A. I don't have any idea, because I don't

13 know what the total amount is.

14 Q. If you don't know the total, how do you

15 know the percentage is 90 percent?

16 A. I'm guessing.

17 MR. WARD: Don't guess. If you don't

18 know --

19 A. Well, I don't know.

20 Q. Isn't it a fact that you have no idea how

21 much it is that Mr. Warfield has amassed in this

22 estate, because you haven't looked at the accounting,

23 isn't that correct?

24 A. That's correct.

25 Q. Let me just go over some names with you

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1 and see if you know of any of these people.

2 Have you ever met Robert Burr?

3 A. No.

4 Q. Do you know who Robert Burr is?

5 A. I've heard his name. I don't know who he

6 is.

7 Q. Did Mr. Cook ever tell you that Mr. Burr

8 was assisting him in placing monies overseas?

9 A. Placing money? No.

10 Q. What do you recall hearing about

11 Mr. Burr?

12 A. That he was somehow tied in with Ben

13 doing the program.

14 Q. And you don't know what that connection

15 was?

16 A. No.

17 Q. Has anybody ever told you that some of

18 the Dannel money is with Mr. Burr?

19 A. No.

20 Q. Has anybody ever told you that Mr. Burr

21 has taken the money from Mr. Cook?

22 A. No.

23 Q. Do you know a person or have you heard of

24 a person by the name of David Post?

25 A. No.

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1 Q. How about David Bryant?

2 A. I've seen his name in the records, but I

3 don't know him, no.

4 Q. Diane Grollemond?

5 A. I've seen her name in the record, but I

6 don't know her either.

7 Q. James Edwards?

8 A. Same thing.

9 Q. Oliver Serpentine?

10 A. Never heard of him.

11 Q. Bruce Bilbrey?

12 A. He's been in the records, and that's all

13 I know.

14 Q. Ben Bilbrey?

15 A. No.

16 Q David Cluff?

17 A. I believe David was at one of the

18 hearings and I met him there.

19 Q. And did you have a conversation with

20 Mr. Cluff?

21 A. Not other than hello. Maybe some casual

22 remarks.

23 Q. J.W. Young?

24 A. No.

25 Q. Daniel Klepac?

1 A. I've talked with Dan on the phone.

2 Q. What is your understanding of his

3 connection with Mr. Cook?

4 A. You know, I don't know for sure. I know

5 he does something with Ben, and that's all I know. I

6 don't know what his association really is with Ben.

7 Q. Do you know if Mr. Klepac has been using

8 any assets that are owned by or in the name of Mr.

9 Cook or any of his entities?

10 A. I think he's looking after the house

11 there. I don't know that for a fact. But no, I don't

12 know of any assets that he's --

13 Q. Do you know if Mr. Klepac has been

14 assisting Mr. Cook at all since this lawsuit began?

15 A. I don't know that he is, no.

16 Q. Have you heard that he is?

17 A. No.

18 Q. How about Teri Naranjo? Do you know her?

19 A. I don't know her.

20 Q. Have you ever talked to her or met her?

21 A. I haven't talked to her or met her.

22 Q. How about a person by the name of Kaiser

23 Akel?

24 A. No.

25 Q. Craig Boone?

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1 A. I believe I met Craig at the meeting in

2 July. Other than that, I don't even know that I

3 talked much with him at that meeting.

4 Q. Michael Patrick?

5 A. He was at the meeting, also, but I didn't

6 really talk much with Michael.

7 Q. The Church of Scientology, have you had

8 any dealings with them?

9 A. No.

10 MR. CRAWFORD: Can we take a short break

11 and see if I might be ready to pass the witness here.

12 (Recess.)

13 (Exhibits 2 - 4 marked.)

14 MR. CRAWFORD: Back on the record.

15 Q. (By Mr. Crawford) Tony, have you had any

16 conversations with Sandra Matthews?

17 A. I've talked to her one time.

18 Q. And when was that?

19 A. I can't remember. It was in January,

20 possibly. I don't know exactly.

21 Q. What did you-all discuss then?

22 A. I think it was the time that I called to

23 get that letter that --

24 Q. The form letter that we talked about?

25 A. Yeah.

1 Q. Okay. Have you ever talked to George

2 Neeley?

3 A. Yes.

4 Q. When did you talk to him?

5 A. The hearing in January.

6 Q. Okay. Any other time besides the

7 hearing?

8 A. No.

9 Q. Did you attend any meetings where

10 Mr. Neeley was present?

11 A. No. Other than at the courthouse. I

12 mean that wasn't a meeting.

13 Q. Do you know why Lonnie Schmitz was at the

14 hearing?

15 A. No. He's interested in the case.

16 Q. Do you know if he's assisting anybody

17 else besides Mr. Cook?

18 A. As far as assisting, what do you mean?

19 Q. Providing paralegal assistance.

20 A. Oh, I don't know his business, no.

21 Q. Do you know if he's being paid for

22 providing any assistance to Mr. Cook?

23 A. I don't know. I don't know.

24 MR. CRAWFORD: I'm going to pass the

25 witness to Mr. Norris and let him ask you a few

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1 questions, reserving the right if something else comes

2 up to ask questions later on. But I would like to

3 tell you if you learn the whereabouts of any

4 receivership assets, on behalf of the Receiver, I

5 would like to tell you that we would greatly

6 appreciate your assistance and cooperation in

7 identifying those assets so that they can be recovered

8 efficiently, inexpensively, and put into the registry

9 of the court for distribution pursuant to the court's

10 orders.

11 Pass the witness.

12

13 EXAMINATION BY PLAINTIFF

14 BY MR. NORRIS:

15 Q. Mr. Martella?

16 A. You can call me Tony.

17 MR. NORRIS: Let's go off the record a

18 second.

19 (Off-the-record discussion.)

20 Q. Okay. Tony, let me just, you know,

21 reiterate something that I said off the record. As

22 you know, I'm Jeff Norris, the attorney for the SEC in

23 this case. And I realize that there's been a great

24 deal of propoganda disseminated in letters, on Dannel

25 investor Web sites and through word of mouth that

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1 ascribes some sinister motives or ulterior motives to
2 the SEC and to me personally. And I think I explained
3 that off the record. I just want to tell you and for
4 any other investors who look at this transcript or
5 that you talk to that my only interest in this case is
6 to see that the investing public is protected and
7 that, frankly, that Dannel investors receive as much
8 as possible as soon as possible from recovery in this
9 case. And I'm not going to reiterate everything I
10 said off the record, but I wanted to reiterate that,
11 okay?

12 A. Okay.

13 Q. All right. Have you ever been a
14 defendant in a civil case involving the offer and sale
15 of securities?

16 A. No.

17 Q. Have you ever been subject to any action

18 by the SEC?

19 A. No.

20 Q. Any action by the National Association of

21 Securities Dealers?

22 A. No.

23 Q. Any action by any state securities

24 commission?

25 A. No.

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1 Q. Have you ever been convicted of a felony?

2 A. No.

3 Q. You've discussed with Mr. Crawford an

4 entity called M&M Engraving, is that correct?

5 A. Yes.

6 Q. And is that a company that you own?

7 A. Yes.

8 Q. What is your affiliation with that

9 company? Are you an officer?

10 A. I own it.

11 Q. Are you the president?

12 A. Yes.

13 Q. Are you a director?

14 A. Yes.

15 Q. Are there any other officers of that

16 company?

17 A. No.

18 Q. Any other directors?

19 A. No.

20 Q. And how long have you owned that company?

21 A. Since 1986.

22 Q. Okay. The other entity that you

23 discussed with Mr. Crawford is M&M Pension. What is

24 the full name of that entity?

25 A. M&M Engraving & Manufacturing Employees

1 Pension Plan, I believe.

2 Q. Let me see how this is addressed.

3 What type of entity is that, is the M&M

4 pension?

5 A. It's a profit, or a pension plan that the

6 company has.

7 Q. Is that a corporate entity? Is it

8 registered with any jurisdiction legally?

9 A. I would assume. I don't know.

10 Q. Okay. Who created the entity, the

11 pension entity?

12 A. We he had it through Equitable Life, so

13 maybe they did.

14 Q. What's your official position, if any,

15 with the pension plan?

16 A. Trustee.

17 Q. And when was that entity created, the

18 pension?

19 A. I believe maybe 1978.

20 Q. So it was in existence at the time you

21 purchased M&M Engraving?

22 A. Yeah.

23 Q. Okay. Apart from M&M Engraving, have you

24 been an officer or director of any corporation since

25 January 1st, 1997?

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1 A. No.

2 Q. Have you been a general partner in any

3 partnerships since January 1st, 1997?

4 A. General? No.

5 Q. Have you been a limited partner in any

6 entities?

7 A. Maybe some little investment, you know,

8 like stock market or something. I can't recall of any

9 particular one, but --

10 Q. Okay.

11 A. -- trustee for the trust may have gotten

12 into a partnership.

13 Q. Can you think of any -- can you recall

14 the names of any limited partnerships of what you were

15 a limited partner?

16 A. No. I mean I don't recall of being in

17 any of them.

18 Q. Have you ever been affiliated with an

19 entity of which Mr. Cook was also affiliated as an

20 officer or director?

21 A. Oh, no.

22 Q. Or employee?

23 A. No.

24 Q. Have you been involved in creating any

25 new entities since January 1st, 1999, any new business

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1 entities?

2 A. No.

3 Q. Do you have any position with any 415

4 corporations or companies?

5 A. No.

6 Q. Apart from that Seagram Trust that we

7 looked at earlier that you said you weren't aware, you

8 recall that?

9 A. Yes, I recall that.

10 Q. Do you have any affiliations with any

11 other trust -- well, strike that.

12 You also mentioned your father's trust

13 you had an affiliation with, right?

14 A. Right.

15 Q. Are there any other trusts with which you

16 have any affiliation?

17 A. No. And I'm not representing that I'm

18 affiliated with that trust either.

19 Q. I understand you're not. Just put those

20 aside for a minute.

21 A. Oh, okay.

22 Q. Any other trusts?

23 A. No.

24 Q. Now, I think you spoke to Mr. Crawford

25 about conversations you had with Mr. Cook since the

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1 Commission filed its case, and I'm going to apologize

2 to you in advance if I ask questions that you've

3 already answered or questions that basically include

4 the same request for the same information, because I

5 have a very poor memory. I'm trying the best I can to

6 avoid repetition, but it may be I'll miss something

7 and I won't remember the question was asked, and I

8 apologize in advance for the time that will take. But

9 have you had any discussions since the Commission

10 filed its complaint with Wayne McLaws?

11 A. I've talked with Wayne McLaws. I don't

12 know what you're considering discussions.

13 Q. Okay. What have you talked to Mr. McLaws

14 about?

15 A. About the case, if there's anything

16 happening good.

17 Q. Did you have any discussions with

18 Mr. McLaws about where he has funds or assets?

19 A. Oh, no.

20 Q. Did you have any discussions with -- have

21 you had any discussions -- okay. Strike that.

22 Apart from discussing whether anything

23 good was happening in the case, are there any other

24 topics of conversation you had with Mr. McLaws?

25 A. No.

1 Q. Would about Alan Clagg? Have you had any
2 discussions or conversations with Mr. Clagg since the
3 Commission filed its case?

4 A. I talked to Alan one time after one of
5 the hearings, and that was about it. I don't recall
6 of any other.

7 Q. And what did you talk to him about? What
8 did you talk about with Mr. Clagg?

9 A. This time I went to the hearing, and they
10 ruled they can sell the property or something. I
11 can't remember exactly what it was. But after this
12 hearing, I called and told him that the judge was
13 going to allow it.

14 Q. So that was the January, after the
15 January 19th hearing? Is that your recollection?

16 A. No. I thought it was before that.
17 Whatever. I thought it was the December hearing, but

18 --

19 Q. Have you had any discussions, other
20 discussions with Mr. Clagg that you recall since the
21 Commission filed its case?

22 A. No.

23 Q. Any discussions with C. Kelly Olsen since
24 the Commission filed its case?

25 A. No.

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1 Q. Did Mr. Cook inform you in or around
2 January of 1999 that he had been served with subpoenas
3 by the SEC?

4 A. January?

5 Q. 1999, yeah.

6 A. No.

7 Q. Before, and I'm talking about before the
8 Commission filed its case.

9 A. No.

10 Q. Okay. Did he ever discuss with you prior

11 to the filing of the Commission's case that Dannel and

12 Mr. Cook were under investigation by the SEC?

13 A. No.

14 Q. Has Mr. Cook ever requested or suggested

15 that you destroy or hide Dannel-related records?

16 A. No.

17 Q. Has he ever suggested that you destroy or

18 hide any records relating to transactions you've had

19 with Mr. Cook?

20 A. Never.

21 Q. Did you ever have any discussions with

22 Mr. Cook about his intent to hide or destroy

23 Dannel-related records?

24 A. No.

25 Q. Have you ever had any discussions with

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1 Mr. Cook about hiding funds or assets from the SEC?

2 A. Never.

3 Q. Are you familiar with accounts in the

4 name of Moroni, L.L.C. at a U.S. Bank branch in Carson

5 City, Nevada?

6 A. No.

7 Q. Did you have any discussions with

8 Mr. Cook about his intending or actually opening

9 accounts on behalf of Mr. Cook to hide Denzel funds?

10 A. Never.

11 Q. Have you ever had direct discussions with

12 Mr. Cook about, since the SEC filed its case, have you

13 had any direct discussions with Mr. Cook about what he

14 intended to do to provide relief to investors, Denzel

15 investors?

16 A. No.

17 Q. Has Mr. Cook told you that he has the

18 funds to repay investors?

19 A. I don't believe he has directly.

20 Q. Have you ever asked him that question?

21 A. Whether he has?

22 Q. No, I'm sorry. That was my fault for

23 pausing. Have you ever directly asked Mr. Cook

24 whether he has funds sufficient to pay investors,

25 Dannel investors?

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1 A. Directly, no.

2 Q. Did you ever indirectly?

3 A. Indirectly, no as well.

4 Q. Okay. And again, if Mr. Crawford asked

5 you this question in the way I'm asking it, I

6 apologize for repeating it, but have you ever had any

7 discussions with Mr. Cook since the Commission filed

8 its complaint about whether he has any funds in

9 offshore bank accounts?

10 A. No.

11 Q. Have you had discussions with any of the
12 defendants in this case, individual defendants? When
13 I say that, I'm including Mr. Cook, but I'm also
14 including Wayne McLaws, Alan Clagg and C. Kelly Olsen.
15 Have you had any discussions with the defendants about
16 whether any of those defendants have funds in offshore
17 accounts?

18 A. No.

19 Q. Have you had any discussions with any of
20 the defendants about a purported plan to obtain the
21 funds to repay investors?

22 A. I don't recall talking specifically about
23 a plan to do it, no.

24 Q. Generally, did you discuss with any of
25 the defendants a course of action that they intended

1 to take?

2 A. The defendants, no.

3 Q. Did you have that discussion with

4 individuals who were not defendants?

5 A. Maybe my -- I've talked with my cousin.

6 Every day he works for me, and we talk about ways the

7 case could be, but he does -- you know, he's not

8 involved at all in it. Just general talk.

9 Q. By the way, let me amend my statement

10 about defendants and say it also includes Gerald Pate.

11 A. Well, I haven't talked with Gerald.

12 Q. I understand. I just wanted to make --

13 that slipped my mind. I just wanted to make sure when

14 I said defendants, you understood that includes Mr.

15 Pate as well.

16 Okay. Has anyone -- has anyone told you,

17 defendants or nondefendants, has anyone told you that

18 they were involved in any sort of course of action to

19 obtain money to repay Dannel investors?

20 A. No.

21 Q. Have you received a series of letters

22 purported to be from a concerned investor that makes

23 certain charges and claims against the SEC and the

24 Receiver and against the court in this case?

25 A. Yes.

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1 Q. Do you have any information concerning

2 who is the author of those letters?

3 A. No.

4 Q. Did you take part in drafting any of

5 those letters?

6 A. No, I did not.

7 Q. Did you take part in sending any of them

8 out?

9 A. No.

10 Q. Did you ever discuss with Mr. Cook who

11 was sending those letters?

12 A. No.

13 Q. I'm sorry. I know you went over this to

14 some degree with Mr. Crawford, but remind me. How did

15 you first become acquainted with Mr. Cook?

16 A. He bought a product that I had for sale.

17 Q. Okay. And that was sometime in 1990?

18 A. '90 or '91.

19 MR. NORRIS: Let me just ask that this be

20 marked as Exhibit 29.

21 (Exhibit 29 marked.)

22 Q. This is just to place things in a time

23 frame. Let me hand you what's been marked as Exhibit

24 29. It's a letter from Ben Cook to Tony Martella

25 under the letterhead of P.A. Investments, and it

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1 concerns a Universal Wet Concentrator. Do you

2 recognize that letter?

3 A. Yes.

4 Q. Does that appear to be reasonable to you

5 that it was sometime in mid-1990 that you provided

6 this machine to Mr. Cook?

7 A. Yes.

8 Q. Okay. How long had you known Mr. Cook,

9 or was this provided, this Universal Wet Concentrator

10 was provided to Mr. Cook shortly after you met him or

11 shortly after you first communicated with him?

12 A. Right.

13 Q. You said he called you, right?

14 A. Right.

15 Q. How did he come to know that you had this

16 machine available?

17 A. I had an ad in the California Mining

18 Journal.

19 Q. And did Mr. Cook tell you how this

20 Universal Wet Concentrator pertained to the business

21 that he did?

22 A. I don't know what you mean there.

23 Q. Did he tell you how he was going to use

24 this machine in his business?

25 A. He was going to use it to concentrate

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1 ore.

2 Q. Okay. Did you understand Mr. Cook to be

3 in the mining business?

4 A. Yes. Mining or consulting.

5 Q. Did he tell you who he consulted for?

6 A. No.

7 Q. Now, after -- you sold this machine to

8 Mr. Cook, right?

9 A. Right.

10 Q. After you sold this machine to Mr. Cook,

11 the Universal Wet Concentrator, you had further

12 communications with him, correct?

13 A. Right.

14 Q. Did you eventually meet him?

15 A. Yes.

16 Q. And when was that?

17 A. Gosh, I don't know.

18 Q. Approximately how long after you sold him

19 the Universal Wet Concentrator?

20 A. Maybe a year, maybe two years. That I

21 met him in person you're talking about?

22 Q. Yes.

23 A. I can't recall exactly.

24 Q. Prior to meeting him in person, did you

25 have conversations on the phone with him periodically?

1 A. Yeah.

2 Q. What, if anything, did Mr. Cook tell you
3 about his background?

4 A. A long time ago. He just was telling me
5 that he was involved in mining projects.

6 Q. Did he describe those mining projects?

7 A. Not that I can remember in any detail.

8 Q. And where were these mining projects
9 located geographically?

10 A. I would think California. I don't
11 remember.

12 Q. Did he tell you?

13 A. No. I don't remember that he did.

14 Q. What else, if anything, did Mr. Cook tell
15 you about the business that he was conducting?

16 A. That was basically it. He was consulting
17 for mining people.

18 Q. Did he tell you he was involved in any

19 type of investment programs at that point in time?

20 A. I don't recall at that time him doing

21 that, no.

22 Q. What, if anything, did he tell you about

23 the entity P.A. Investments, which is on Exhibit 29?

24 A. He didn't tell me anything about P.A.

25 Investments.

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1 Q. Did you obtain any information

2 subsequently about that entity?

3 A. No.

4 Q. Did you come to understand what the P.A.

5 stood for?

6 A. No.

7 Q. Did it stand for Patricia Arton?

8 A. I have no idea. I never thought about

9 that.

10 Q. At some point in time, did Mr. Cook tell

11 you that he was involved in some type of investment

12 program?

13 A. At some point in time, yeah.

14 Q. And do you recall approximately when down

15 the road that was?

16 A. Well, I don't know whether he told me he

17 was involved in one.

18 Q. Okay.

19 A. Probably around '94, we started talking

20 about investment programs.

21 Q. Okay. And what did you discuss during

22 those conversations?

23 A. How lucrative these investment programs

24 are, and he was going to try and do some research and

25 find out about them.

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1 Q. Did he tell you he had had prior

2 involvement in those programs?

3 A. Not that I recall.

4 Q. Did he tell you that he had not had prior

5 involvement in those programs?

6 A. No. He may have said he heard of them,

7 but I don't know that he told me he had involvement in

8 any of them.

9 Q. Apart from P.A. Investments, which is on

10 the letterhead of Exhibit 29, did you understand

11 Mr. Cook during this period from 1990 to 1993, did you

12 understand him to be affiliated with any other

13 companies? Did he mention other companies that he was

14 affiliated with?

15 A. Well, no, I don't recall of any. I don't

16 remember when Collateral Equity came into the picture,

17 but I mean -- not any other than what we talked about

18 today.

19 Q. Apart from the sale of this Universal Wet

20 Concentrator, you've done other business with Mr. Cook

21 through the years, correct?

22 A. I don't know what you consider other

23 business. I've made him loans.

24 Q. Okay. You made him loans?

25 A. Right.

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1 Q. Okay.

2 A. Now, other business, I don't know. I

3 can't think of other business that I may have done.

4 Q. Okay. Let me talk about those loans for

5 a minute. Over the years, how much total would you

6 estimate you have lent to Mr. Cook or Cook-related

7 entities?

8 A. Total?

9 Q. Yeah.

10 A. Maybe around 300,000.

11 Q. Could it be as much as 500,000?

12 A. I wouldn't think it would have been that

13 much.

14 Q. I'm not trying to trip you up or

15 anything. I'm interested in knowing how much it was.

16 A. Yeah.

17 MR. NORRIS: Let me ask that the

18 following be marked as Exhibit 30.

19 (Exhibit 30 marked.)

20 Q. Let me hand you what's been marked as

21 Exhibit 30. It is a document entitled Interest

22 Statement, dated March 28th, 1997, and it talks about

23 -- it's addressed to M&M Engraving & Manufacturing

24 from Ben Cook, and it talks about 15 different notes.

25 Do you recognize this document?

1 A. Yes.

2 Q. Now, this document states that the

3 following statements, monthly statements summary

4 confirms accrued interest earned on the following

5 notes, and it goes 1 through 15. And then under

6 principal, the figure that's stated is \$483,600. Does

7 that refresh your recollection about the principal sum

8 of the loans you made to Mr. Cook?

9 A. I mean I still thought it was -- I never

10 knew I had that much loaned to him. I still thought

11 it was 300.

12 Q. Could it be that much?

13 A. Sure. It could be, but --

14 Q. Does it comport with your recollection

15 that you had at least 15 separate notes with Mr. Cook?

16 A. Possibly, yes.

17 MR. NORRIS: Let me ask that the

18 following be marked as Exhibit 31. Actually, let's

19 make this one 31 and this one 32.

20 (Exhibits 31 & 32 marked.)

21 Q. Let me just hand you what's been marked
22 as Exhibits 31 and 32. They are both documents that
23 reflect, well, the title of both are Loan Summary Of
24 Collateral Equity Corporation (Borrower) With M&M
25 Engraving & Manufacturing, Inc. (Lender). There's no

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1 specific date stated on these documents as to when
2 they were created. However, each of them includes, or
3 actually, the Exhibit 31 includes a reference to a
4 loan that is reportedly dated 11-3-93.

5 Let me ask you to look at both of those
6 documents, 31 and 32. Do you recognize the Exhibits
7 31 and 32?

8 A. I recognize, yes.

9 Q. Okay. And do you have any -- are these
10 documents that were provided to you by Mr. Cook?

11 A. Yes.

12 Q. And were they summaries of the loan

13 transactions that you had with Collateral Equity, or

14 that M&M Engraving had with Collateral Equity and M&M

15 Pension and Profit Sharing Trust had with Collateral

16 Equity?

17 A. It appears that way.

18 Q. And to your knowledge, do these

19 accurately reflect the amounts of those loans, at

20 least as of November 3rd, 1993? And the total --

21 A. Yeah. Yes.

22 Q. And Exhibit 31 reflects a total loan

23 amount as of, at least the date of this document, from

24 M&M Engraving of \$202,000. Do you see that?

25 A. Right.

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1 Q. And from M&M Pension of 207,500, correct?

2 Do you see that?

3 A. That's what it shows.

4 Q. Okay. And does that refresh your

5 recollection about whether you had lent Mr. Cook at

6 least \$400,000, or had lent Collateral Equity?

7 A. Well, what I was -- if you'll look at the

8 eighty-seven five from the pension plan, I didn't have

9 that in consideration, and that's where I came up with

10 300, roughly. See, that's -- so, yes, 400. It would

11 be more accurate to say 400 with the 87,500.

12 Q. And did you subsequently, after 11-3-93,

13 loan Mr. Cook additional funds?

14 A. I probably did.

15 MR. NORRIS: Okay. Actually, I probably

16 could have avoided marking all of those if I had just

17 marked this first. Let's mark this as Exhibit 33.

18 (Exhibit 33 marked.)

19 Q. Let me hand you what's been marked as
20 Exhibit 33. Now, this is a document entitled, well, a
21 document to Tony Martella from Ben Cook on Alliance
22 Legal Services Memo letterhead. And it purports to be
23 -- it's dated October 25th, 1996, and purports to be a
24 letter of agreement. Just ask you to look at that
25 document for a minute.

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1 A. Okay.

2 Q. Okay. First of all, let me ask you to
3 look on page five of the memo. Do you recognize your
4 signature under M&M Engraving and M&M Pension Fund?

5 A. Yes.

6 Q. And do you recognize the signature above
7 the names Ben Cook as being Mr. Cook's signature?

8 A. It looks like it is.

9 Q. Let me ask you to turn to the next page,

10 page six, and it has a document that purports to be a

11 summary of promissory notes. In this case, the

12 transaction is purportedly going to assign those to

13 Alliance Legal Services by Collateral Equity

14 Corporation. We'll discuss that in a minute.

15 A. Okay.

16 Q. This document lists 15 notes between June

17 1993 and October 1996. One of those, number seven, it

18 says it's paid in full, right?

19 A. Okay.

20 Q. But the others, the principal of the

21 other notes equal \$483,600. Do you see that?

22 A. Yes.

23 Q. Do you have any reason to believe that

24 that is not -- that this does not constitute an

25 accurate rendition or deliniation of the loans that

1 you had made to, or that M&M Engraving and M&M Pension

2 had made to Mr. Cook?

3 A. It appears that way.

4 Q. Okay. So that amount appears to be at

5 least \$483,000, correct?

6 A. Correct.

7 Q. Okay. And that was outstanding as of

8 October 25th, 1996, which is the date of this

9 document?

10 A. Well, I don't know if it was -- if that

11 last loan had been made. That's what we were trying

12 to get set up, I believe.

13 Q. The \$40,000?

14 A. The \$40,000 one, right.

15 Q. Okay. What was the purpose of the

16 purported transaction that's reflected in Exhibit --

17 A. 33.

18 Q. -- 33?

19 A. From what I remember, of course, you read
20 this and it will probably tell you. This was when Ben
21 was trying to set up, and I don't know if I recall
22 exactly what was going to be done, but it was
23 basically to set up a company to sell shell companies
24 for public companies.

25 Q. And what was the purpose of transferring

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1 those loans to Alliance Legal Services? What purpose
2 would that serve?

3 A. I don't know. Ben requested that.

4 Q. Now, you -- was that done, to your
5 knowledge?

6 A. Well, these are not signed, so I don't
7 know that it did. I always thought it was Collateral
8 Equity I had the pledge with, but possibly could have
9 been.

10 Q. Were there any other loans, to your

11 recollection, after October 25th, 1996?

12 A. You know, I don't remember any. Maybe

13 there was a couple of small ones.

14 Q. Why did you start lending Mr. Cook or

15 Mr. Cook's entities funds in June of 1993?

16 A. I'm trying to remember the first loan we

17 did had something to do with some mining ventures.

18 And then after, you know, it was to get something --

19 to get some business started up and going.

20 Q. I take it it's not your practice to lend

21 \$500,000 to all of the people with whom you do

22 business, is that correct?

23 A. Right. I don't have that much to lend to

24 people. I'm just --

25 Q. I'm sorry. What was it about Mr. Cook

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1 that led you to make these kinds of commitments to
2 him?

3 A. He just seemed to be sincere in what he
4 was trying to do, and I thought we could make some
5 money at it.

6 Q. Well, how did he propose that he would
7 repay these loans?

8 A. From the businesses he was using the
9 money for like the mining deal would be -- would take
10 off and make money.

11 Q. Okay. And did he -- apart from the
12 mining business, were there other businesses that
13 Mr. Cook at various times told you would produce the
14 profits that were necessary to repay these loans?

15 A. Well, like this business shown in Exhibit
16 33, sell shell corporations, and it would generate
17 money and we could make money from that.

18 Q. Anything else?

19 A. There probably was. I don't remember

20 exactly all the loan amounts and what we went through

21 with all those things.

22 Q. Were there investment or trading programs

23 through those years that Mr. Cook -- let me finish the

24 question -- that Mr. Cook said might produce the

25 profits to repay loans?

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1 A. Not that I recall on those loans, no.

2 Q. Okay. So was there anything besides the

3 mining business and the business of selling shell

4 corporations?

5 A. Oh, I'm sure there were.

6 Q. What were they?

7 A. But that's what I don't remember exactly,

8 what they were.

9 Q. Did the mining business make money?

10 A. Not that I'm aware of.

11 Q. Did you have discussions with Mr. Cook

12 about whether the mining business was making money?

13 A. I'm sure we talked about the mining, and

14 it's not particular one business.

15 Q. Mm-hmm.

16 A. Projects, I maybe should say.

17 Q. Right.

18 A. Mining projects. Yeah, I'm sure I've

19 talked to him about some of those.

20 Q. But on the basis of those conversations,

21 you have no reason to believe that the projects were

22 ever making money.

23 A. The basis I have is that the loans were

24 not paid back from those --

25 Q. What specifically were --

1 A. -- projects.

2 Q. I'm sorry. My apologies. What

3 specifically were those projects?

4 A. I can't recall specifics. It was more

5 like he was going to analyze ore for somebody to help

6 them set up a milling operation to mine their ore,

7 stuff like that.

8 Q. He was going to contract with other

9 companies to do that?

10 A. I think, yeah.

11 Q. And do you have an understanding here --

12 well, do you know of the identity of any of those

13 companies?

14 A. Not specific companies, no.

15 Q. Did Mr. Cook ever discuss with you any

16 specific companies?

17 A. He may have mentioned the name, but I

18 don't remember any of the names.

19 Q. Did he ever send you copies of any
20 contracts that he had with other entities to provide
21 these services?

22 A. No.

23 Q. What about the business of selling shell
24 corporations? Did that ever make money?

25 A. There again, I don't know that it ever

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1 made money.

2 Q. Did you ever have discussions with
3 Mr. Cook about whether that project was making money?

4 A. Yeah. We talked about it.

5 Q. And what did he say?

6 A. We would talk about companies he had
7 lined up to sell shells to, and if he could start
8 selling three a month, then we could start making
9 money, but I don't know that he ever sold any of them.

10 Q. All right. Now that we've sort of looked
11 at what is a rough approximation of the amount of the
12 loans that were made, does that refresh your
13 recollection at all about the total amount of
14 repayment that you've received from Mr. Cook?

15 A. I don't know what you mean by the total
16 amount of repayment.

17 Q. From 1993 until the present, how much has
18 Mr. Cook repaid of the funds that he's borrowed from
19 you?

20 A. Probably about 240,000.

21 Q. Okay. And 100,000 of that is the 100,000
22 you got on February 12th, 1999, the check we looked at
23 earlier?

24 A. I would think. I would think, yes.

25 Q. All right. So there would still be

1 approximately 250,00 outstanding. 250, 240.

2 A. That's the way the papers look.

3 Q. And did Mr. Cook ever discuss with you --

4 let's put aside the \$100,000 that you received in

5 February of 1999. The other, how much did you say,

6 100, what did you say altogether, 200 and?

7 A. 40.

8 Q. 40? The other 140,000, when did you

9 receive that?

10 A. I think the -- hmm. I can't remember

11 when I borrowed. I borrowed 40,000 from the bank, and

12 that was paid back, and I cannot recall. That may be

13 what number seven is. And then it could have been

14 sometime in '97, because it was like a 90-day note.

15 Q. Mm-hmm.

16 A. So it could have been for this 40,000. I

17 cannot recall the date exactly. And then the other

18 100,000 was in '97, also, I believe. That was paid

19 back to the pension plan.

20 Q. Okay. Now, in any of those cases, did

21 you discuss with Mr. Cook the source of the funds that

22 he was using to repay you?

23 A. No.

24 Q. He just told you, or repaid funds, but he

25 didn't tell you where the money was coming from.

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1 A. Right.

2 Q. Did he ever mention whether any of these

3 funds were from an investment program or overseas

4 trading program?

5 A. No.

6 Q. Let me jump back and ask you a question

7 about somebody you discussed with Mr. Crawford. You

8 mentioned that Lonnie Schmitz or (different

9 pronunciation) Schmitz is in California, is that

10 correct? It's your understanding?

11 A. From my understanding, yeah.

12 Q. Where did you get that understanding,

13 that he's in California?

14 A. When he was here, I believe he said he

15 was from California.

16 Q. Did he say where in California?

17 A. If he did, I don't remember.

18 Q. Have you ever heard of an individual by

19 the name of Herb Bates?

20 A. No.

21 Q. Do you know whether Mr. -- do you know of

22 anyone who works with Mr. Schmitz in his paralegal

23 business?

24 A. No, I don't.

25 Q. And apart from attending that hearing

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1 where you meet Mr. Schmitz, do you have any
2 understanding of any other services or activities he's
3 been involved in regarding this case?

4 A. Other than the hearing, no.

5 Q. Okay. Do you know of any documents that
6 he's drafted?

7 A. No.

8 Q. Do you know of any specific advice that
9 he's given to anyone?

10 A. Well, he's -- at the hearing, he told me
11 that, you know, different things that I can't recall
12 exactly. Well, I don't want to say certain things,
13 because I'm not sure that I can remember exactly what
14 we talked about. But, you know, how the case should
15 never have been brought up, and you know.

16 Q. What was the basis for his opinion that
17 the case should never have been brought?

18 MR. WARD: If you don't know, don't

19 guess.

20 Q. What did he tell you? What did he tell

21 you?

22 A. You know, I don't remember, because a lot

23 of it was legal, and I'm not really into that

24 profession to understand exactly what he's saying. I

25 mean it would be like me talking to you. I can't

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1 remember what we talked about earlier.

2 Q. For example -- well, let me back up and

3 say, were there specific conclusions that the SEC had

4 reached that he took issue with?

5 A. Not that I can call a specific thing that

6 the SEC has brought up, no.

7 Q. Did he express the opinion that the type

8 of trading program that Mr. Cook engaged in actually

9 did exist, the type of program?

10 A. You know, I don't remember him saying
11 anything about the trading program.

12 Q. Did he tell you that he had reached the
13 conclusion that the program did not operate as a Ponzi
14 scheme?

15 A. I don't recall him ever saying anything
16 like that.

17 Q. Did he have any -- did he say -- did he
18 raise any specific criticisms of the evidence that the
19 Commission had presented thus far in the case?

20 A. I don't know of any criticism he would
21 have brought, no.

22 Q. Was he accompanied by anyone at the
23 hearing?

24 A. No. I mean I think he was there by
25 himself with other people that were there.

1 Q. Who was he with? Who was he sitting

2 with?

3 A. Well, I don't know who he was sitting

4 with, but there were other investors there, you know.

5 MR. CRAWFORD: Can we take a break?

6 (Recess.)

7 (Exhibits 34 - 37 marked.)

8 Q. (By Mr. Norris) Mr. Martella, I have

9 handed you what has been marked as Exhibits 34, 35, 36

10 and 37. You may not have been able to look at 37. I

11 asked you to review those, start reviewing those while

12 we were off the record. So let me know when you have

13 concluded that review.

14 A. Okay.

15 Q. Let me just, for the record, describe

16 what I've given you. Exhibit 34 is a document on

17 letterhead of what is referred to as H.I.S. Financial

18 Trust, and it consists of a letter purportedly to Tony

19 Martella dated November 4, 1993 from Ben Cook. And it

20 says it's relating to Financial Agreement Number 1203.

21 Exhibit 35 is a document on the

22 letterhead of an entity called Bronze Trust, a

23 two-page letter purportedly from Ben Cook to Tony

24 Martella dated November 4, 1993, Re: Investment

25 Funding Commitment Number, and then it says

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1 213-222-610061.

2 Exhibit Number 36 is a letter purportedly

3 from Ben Cook to a Mr. Edgar Cox with a place for the

4 signature at the end of, the second page, of Tony

5 Martella. It also has attached to what appears to be

6 a copy of that page, second page, with three

7 signatures on them, purportedly Ben Cook, Tony

8 Martella and Edgar Cox. And it is related -- it says

9 it's regarding a -- it's dated November 5th, 1993, and

10 says it's regarding a Request and Acceptance for

11 Assignment of Payments Order.

12 And finally, Exhibit 37 is purportedly a
13 letter on letterhead From The Desk Of Ben Cook dated
14 November 5th, 1993, Re: Memorandum of Understanding
15 to Tony Martella. And it consists of a three-page
16 letter or four-page letter with a signature of Ben
17 Cook on page four, or purportedly of Ben Cook on page
18 four. And again, a faxed copy of page, appears to be
19 identical to page three of a letter with a purported
20 signature of Tony Martella.

21 Mr. Martella, do you recognize these
22 documents?

23 A. They look like documents I have seen in
24 the past, yes.

25 Q. Okay. Let me ask you to look

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1 specifically at page -- Exhibit 36, the last page of
2 Exhibit 36. Do you recognize that as your signature
3 on page 36?

4 A. That looks like. It's a copy of a fax.

5 It appears -- that looks like it.

6 Q. Let me ask you to look at the end, the
7 last page of Exhibit 37. Does that appear to have
8 your signature on it?

9 A. It also is a copy, appears to be a copy
10 of a fax, and that does look like my signature.

11 Q. Are you familiar with this entity H.I.S.
12 Financial Trust?

13 A. I don't know that I'm familiar with it.

14 I see it on these papers.

15 Q. Okay. Did Mr. Cook -- did you ever
16 discuss with Mr. Cook his affiliation with H.I.S.
17 Financial Trust?

18 A. I'm sure I did.

19 Q. Did you reach an under -- do you have an

20 understanding of what his affiliation was?

21 A. I don't remember. That was back in '93,

22 and this never occurred. I mean nothing ever became

23 of this.

24 Q. Okay. We'll discuss that in a minute.

25 Exhibit 35 is purportedly on the letterhead of an

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1 entity called Bronze Trust. Did you have a discussion

2 with Mr. Cook or a discussion with Mr. Cook about what

3 his affiliation was with Bronze Trust?

4 A. I'm sure I did, there again.

5 Q. And do you recall what his affiliation

6 with that entity is or was?

7 A. No. I don't recall, because it was very

8 short-lived.

9 Q. Do you recall, as you sit here today, do

10 you recall the transaction or attempted transaction

11 that these documents evidence?

12 A. I don't recall the transactions. I

13 recall the documents.

14 Q. Okay. All right. Now let me ask to you

15 look at page -- well, as a preliminary matter, several

16 of these documents reference what is referred to as a

17 Roll Program and the proceeds from a Roll Program.

18 For example, let me find a reference to that. Well,

19 the first page, the first sentence of Exhibit 34: The

20 purpose of this letter is to inform you of our

21 progress concerning or, I don't know if that's

22 supposed to be an "or," Roll Financing Program.

23 Probably "our Roll Financing Program and our

24 successes."

25 A. Right.

1 Q. What did Mr. Cook tell you about this

2 purported Roll Financing Program?

3 A. This one in particular?

4 Q. Yes.

5 A. I can't recall that far back. From what

6 I recall, this was when he was trying to get some type

7 of program set up.

8 Q. What were the elements of that program?

9 What was supposed to happen?

10 A. From my recollection, they would trade

11 bank instruments for profit.

12 Q. Where would those trades take place?

13 A. I guess overseas.

14 Q. And did he tell you how? Was he

15 collecting investor funds for this program, as you

16 recall?

17 A. Not that I'm aware of at that time, no.

18 Q. Okay. Whose funds would be used to trade

19 these bank instruments?

20 A. Investors, I'm sure.

21 Q. Okay.

22 A. But he had to have the program set up

23 before he would take investors' money.

24 Q. For example, on page two of Exhibit 34,

25 he says, Since our arrival, we have confirmed to four

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1 of our clients that we are now in Geneva, Switzerland

2 and have our trading accounts open for active trading

3 activities with our (Roll Financing Program).

4 Did he ever identify any of his clients

5 to you?

6 A. No.

7 Q. Did he tell you how much, if any, he

8 collected for this program?

9 A. No.

10 Q. Was it your understanding from Mr. Cook

11 that this program would generate returns through the
12 sale of, or through the purchase and sale of bank
13 instruments?

14 A. Basically, what I remember, yeah.

15 Q. Did you talk to him at all about whether
16 this program was monitored or controlled by or
17 approved by any government agencies?

18 A. I can't recall that it was.

19 Q. Okay. Did he specifically mention to
20 you, as you can recall, whether this was -- whether
21 this program would be providing any funding for
22 international humanitarian projects or international
23 projects?

24 A. At that time, I don't believe it was
25 brought up.

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1 Q. Now, what type of role or participation

2 did he ask you to play in this program?

3 A. From what I remember, I was waiting for

4 him to have it set up, and then I would become an

5 investor.

6 Q. Okay. Did he also ask you to lend funds

7 to him to pay for his transaction costs?

8 A. I don't know if it was for his

9 transaction costs. I did loan him money at that time.

10 Q. Let me ask you to look at page, well,

11 let's see. Page three. It states on the third full

12 paragraph: At this specific time, we have an

13 immediate need for \$65,000. We have compiled all of

14 our resources -- we have compiled all of our resources

15 to make this trip, open accounts, raise working

16 capital, and maintain our current business --

17 businesses separately from this venture.

18 Did Mr. Cook, in fact, request that you
19 lend him \$65,000 to complete these transactions?

20 A. I remember him asking for 65,000, but I
21 don't remember that it was for a specific purpose, in
22 my recollection.

23 Q. But in connection with an investment
24 program, to pay costs for an investment program?

25 A. I don't remember if it was for costs on

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1 an investment program.

2 Q. All right. Let me ask you to look at the
3 next page. And this outlines his proposal. By the
4 way, he talks about an individual named Ed Cox. Did
5 you ever speak to Ed Cox?

6 A. No.

7 Q. Okay. Do you know where Ed Cox resided?

8 A. No.

9 Q. Okay. Page four of Exhibit 34, it says,

10 "Ed and I had a number of discussions today after
11 planning our strategy for this week and we would like
12 to offer you the following financial proposal in
13 exchange for your financial participation as outlined
14 below."

15 Okay. It talks about repayment of the
16 \$65,000, but in addition to that, it states a
17 guaranteed \$5,000 cash roll disbursement payment.
18 This is paragraph numbered five. "A guaranteed \$5,000
19 cash roll disbursement payment each and every time the
20 10 million dollars is traded at a profit."

21 And then it says, and then paragraph six
22 states that: "In addition, when H.I.S. Financial
23 Trust increases the principal balance of the trading
24 account, your \$5,000 payment continues to increase on
25 a pro rata basis for as long as the trust investment

1 agreement specifies."

2 And then it says, Example the 300 million

3 Belgium client increased their trading above the 10

4 million to let us say -- to let's say, let's say to

5 300 million, your cash payment will increase to

6 \$155,000 per trade roll.

7 Do you recall that for providing the loan

8 to Mr. Cook, he was offering you some participation in

9 this Roll Program, participation in the profits?

10 A. If the program was put into effect, yes.

11 Q. Okay. And let me just ask you to look at

12 Exhibit 37 for a minute. This is entitled Memorandum

13 of Understanding, and this summarizes the transaction,

14 including, it states let me explain. The first

15 sentence says, "The purpose of this Memoradum of

16 Understanding is to explain in detail how the

17 transaction works and how you will get paid through

18 the loans and the guaranteed roll transaction

19 payments." Do you see that?

20 A. Yes.

21 Q. And then on page three, it says in the

22 second full paragraph, This loan transaction with the

23 extra incentives added will afford you the approximate

24 sum of \$8,063,000 in profits and capital surplus in 12

25 months.

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1 Do you recall that in exchange for the

2 \$65,000 loan, Mr. Cook was stating that if this

3 program took place, you could expect a profit of eight

4 million dollars?

5 A. That's what this looks like, yeah.

6 Q. And this is a document where you

7 indicated that you believed your signature is on the

8 last page.

9 A. Right.

10 Q. Okay. All right. Also, let me ask you

11 to look at Exhibit 35. And this is entitled -- this
12 is from Bronze Trust, and it's entitled Investment
13 Funding Commitment Number, Investment -- I should say
14 Investment Funding Commitment. And this document
15 talks about, it says, The purpose of this, the first
16 sentence: The purpose of this Investment Funding
17 Commitment, in the amount of One Million Six Hundred
18 Fifty Thousand Dollars, is to outline -- US Dollars --
19 is to outline our terms and conditions in regard to
20 funding your project (The Dallas Sports Fun Park).

21 Are you familiar with what is called the
22 Dallas Sports Fun Park?

23 A. I'm familiar with what was purported to
24 be that, right.

25 Q. And what was that?

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1 A. That was a sports complex that me and my
2 cousin were talking about putting together in Dallas.

3 Q. And did Mr. Cook at one time tell you
4 that he would provide you with funding for that
5 project?

6 A. We sent him the information asking if he
7 could get it. Now, I don't remember him saying yes,
8 he had it. He was going to check it out and let us
9 know, but we never went through with our project.

10 Q. And why was that?

11 A. I don't remember why. Probably because I
12 didn't want to commit to that type of money after I
13 looked at the project closer.

14 Q. Okay. What was the relationship between
15 the purported Roll Program and this investment funding
16 commitment that Mr. Cook was talking about?

17 A. I don't know that there's any

18 relationship.

19 Q. Okay. All right. Let me ask you to look
20 at Exhibit 37. Again, it talks about the -- it's a
21 Memorandum of Understanding, and it states: "The
22 purpose of this Memorandum of Understanding is to
23 explain in detail how the transaction works and how
24 you will get paid through the loans and the guaranteed
25 roll transaction payments."

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1 And then it says, "First, let me explain
2 that this transaction involves three entities,
3 Collateral Equity Corporation, will provide the
4 collateral for the \$65,000 loan and will repay the
5 loan, principal and interest in accordance with the
6 promissory notes and loan agreements."

7 Second, the Bronze Trust, the Bronze
8 Management Trust will fund your loan with the Dallas
9 Sports Fun Park project in the amount of \$1,650,000

10 and the trust will receive the equity interest and
11 become your investment partner through the escrow
12 closing documents in accordance with this -- with
13 current agreements.

14 Third, the H.I.S. Financial Trust will
15 make the necessary assignments of payment on my behalf
16 for your \$5,000 guaranteed payment from each \$10,000
17 -- \$10,000,000 dollar deposit for the Roll Program,
18 that I have arranged with Ed, as Trustee to approve my
19 assignment for you Guaranteed Payment as you direct,
20 in accordance with this memorandum's terms and
21 conditions.

22 Does that refresh your recollection about
23 how the Dallas Sports Park funding was purportedly
24 tied into the \$65,000 loan and the Roll Program?

25 A. That shows me how it was purported to be

1 done, right.

2 Q. Let me ask you a few questions about
3 these, what we've looked at. Did you provide the
4 \$65,000?

5 A. I believe I did.

6 Q. Okay. And is that -- do you see a loan
7 that appears to be on the exhibits we've already
8 marked, that appears to be that \$65,000, or is that
9 from your recollection?

10 A. No. I'm looking back at these records.

11 Q. Okay. And --

12 A. It looks like it's loan number 10.

13 Q. Okay. And what document, what exhibit
14 are you looking at? Look through the exhibits.

15 A. Oh, here it is.

16 Q. Okay.

17 A. Exhibit 31.

18 Q. Okay. Exhibit 31. And that references a

19 loan by M&M Pension & Profit Sharing Trust of \$65,000,

20 correct, in November of 1993?

21 A. Well, that's what it shows, but it was

22 M&M Engraving.

23 Q. All right. But you believe the \$65,000

24 loan that's listed there is the \$65,000 that's

25 referred to in these Exhibits 34 through 37?

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1 A. Yes.

2 Q. Okay. Did the program, the Roll Program

3 ever take place?

4 A. Not that I know of.

5 Q. Okay. Did you ever receive any of the

6 returns that were suggested in the exhibits we've

7 looked at?

8 A. No.

9 Q. Did Mr. Cook ever provide you with any

10 funding for the Dallas Sports Park?

11 A. No.

12 Q. Do you have any understanding how much,

13 if any, Mr. Cook raised for the Roll Program?

14 A. I don't know that he raised any.

15 Q. Okay.

16 A. I don't know that the Roll Program

17 existed.

18 Q. Okay. Do you have an understanding of

19 how many investors Mr. Cook lined up for that program,

20 if any?

21 A. No.

22 Q. Did you have subsequent conversations

23 with Mr. Cook in which he explained to you the -- what

24 happened to that project?

25 A. I believe so.

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1 Q. And what did he say?

2 A. That Ed took most of the money and paid

3 some of his bills with it and then left Ben hanging.

4 Q. Did Mr. Cook ever tell you how he knew

5 Mr. Cox? When you say Ed, you're talking about Ed

6 Cox?

7 A. Correct.

8 Q. Okay. Did Mr. Cook ever explain to you

9 how he knew Mr. Cox?

10 A. No.

11 Q. Did he tell you how long he had known

12 him?

13 A. No.

14 Q. Did Mr. Cook specify to you how much

15 money Mr. Cook -- Mr. Cox had taken?

16 A. Exact dollar-wise, no, I don't remember.

17 Q. Do you have an approximation?

18 A. I don't remember.

19 Q. There is a reference -- hold on a second.

20 Let me ask you to look at Exhibit 37 one
21 more time. Exhibit 37 on page one starting about
22 where we left off and looking at this before says,
23 "Fourth, I will arrange to structure your Trusts that
24 will be created upon my return from Geneva,
25 Switzerland. There will not be any charge for this

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1 service. I have made arrangements with Ed's Trust
2 Organization to authorize me, on behalf of the Trust
3 Organization, to reorganize your current financial
4 assets and liquidity."

5 Had you discussed that with Mr. Cook
6 prior to this letter?

7 A. Apparently I had, yes.

8 Q. And what had you discussed his doing in
9 that regard in terms of creating trusts and

10 reorganizing your business?

11 A. From what I remember, Ed was supposed to
12 know trusts real well, and Ben would get him to set me
13 up some type of trust. So in our program, reportedly
14 like these would happen. The trust would own the --
15 would make money. I can't remember the exact details.

16 Q. What was the purpose of having the trust
17 involved, from your point of view? What was the
18 purported advantage of having a trust involved in the
19 process?

20 A. That's why I didn't set it up. I don't
21 know. I don't remember exactly the advantages of the
22 trust, but Ben was telling me that Ed knew trusts and
23 could get it set up to be a benefit.

24 Q. And was this supposed -- was this going
25 to be an offshore entity?

1 A. I believe it may have been.

2 Q. And was this going to be an entity

3 purportedly for receiving your payments under the Roll

4 Program?

5 A. I think.

6 Q. And was that based on some sort of tax

7 benefit that it would have, keeping your proceeds

8 offshore?

9 A. If there is such a thing, I don't know.

10 Q. I'm not trying to put words in your

11 mouth. I'm trying to see if that was one of the

12 things that was discussed with you.

13 A. I can't really remember everything we

14 discussed about those back then. You know, it's --

15 it's possible. If there is some way to use those for

16 tax benefits, yes.

17 Q. Did you ever get repayment of that

18 \$65,000 loan?

19 A. I've got repayment on some of the loans.

20 I don't know that particular loan was repaid, like I

21 said before.

22 Q. What, if anything, did Mr. Cook do to get

23 the money back from Mr. Cox?

24 A. That I have no idea. I believe Mr. Cox

25 left Geneva, and I don't know what type of recourse

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1 Ben took after that.

2 Q. Was it Mr. Cook's statement to you that

3 he had actually turned funds over to Mr. Cox?

4 A. I don't know that he turned the funds to

5 Mr. Cox. I don't know how the funds were distributed,

6 no.

7 Q. Did he indicate that the funds that

8 Mr. Cox had run off with were funds that had been

9 provided by investors?

10 A. What funds?

11 Q. Well, I think you said that the reason
12 this program didn't work, Mr. Cook told you the reason
13 the program didn't work was that Mr. Cox had absconded
14 with funds.

15 A. Well, with the \$65,000 is the funds I was
16 referring to. Not anybody else's funds. I don't know
17 of anybody else. I don't know of any other funds put
18 into this.

19 Q. Okay. Did you ever discuss with Mr. Cook
20 whether anyone else had put funds into this?

21 A. Well, the program was never set up, so
22 yeah, I'm sure we did, but no one put any in because
23 there was no program.

24 Q. Okay. And I guess that -- and why was
25 that?

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1 A. Because like I said before, Ben was
2 trying to get a program set up, but he would not
3 accept any funds until he had his program set up.

4 Q. Okay.

5 A. And this one was in the works to get set
6 up, but it never materialized. Now, I don't consider
7 the \$65,000 I gave him as funds for the program. It
8 was a loan.

9 Q. Right. Exhibit 34 on page two states in
10 the last full paragraph: The diamond -- this diamond
11 cartel related group has committed 10 million dollars
12 to trade in -- trade with in our (Trading Rollover
13 Program), plus they are scheduled to wire transfer
14 their funds to Spectrum's account tomorrow afternoon
15 to commence our trading program, end quote.

16 Do you have an understanding whether that
17 transfer of funds ever took place?

18 A. I understood it never took place.

19 Q. Okay. And what is that based on?

20 A. From my recollection, that this program

21 never was materialized.

22 Q. Okay. Did you ever actually discuss with

23 Mr. Cook whether those funds had been sent to

24 Spectrum's account as set forth on page two of Exhibit

25 34?

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1 A. I don't remember that they were ever

2 sent, no. It says they are ready to send, but I don't

3 know if they were ever sent.

4 Q. You don't know one way or another?

5 A. Right.

6 Q. Okay. Are you familiar with an entity

7 called First Continental Industries, Ltd.?

8 A. I remember that name.

9 (Exhibits 38 - 42 marked.)

10 Q. Mr. Martella, let me hand you documents
11 that have been marked Exhibit 38 through Exhibit 42.
12 And just briefly, for the record, Exhibit 38 is a
13 three-page document, purportedly From The Desk Of Ben
14 Cook, dated December 30, 1993, addressed to Tony
15 Martella, and it contains a Memorandum of Agreement.

16 Exhibit 39 is a document on First
17 Continental Industries, Ltd. letterhead dated March
18 6th, 1994, Re: AMTP Information Package, purportedly
19 from Ben -- two-page letter purportedly from Ben Cook
20 to Tony Martella.

21 Exhibit 40 is a fax on M&M Engraving &
22 Manufacturing letterhead from Tony Martella to
23 Collateral Equity Corp., specifically addressed to
24 Patsy and containing a letter from Donald O'Connor --
25 I'm sorry. A letter from Tony Martella to Donald

1 O'Connor.

2 Exhibit 41 is a letter on First

3 Continental Industries, Ltd. letterhead from,

4 purportedly from Ben Cook to Tony Martella dated March

5 10th, 1994, Re: Letter of Agreement Fee Protection.

6 It also has a signature for M&M Manufacturing Company

7 and Employees Pension Fund, and purportedly has the

8 signature of Tony Martella on it.

9 And finally, Exhibit 42 is a document

10 also on First Continental Industries, Ltd. letterhead

11 dated March 10, 1994 from Ben Cook to Tony Martella,

12 Re: Response Request -- Response to Request dated

13 March 9, 1994. And it also has a place for the

14 signature of Tony Martella, Anthony J. Martella, and

15 is purportedly signed.

16 Let me ask you to look those over, if you

17 haven't already, and I'll ask you some questions about

18 those.

19 A. Okay.

20 MR. NORRIS: Let's go off the record a

21 minute.

22 (Off-the-record discussion.)

23 Q. (By Mr. Norris) Let's continue, anyway.

24 I had asked you a question before whether

25 you had heard of First Continental Industries, Ltd.,

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1 and what was the answer to that?

2 A. I told you that I do recall the name.

3 Q. Okay. Did you discuss that entity with

4 Mr. Cook at any time?

5 A. Yes.

6 Q. Did he tell you what his affiliation was

7 with First Continental?

8 A. I'm sure he did, but I don't recall the

9 exact definition. What I recall is these people had a

10 program and Ben was going to try and work with them on

11 getting a program set up.

12 Q. What was his affiliation, if any, with

13 First Continental? Was he a principal in that

14 company?

15 A. Well, I would have to go back and read

16 these documents. I don't know that he was a principal

17 with them. He was going to become one, but I don't

18 know that he was ever a principal with them.

19 Q. Have you had a chance to look these

20 documents over?

21 A. Well, I've looked at them. I haven't

22 read each one of them individually.

23 Q. Okay.

24 A. And that's why I say. In here, it may

25 tell you your question. I don't recall from my

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1 recollection of what his affiliation was with them.

2 Q. I do want to make sure you've read these
3 or looked over these documents carefully enough that,
4 if it can, refresh your memory about this transaction,
5 that it does so. So if you need more time to look
6 them over, you know, let's go ahead and take it, okay?

7 A. Well, I just remember this company and
8 nothing ever became of it, so it doesn't -- that's why
9 I probably don't remember much.

10 Q. Now, you've -- do you remember, do you
11 recognize Exhibit 38?

12 A. It's hard to remember all these. I can't
13 say that I remember this exact document, but it's
14 addressed to me.

15 Q. Do you remember receiving documents
16 relating to the transaction that is described in these
17 exhibits?

18 A. I remember receiving documents concerning

19 First Continental Industries, yes.

20 Q. Do you remember receiving documents

21 relating to some kind of trading program, Asset

22 Management Trading Program, some kind of trading

23 program involving First Continental?

24 A. Yes.

25 Q. Okay. Let me ask you to look on the

165

1 first and third pages of Exhibit 38. Do you recognize

2 that signature or signatures as being that of Ben

3 Cook?

4 A. It appears to be.

5 Q. Okay. Similarly, with respect to Exhibit

6 39, is that a document that you recognize?

7 A. Under the same way I explained it, yes.

8 Q. Okay. How about Exhibit 30 -- Exhibit

9 40, which appears to be a document from you?

10 A. No. I remember that one.

11 Q. Okay. You remember executing the

12 document that is the second page of that letter?

13 A. Yeah.

14 Q. Okay. And do you remember sending this

15 document to a Patsy?

16 A. Yeah.

17 Q. And is that your handwriting on the cover

18 sheet?

19 A. Yes, it is.

20 Q. And who is the Patsy that you were

21 sending this to?

22 A. I believe that was Patsy Arton.

23 Q. Patricia Arton?

24 A. Yes.

25 Q. Okay. Similarly, with respect to Exhibit

1 41, do you recall, do you recognize that document?

2 A. There again, I recognize that this is

3 addressed to me and that I signed it.

4 Q. Is this your -- is that your signature on

5 page two?

6 A. Yes.

7 Q. Okay. Do you recognize the signature of

8 Ben Cook on page two of that document?

9 A. Yes.

10 Q. Finally, Exhibit 42, do you recognize

11 this document?

12 A. Yes.

13 Q. Okay. And is that your signature on page

14 two of the document?

15 A. It sure looks like it.

16 Q. Okay. You recognize your signature.

17 A. Yeah.

18 Q. And is that -- do you recognize the

19 signature under Senior Trust Director or over Senior

20 Trust Director to be that of Ben Cook?

21 A. It looks like it, yes.

22 Q. Several of these documents reference what

23 is referred to as a Asset Managed Trading Program

24 involving Continental, First Continental Industries.

25 What did Mr. Cook tell you about that program?

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1 A. The specifics, I cannot recall. It was

2 another type of program to make money in.

3 Q. And what were the elements of that

4 program? How was it going to make money?

5 A. In looking at these documents, I can't

6 recall exactly. It's some type of trading program.

7 Q. Did Mr. Cook explain to you what would be

8 traded?

9 A. Specifically, I cannot recall.

10 Q. Okay. Did he tell you what the source of

11 returns for this program would be? How would the, I

12 guess it's a similar question, but how would the

13 returns to investors be generated?

14 A. If I knew, if I remembered what they were

15 trading, it was from selling something at a discount

16 and making more on the secondary market. I don't

17 recall exactly on this particular one, no.

18 Q. Did Mr. Cook ask you to participate in

19 this program in some way?

20 A. Well, there again, the program was trying

21 to be set up. And I indicated to him I wanted to

22 participate in it, but no funds were put in for

23 participation, because the program was never approved

24 by Ben.

25 Q. How did you -- how did you indicate that

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1 you wanted to participate? In what capacity?

2 A. Verbally.

3 Q. No, no. I mean -- I mean participate in

4 what way? As an investor?

5 A. Yeah.

6 Q. Okay.

7 A. Yeah.

8 Q. Did you discuss with Mr. Cook any

9 specific amount that you would want to invest?

10 A. No.

11 Q. Did he --

12 A. Not that I recall.

13 Q. Did he tell you prospectively what type

14 of risk would be involved in making this kind of

15 investment in this kind of program?

16 A. In this particular one, I don't recall

17 that either.

18 Q. Did he tell you he had operated this --
19 been involved in this type of program before?

20 A. No. I don't know that he said he was
21 involved in it. I know he said he had seen these
22 programs before.

23 Q. Apart from Mr. Cook, did you communicate
24 with anybody else about this program?

25 A. Back then, I don't remember.

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1 Q. What about the first program we looked at
2 involving H.I.S. Financial Trust, that Roll Program?
3 Did you communicate with anybody besides Mr. Cook
4 about that program?

5 A. I don't recall talking to anybody about
6 it.

7 Q. Going back to the First Continental
8 Industries program, looking at Exhibit 38, the
9 Memorandum Agreement between yourself and Mr. Cook, or

10 purported, proposed, do you recall whether you
11 actually ever executed that, this particular document?
12 It has a place for your signature, but this one is not
13 signed.

14 A. That's why I say this looks like a
15 document. I don't recall this exact document. I
16 cannot tell you if I did execute it or not. I don't
17 see my signature here.

18 Q. This has a statement of the purported
19 agreement between the parties, and it says, the second
20 paragraph on page one says, "Martella agrees to
21 provide Cook with a loan in the amount of \$17,000 and
22 this amount will be paid back off the top of the fees
23 prior to any split of commissions."

24 And then the split of commissions is
25 referred to in the prior paragraph. Compensation both

1 -- there's a missing verb or something -- compensation

2 both parties agree that the first two completed

3 transactions will be split on a 50 - 50 basis. Any

4 additional transactions will be split on a Eight (80)

5 to Cook and Twenty to Martella.

6 What types of transactions was he talking

7 about? And actually, above it. Let me continue.

8 Above it, in the second paragraph it says, Both

9 parties agree to share a series of banking

10 transactions whereby the parties Martella and Cook

11 will share in the net proceeds of the first two

12 transactions on a 50 - 50 basis.

13 Did he specifically identify what type of

14 banking transactions this program would involve?

15 A. I can't recall of a specific banking

16 transaction, but it was some type of banking

17 transactions.

18 Q. Okay.

19 A. As stated.

20 Q. And what was the significance of the term

21 asset management? What types of assets did the

22 trading program involve?

23 A. There again, I don't understand the

24 question.

25 Q. Okay. Well, Asset Managed Trading

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1 Program, what did that mean, in your understanding,

2 that it would be an Asset Managed Trading Program?

3 A. Oh. I don't know what asset managed

4 would mean. It was just a trading program to trade

5 bank instruments.

6 Q. Okay. Did you, in fact, provide Mr. Cook

7 with a loan of \$17,000 on or about December 30, 1993

8 or shortly thereafter? I see that the rest of these

9 documents are in March of 1994, up to March of 1994.

10 MR. CRAWFORD: You want to go off the

11 record?

12 MR. NORRIS: Yeah. Let's go off the

13 record.

14 (Off-the-record discussion.)

15 (Brief Recess.)

16 Q. (By Mr. Norris) Mr. Martella, let me ask

17 you, or I was asking you about whether Mr. Cook ever,

18 or whether you ever made the \$17,000 loan to Mr. Cook.

19 And let me ask you to look at Exhibit 33, which has a

20 listing of loans, and specifically the page six of

21 that document, it has the Exhibit A that has a

22 delineation of various individual loans. Do you see

23 that loan on the list?

24 A. It appears it could be loan 13.

25 Q. Which is?

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1 A. For \$18,000.

2 Q. In January of 1994, correct?

3 A. Right.

4 Q. Okay. We've seen in Exhibit 38 a

5 reference to receiving funds from the first two

6 completed transactions on a 50 - 50 basis. Did

7 Mr. Cook quantify what he thought you could expect in

8 terms of the total amount of returns you could earn

9 from entering into this agreement?

10 A. If he did, I don't remember what the

11 amount would be, because I cannot remember what the

12 exact transactions were.

13 Q. Okay. Let me ask you to look at Exhibit

14 40. This document, which was sent to, faxed to,

15 apparently to Patsy, includes a letter to Donald

16 O'Connor. Do you recall who Mr. O'Connor was?

17 A. He was someone that Ben was trying to

18 work with to get a program set up with First

19 Continental, from what I recall.

20 Q. This letter to Patsy states: I'm not

21 sure this is right because I'm not a principal

22 involved but will be a facilitator. What does that

23 mean?

24 A. That I was not an officer or owner or any

25 part of this. I was just going to be an investor.

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1 Q. Did, in fact, the term facilitator mean

2 that you were stating that you would be someone who

3 would obtain clients or investors for First

4 Continental?

5 A. Well, I could possibly be, yes.

6 Q. Do you have an understanding, looking at

7 Exhibit 41, what is meant, what is indicated by the

8 Registration Number FAC-797-TMO?

9 A. That was some internal usage number for

10 identifying who brought what in, from what I

11 understand it to be.

12 Q. And in the text of Exhibit 41, there's a

13 reference to Registration Number FAC-789-PAA. Do you

14 have an understanding of what that signified?

15 A. The same thing. That's --

16 Q. Now, this document, Exhibit 41, states:

17 "The purpose of this letter is to confirm that First

18 Continental Industries, Ltd. has accepted your request

19 to participate as a Facilitator in our Asset Managed

20 Trading Program. We would like to take this

21 opportunity to welcome you to our program, and we will

22 assist you in every way possible to achieve a high

23 degree of success with your clients and our Asset

24 Managed Trading program, hereinafter referred to as

25 AMTP." What clients were they referring to?

1 A. People I might bring in to invest.

2 Q. And did they tell you how you would

3 expect to be compensated, if at all, for bringing in

4 these clients?

5 A. I don't recall on this particular one,

6 because there again, this never took place, and I

7 don't recall a lot about it.

8 Q. There's a reference on page two in the

9 second full paragraph: "We will assist you in

10 protecting your fees, that you are to receive from

11 your clients. Our protection fee agreements will

12 protect your fees up to one percent maximum of the

13 gross amount invested by your client."

14 Was it your understanding that you would

15 be receiving your fees, if you did receive them, from

16 the investor?

17 A. After reading that, that seems that way,

18 yes.

19 Q. Did you ever enter into this fee

20 protection agreement that's referenced here?

21 A. What do you mean did I ever enter into

22 it? I signed it.

23 Q. No. Well, okay.

24 A. There was never anybody --

25 Q. Was there a separate agreement that was

A

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1 entitled a fee protection agreement?

2 A. I don't recall that. Like I say, here

3 again, these are moot documents because nothing ever

4 became of them.

5 Q. Did you ever obtain any investors for

6 this program?

7 A. No.

8 Q. Did you ever receive any commissions?

9 A. I've never invested in it.

10 Q. I meant -- okay.

11 A. So no, my answer is no, because there was

12 never any investment made.

13 Q. Right. Did Mr. Cook tell you how much he

14 was intending to raise for this program?

15 A. I don't know that there's a limit on how

16 much you intend to raise.

17 Q. Did he tell you he had a specific

18 allocation or a specific goal?

19 A. No.

20 Q. Okay. Is it your understanding that he

21 collected funds from investors?

22 A. Never.

23 Q. Did he tell you that he hadn't?

24 A. He never told me he had.

25 Q. Okay.

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1 A. So I don't know that he would tell me he
2 hadn't, because he never told me he had. I mean, uh.

3 Q. So are you -- do you not know?

4 A. I'm not aware of him ever collecting
5 anything for this program.

6 Q. But he also did not tell you that he
7 didn't, correct? Is that right? Did you ever --

8 A. I guess that's right. I mean that's -- I
9 don't understand why you would even ask that if the
10 program was never in existence.

11 Q. You know, to be candid with you, I've
12 seen plenty of funds raised for programs that never
13 were in existence, okay?

14 A. Okay. See, that's why I keep --

15 Q. That's the long and the short of it. But
16 he didn't indicate either way whether he had actually
17 raised any funds? Is that what you're expressing?

18 A. Correct.

19 Q. All right. You've already answered this,
20 but to your knowledge, did this program ever take
21 place?

22 A. No.

23 Q. Okay. And did you have a discussion with
24 Mr. Cook as to why it did not take place?

25 A. I'm sure I did. Now, as to why it

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1 didn't, because Ben did not feel like the program
2 would work correctly, and he pulled out of it.

3 Q. Did he tell you that?

4 A. I believe, I can't recall the exact
5 conversation, but that was the conversation we had
6 about a lot of these programs. Like I told you
7 before, Ben would get his programs set up first before
8 he raised any money to put in them, was my
9 understanding. And this program would not work, so he

10 never raised any money for it.

11 Q. Did he tell you how he determined that it

12 would not work?

13 A. No.

14 Q. Did he give you back your 17,000, your

15 \$18,000?

16 A. There again, he's paid me back some

17 money, but I cannot tell you which exact loans they

18 were, but --

19 Q. Did he tell you that he returned funds to

20 -- did he tell you he was returning any funds to any

21 purported investors or other people who had lent money

22 to him in connection with this program?

23 A. No.

24 (Exhibits 43 & 44 marked.)

25 Q. I'm going to hand you what's been marked

1 as Exhibit 43 and Exhibit 44. Exhibit 43 appears to
2 be a document that's identical to Exhibit 42, except
3 that it's dated April 5th and has a different
4 reference number, registration number.

5 Exhibit 44 is a document that appears to
6 be identical to the final page of Exhibit 41, but
7 again, has a different date on it. This one is April
8 29th, 1994.

9 Let me just briefly ask you, do you
10 recall why you, and again, it has a different -- well,
11 this one doesn't have a reference number, but do you
12 recall why you executed documents that were similar to
13 the ones you executed in March, but apparently with
14 respect to a different registration number?

15 A. Well, to me, the titles, the headings on
16 the letters are different, and that represents --

17 Q. Now, what are you looking at?

18 A. You said 43 to 42?

19 Q. All right. Yeah. So I see.

20 A. The first, the 42 is First Continental

21 Industries. 43 is labeled as being Cook & Associates.

22 Q. Okay. And then why did you --

23 A. And that makes me think that that may be

24 similar to this. After Ben decided not to go with the

25 First Continental, he tried to set up another one.

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1 Q. And did he?

2 A. Not to my knowledge.

3 Q. Did he ever collect any funds?

4 A. Not to my knowledge.

5 Q. And did you act as a facilitator on that

6 second program?

7 A. I didn't act as one. I signed up to be

8 one.

9 Q. And was it your understanding that the

10 program was to operate in exactly the same manner as

11 the one, the First Continental had?

12 A. Well, I don't know if was to work

13 exactly. It was to work to make money, but the first

14 one didn't make anything, so I don't know it would

15 have worked out. I mean --

16 Q. Did the second one make anything?

17 A. Real similar.

18 Q. Did the second one make anything?

19 A. The second one never happened.

20 Q. And why was that?

21 A. I don't know. I can give you

22 speculation, but I don't know.

23 Q. Did you ever discuss with Mr. Cook why

24 the second one didn't happen?

25 A. I'm sure we talked about it, but I don't

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1 recall any exact reasons, other than he did not feel
2 like it would work, so he would not go through with a
3 program that would not work.

4 Q. I'm going to skip several of the things
5 until next time that I was going to discuss with you,
6 and I want to go to the Dannel Program. Do you recall
7 when you first became aware of the entity called
8 Dannel Finance Limited?

9 A. Probably late '97 or early '98, from what
10 I can recall right now.

11 Q. Now, you've testified to Mr. Crawford
12 that you believe that the -- it's your belief that the
13 program that Dannel Finance Limited offered operated
14 as Mr. Cook represented. Would that be fair?

15 A. Yes.

16 Q. Okay. You've also testified about a
17 couple of programs that didn't happen and didn't

18 produce returns, is that correct?

19 A. Correct.

20 Q. Okay. Prior to the Dannel Program --

21 A. Yes.

22 Q. -- were you aware of any programs that

23 Mr. Cook operated or was involved in that actually did

24 produce some kind of return?

25 A. Other than Dannel, no.

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1 Q. Okay. Now, we've established that you or

2 through your entities, you made three different

3 investments in Dannel, is that correct?

4 A. That's correct.

5 Q. Let's see. That totalled 80, plus 100,

6 plus 150, right?

7 A. Correct.

8 Q. So that was a total of \$330,000?

9 A. That's right.

10 Q. Okay. The first of those investments, as
11 we looked at earlier, took place in May of 1998. Do
12 you recall that?

13 A. I believe that's right.

14 Q. Were you aware of the existence of the
15 Dannel Trading Program? How long had you been aware
16 of the existence of the Dannel Trading Program prior
17 to that investment?

18 A. A few months.

19 Q. Okay. And when did you start discussing
20 with Mr. Cook the possibility of becoming an investor?

21 A. I can't recall an exact time. Probably
22 March or April.

23 Q. Okay. Did you ever discuss the terms of
24 the Dannel Program, the terms and attributes and
25 characteristics of the Dannel Program with anyone

1 other than Mr. Cook?

2 A. I'm not really sure what you mean.

3 Q. I mean the things like the rate of return

4 and how returns were generated and the risk of the

5 investment, the risks and characteristics of the

6 investment. Did you discuss those with anyone other

7 than Mr. Cook?

8 A. Not that I can remember.

9 Q. Okay. And prior to receiving written

10 materials that we've discussed earlier that have been

11 marked, some of which have been marked as Exhibits 3

12 and 4 to this deposition, did you discuss orally with

13 Mr. Cook the attributes of the program, the risks and

14 characteristics?

15 A. Probably I did, yes.

16 Q. What did Mr. Cook tell you about the rate

17 of return that you could expect, or that an investor

18 in Dannel could expect from the program?

19 A. Well, he told me that I could expect an
20 eight percent return on investment.

21 Q. Okay. And did he tell you whether that
22 was the return that was afforded to all investors or
23 whether that was some sort of special return for you?

24 A. That was a special return for me.

25 Q. And why, did he tell you why he was

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1 providing you with a special rate of return?

2 A. Because of my past involvement with Ben
3 as far as loans to him.

4 Q. Did he tell you whether any portion of
5 the return that you are receiving from the, or did he
6 -- did you discuss with him whether a portion of the
7 return that you would be receiving from Denel
8 investments would be credited towards Mr. Cook's loan
9 principal or the interest that he owed you? Was that
10 something that you discussed?

11 A. No. That was -- no.

12 Q. So it's your understanding that the
13 return that you received on the Dannel Program was
14 entirely separate from Mr. Cook's obligations under
15 those loans.

16 A. Right.

17 Q. Okay. And you did not on your books and
18 records credit Mr. Cook's loan obligations for any of
19 that return that you were receiving from the Dannel
20 Program?

21 A. Right.

22 Q. And you did not tell him that you were
23 going to credit him on the loan obligation for any
24 part of that return?

25 A. Right.

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1 Q. Okay. Did Mr. Cook discuss with you the
2 kinds of -- the returns or the profits that Dannel was
3 earning through its -- through the Dannel Program?

4 A. No.

5 Q. What did Mr. Cook tell you about the rate
6 of return that most investors received?

7 A. He said most of them, from what I can
8 recall, were receiving two percent a month.

9 Q. Okay. And you were -- and he told you
10 that you would receive eight percent a month.

11 A. Two to five percent, maybe, is what.

12 Q. So you were told eight percent a month,
13 or 96 percent a year, correct, for the year?

14 A. For my investment, right.

15 Q. Okay. Did you have any discussions with
16 Mr. Cook about the commissions that brokers were paid
17 on Dannel investments?

18 A. Well, I understood that they would be
19 paid eight percent.

20 Q. Okay. That the brokers would be paid
21 eight percent?

22 A. I'm not real sure what you mean brokers,
23 but people that brought other investors in that he
24 recognized, yeah, they would get eight percent. Now,
25 out of that eight percent, they would pay their

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1 investor two percent, or whatever rate was negotiated.

2 Q. All right. So they could pay two percent
3 or more.

4 A. Yeah.

5 Q. But if they paid them two percent, then
6 they would have six percent.

7 A. Right.

8 Q. As brokerage fees.

9 A. The way I understood it.

10 Q. Okay. Now, how did -- what did Mr. Cook

11 say, if anything, about how investor funds in the

12 Dannel Program would be used?

13 A. It's in the literature that they would be

14 used for banking transactions overseas.

15 Q. Okay. And when you say it's in the

16 literature, you're referring to the materials in

17 Exhibits 3 and 4?

18 A. Correct.

19 Q. Do you recall whether, we may or may not

20 have time to look at those today, but do you recall

21 whether Mr. Cook supplemented that written information

22 with any other representations to you or statements

23 about the use of funds?

24 A. No.

25 Q. Did you rely on the information in

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1 Exhibits 3 and 4 for information about the use of the

2 funds? Was that the source of your information?

3 A. For use of?

4 Q. How Dannel would use investor funds to

5 generate a return.

6 A. Yeah.

7 Q. Okay. And based on that, your

8 conclusion, based on the information in the written

9 materials, was that Dannel would use -- would send the

10 funds overseas and use it to trade bank instruments,

11 is that correct?

12 A. Basically, yes.

13 Q. Okay. Anything else that you want to add

14 to that or qualify that in some way?

15 A. Well, I don't know that they were sent

16 overseas to do that. The trading took place overseas.

17 I don't remember particularly how the money was

18 allocated here.

19 Q. Well, we would look at that.

20 A. You see.

21 Q. Yeah. If we have time, we'll look at

22 that today, because the documents specifically address

23 that.

24 And did Mr. Cook ever tell you anything

25 that was contrary to the representations that are in

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1 the documents in Exhibits 3 and 4?

2 A. Not that I can recall.

3 Q. Did Mr. Cook say anything about -- well,

4 what did Mr. Cook tell you, if anything, about the

5 risks, if any, to investor funds from investment in

6 this program? What did he say about its safety?

7 A. That the risks were very low.

8 Q. And did he tell you how investor -- why

9 the risks were very low?

10 A. Because the money was always in control

11 by Denzel.

12 Q. How did Denzel maintain control of the

13 funds and still engage in these trades?

14 A. It's the way the trading programs were

15 set up that you never bought anything unless you have

16 it sold. So if you buy an instrument, you immediately

17 turn around and sell it so you have your money right

18 back then. So you never were -- you should never lose

19 your money, because the transactions were always

20 guaranteed.

21 Q. Okay. And did he tell -- and guaranteed,

22 when you say guaranteed, what do you mean?

23 A. That you had another buyer to buy them

24 before you bought them.

25 Q. Okay. Do you recall anything else

1 specific that he said about how investor funds were

2 protected and why the program was low risk?

3 A. It was because of that, basically.

4 Q. Okay. Did he tell you that there was any

5 kind of guarantee or collateral for investor funds

6 that you can recall?

7 A. There was something about CDs being

8 purchased to do the trades.

9 Q. And what did he say about the CDs?

10 A. That he could buy the CDs at a discount,

11 and the discount was enough to cover the amount of the

12 investors' funds used to buy the CDs for the trading

13 program.

14 Q. Did he tell you how many of these CDs

15 Dannel had purchased?

16 A. No.

17 Q. Did he tell you how -- did he tell you

18 whether they purchased a CD for every certain

19 increment of investor funds? In other words, was
20 there -- were there a certain million -- certain
21 number of millions of dollars of investor funds that
22 would then be, for which a CD would be purchased?

23 A. I think for every three and a half
24 million dollars of investors' funds, he could buy a 25
25 million dollar CD.

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1 Q. And he claimed that he did? He did buy a
2 25 million dollar CD? Was that his statement?

3 A. I don't know that he actually said I
4 bought a 20 million dollar -- 25 million dollar CD.
5 That's the way I understood the program to work, so I
6 assumed he did that.

7 Q. Okay. Did he tell you, did he say the 25
8 million dollars was the face value of the CD?

9 A. Yes.

10 Q. That's what I'm getting at. Okay. What

11 I'm getting at is you said it was purchased at a -- at

12 a discount.

13 A. Discount.

14 Q. If 25 million dollars was the face value

15 --

16 A. Was the face amount.

17 Q. -- did he tell you how much he purchased

18 it for?

19 A. He could purchase it for 20 million

20 dollars.

21 Q. Did he tell you from what institutions,

22 financial institutions these CDs were purchased?

23 A. No.

24 Q. Did he tell you what type of interest was

25 earned on these CDs?

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1 A. They bore a coupon rate of eight percent
2 per year.

3 Q. Was that in addition to the discount that
4 would be received?

5 A. Yes.

6 Q. Okay. So there would be a five million
7 dollar, quote, premium, end quote, at the end of the
8 year, correct?

9 A. Right.

10 Q. These were one-year CDs?

11 A. From my understanding.

12 Q. Okay. But in addition to that, Mr. Cook
13 said that they would get eight percent per month, or
14 per year. Excuse me.

15 A. Eight percent per year.

16 Q. Okay. And how would the premium be --
17 well, let me back up for a second. Was it your

18 understanding from Mr. Cook -- strike that.

19 What was your understanding from Mr.

20 Cook, if any, about the source of the funds used to

21 purchase the 20 million dollar CDs?

22 A. Investors.

23 Q. And if Mr. Cook was purchasing a 20

24 million dollar CD for each three and a half million

25 dollars in investor funds, well, it doesn't seem to

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1 add up. So how did he explain that?

2 A. There was some trust that would loan him

3 the 20 million dollars to buy the CD, and I don't know

4 how much that cost, but that came out of the three and

5 a half million dollars that he raised. He would pay

6 them a fee for borrowing 20 million dollars and

7 purchase the CD, and when the CD matured, he could pay

8 them back and his fees were already paid, from the way

9 I understand it.

10 Q. So he would borrow 20 million dollars,
11 buy a discounted CD. He would pay a fee upfront for
12 borrowing the 20 million dollars, correct? Is that --

13 A. Correct.

14 Q. How much was that fee?

15 A. I don't know the exact amount. It was in
16 the three and a half million dollars that he raised.

17 Part of that was used for that.

18 Q. And then purportedly, when the CD
19 matured, he would pay back that 20 million dollars?
20 Is that how he explained it?

21 A. Right.

22 Q. And what would be done with the five
23 million dollar premium? What was that used for?

24 A. That would go back to pay the investors
25 the three and a half million dollars that was raised,

1 plus whatever the interest he was paying them on that

2 money.

3 Q. And did Mr. Cook mention who was

4 providing these 20 million dollar loans for each CD?

5 A. No.

6 Q. Did he tell you where that institution

7 was?

8 A. No.

9 Q. Was it purportedly a bank?

10 A. No. I don't know.

11 Q. But the five million dollars would be

12 used for what again? To pay back the principal?

13 A. From what I understand it, it was to pay

14 back the investors' three and a half million dollars

15 raised to buy the CD.

16 Q. Okay. And what was the -- and what would

17 be done with the eight percent? Let me ask you this.

18 For the eight percent per year that the CDs were

19 returned, did Mr. Cook tell you whether that was
20 received on a monthly basis or whether it was received
21 at the end of the term?

22 A. No. I understood it to be a monthly
23 basis. I don't know.

24 Q. Did Mr. Cook explain why a financial
25 institution would be willing to sell him a CD at such

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1 a steep discount and also provide him with eight
2 percent a year interest?

3 A. The way I understood it was banks in
4 Europe could leverage their assets several times to
5 get loans. I'm not real sure how that worked, but the
6 more money they had on the books, the more they could
7 loan out or borrow, and that's why they would discount
8 CDs so they could -- if they had a 10 to 1 write down
9 or 10 to 1 loan value, they loaned 20 million, then,
10 well, they had a 20 million CD on the books and they

11 could borrow 200 million to do that.

12 Q. Now, I'll represent to you at the time

13 that the Dennel operation was shut down, we estimate

14 that there was approximately, oh, 35 million or so

15 dollars in investor funds outstanding, maybe 30,

16 principal outstanding. If you assume that a 20

17 million dollar, based on what Mr. Cook said, that a 20

18 million dollar CD was purchased for each three and a

19 half million, there are somewhere 150 to 200 million

20 dollars worth of CDs somewhere, or should have been at

21 the time this program was shut down. Did you ever ask

22 Mr. Cook where that money is?

23 A. No. I never asked him. I knew better

24 than to ask him.

25 MR. WARD: We're getting fairly close to

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1 a stopping point?

2 MR. NORRIS: Yeah. Let me go for a

3 little bit longer. I have a line of questioning I

4 want to complete, but it's not going to take that much

5 longer.

6 Q. (By Mr. Norris) Did Mr. Cook ever

7 mention that he -- well, what did Mr. Cook say his

8 affiliation was with Denzel?

9 A. I don't know. As far as a title goes? I

10 just thought he owned Denzel.

11 Q. Did he tell you whether he had any

12 partners in the Denzel Program?

13 A. I understood that Bob Burr was supposed

14 to be, I don't know if he was a partner, but he was

15 involved with it.

16 Q. Did you ever see any documents that

17 confirmed that these purported CDs were purchased?

18 A. No.

19 Q. If Mr. Cook could -- had the wherewithal

20 to purchase or to pay to obtain 20 million dollar CDs,

21 25 million dollar CDs at a discount and earn five

22 million dollars per CD and also eight percent interest

23 per year, did he tell you why he needed investor funds

24 at all?

25 A. From my understanding, he was helping

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1 people with obtaining a high interest rate, two

2 percent per month. He didn't need the investors to do

3 this, but he was trying to help them by doing this,

4 allowing them to participate in a good deal.

5 Q. So his motives were altruistic.

6 A. His what?

7 Q. Were altruistic or humanitarian.

8 A. His motives?

9 Q. Yes.

10 A. Oh.

11 Q. He was not --

12 A. I guess you could say that.

13 Q. All right. Now, in addition to the funds

14 from the CDs, from the interest and the principal,

15 discounted principal and the CDs, I believe you also

16 said that the Dannel Program generated returns,

17 purportedly generated returns through the trading of

18 bank instruments. Was that your understanding from

19 Mr. Cook?

20 A. That was my understanding.

21 Q. Okay. And did you ever discuss the

22 trading of bank instruments in the Dannel Program with

23 anyone other than Mr. Cook?

24 A. Yeah.

25 Q. I mean for the Dannel Program?

1 A. Yeah.

2 Q. Okay. Who did you discuss it with?

3 A. Friends of mine.

4 Q. Okay. Anyone who purportedly had an

5 affiliation with Dannel?

6 A. Oh. No.

7 Q. Okay. What did Mr. Cook tell you about

8 the trading of bank instruments in the Dannel Program?

9 What did he say about them?

10 A. He said they would be traded. I don't

11 know what -- I don't know how to answer that.

12 Q. Did he tell you -- well, let me parse it

13 down, then. Did he tell you what type of bank

14 instruments these were?

15 A. Specifically, no. I understood it to be

16 letters of credit, CDs, instruments of that sort.

17 Q. And with what institution would these

18 trades take place?

19 A. European banks.

20 Q. Any particular tier of European banks?

21 A. I don't know of any -- I mean, no, just

22 --

23 Q. Did he mention the size or the grade of

24 banks?

25 A. What I understood was banks there had to

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1 go to money centers to borrow money, because they had

2 no Federal Reserve. And they had to go through a

3 trader in order to do that, and the trader is the one

4 that would make the transactions, okay? Now, which

5 trader, I never knew. Which banks, I never knew.

6 Q. Did Mr. Cook mention any specific banks

7 with which his program did these trading activities?

8 A. Like I said, I never knew of any banks.

9 Q. Did you ever see any documents which

10 actually indicated or evidenced that such trading was

11 taking place?

12 A. No.

13 Q. Did Mr. Cook mention -- well, what was

14 the source of funds that were used, purportedly, to

15 actually purchase these bank instruments?

16 A. For the bank instruments?

17 Q. Mm-hmm. To purchase the instruments that

18 were --

19 A. That were traded?

20 Q. Yes.

21 A. I think these CDs that were bought.

22 Q. And how did those provide the funds for

23 that?

24 A. I don't understand. That's why I don't

25 understand it. The CDs he purchased at a discount

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1 were used for the trading program is all I know.

2 Q. Did Mr. Cook provide any explanation to

3 you about the mechanics of this trading?

4 A. Other than the trader would not buy a

5 instrument until he had someone else to buy it on the

6 secondary market, whatever that is.

7 Q. Was it your understanding that the

8 trader, from Mr. Cook, that the trader would purchase

9 the instruments and sell them to somebody else, sell

10 them to another person or entity and make a profit on

11 the spread?

12 A. Right.

13 Q. Okay. And what, according to Mr. Cook,

14 was the general profit on each trade?

15 A. It varied quite a bit. Two percent, and

16 I don't know what the top end was. Maybe five

17 percent?

18 Q. And how many -- okay. Go ahead.

19 A. But that was on several million dollars.

20 Q. Okay. And how often would these trades

21 take place?

22 A. Once, twice a week.

23 Q. And was it your understanding from

24 Mr. Cook that these trades would, these instruments

25 would initially be bought from very large financial

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1 institutions? Is that what --

2 A. I don't know whether it was from large

3 financial institutions. I don't know who they were

4 bought and sold to, other than there was money centers

5 and banks involved.

6 Q. Okay. Were they purchased from the money

7 centers and then sold to the banks? Was that your

8 understanding?

9 A. That's the way I understood it, yeah.

10 Q. Did Mr. Cook explain why the money

11 centers didn't just directly engage in transactions

12 with the banks?

13 A. Mr. Cook never explained it to me, but on

14 the Net, I read that European banks are not allowed to

15 trade with other banks. They have to go through a

16 trader to the money centers.

17 Q. Okay. And where did you read that on the

18 Net? Do you have a specific -- do you recall a

19 specific Web site?

20 A. I can't recall the Web site. I could

21 probably -- I think it's not on there any longer. I

22 think I tried to access it again, and it was gone.

23 But there's several on there. I can find some on

24 there and show that to you.

25 Q. Okay. I would actually be interested in

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1 seeing them.

2 A. I go to Yahoo and put in high yield

3 investments, and it brings up a lot of them.

4 Q. Okay. And did you ever see any, apart

5 from what you read on the Web sites, have you ever

6 seen any corroboration that that's actually how --

7 there is actually a European law or regulation that

8 prohibits direct transactions between the money

9 centers and the banks?

10 A. I haven't seen any corroborations of it,

11 no. It's just what was put on the Web sites.

12 Q. Did you -- did Mr. Cook indicate whether

13 he did this trading himself, and was he the person who

14 bought and sold?

15 A. No. A trader did.

16 Q. Okay. And did he ever identify any

17 specific trader that he worked with?

18 A. No.

19 Q. Did you ever see any documents which
20 evidence a relationship between Mr. Cook and any
21 specific trader?

22 A. No.

23 Q. Did Mr. Cook ever mention the name of any
24 trader?

25 A. Not that I can recall.

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1 Q. Did Mr. Cook tell you whether this -- his
2 program was regulated or monitored by any particular
3 government agency?

4 A. I don't remember any particular agency
5 monitoring it. It seems to me the Federal Reserve
6 knew of these programs. Now, whether they monitored
7 them, I don't know.

8 Q. Who told you that the Federal Reserve
9 knew of these programs?

10 A. I don't remember if I read that on the
11 Web. I've read so much about this. I don't remember
12 if it was something that Ben and I talked about or if
13 I read it.

14 Q. Did you ever discuss that subject with
15 Mr. Cook, the role of the Federal Reserve?

16 A. It's possible. It's possible. I don't
17 recall exactly. Like I say, I've seen so much of it,
18 it's hard to remember each one.

19 Q. Did he tell you whether any other
20 government, United States government agency was
21 involved in these programs in any way, either
22 monitoring it or approving it, or --

23 A. No.

24 Q. Okay. Did Mr. Cook discuss with you the
25 relationship between the Dannel Program and any

1 international organizations?

2 A. Well, I don't remember. I don't

3 understand -- I know that the programs had something

4 to do with the World Bank and the IMF.

5 Q. And what -- and did you ever discuss with

6 Mr. Cook the role of the World Bank in these programs?

7 A. I believe I did.

8 Q. And what did he say?

9 A. I believe the World Bank was the overseer

10 of the traders, and they took 50 percent of the trades

11 in order to facilitate their workings in the world.

12 Q. And what kind of workings were those?

13 Were those international humanitarian projects?

14 A. Yes.

15 Q. And what did Mr. Cook tell you about the

16 role of the IMF with this program? The International

17 Monetary Fund? Is that what you're referring to?

18 A. Right. And there again, I don't know the

19 exact difference, roles that each one of those took,

20 but they would kind of work together is all I

21 remember.

22 Q. So they worked together in?

23 A. Monitoring the trades in order to get

24 money to fund their projects around the world.

25 Q. Okay. I'm about ready to close out for

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1 today, but let me ask you. Well, let me ask you,

2 first of all, did you ever see any -- have you ever

3 seen any evidence of the involvement of the World

4 Bank or the IM -- International Monetary Fund in these

5 programs?

6 A. No.

7 Q. All right. Or in the Dannel Program

8 specifically?

9 A. No.

10 Q. Okay. Is that something you've read on

11 the Web site as well?

12 A. I've read that as well, yes.

13 Q. Okay. Let me just ask you. You

14 mentioned -- you mentioned that you had been to at

15 least that meeting in July, July 1998 meeting that had

16 some other Dannel personnel present, is that correct?

17 A. Correct.

18 Q. How many other meetings, if any, did you,

19 and I think you mentioned a meeting later in the year

20 that you were present at, is that correct?

21 A. I don't remember mentioning that, but --

22 Q. I think you did. I think I wrote that

23 down.

24 A. I believe I was there.

25 Q. Yeah. How many meetings in all did you

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1 attend?

2 A. I think I attended three meetings.

3 Q. During any of those meetings, did --

4 well, who made -- who conducted each of those

5 meetings? Who was the moderator of the meetings?

6 A. I don't know of anyone particular. I

7 know Wayne said some remarks and Ben said some

8 remarks.

9 Q. During the course of any of those

10 meetings, did anyone else make remarks?

11 A. I can remember one meeting where Wayne

12 and Gerald talked about the program.

13 Q. Did Mr. Cook -- I mean did Mr. Pate and

14 Mr. McLaws make presentations about how they presented

15 the investment to potential investors?

16 A. I don't know if you would call it a

17 presentation. They just talked about it.

18 Q. Do you recall slides or visual aids being
19 used in connection with any of those presentations or
20 talks?

21 A. I believe that Michael --

22 Q. Patrick?

23 A. -- Patrick had some type of slides made
24 up that were used.

25 Q. Okay.

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1 A. But that's all I can really remember.

2 Q. And you saw a presentation by Gerald Pate
3 and by Mr. McLaws?

4 A. I didn't see a presentation.

5 Q. You saw a talk.

6 A. I saw a discussion.

7 Q. Yeah, okay. I'm using presentation not
8 in the formal sense.

9 A. I don't want to -- they didn't have

10 visual aids at that deal is what I'm talking.

11 Q. They didn't have it then, okay. But Mr.

12 -- so that wasn't the -- it wasn't the same meeting at

13 which Mr. Michael Patrick gave some visual aids?

14 A. I don't think so.

15 Q. Okay. And did you see the, quote,

16 discussions or conversations, or I'll call them

17 presentations by Mr. McLaws and Mr. Pate, were they at

18 the same meeting? Is that at the same meeting?

19 A. They were together.

20 Q. They were together. Okay. Did they give

21 separate talks?

22 A. No. They were together. McLaws and Pate

23 talked together.

24 Q. Did you ever see any of the Dannel -- did

25 any of the Dannel sponsors at any of these meetings

1 give a separate, what I'll call presentation, about
2 how they presented the investment to potential
3 investors?

4 A. I can't recall, other than that time with
5 Wayne and Gerald.

6 Q. Okay. A couple of more questions. The
7 meeting that we looked at that we pinpointed through a
8 document was sometime in July 1998, correct?

9 A. Yes.

10 Q. When were these other two meetings that
11 you attended?

12 A. That one was July. I think it was August
13 and September.

14 Q. Okay. Finally, have you attended any,
15 apart from the courtroom appearances that you've
16 talked about where you have been present, have you
17 attended any meetings of Dannel investors since the
18 filing of the Commission's litigation?

19 A. No.

20 MR. NORRIS: All right. I think we've
21 finished for today. I think I told you, Mr. Ward,
22 that I have additional material I want to ask Mr.
23 Martella about. I think we've sort of agreed, without
24 really discussion in detail, that we're not going to
25 continue tomorrow?

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1 MR. WARD: That's correct.

2 MR. NORRIS: But we will set this
3 hopefully for sometime within the next few weeks for
4 continuing it.

5 MR. WARD: That would be fine.

6 MR. NORRIS: Okay. Very good. We're off
7 the record for today.

8

9 (Deposition Adjourned.)

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1 CORRECTIONS AND SIGNATURE

2 PAGE/LINE CORRECTION REASON FOR CHANGE

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16 I, ANTHONY J. MARTELLA, have read the
 foregoing deposition and hereby affix my signature
17 that same is true and correct except as noted herein.

18 _____

19

20 STATE OF TEXAS *

Subscribed and sworn to before me by the said
21 witness, ANTHONY J. MARTELLA, on this ____ day of
_____, A.D., 2000.

22

23 _____

24 NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

25 My Commission Expires: _____

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1 STATE OF TEXAS **

2 I, DON R. WILLIS, Certified Shorthand

3 Reporter in and for the State of Texas, do hereby

4 certify that, pursuant to the agreement hereinbefore

5 set forth, there came before me on March 16, 2000, at

6 10:15 o'clock a.m., in the City of Dallas, County of

7 Dallas and State of Texas, the following named person,
8 to-wit: ANTHONY J. MARTELLA, who was by me duly sworn
9 to testify the truth and nothing but the truth of his
10 knowledge touching and concerning the matters in
11 controversy in this cause; and that he was thereupon
12 carefully examined upon his oath and his examination
13 reduced to writing under my supervision; that the
14 deposition is a true record of the testimony given by
15 the witness, same to be sworn to and subscribed by
16 said witness before any Notary Public.

17 I further certify that I am neither attorney
18 for, nor related to or employed by, any of the parties
19 to the action in which this deposition is taken, and
20 further that I am not a relative or employee of any
21 attorney or counsel employed by the parties hereto, or
22 financially interested in the action.

23

24

25

1 GIVEN UNDER MY HAND AND SEAL OF OFFICE

2 on this _____ day of _____, A.D., 2000.

3

4

DON R. WILLIS, CSR # 943

5

Certification Expires: 12-31-2000

Allen, Harris, Shaw

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3626 Hall Street

Suite 617

7

Dallas, Texas 75219

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Taxable Cost: _____

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