

1 IN THE IOWA DISTRICT COURT FOR POLK COUNTY

2 PSFS 3 CORPORATION,)
3 Plaintiff/Counterclaim)
4 Defendant,) No. CL 114226

5 vs.)

6 RAFIK YANNI, DDS, INC., and)
7 RAFIK YANNI, et al.,)
8 Defendants/)
9 Counterclaim)
10 Plaintiffs,)

11 vs.)

12 BRICAN AMERICA, INC., a)
13 Florida corporation, BRICAN)
14 AMERICA, LLC, a Florida)
15 limited liability company,)
16 BRICAN FINANCIAL SERVICES,)
17 LLC, a Florida limited)
18 liability company, JEAN)
19 FRANCOIS VINCENS, JACQUES)
20 LEMACON, SALVATORE M. DeCANIO)
21 JR., JJR INVESTMENTS, LLC, a)
22 Florida limited liability)
23 company, LIFESTYLE OF VISION,)
24 INC., a Florida corporation,)
25 VISO LASIK MEDSPAS, LLC, a)
Florida limited liability)
company, VISO LASIK MEDSPAS)
OF CHARLOTTE, LLC, a North)
Carolina limited liability)
company, VISO LASIK MEDSPAS)
OF SAN ANTONIO, LLC, a Texas)
limited liability company,)
and NCMIC FINANCE)
CORPORATION, doing business)
as Professional Solutions)
Financial Services, an Iowa)
corporation,)

23) VIDEOTAPED
24) DEPOSITION OF
25 Additional)
Counterclaim) PATRICK
Defendants.) McNERNEY

ORIGINAL

1 THE VIDEOTAPED DEPOSITION OF PATRICK
2 McNERNEY, taken before Kira M. Matthias,
3 Certified Shorthand Reporter of the State of
4 Iowa, commencing at 9:03 a.m., January 12,
5 2011, at Suite 200, 12257 University Avenue,
6 Clive, Iowa.

7 A P P E A R A N C E S

8 Plaintiff/Counterclaim Defendant by:

9 EDWARD N. McCONNELL
10 Attorney at Law
11 Suite 200
12 12257 University Avenue
13 Clive, Iowa 50325

14 Defendants by: BILLY MALLORY
15 Attorney at Law
16 Suite 100
17 6701 Westown Parkway
18 West Des Moines, Iowa 50266

19 RONALD P. GOSSETT
20 Attorney at Law
21 4700 Sheridan Street
22 Building 1
23 Hollywood, Florida 33021

24 Also present: Bart Howard, Videographer
25 Greg Cole

26 Reported by: Kira M. Matthias, CSR

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P R O C E E D I N G S

1
2 THE VIDEOGRAPHER: My name is
3 Bart Howard. Today's date is January 12,
4 2011. The approximate time is 9 a.m. We are
5 here for the deposition of Patrick McNerney,
6 and I will have everyone identify themselves
7 starting from my left.

8 MR. McCONNELL: Okay. My name is
9 Edward McConnell. I represent PSFS 3
10 Corporation and NCMIC Finance Corporation
11 doing business as Professional Solutions
12 Financial Services.

13 MR. McNERNEY: I'm Patrick McNerney.

14 MR. GOSSETT: I'm Ronald Gossett. I
15 represent various defendants in the Iowa
16 cases in which Mr. McConnell represents the
17 plaintiff.

18 MR. MALLORY: My name is
19 Billy Mallory. I, too, represent various
20 defendants in the Iowa litigation.

21 THE VIDEOGRAPHER: On the --

22 MR. GOSSETT: Are you ready for us
23 to proceed?

24 THE VIDEOGRAPHER: On the record.

25 Q. Mr. McNerney, would you state your name,

1 please, sir.

2 THE COURT REPORTER: I need to swear
3 him in.

4 MR. GOSSETT: Oh, good.

5 PATRICK McNERNEY,
6 called as a witness, having been first duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. GOSSETT:

10 Q. Would you state your name, please, sir.

11 A. Patrick McNerney.

12 Q. Mr. McNerney, have you ever had your
13 deposition taken before?

14 A. Yes.

15 Q. I will not go through all the cautionary
16 things we usually say at the beginning, but
17 if we have an issue arise sometime during the
18 deposition, I'll stop and repeat some of them
19 at that point. I just would add to your
20 normal preparation that if I ask you a
21 question that you do not at all understand,
22 please let me know that. I'm not always
23 clear in the questions that I ask, and I'd
24 rather be clear and have you answer what I
25 thought I asked as opposed to you assuming

1 what I ask and answer a question and we get
2 off on a wrong track. Is that okay?

3 A. It's okay.

4 Q. Had -- did you have your deposition taken
5 in the litigation where NCMIC Finance
6 Corporation sued Brican America, Inc.?

7 A. No.

8 Q. When I refer to NCMIC, is it okay if I
9 say NCMIC?

10 A. Yes.

11 Q. It's a little easier for me.

12 A. Yes.

13 Q. You'll know what I'm referring to?

14 A. Yes.

15 Q. Great. Then we're going to be dealing
16 with probably the two separate corporations
17 today, NCMIC Group, Inc., and NCMIC Finance
18 Corporation. Is it okay to use NCMIC for
19 both of them? And I'll -- I'll specify
20 whether it's NCMIC Group or NCMIC Finance
21 Corporation.

22 A. Okay.

23 Q. Prior to your deposition today, I've
24 marked 28 exhibits, and I've given you a
25 three-ring binder with numbered tabs in it.

1 Those numbered tabs equate to the exhibit
2 number. So if I were to ask you to turn to
3 Exhibit 3, you would just turn to tab 3.

4 And you'll see down at the bottom, on the
5 left-hand side of each page, I placed a
6 legend. The legend says "McNerney Depo
7 Exhibit," and then it's a number. This one
8 we're looking at is number 3. And below that
9 is a sequential page number, and on the first
10 page of Exhibit 3, it says page 1 of 16. Do
11 you see where I'm looking?

12 A. Yes.

13 Q. And if I were to ask you to turn to a
14 particular page, all you'd need to do is look
15 at the page -- page legend at the bottom of
16 the exhibit. For instance, if you turn to
17 page 10 of Exhibit 3, and you'll see on that
18 page down the bottom left-hand side, it says
19 page 10 of 16; correct?

20 A. Correct.

21 Q. So that's how we'll navigate through
22 these exhibits today. And while we're on
23 this page in this exhibit, would you take a
24 second to read the biographical information
25 about you that appears on that page? And let

1 me know when you're through if that
2 information is still accurate.

3 A. The information is still accurate.

4 Q. Did you prepare for your deposition
5 today?

6 A. Yes.

7 Q. What did you do to prepare for it?

8 A. I went through the binder and materials
9 that you had furnished to Mr. McConnell.

10 Q. And did you spend time -- I don't want to
11 know what was said in the conversation, but
12 did you spend time in your preparation with
13 Mr. McConnell?

14 A. Yes.

15 Q. How much time did you spend with him?

16 A. I would say probably three hours.

17 Q. And how much time other than that did you
18 spend preparing for the deposition?

19 A. Other than reading through the book which
20 I suppose probably took an hour, I also spent
21 some time talking with Mr. Cole and with
22 Mr. Gary Hoffman.

23 Q. And I don't know that we got that on the
24 record that Mr. Cole is here in the
25 deposition room; correct?

1 A. Correct.

2 Q. In having done those things, do you feel
3 adequately prepared for your deposition
4 today?

5 A. Yes.

6 Q. Would you agree that prior to the
7 formation of PSFS 3 Corporation, three
8 lawsuits have been filed against NCMIC
9 Finance Corporation, in states other than
10 Iowa, concerning the contracts entered into
11 between NCMIC Finance Corporation doing
12 business as Professional Solutions Financial
13 Services and certain customers of Brican?

14 A. That's a fairly long question. I'm going
15 to have to have you break that down a little
16 bit for --

17 Q. Sure.

18 A. -- me.

19 Q. At some point in time, lawsuits were
20 filed by customers of Brican against NCMIC;
21 correct?

22 A. Correct.

23 Q. And there have been more than three such
24 lawsuits filed; correct?

25 A. Correct.

1 Q. And do you know the sequence of filing of
2 the first three lawsuits?

3 A. Only from after-the-fact information.

4 Q. That's fine. What do you know about it?

5 A. My understanding is the first lawsuit was
6 filed in New Jersey.

7 Q. Okay.

8 A. Then I believe the second lawsuit --
9 there were two in Florida. I don't recall
10 the sequence. And then there was one in
11 California.

12 Q. And the two in Florida, would that
13 include one of the ones that I filed?

14 A. Yes.

15 Q. Now, were the four that you just
16 identified filed in court prior to the
17 formation of PSFS 3 Corp.?

18 A. No.

19 Q. Were any of those filed prior to the
20 formation of PSFS 3 Corp.?

21 A. I think the Florida actions were filed
22 before then. I believe the California action
23 was after that, and we did not find out about
24 the New Jersey suit until after the formation
25 of PSFS 3 Corporation is my recollection.

1 Q. So then, as I understand your testimony,
2 you're aware that three lawsuits were filed
3 against NCMIC Finance Corporation by certain
4 customers of Brican prior to the formation of
5 PSFS 3 Corp. Is that accurate?

6 A. We became aware of the Florida litigation
7 before the formation. The New Jersey
8 litigation we did not become aware of until
9 after the formation as well as the California
10 litigation was after the formation.

11 Q. Okay. If you turn to Exhibit 21, please,
12 and turn to pages 5 and 6 of Exhibit 21, what
13 are those two pages?

14 A. This is an e-mail from Mr. Greg Cole to
15 Mr. Rally -- Randy Allemang at Wells Fargo
16 Corporation.

17 Q. And if you look at the second page, was
18 the second page part of the e-mail you just
19 identified?

20 A. Yes.

21 Q. Who is Mr. Allemang at Wells Fargo?

22 A. Mr. Allemang is our contact person at
23 Wells Fargo Finance Corporation.

24 Q. And you'll see on page 5 that you were
25 sent a copy of this e-mail at the time it was

1 sent to Mr. Allemang; correct?

2 A. Correct.

3 Q. Who is Gary Hoffman?

4 A. Gary Hoffman is the chief financial
5 officer of NCMIC Finance Corporation.

6 Q. And if you would look at -- well, let's
7 look at -- let's deal with the format of this
8 first because there are other e-mail that we
9 may run across in our time today. So let's
10 look at the formatting.

11 Do you see down at the bottom of page 5
12 there's a line across the page, and
13 immediately below that there's a legend that
14 says from Ed McConnell and has his e-mail
15 address? And as you turn to page 6, that
16 legend continues. Would you agree with me
17 that this e-mail is an e-mail where the
18 earliest e-mail appears at the later pages so
19 that the most recent e-mail is at the
20 beginning of the pages?

21 A. Yes.

22 Q. Okay. Then would you agree then that
23 Mr. McConnell's e-mail to Mr. Cole was
24 forwarded by Mr. Cole to Mr. Allemang, among
25 others?

1 A. Yes.

2 Q. Okay. Then if you would look at the
3 second paragraph on page 5 of Exhibit 21, we
4 have down at one, two, three, four, five --
5 the sixth line of that paragraph, the
6 sentence that begins "very recently," do you
7 see where I am?

8 A. Yes.

9 Q. Now, I'm going to read those two
10 sentences into the record. "Very recently a
11 few websites have surfaced where three
12 'hungry,' in quotes, attorneys have offered
13 to represent lessees in litigation against
14 Brican, its principals, and the leasing
15 companies who financed their lease contracts.
16 Those three attorneys have begun to file
17 suits and we have been named in three suits."
18 Did I read that correctly?

19 A. Yes.

20 Q. And the date of this e-mail is when, sir?

21 A. March 26.

22 Q. And do you know when PSFS 3 Corp. was
23 formed?

24 A. March 30.

25 Q. So as of March 26, which was a date

1 before the formation of PSFS 3, would you
2 agree with me that Mr. Cole at least knew
3 that there were three lawsuits filed?

4 A. Yes.

5 Q. And they apparently, according to
6 Mr. Cole, were filed by three hungry
7 attorneys. Do you see that?

8 A. I see that.

9 Q. Do you know what he means by that?

10 A. No, I do not.

11 Q. Do you know if he includes me in that
12 description?

13 A. I do not.

14 Q. If you'll turn to page -- Exhibit 28,
15 please, and I'll represent to you that
16 Exhibit 28 is the first two pages of the
17 lawsuit that I filed in the United States
18 District Court in the Southern District of
19 Florida. Those two pages consist of the
20 caption of the case. If you turn to page 2
21 of Exhibit 28, you'll see that NCMIC Finance
22 Corporation is one of the defendants. Do you
23 see those things?

24 A. I do.

25 Q. And if you look at the top of page 1 or 2

1 of Exhibit 28, you'll see a date when it was
2 docketed in the southern district court, and
3 that date is March 16, 2010. Do you see that
4 date?

5 A. I do.

6 Q. So just to make clear, would you agree
7 with me that prior to the formation of PSFS 3
8 Corp., three lawsuits had been filed against
9 NCMIC Finance Corporation in states other
10 than Iowa concerning the contracts with
11 Brican?

12 A. Yes.

13 Q. Okay. Would you agree that NCMIC's
14 purpose in creating PSFS 3 Corporation and
15 assigning leases to it was to try to make
16 certain that all suits concerning such
17 contracts had to be brought in Iowa?

18 A. Yes.

19 Q. Was there any other purpose?

20 A. Yes.

21 Q. What other purpose?

22 A. We felt that it was important to
23 segregate the three column leases from the
24 other leases involved in the portfolio with
25 Brican so that administratively we could

1 track and evaluate them separately.

2 Q. What tracking of the three column leases
3 is either NCMIC or PSFS 3 doing?

4 A. The tracking will involve primarily, when
5 we come down to year end, the evaluation for
6 impairment purposes under generally accepted
7 accounting principals, which I refer to as
8 FAS -- which is F-A-S, cap letters -- FAS 5
9 and FAS 51.14.

10 Q. Do you hold a degree in accounting, sir?

11 A. No, I do not.

12 Q. And -- but you are familiar very much so
13 with accounting terms, are you not?

14 A. Yes.

15 Q. When is the year end for PSFS 3 Corp.?

16 A. The year end --

17 Q. The fiscal year end?

18 A. The year end will be December 31.

19 Q. And did you have a short year end of
20 December 31, 2010?

21 A. We will. The books have not been closed
22 yet.

23 Q. And what is the fiscal year end for NCMIC
24 Finance Corp.?

25 A. December 31.

1 Q. And has its books been closed --

2 A. No.

3 Q. -- for 2010?

4 A. No.

5 Q. What type of tracking is being done?

6 A. The tracking involves the monitoring of
7 payments. We will go through the evaluation
8 under the FAS requirements for impairment in
9 the portfolio and the monitoring of which of
10 the three column leases are in litigation and
11 which ones are still paying as agreed.

12 Q. Who was it that made this decision that
13 transferring the leases to a newly formed
14 Iowa corporation would facilitate tracking?

15 A. It was a collaborative decision that we
16 made internally and also with the input from
17 counsel.

18 Q. Well, let's look at that input from
19 counsel. As we turn to Exhibit 21, page 6,
20 when you say we made it internally, who were
21 the people? What were the names of the
22 people involved in making that decision?

23 A. It principally would have been myself,
24 Mr. Cole, Mr. Schlueter, and Mister -- excuse
25 me, Mr. Hoffman.

1 Q. Now, if you would, turn to page 6 of
2 Exhibit 21, and just take a minute to read to
3 yourself the contact of Mr. McConnell's
4 e-mail to Mr. Cole. I have some questions
5 for you after you've done that.

6 A. I've finished reading it.

7 Q. Can you point me to anyplace in that
8 e-mail where Mr. McConnell deals with
9 tracking?

10 A. No.

11 Q. Okay. Now, Mr. McConnell reports to
12 Mr. Cole that this is his recommendation, but
13 he's also discussed this recommendation with
14 Catherine Rodriguez; correct?

15 A. Correct.

16 Q. Do you know who Ms. Rodriguez is?

17 A. Yes.

18 Q. Who is Ms. Rodriguez?

19 A. Ms. Rodriguez is our lead counsel in
20 Florida.

21 Q. And she had also represented NCMIC in the
22 lawsuit filed by NCMIC against Brican
23 America, Inc.; correct?

24 A. No.

25 Q. Had she not been invited --

1 A. I --

2 Q. -- to that?

3 A. -- don't recall that.

4 Q. Okay. And he also says that
5 Mr. Gallagher, Michael Gallagher, has agreed
6 with his recommendation or concurred with his
7 recommendation. Who is Michael Gallagher?

8 A. Michael Gallagher is an attorney that we
9 have used before. He's with the -- the
10 Katten law firm in New York.

11 Q. And Mr. Gallagher was also a -- an
12 attorney representing NCMIC Finance
13 Corporation in its suit against Brican
14 America Inc., was it not?

15 A. Yes.

16 Q. Mr. Gallagher is now also admitted pro
17 hac vice to the Iowa state court in all of
18 your litigation with the lessees, is he not?

19 A. I believe he's made application. I don't
20 know if it's been approved or not.

21 Q. And Mr. Gallagher also is admitted pro
22 hac vice in the southern district of Florida
23 for the litigation where he, Ms. Rodriguez,
24 Mr. McConnell, and Mr. Larson are defending
25 NCMIC and PSFS 3 Corp.; correct?

1 A. Correct.

2 Q. How many leases were transferred from
3 NCMIC Finance Corporation to PSFS 3 Corp.?

4 A. I believe it was just under 800. I don't
5 have an exact count.

6 Q. If you would, turn to Exhibit 7, please.
7 Do you recognize your signature on Exhibit 7?

8 A. Yes.

9 Q. What is Exhibit 7?

10 A. Exhibit 7 is a written consent of the
11 board of directors of NCMIC Finance
12 Corporation --

13 Q. And --

14 A. -- that --

15 Q. I'm sorry. Go ahead.

16 A. That authorizes the incorporation of PSFS
17 3.

18 Q. Okay. If you would, read for us, please,
19 the second paragraph of that board of
20 directors unanimous written consent.

21 A. "Whereas in accordance with the advice of
22 counsel, NFC wishes to assign certain three
23 column leases to a newly created wholly owned
24 subsidiary of the corporation."

25 Q. Now, we just looked at Exhibit 21, pages

1 5 and 6 being the e-mail from Mr. McConnell.
2 Is that the advice of counsel referred to in
3 this minutes?

4 A. Yes.

5 Q. And before we leave that exhibit but on a
6 different topic within that exhibit, the
7 fourth paragraph that begins "be it further
8 resolved" says "that upon incorporation of
9 PSFS 3 Corporation, the board of directors
10 authorizes the president of NFC to assign
11 such three column leases to PSFS 3
12 Corporation as he deems necessary to conform
13 to the aforementioned advice of counsel."

14 Did I read that correctly?

15 A. Yes.

16 Q. And who was at that time the president of
17 NFC?

18 A. Mr. Cole.

19 Q. And is he still the president of N --
20 NFC, as we sit here today?

21 A. Yes.

22 Q. Would you turn to Exhibit 8, please.
23 What is -- first of all, do you recognize
24 your signature on Exhibit 8?

25 A. Yes.

1 Q. What is Exhibit 8?

2 A. Exhibit 8 is a written consent by the
3 board of directors of PSFS 3 Corporation.

4 Q. And the second paragraph reads, "Whereas
5 NCMIC Finance Corporation proposes" -- in --
6 in brackets ("NCMIC") -- "proposes to
7 transfer certain property to the company,"
8 which was previously defined as PSFS 3
9 Corporation; correct?

10 A. Correct.

11 Q. "Subject to the security interests
12 previously granted by NCMIC to Wells Fargo
13 Capital Finance, LLC, as agent for certain
14 lenders." Did I read that correctly?

15 A. Yes.

16 Q. And the fourth paragraph says, "Therefore
17 be it resolved that Patrick E. McNerney" --
18 that is you; correct?

19 A. Correct.

20 Q. "Duly elected and qualified president of
21 the company is authorized and directed to
22 sign such documents as necessary to execute
23 this arrangement effective March 31, 2010, in
24 the form to which he may agree, and execute
25 such other documents as be -- "as may be

1 necessary to accomplish the foregoing." Did
2 I read that correctly?

3 A. Yes.

4 Q. If you'd turn to Exhibit 27, please, I'll
5 represent to you that Exhibit 27 is a
6 compilation of documents that I received from
7 one of my clients, a doctor with the name of
8 Hassan, H-a-s-s-a-n, middle initial "H."
9 Last name -- I'm just going to spell it. I'm
10 not sure how to say it. A-l-h-a-o-u-a-s-l-i.

11 And page 3 of that exhibit -- pages 3 and
12 4 were provided to me by that doctor. We see
13 this assignment form in other exhibits
14 throughout the notebook, but I wanted to
15 relate it specifically to a lease. What are
16 pages 3 and 4 of Exhibit 27?

17 A. Pages 3 and 4: Page 3 is the front page
18 of a document entitled "Assignment of
19 lessor's interest in leases and assumption of
20 liability under the leases -- "under leases,"
21 excuse me. And page 2 is the signature page.

22 Q. And who signed this document on behalf of
23 NCMIC Finance Corporation?

24 A. NCMIC Finance Corporation's signature was
25 Mr. Cole.

1 Q. And who signed this on behalf of PSFS 3
2 Corporation?

3 A. Ms. Anderson, Jacqueline --
4 Jacqueline L. Anderson.

5 Q. And who is Jacqueline L. Anderson at the
6 time she signed this document?

7 A. At the time she signed this document, she
8 was the director of PSFS 3 Corporation and
9 also the corporate secretary.

10 Q. And is she still holding that -- those
11 positions?

12 A. Yes.

13 Q. Why did you not sign this document?

14 A. I directed her to get whatever signatures
15 were required and to get the documents
16 formatted, work with Mr. Cole, the finance
17 corporation to get the assignment completed.

18 Q. If you turn back to Exhibit 8, please,
19 did you not believe that Exhibit 8
20 directed the -- the board of directors
21 directed you to sign the assignment document?

22 A. No.

23 Q. Do you see anything in there where it
24 directs the corporate secretary to sign the
25 document?

1 A. It says to execute the agreement in the
2 form to which I may agree.

3 Q. Well, it says Patrick E. McNerney, and it
4 defines you as authorized and directed to
5 sign such documents as necessary to execute
6 this arrangement effective March 31, 2010, in
7 the form to which he may agree; correct? In
8 the form?

9 A. Correct.

10 Q. But you understood that not to be a
11 directive that you had to sign it?

12 A. That is correct.

13 Q. And I have asked in the subpoena that was
14 directed to you that was accepted by your
15 counsel, which we'll see in Exhibit 1, page
16 11 of Exhibit 1, and paragraph 7 reads -- and
17 this is a request to you under -- under
18 particular Rules of Civil Procedure for Iowa.
19 "All grants of corporate authority granting
20 Jacqueline L. Anderson authority to sign the
21 assignment of lessors' interest in leases and
22 assumption of liability under leases on
23 behalf of PSFS 3 Corporation, attached to
24 your affidavit of June 23, 2010, as
25 Exhibit 2-A, filed in this matter." Did I

1 read that correctly?

2 A. Yes.

3 Q. And if we turn to tab 17, I'll represent
4 to you that Exhibit 17 is a copy of the
5 response that -- with which I was served to
6 the request that we just read. And if you
7 ever need to verify that representation or
8 look for other documents, I brought the
9 notebook that I received from your counsel,
10 and he has it with him. It's the white
11 notebook, and I have marked that as
12 Exhibit 29 for today's deposition.

13 Would you please show me in Exhibit 17
14 where the corporate secretary has the
15 authority to enter into a contract on behalf
16 of the corporation, PSFS 3 Corporation?

17 A. There are --

18 THE VIDEOGRAPHER: Off --

19 A. -- several.

20 THE VIDEOGRAPHER: Off the record.

21 (An off-the-record discussion was
22 held.)

23 THE VIDEOGRAPHER: On the record.

24 Q. (BY MR. GOSSETT) Mr. McNerney, I'm going
25 to reask that question because of a

1 malfunction with the recording equipment.
2 Would you please show us where in Exhibit 17
3 the corporate secretary of PSFS 3 Corporation
4 is authorized to sign the assignment of
5 leases and assumption of liability on behalf
6 of PSFS 3 Corporation?

7 A. Let me make sure I get to the right --
8 Article IV Officers, which in Exhibit 17 is
9 page 6 of 24. Paragraph 5 gives the
10 authority to the president to in general
11 supervise and control all of the business
12 affairs of the corporation. And that would
13 provide me the authority to delegate to the
14 corporate secretary to sign a document.

15 Q. Okay. Any -- in any other provision?

16 A. Yes.

17 Q. What other provision?

18 A. In Article VI in Exhibit 17, which would
19 be page 8 of 24, it continues on to the top
20 of page 9. And the last sentence of that
21 paragraph, it says, "In all transactions any
22 officer of the corporation is hereby
23 authorized to receive and receipt for all
24 money due and payable to the corporation,"
25 which would include the leases.

1 Q. All right. In any other, other than
2 those two?

3 A. And the -- let's see. In Article III,
4 number 3 in Exhibit 17, which is page 3 of
5 24, number 3 states that "In discharging
6 board or committee duties, a director who
7 does not have knowledge that makes reliance
8 unwarranted is entitled to rely on the
9 performance of any of the persons specified
10 in subsection 5, paragraph A, to whom the
11 board may have delegated, formally or
12 informally by course of conduct, the
13 authority or duty to perform one or more of
14 the board's functions that are delegable
15 under applicable law."

16 Q. Okay. Any others?

17 A. In Exhibit 17 on page 5 of 24, section 11
18 at the bottom of the page. "A director of
19 the corporation who is present at a meeting
20 of the board of directors at which action on
21 any corporate matter is taken shall be
22 presumed to have assented to the action taken
23 unless a dissent shall be entered into the
24 minutes of the meeting or unless the director
25 shall file a written dissent to such action

1 with the secretary of the meeting before the
2 adjournment thereof or shall forward such
3 dissent by registered mail to the secretary
4 of the corporation immediately after the
5 adjournment of the meeting. Such right to
6 dissent shall not apply to a director who
7 voted in favor of such action."

8 Q. And you believe that that provision you
9 just read authorizes the secretary of -- the
10 corporate secretary of the corporation to
11 sign the assignment of lease document?

12 A. There is no dissent registered with the
13 board of directors by any of the members of
14 the board or the officer as to her signature
15 on the document.

16 Q. Her signature on the document did not
17 take place until after the written consent of
18 the board of directors; correct?

19 A. Correct.

20 Q. Okay. Any other place?

21 A. If you go back to Exhibit 8, the
22 unanimous written consent of PSFS 3
23 Corporation where Ms. Anderson is the
24 director as well as corporate secretary, in
25 the third paragraph, "Whereas the company

1 desires to accept such transfer." And in my
2 reading that means that her signature as
3 corporate secretary is merely carrying out
4 the wishes expressed by the consent of the
5 board of directors.

6 Q. Don't you understand paragraph 4 of that
7 same document to direct Patrick E. McNerney
8 to sign such documents as necessary to
9 execute this arrangement?

10 A. In the form to which I may agree.

11 Q. Well, isn't the form different from who
12 signs the form?

13 A. No. The -- the form would include a
14 signature line.

15 Q. Okay. Any others?

16 A. No.

17 Q. All right. Let's try to go through them
18 then in the order in which you gave them to
19 me starting with Exhibit 17, page 6, section
20 5. You read the first sentence to us. Let's
21 look at the second sentence. "The president
22 may sign with the secretary." That would be
23 both of you together; correct?

24 A. No.

25 Q. Then what do you understand the phrase

1 "with the secretary" to mean?

2 A. The word is "may" rather than "shall" or
3 "will." So it says, "The president may sign
4 with the secretary," which in my reading
5 gives the secretary the authorization to sign
6 documents.

7 Q. Okay. So under the Article IV Officers
8 describing president, you find in that an
9 authority of the secretary to sign documents?

10 A. Yes, because I also have the authority to
11 delegate authority.

12 Q. If we look over to section 7, that deals
13 with specific authority of the secretary on
14 page 7 of Exhibit 17, does it -- doesn't it?

15 A. Refers to one of the duties of the
16 secretary. Yes.

17 Q. And nothing in that paragraph authorizes
18 her to sign contracts on behalf of the
19 corporation, does it?

20 A. That is correct.

21 Q. Okay. Going back then to page 6,
22 paragraph 5, the sentence that I was reading,
23 "The president may sign, with the secretary,
24 and any other proper officer of the
25 corporation thereunto authorized by the board

1 of directors, any deeds, mortgages, bonds,
2 contracts, or other instruments which the
3 board of directors has authorized to be
4 executed, except in cases where the signing
5 and execution thereof shall be expressly
6 delegated by the board of directors or by
7 these bylaws to some other officer or agent
8 of the corporation," and it continues from
9 there. Did I read that part correctly?

10 A. Yes.

11 Q. And if we then turn to page 3 of
12 Exhibit 17, which is Article III, section 1,
13 paragraph 3, which is one of the provisions
14 of authority that you relied upon in having
15 the corporate secretary sign the assignment
16 of leases, it reads, "In discharging board or
17 committee duties, a director who does not
18 have knowledge that makes reliance
19 unwarranted is entitled to rely on the
20 performance of any of the persons specified
21 in subsection B, paragraph A, to whom the
22 board may have delegated, formally or
23 informally by course of conduct, the
24 authority or duty to perform one or more of
25 the board's functions that are delegable

1 under applicable law." Did I read that
2 correctly?

3 A. Yes.

4 Q. Would you --

5 MR. McCONNELL: Excuse me. You said
6 "subsection B." It's subsection 5. That's
7 the only difference I would have.

8 MR. GOSSETT: Okay. I thought I had
9 said 5, but thank you, Mr. McConnell.

10 Q. With that correction did I read it
11 correctly, Mr. McNerney?

12 A. Yes.

13 Q. Would you please show us in -- any
14 authority from the board of directors to the
15 corporate secretary? Let me use the language
16 of this paragraph: Any authority delegated
17 by the board to the secretary to sign this
18 document?

19 A. To specifically sign that document?

20 Q. Yes, sir.

21 A. No.

22 Q. Okay. No, there is none? Or no, you
23 will not show it to me? I understood your
24 answer, but --

25 A. No. That's good clarification. No,

1 there is no specific authority in this
2 document authorizing the corporate secretary
3 to sign that assumption of lease.

4 Q. Okay. Now, while we're looking at
5 Exhibit 17, I want you to look at pages 17 --
6 Exhibit 17, pages 2 through 10 and tell us
7 what that document consists of. What is that
8 document?

9 A. These are the bylaws of PSFS 3
10 Corporation.

11 Q. And are these bylaws still in effect?

12 A. Yes.

13 Q. Have they been modified whatsoever?

14 A. No.

15 Q. Has there been any confirmation of the
16 conduct of the corporate secretary signed by
17 the board of directors?

18 A. No.

19 Q. Any ratification signed by the board of
20 directors as to the action of the corporate
21 secretary?

22 A. Signed by the board of directors?

23 Q. Correct.

24 A. No.

25 Q. Now, let's take a look at your affidavit

1 that was filed in some of these cases. If
2 you'd turn to Exhibit 2, I'll represent to
3 you that Exhibit 2 consists of a filing that
4 was made on behalf of Professional Solutions
5 Financial Services in the case of
6 Professional Solutions Financial Services, a
7 division of NCMIC Finance Corporation and
8 PSFS 3 Corporation as plaintiffs against
9 Visual Perceptions Eyecare and Catherine
10 Ferentini, individually. It's CL No.
11 116973.

12 And if we turn to what I've marked as
13 page 41 of the 61 pages of that document,
14 we'll see a document entitled Affidavit of
15 Patrick McNerney. Are you with me?

16 A. Yes.

17 Q. And if you turn to page 44 of the
18 exhibit, is that your signature on page 44?

19 A. Yes.

20 Q. And we see that the notary has signed
21 this document stating that the document was
22 subscribed and sworn to before her or him the
23 23rd day of June, 2010; is that correct?

24 A. Yes.

25 Q. So is the date accurate? You signed this

1 document on June 23, 2010?

2 A. Yes.

3 Q. If you look at page 43, there are two
4 paragraphs that are numbered 16. Do you see
5 those?

6 A. Yes.

7 Q. I'm going to look at the second paragraph
8 16. Are you with me?

9 A. Yes.

10 Q. The first sentence says, "It was always
11 the intent in the three column lease format
12 that jurisdiction and venue would be in
13 Iowa." Did I read that correctly?

14 A. Yes.

15 Q. Now, let's turn back then to one such
16 lease which appears at Exhibit 27. And if
17 you turn to page 2 of Exhibit 27, you'll see
18 a paragraph numbered 13. Are you with me?

19 A. Yes.

20 Q. And that paragraph is entitled Governing
21 Law, Consent to Jurisdiction and Venue of
22 Litigation. Did I read that correctly?

23 A. Yes.

24 Q. And the first sentence of that paragraph
25 reads, "This lease and each schedule shall be

1 governed by the internal laws of the state in
2 which lessor's or lessor's assignee's
3 principal corporate offices are located."

4 Did I read that correctly?

5 A. Yes.

6 MR. McCONNELL: Excuse me. You said
7 "of" instead of "for," but that's just a
8 minor correction. You said --

9 MR. GOSSETT: Yes.

10 MR. McCONNELL: -- internal laws
11 "of" --

12 MR. GOSSETT: Thank you.

13 MR. McCONNELL: -- and it should be
14 "for."

15 MR. GOSSETT: Thank you,
16 Mr. McConnell. My apologies.

17 Q. Let me read it again: "This lease and
18 each schedule shall be governed by the
19 internal laws for the state in which lessor's
20 or lessor's assignee's principal corporate
21 offices are located." Did I read that
22 correctly?

23 A. Yes.

24 Q. Would you agree that that sentence
25 concerns only governing law?

1 A. I'm not an attorney, so I'm not sure that
2 I could answer in the legal sense but as a
3 layperson.

4 Q. And what would your answer be as a
5 layperson?

6 A. I would state that it would be governed
7 by the internal laws for the state in which
8 the lessor or the lessor -- lessee --
9 lessor's assignee's principal corporate
10 offices are located.

11 Q. So that would be -- well, let me deal
12 first -- since you've already brought up the
13 fact that you're -- you're not an attorney at
14 all, let me deal with the form. Do you know
15 who prepared the language in this document
16 that consists of paragraphs 1 through 14?

17 A. No.

18 Q. Are you generally familiar with the forms
19 that are utilized by NCMIC Finance Group in
20 the leasing portion of its business?

21 A. No.

22 Q. Was there a time that you were familiar
23 with those forms?

24 A. No.

25 Q. Is it accurate that you were the one who

1 was responsible for leading NCMIC Finance
2 Corporation as it expanded into new
3 businesses such as equipment financing?

4 A. Yes.

5 Q. When was the first time that you saw a
6 three column equipment lease agreement form
7 that was prepared by Professional Solutions
8 Financial Services?

9 A. To the best of my recollection, it would
10 have been sometime in 2009 when we had the
11 initial litigation with Brican.

12 Q. And how frequently have you seen these
13 leases since 2009?

14 A. They've been very prominent in the
15 exhibits that have been filed in the various
16 pleadings.

17 Q. Did you have any conversations with
18 anybody, excluding your attorney, about the
19 content of paragraph 13 of Exhibit 27 or any
20 lease like Exhibit 27?

21 A. No.

22 MR. McCONNELL: Excuse me. I
23 just -- is -- can you give us a date span on
24 that?

25 MR. GOSSETT: Since 2009.

1 MR. McCONNELL: I see. Okay. Thank
2 you.

3 Q. With that clarification is your answer
4 still the same?

5 A. Yeah. There haven't been any specific
6 discussions about leases or lease formats
7 other than as they've involved the
8 litigation.

9 Q. Let's go back to your affidavit,
10 Exhibit 2. Paragraph 1 on page 41 of your
11 affidavit says that you were president of
12 PSFS 3 Corporation, an Iowa corporation. Is
13 that accurate?

14 A. Yes.

15 Q. Do you receive any compensation from PSFS
16 3 Corporation?

17 A. No.

18 Q. Are there any employees of PSFS 3
19 Corporation that receives compensation from
20 PSFS 3 Corporation?

21 A. No.

22 Q. Are there any employees at PSFS 3
23 Corporation who are not compensated by PSFS 3
24 Corporation?

25 A. If you wouldn't mind doing that one more

1 time.

2 Q. Are there -- let me skip that. That's a
3 little convoluted concept --

4 A. Okay.

5 Q. -- anyway.

6 A. Thank you.

7 Q. I'm asking you if you've violated federal
8 law, and that's not my purpose in today's
9 deposition. If we look at Exhibit 1, page
10 11, that's the list of documents I requested
11 that you produce. Here --

12 A. I'm sorry. Page 11?

13 Q. Page 11 of Exhibit 1.

14 A. Of Exhibit 1. Okay. I'm sorry. Excuse
15 me.

16 Q. Are you with me? I'll give you a second.

17 A. Yes.

18 Q. Okay. I asked for you to produce each
19 employment agreement between PSFS 3
20 Corporation and the three people listed there
21 in A, B, and C, you being in A. Do you see
22 that request?

23 A. Yes.

24 Q. And if we turn to Exhibit 12, we see that
25 there is one page there that's -- that says

1 PSFS 3 Corporation Employment Agreements N/A.
2 And if you would like to verify this, you're
3 welcome to look at that white notebook.

4 There were no documents produced to me that
5 are employment agreements of either of those
6 three people with PSFS 3 Corporation. Do any
7 such documents exist?

8 A. No.

9 Q. Then Exhibit 1, page 11, back to the
10 request. Are you there?

11 A. Okay.

12 Q. The next thing I ask for in paragraph 3
13 is the lease for all office space occupied by
14 PSFS 3 Corporation at 14001 University
15 Avenue, Clive, Iowa. Did I read that
16 correctly?

17 A. Yes.

18 Q. If we turn to Exhibit 13, we have one
19 page that says PSFS 3 Corporation Office
20 Lease N/A, and nothing was produced. Are
21 there any such leases?

22 A. No.

23 Q. And then back to Exhibit 11 -- oh, before
24 I leave the lease aspect, not only is there
25 no written lease, but PSFS 3 Corporation

1 doesn't pay any rent for any office space at
2 that location, does it?

3 A. That is correct.

4 Q. And paragraph 4 of Exhibit 1, page 11
5 asks for leases for all office space occupied
6 by PSFS 3 Corporation at any other office
7 location. And we look at Exhibit 14, which
8 was the response, and there were no documents
9 provided. Are there any such documents in
10 existence?

11 A. No.

12 Q. Would that indicate PSFS 3 Corporation
13 doesn't pay rent at any other location
14 either?

15 A. Yes.

16 Q. Now, if we turn to your affidavit,
17 Exhibit 2, page 41, when was -- I believe I
18 asked you this question already, but I want
19 to make sure we have dates in mind as we
20 enter this phase of the questions. When was
21 PSFS 3 Corporation formed?

22 A. I believe it was March 30, if I recall
23 from the previous document, the unanimous
24 written consent. March 30 of 2010.

25 Q. Thank you. And on paragraph 2 of page 41

1 of Exhibit 2, you state this in your
2 affidavit, "PSFS 3 Corporation is a wholly
3 owned subsidiary of NCMIC and was capitalized
4 with \$500,000 in cash, currently held in PSFS
5 3's separate bank account at Wells Fargo
6 Bank." Did I read that correctly?

7 A. Yes.

8 Q. When was PSFS 3 Corporation capitalized
9 with \$500,000 cash?

10 A. PSFS 3 Corporation was capitalized on
11 March 30 of 2010. The \$500,000 in cash was
12 deposited into their bank account I believe
13 on May 14, 2010.

14 Q. How was NCMIC -- excuse me. How was PSFS
15 3 Corporation capitalized with \$500,000 if no
16 money was paid to PSFS 3 Corporation until
17 May 14?

18 A. PSFS 3 was originally incorporated by
19 putting capital into PSFS 3's equity account
20 as reflected in the general ledger account
21 with a receivable for the \$500,000 in cash on
22 March 30 of 2010.

23 Q. With a receivable. So then it wasn't
24 capital. It was a loan to PSFS 3; correct?

25 A. Originally, it was set up as a receivable

1 to PSFS --

2 Q. Receivable by whom?

3 A. Receivable to PSFS 3 Corporation from
4 NCMIC Finance Corporation.

5 Q. If you turn to Exhibit 16, please, page 2
6 of Exhibit 16 -- first of all, let me ask
7 you, what is Exhibit 16?

8 A. Exhibit 16 are the general ledger records
9 for PSFS 3 Corporation beginning on
10 March 31, 2010, and running through
11 November 30, 2010.

12 Q. Who keeps the books for PSFS 3
13 Corporation?

14 A. The books are kept by Mr. Gary Hoffman.

15 Q. And Mr. Gary Hoffman is compensated for
16 that -- for such work by whom?

17 A. Mr. Hoffman is compensated by NCMIC
18 Finance Corporation.

19 Q. If you turn to page 2 of Exhibit 16,
20 please, I've already asked you this question,
21 and you've already answered it, but again, I
22 want to just establish for this series of
23 questions that your undergraduate and
24 graduate degrees are not in accounting;
25 correct?

1 A. Correct.

2 Q. Are you generally familiar with
3 accounting principles as they relate to a
4 general ledger?

5 A. Yes.

6 Q. Okay. And I want to ask you several
7 predicate questions that deal with the
8 mechanics of keeping this general ledger.
9 I've already asked you by whom the books are
10 kept. What is the software that is utilized,
11 if you know, by PS -- by NCMIC to keep the
12 records of its financial transactions?

13 A. That's a very, very broad question.
14 I'm --

15 Q. Well, let me narrow it down.

16 A. Okay. Thank you.

17 Q. What software is this report printed
18 from?

19 A. The general ledger software, I do not
20 know what the brand is. We have had several
21 iterations throughout the entire company of
22 general ledgers. So I don't know exactly
23 which software it is.

24 Q. Are you familiar with the -- generally
25 the account numbers used in the book of

1 accounts of NCMIC?

2 A. I would say I'm generally familiar.

3 Q. Okay. Would you agree that there are
4 five different categories of numbers that are
5 used? Assets -- asset accounts begin with
6 the number 1. Can you agree? Can -- do you
7 want me to point out in the general ledger
8 where I'm getting that information, or is
9 that something that you --

10 A. I agree.

11 Q. Okay. And liability accounts begin with
12 2?

13 A. Yes.

14 Q. Capital accounts begin with 3?

15 A. Yes.

16 Q. Income accounts begin with 4?

17 A. Yes.

18 Q. Expense accounts begin with 5?

19 A. Yes.

20 Q. Okay. Any other accounts?

21 A. No.

22 Q. So now looking at page 2 of Exhibit 16,
23 the -- again, looking at mechanics here, we
24 have an account description in the first line
25 that runs fully across the page. And it has

1 an account number that begins with the number
2 1. It has four other digits, then a bunch of
3 zeros. And in the middle of the number, it
4 has letters "dash" PSFS "dash" and it begins
5 with zeros again. Do you see where I'm
6 reading?

7 A. Yes.

8 Q. What's the indication there of PSFS?

9 A. The PSFS is in regard to at the top of
10 the page, this is the PSFS 3 general ledger.
11 And the PSFS, as you've pointed out in the
12 account number, that field only allows for
13 four characters.

14 Q. Oh, okay. So PSFS there is -- because
15 the limitation of four characters, it says
16 PSFS, but it intends to be PSFS 3?

17 A. That is correct.

18 Q. And then we'll see over on page 3 another
19 account number for direct leases that begins
20 with the digits 18. It's the second line
21 that goes all the way across the page. And
22 it has in the middle of it DL00. What is the
23 DL indication there?

24 A. The DL was the original indication that
25 was used for setting up the leases. My

1 understanding, in talking with Mr. Hoffman,
2 is that account has been closed and the
3 balances have been transferred down below to
4 the new account called contracts financed
5 PSFS.

6 Q. Okay. Now, back to the formatting of
7 this entry, the very first one on page 2
8 where the account number is 1218 and a lot of
9 zeros, the description of the account is
10 "receivable from NFC." Is the NFC there
11 NCMIC Financial Corporation?

12 A. Yes.

13 Q. Finance Corporation? Excuse me.

14 A. Yes.

15 Q. And the first entry on that line of
16 dollars and cents is under the column
17 "beginning balance," and it says zero;
18 correct? Do you see where I am?

19 A. Oh, yes.

20 Q. I want to look all the way across that
21 column first.

22 A. Okay. I see. You were -- okay. Yes.

23 Q. And it has total debits, \$2,533,348.58;
24 correct?

25 A. Yes.

1 MR. McCONNELL: Well, it was \$334;
2 not \$348. But other than that, we're fine.

3 MR. GOSSETT: Okay.

4 Q. And would you agree a debit and an asset
5 increases the asset?

6 A. Yes.

7 Q. And then the next entry is under total
8 credits, \$2,374,372.25. Did I read that
9 correctly?

10 A. Yes.

11 Q. And that is under total credits; correct?

12 A. Correct.

13 Q. Would you agree that a credit of an asset
14 decreases the asset amount?

15 A. Yes.

16 Q. And the net change \$158,962.38 -- 33
17 cents. Did I read that correctly?

18 A. Yes.

19 Q. And the ending balance is that same
20 figure; correct?

21 A. Correct.

22 Q. And the period covered by this is
23 conceptually from January 1, 2010, through
24 November 30, 2010; correct?

25 A. Correct.

1 Q. And yet we see that the first entry is
2 March 31, 2010, under that account; correct?

3 A. Correct.

4 Q. And the entry there is the \$500,000 that
5 you indicated was the capitalization of PSFS
6 3 Corp.; correct?

7 A. Correct.

8 Q. Okay. Now, if you'd turn to Exhibit 11,
9 please, what is Exhibit 11?

10 A. Exhibit 11 are the PSFS 3 Corporation
11 bank statements. The first one dated start
12 date May 4, 2010, for the month ending
13 May 31. And the last, which is page 12 and
14 13 of that exhibit, are the checking account
15 statements for the month end
16 November 30, 2010.

17 Q. Do you know if you have possession of the
18 bank account statement for December 2010?

19 A. I don't recall what the cycle date is.
20 It should be here shortly if it isn't
21 already.

22 Q. Okay. Now let's go to page 2 of
23 Exhibit 11, please. You testified that the
24 first deposit to the capital account of PSFS
25 3 Corp. that was funded was done May 14?

1 A. The cash.

2 Q. With the cash, yes.

3 A. That was the first deposit into the
4 checking account for the initial capital.
5 That is correct.

6 Q. And -- and in fact, we see that deposit
7 here; correct?

8 A. Correct.

9 Q. Now, there's a transaction detail
10 following that deposit. And we see after
11 WT Seq# NCMIC Finance Corp./Org=NCMIC Group,
12 Inc. Do you see that?

13 A. Yes.

14 Q. Do you know what that means?

15 A. I think I know what it means, but I'm not
16 going to assert a yes.

17 Q. Understanding that you believe you know
18 what it means but you're not confident --
19 I -- I -- I assume that it means that you're
20 not confident in what it means?

21 A. That is correct.

22 Q. Would you tell me what you believe it
23 means, please?

24 A. I think what it refers to is all of our
25 accounts with Wells Fargo are organized like

1 the common lockbox under NCMIC Group and then
2 the subaccount here would be NCMIC Finance
3 Corporation.

4 Q. Okay. And then there are numbers
5 following the two letters "IN." Do you see
6 that?

7 A. Yes.

8 Q. And then following that there's a
9 transaction number, TRN, number symbol and --

10 A. Yes.

11 Q. -- then numbers? Then RFB number. Do
12 you know what the RFB number means?

13 A. No.

14 Q. Okay. And would you agree that there
15 were no payments out from PSF -- PSFS 3 bank
16 account in May of 2010?

17 A. Yes.

18 Q. And we turn to June 2010, which are on
19 pages -- which is on page 3. We see that on
20 June 11 there is a transfer out of money of
21 \$163.70. Do you see that?

22 A. Yes.

23 Q. And the indication there is that it was
24 for client analysis service charge. Do you
25 see where I'm reading?

1 A. Yes.

2 Q. Would that be something that we would all
3 experience as a bank charge?

4 A. When you say "we" --

5 Q. All -- people generally, referring to
6 whatever the bank charges them for a -- an
7 account. I don't know what client analysis
8 means. So let me ask you the --

9 A. Oh.

10 Q. -- question better.

11 A. Okay. That would be -- okay.

12 Q. What does client analysis mean?

13 A. A little bit to your -- the first part of
14 your question. Personal accounts and
15 commercial accounts are service charged
16 differently by commercial banks. Client
17 analysis service charge would be the fee
18 assessed by Wells Fargo for service charges
19 for the bank account for the month, and it's
20 calculated by a process which -- which is
21 known as account analysis.

22 Q. I see from Exhibit 3, page 11, that you
23 were an undergraduate of the Stonier Graduate
24 School of Banking; correct?

25 A. Yes.

1 Q. Okay. So we can take your description
2 there with some very good authority of what
3 it means. You not only graduated in banking,
4 you also worked in the field of banking
5 before joining NCMIC; correct?

6 A. Yes.

7 Q. Commercial banking?

8 A. But I would not consider myself an expert
9 in general ledger or bank statements.

10 Q. Okay. And there were no other transfers
11 out of money from PSFS 3's account in
12 June 2010; correct?

13 A. Correct.

14 Q. Nor were there any deposits into the
15 account; correct?

16 A. Correct.

17 Q. Had there been any receipts of payment
18 made by customers on the leases that had been
19 assigned from NCMIC to PSFS 3 in May and June
20 of 2010?

21 A. Yes.

22 Q. Why was the money not deposited in PSFS
23 3's account in May or June?

24 A. The money is accounted for in a
25 subaccount in the general ledger and with a

1 lockbox. Payments are actually posted in
2 cash to the account for PSFS 3 at Wells Fargo
3 at month end.

4 Q. And then immediately taken right back
5 out; correct?

6 A. Correct.

7 Q. Why?

8 A. That is the repayment of the debt from
9 PSFS 3 Corporation back to NCMIC Finance
10 Corporation from the initial capitalization
11 of the balance sheet.

12 Q. Is there a note evidencing that debt?

13 A. Yes.

14 Q. Has that note been produced?

15 A. No.

16 Q. And are there payments being made on that
17 note?

18 A. Yes.

19 Q. Does that note carry with it the
20 obligation to pay interest to NCMIC Finance
21 Corp. by PSFS 3 --

22 A. Yes.

23 Q. -- Corp.? What's the interest rate?

24 A. I believe it's a floating rate with
25 prime, if I'm not mistaken, but I don't

1 recall.

2 Q. Has any such interest been paid?

3 A. Yes.

4 Q. How?

5 A. From the payments that received -- are
6 received on the leases, and the payments are
7 then made at month end on the note back to
8 NCMIC Finance Corporation.

9 Q. And the payment back to NCMIC is in the
10 exact same amount down to the penny of the
11 deposit made into the bank account; correct?

12 A. Correct.

13 Q. Would you direct us in Exhibit 16, the
14 general ledger, to any of that interest
15 expense, please?

16 (Cell phone interruption.)

17 MR. GOSSETT: Sorry about that.

18 A. In Exhibit 17?

19 Q. Sixteen.

20 A. I'm sorry. Excuse me. Exhibit 16 on
21 page 7, general ledger account, interest
22 payable to NFC reflects the liability account
23 for payable back to NFC for interest, and on
24 page 12 of Exhibit 16 is the expense account
25 for interest.

1 Q. And the interest expense account that
2 you're referring to on that page is 55551,
3 then with five zeros. And the description is
4 interest expense-LOC Brenton a-l-l-o-c. Did
5 I read that correctly?

6 A. That is correct.

7 Q. Now, the LOC stands for what?

8 A. LOC would be an abbreviation, I believe,
9 for line of credit.

10 Q. And what is the Brenton?

11 A. Brenton was a previous bank here in
12 Des Moines that had subsequently been
13 acquired with whom we had a relationship.

14 Q. And the a-l -- a-l-l-o-c?

15 A. Allocation would be -- I believe would be
16 the abbreviation.

17 Q. And the total interest for the year was
18 what? Forward from March 31, 2010, to
19 November 30, 2010, the total interest was
20 what?

21 A. 360,000 -- \$361,000-, excuse me, -148.14.

22 Q. And what's the principal that's owed?

23 A. On page 6 and 7 of that exhibit is a
24 general ledger account beginning with the
25 numbers 21120 designated as note payable to

1 NC -- NFCCE (sic). And the balance on that
2 at the end of the general ledger on
3 November 30 was \$12,484,484.03.

4 Q. And beginning balance was what? Excuse
5 me. The first beginning balance was zero, of
6 course, but then the entry on March 31, 2010,
7 how much in leases was transferred to PSFS 3
8 Corp.?

9 A. The gross amount of leases transferred --

10 Q. I think the entry there is on page 6.

11 A. Oh, okay.

12 Q. The note -- oh, I'm sorry. No, it's not.
13 That's just the note payable.

14 A. That's the note payable.

15 Q. Yup. Did you find the amount of the
16 leases transferred?

17 A. Yes, I did.

18 Q. What is it?

19 A. On page 3 the account number beginning
20 1800 Contracts Financed-PSFS, the opening
21 post date on March 31 was \$15,048,618.21.

22 Q. And what was the amount of the note on
23 that date owed by PSFS 3 to NCMIC?

24 A. \$13,012,801.15.

25 Q. How was the other \$2 million of the

1 assets transferred treated?

2 A. That would be treated as unearned income.

3 Q. I see on page 8 an account for unearned
4 lease income which is a liability account,
5 2125. And it has on March 3 -- and I'm --
6 there's -- why the difference? There's a
7 portion on page 8, but there's another entry
8 on page 9. What's the difference between
9 those two?

10 A. The account on page 8 again went to the
11 initial setup and classification. You'll see
12 it bears the general -- general ledger
13 designation DL00. And that account has been
14 closed and all the activity has since been
15 reposted and transferred into the account
16 2125 PSFS.

17 Q. Who physically prepared this report that
18 we see as Exhibit 16?

19 A. I don't know.

20 Q. And did you review it before it was
21 produced?

22 A. Yes.

23 Q. And in preparation for your deposition
24 today, did you review it again?

25 A. Yes.

1 Q. How much time do you think you spent
2 going through it?

3 A. Maybe 30 minutes.

4 Q. Okay. If we go back to Exhibit 2, your
5 affidavit, please, page 41, paragraph 4 of
6 your affidavit, I'm going to skip the first
7 clause that precedes the semicolon and pick
8 up after the semicolon. "Payments by lessees
9 under lease -- "leases assigned to PSFS 3 are
10 received at a common or shared NCMIC/PSFS
11 lockbox. However, PSFS 3 transactions are
12 accounted for separately in our general
13 ledger records for all lease accounts owned
14 by PSFS 3." Did I read that correctly?

15 A. Yes.

16 Q. And I think we've established, by your
17 testimony today, that there was generally
18 somewhat shy of 800 such leases transferred
19 from NCMIC to PSFS 3 Corp.; correct?

20 A. Correct.

21 Q. Would you turn back to Exhibit 16,
22 please? And point out for us where the PSFS
23 3 transactions are accounted for separately
24 in the general ledger records for all lease
25 accounts owned by PSFS 3.

1 A. The payment amounts would appear as
2 debits and credits in the contracts financed.

3 Q. Would you agree that at best what you
4 have in the general ledger is a grouping of
5 payments made to a lockbox under a -- a
6 number unique to the lockbox, not to the
7 lease amount of lease contract?

8 A. A general ledger is a grouping.

9 Q. Yes. But you said in your affidavit that
10 PSFS 3 transactions are accounted for
11 separately in our general ledger records for
12 all lease accounts owned by PSFS 3. Now, in
13 what you've directed us to, I see payments
14 under contracts financed that -- debits and
15 credits. But for instance, on April 30,
16 2010, I see six debits that are indicated by
17 under the description numbers that I do --
18 cannot equate to any lease number.

19 So would the general ledger at best
20 reflect simply payments that were received
21 that someone has allocated to PSFS 3 that is
22 not -- that allocation is not carried on the
23 general ledger?

24 A. I'm not sure I understand the word
25 "allocated."

1 Q. Well, let's look at the very first
2 entry --

3 A. Okay.

4 Q. -- of payments. That would be from
5 March -- excuse me, April 30, 2010. There is
6 a debit of \$19,812. That indicates money or
7 payment received or payments received of
8 \$19,812; correct?

9 A. No.

10 Q. What does it reflect?

11 A. That's a posting of an asset. It's a
12 debit, so it's an increase to the asset
13 account. That represents the transfer of
14 individual leases over from the original
15 transfer of the three column leases from
16 NCMIC Finance Corporation to PSFS 3. All
17 those transactions were made in the month of
18 April as we had some accounts that we didn't
19 initially identify as three column leases.
20 So there's some follow-on after the initial
21 transfer. There was some individual leases
22 that were transferred over, and that would
23 account for the debits.

24 Q. Okay. Where then -- thank you for that
25 explanation. Where are the -- I want to use

1 your language. I don't like to mix things up
2 with my language. Where are the PSFS 3
3 transactions accounted for separately in your
4 general ledger records for all lease accounts
5 owned by PSFS 3?

6 A. They would be accounted for separately on
7 the dates of the postings of the payments
8 received.

9 Q. Okay. So those payments received would
10 be in a revenue account; correct?

11 A. No, because the general ledger is split
12 between -- is -- is an accrual based system,
13 so payments wouldn't include both interest
14 and -- not interest. I should say they would
15 include income. They would include taxes.
16 They would include the principal repayment
17 then on the amortization of the lease.

18 Q. Okay. Would you point us out to any such
19 transaction entry in the general ledger?

20 A. On June 30 in the general ledger there's
21 a --

22 Q. What page are we on?

23 A. I'm sorry. I am on page 4 of 13.

24 MR. McCONNELL: Say, I hate to do
25 this again, but can I take a time-out?

1 MR. GOSSETT: Absolutely.

2 MR. McCONNELL: I'm --

3 MR. GOSSETT: As I said, any time.

4 MR. McCONNELL: Yeah. I'm sorry.

5 THE VIDEOGRAPHER: Off the record.

6 (A recess was taken.)

7 THE VIDEOGRAPHER: On the record.

8 Q. (BY MR. GOSSETT) Mr. McNerney, as we
9 broke, you were going to be directing us in
10 Exhibit 16 to the postings of transactions
11 dealing with the PSFS leases as they were
12 paid?

13 A. Yes.

14 Q. What have you got for us?

15 A. On page 4 of 13 in Exhibit 16 reflects
16 the credit amount of payments that are
17 received from the contracts financed starting
18 in May -- on May 31 of 2010. And then
19 continuing on are the other payments
20 received, and I'm looking primarily at the --
21 the large six-figure numbers. Those are the
22 ones that would be reflected flowing through
23 the checking account for PSFS 3 Corporation
24 for payments received.

25 Q. Okay. Any others?

1 A. No.

2 Q. Now, let's look at page 4 of Exhibit 16
3 for a minute. The debit entries from the
4 beginning down to May 31, all those debit
5 entries are increasing the asset account
6 contracts financed. So those are not
7 payments received; correct?

8 A. That is correct.

9 Q. And then we have a credit amount on
10 May 31 of \$543.66 which carries a description
11 that begins with a 9 number, and it says
12 PSFS. Do you know what that is?

13 A. No.

14 Q. And then we have the next entry on May
15 31, \$190,117.17. And under description it
16 says "PSFS payable." Do you know what that
17 is?

18 A. That would reflect the amount of payments
19 that have been received on the N -- NCMIC
20 Finance Corporation contracts is my -- my
21 belief, I think.

22 Q. And those were received in the lockbox?

23 A. Yes.

24 Q. And the money that was received in the
25 lockbox was deposited initially into whose

1 account?

2 A. There is a subaccount associated with the
3 lockbox where all the payment and cash
4 amounts are aggregated and the checks are
5 cleared.

6 Q. Who is the owner of that account?

7 A. It's a subaccount of the -- I believe it
8 would be a -- in this case, because it's a
9 joint shared lockbox, would be NCMIC Finance
10 Corporation.

11 Q. And under the description it says "PSFS
12 payable." We saw before in account
13 descriptions -- account numbers a limitation
14 on an alphanumeric field -- or an alphabet
15 field of 4. Is this PSFS similarly limited,
16 or does this mean Professional Solutions
17 Financial Services payable?

18 A. I don't know if there's a limitation or
19 if that's an open field.

20 Q. But if we look down two entries, we see a
21 description of principal noncash, and there
22 doesn't seem to be a limitation there in the
23 first four; correct?

24 A. That is correct.

25 Q. Are we able then to extrapolate from that

1 that this PSFS payable means Professional
2 Solutions Financial Services payable or not?

3 A. Yes.

4 Q. The entry on June 30, 2010, for
5 \$198,087.28 --

6 A. Yes.

7 Q. -- has the same description of PSFS
8 payable. Then immediately below that there's
9 another credit entry of 171,479.08 that says
10 PSFS receivable. Do you see that?

11 A. Yes.

12 Q. Do you know the difference between those
13 two descriptions?

14 A. The \$198,087.28, that is a credit on that
15 general ledger account as reflected on page 7
16 on May 31, in about the middle of the page,
17 as a debit noting that it's been paid to
18 NCMIC Finance Corporation on the payable of
19 PSFS back to NCMIC Finance Corporation.

20 The amount for \$171,479.08, without
21 having gone through ticking and tying out the
22 general ledger, I would probably have to --
23 and it may not be reflected dollar for
24 dollar, depending on what the nature of the
25 transaction was. The credit may be a total

1 amount, but the debit may be another amount.
2 And if I go to -- you're on July 31 on page 4
3 of 13. You asked about the 171,479.08
4 reflected as a PSFS receivable. If you flip
5 back to page 2, in the middle of the page,
6 this is the receivable. There are inner
7 company accounts running back and forth,
8 payables and receivables. You'll see that
9 that amount is reflected as a debit on the
10 receivable between NCMIC Finance Corporation
11 and PSFS 3 Corporation.

12 Q. Thank you. Now, if we go back to the
13 bank statements, Exhibit 11, I've asked you
14 generally, but I'd like you to confirm by
15 looking at each one of these statements that
16 the exact amount of money down to the penny
17 that was transferred to PSFS 3 Corporation at
18 the end of each months -- each month was
19 immediately transferred out to NCMIC Finance
20 Corporation in the exact amount that was
21 transferred in?

22 A. And you're referring, I'm assuming,
23 beginning with the August checking account?

24 Q. Yes, sir.

25 A. Okay. Yes. That is correct.

1 Q. Actually, I was beginning with the July
2 account.

3 A. Yes.

4 Q. Okay.

5 A. Yes, July. My mistake.

6 Q. Then in each one of those bank statements
7 beginning in August, or it may have even been
8 before then, the only other money paid out
9 from the checking account was for the client
10 analysis service charge until we get to
11 November; correct?

12 A. Yes.

13 Q. And then in November we have under a
14 posting of 11/12 \$264.94 payment to NCMIC
15 Finance Corporation. Do you know what that's
16 about?

17 A. No.

18 Q. Okay. I wanted to point that out because
19 I have a series of questions now dealing with
20 payments. And that's such a minimal amount,
21 I wouldn't spend any more time on it, but I
22 did want to show that there is one payment to
23 NCMIC for something of \$264.94.

24 Now, based upon a review of those bank
25 statements, Exhibit 11, would you agree that

1 PSFS 3 paid no fees to the State of Iowa for
2 incorporating?

3 A. There were no fees paid out of these
4 checking accounts for that to be
5 incorporated.

6 Q. Right. And PSFS 3 Corp. paid no
7 compensation to anybody?

8 A. That is correct.

9 Q. PSFS 3 has paid no rental for any
10 offices; correct?

11 A. That is correct.

12 Q. PSFS 3 has paid no telephone bills to
13 conduct business; correct?

14 A. That is correct.

15 Q. PSFS 3 has paid no electrical bills;
16 correct?

17 A. That is correct.

18 Q. PSFS 3 has purchased no office supplies,
19 has it?

20 A. That is correct.

21 Q. PSFS 3 purchased no paper, whether
22 stationery or plain; correct?

23 A. Correct.

24 Q. PSFS 3 has paid for no business cards;
25 correct?

1 A. Correct.

2 Q. And other than the promissory note
3 payments that were done by a bookkeeping
4 entry when money was transferred from NCMIC
5 Finance Group to PSFS 3 Corp. and then back
6 to NCMIC Finance Group, PSFS 3 has made no
7 other payment on any promissory notes;
8 correct?

9 A. Correct.

10 Q. PSFS 3 did not pay \$10 to NCMIC Finance
11 Corporation as part of the consideration for
12 the purchase of the financing contracts, did
13 it?

14 A. That I don't know.

15 Q. Well, do we see any payment from the
16 checking account for anything?

17 A. There's no payment on the checking
18 account. That is correct.

19 Q. And in fact, would you agree with me that
20 other than your explanation of tracking the
21 leases, that the purpose in forming PSFS 3
22 was to invoke a forum selection clause and try
23 to change the appropriate venue for this
24 litigation to Iowa after a suit was brought
25 against it by my clients in Florida?

1 Correct?

2 A. Would you break that down just a little
3 bit?

4 Q. Sure. The purpose, other than
5 tracking -- you've told us --

6 A. Okay.

7 Q. -- the two explanations that --

8 A. Correct.

9 Q. -- are -- and I accept your explanations
10 for it. I just want to --

11 A. Okay.

12 Q. -- focus -- I understand tracking.

13 A. Okay.

14 Q. What you said about tracking. But the
15 purpose in forming PSFS 3 Corp., other than
16 the tracking thing you talked about --

17 A. Yes.

18 Q. -- was to invoke a forum selection clause
19 to try to change the litigation location
20 after I had filed suit, as well as others,
21 change the venue for the litigation to Iowa?

22 A. Yes.

23 MR. GOSSETT: Okay. Thank you. I
24 have no further questions in today's
25 deposition. I do want to state, for the

1 purpose of this deposition, I limited my
2 questions to only the subject matter of your
3 affidavit in compliance with Judge Seitz's,
4 S-e-i-t-z, order in the multidistrict
5 litigation. I do reserve the right to depose
6 you in the future about other matters. Okay?

7 THE WITNESS: Okay.

8 MR. GOSSETT: With that would you
9 like the witness to read or waive the reading
10 and signing of the deposition transcript?

11 MR. McCONNELL: Well, we're -- we're
12 in Iowa state court for this deposition, so
13 there is no reading or signing --

14 MR. GOSSETT: Okay.

15 MR. McCONNELL: -- requirement. But
16 I do have -- I do have at least one question.

17 CROSS-EXAMINATION

18 BY MR. McCONNELL:

19 Q. Pat, you were asked a question regarding
20 ratification as it appeared from the board
21 regarding Jackie Anderson's signatures. Do
22 you recall that generally?

23 A. Yes.

24 Q. Was there any ratification done of any
25 officer conduct in the year 2010?

1 A. Yes.

2 Q. And what was that?

3 A. At the end of the year at our board
4 meetings, we have a resolution from the board
5 ratifying all the legal and lawful acts of
6 the officers during the year.

7 Q. All right. And where would that be
8 reflected?

9 A. That would be reflected in the minutes of
10 PSFS 3 Corporation.

11 Q. Okay.

12 MR. McCONNELL: All right.

13 That's -- that's the question I had.

14 MR. GOSSETT: Would you agree to
15 produce that document for me, please?

16 MR. McCONNELL: You're looking for
17 the board minutes?

18 MR. GOSSETT: The document he just
19 said, the --

20 MR. McCONNELL: Yes.

21 MR. GOSSETT: -- board minutes of
22 PSFS 3 Corp. that contains the end-of-year
23 ratification.

24 MR. McCONNELL: Yes.

25 MR. GOSSETT: Okay.

1 MR. McCONNELL: We'll be happy to do
2 that.

3 MR. GOSSETT: Great. Thank you,
4 sir.

5 MR. McCONNELL: Okay. Thank you.

6 THE VIDEOGRAPHER: Off the record.

7 (Deposition concluded at 10:48 a.m.)

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I, Kira M. Matthias, a Certified Shorthand Reporter of the State of Iowa, do hereby certify that there came before me at the time, date, and place hereinbefore indicated, the witness named on the caption sheet hereof, who was by me duly sworn to testify to the truth of said witness's knowledge, touching and concerning the matters in controversy in this cause; that the witness was thereupon examined under oath, the examination taken down by me in shorthand, and later reduced to printed form under my supervision and direction, and that the deposition is a true record of the testimony given and of all objections interposed.

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I further certify that I am neither attorney or counsel for, or related to or employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

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Dated at Des Moines, Iowa, this 25th day of January, 2011.

Kira M. Matthias

CERTIFIED SHORTHAND REPORTER