

EXHIBIT “G”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-21192-CIV-HUCK/O'SULLIVAN

NCMIC FINANCE CORPORATION)

d/b/a PROFESSIONAL)

SOLUTIONS FINANCIAL)

SERVICES, an Iowa)

Corporation,)

Plaintiff,) DEPOSITION OF

vs.) PAULA BARKLEY

BRICAN AMERICA, INC.,)

a Florida Corporation,)

Defendant.)

-----)

THE DEPOSITION OF PAULA BARKLEY, taken
before Megan May Mitchell, Certified Shorthand
Reporter of the State of Iowa and Registered
Professional Reporter, commencing at 1:00 p.m.,
November 17, 2009, at 604 Locust Street,
Suite 307, Des Moines, Iowa.

A P P E A R A N C E S

Plaintiff by: MICHAEL F. GALLAGHER
Attorney at Law
Katten Muchin Rosenman LLP
575 Madison Avenue
New York, New York 10022
212-940-6430

Defendant by: CHARLES H. LICHTMAN
Attorney at Law
Berger Singerman
350 East Los Olas Boulevard
Suite 1000
Fort Lauderdale, Florida 33301
954-525-9900

Also present: Greg Cole

Reported by: Megan May Mitchell, CSR, RPR

I N D E X

Examination by: Page

Mr. Lichtman 3

Exhibit Marked/Offered

No exhibits were marked.

1 PAULA BARKLEY,
2 called as a witness, having been first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. LICHTMAN:

6 Q. Please state your name for the record
7 and spell it.

8 A. Paula, P-a-u-l-a, Barkley
9 B-a-r-k-l-e-y.

10 Q. You used to go by Nuzum?

11 A. Yes, Nuzum, N-u-z-u-m.

12 Q. Is Barkley a new married name or --

13 A. It's my maiden name.

14 Q. Maiden name. I got it, then.

15 Your home address?

16 A. 320 Southwest Hughes Avenue.

17 Q. And what town is that in?

18 A. Des Moines, Iowa, 50315.

19 Q. And are you currently employed?

20 A. Yes.

21 Q. By whom?

22 A. Wells Fargo Financial Leasing.

23 Q. Okay. And where are they located?

24 A. 800 Locust.

25 Q. All right. And what do you do for

1 them?

2 A. I'm an equipment finance contract
3 administrator.

4 Q. What do those responsibilities entail?

5 A. Funding of leases, making sure the
6 documents are right. Pretty much the same
7 thing I did at NCMIC. Funding of leases and
8 reviewing of the leases, funding of the
9 vendors, their money.

10 Q. Okay. And how long have you been with
11 Wells Fargo?

12 A. Since August. I was with them for
13 18 years prior to going to NCMIC.

14 Q. And then you --

15 A. I went to NCMIC and then went back to
16 Wells Fargo.

17 Q. So you were with NCMIC from when to
18 when?

19 A. From December of 2004 until July of
20 2009.

21 Q. Why did you leave?

22 A. I was fired.

23 Q. Why were you fired? How could they
24 fire you? What's wrong with you?

25 MR. LICHTMAN: You should be ashamed

1 of yourself.

2 A. I was told I could not do my job.

3 Q. What did they think you could not do?

4 A. That I made a mistake on loading an
5 application. That's was why I was fired.

6 Q. A small-ticket application?

7 A. Yes.

8 Q. And I assume that in the course of
9 your responsibilities you loaded up thousands
10 of applications; right?

11 A. Correct.

12 Q. And they came to you and said because
13 you misloaded one you're terminated?

14 A. Correct.

15 Q. Well, that doesn't seem very fair;
16 right? Correct?

17 A. Correct.

18 Q. Okay. And was that on a small-ticket
19 lease?

20 A. Yes.

21 Q. And did the company suffer default as
22 a result of that?

23 A. No.

24 Q. Okay.

25 A. I don't even know that it became a

1 lease.

2 Q. All right. So I assume you felt it
3 was a pretextual reason for being fired?

4 MR. GALLAGHER: Objection. You can
5 answer, if you understand.

6 A. Rephrase that.

7 Q. Did you feel it was pretextual, that
8 there was some other reason that they let you
9 go as opposed to one issue with loading up a
10 lease? There's something behind the scenes
11 going on?

12 A. Yes.

13 Q. Okay. I can tell that this is an
14 uncomfortable subject.

15 A. Yes.

16 Q. I don't wish to make you feel
17 uncomfortable.

18 A. I know that.

19 Q. The problem is that we're in the midst
20 of a \$30 million lawsuit and you worked at the
21 company and now you're not working at the
22 company. I am, unfortunately, as the case
23 goes, entitled to -- and maybe you could even
24 argue required -- to get all the information.
25 Okay?

1 A. Yes.

2 Q. So you know, I don't think you have to
3 worry about anybody picking up this transcript
4 and sending it to The Des Moines Register or
5 whatever the name of the newspaper is. Okay?

6 A. Yes.

7 Q. The case is pending in Florida, as I
8 think you know.

9 A. Correct.

10 Q. Well, let me back up for a second.
11 You were fired in July '09, and what did you do
12 until you started working -- it only took you a
13 few weeks before you got hired by Wells Fargo
14 again?

15 A. I was hired the next week.

16 Q. Next week. Okay. So that's not so
17 bad.

18 A. No.

19 Q. What contact did you have with anyone
20 from NCMIC --

21 MR. LICHTMAN: (To the court reporter)
22 When I say NCMIC, you know what the initials
23 are, the acronym?

24 Q. -- or PSFS from the time that you left
25 until today?

1 A. I have talked to Lauren. She's the
2 compliance person.

3 Q. Lauren who?

4 THE WITNESS: What's her last name?

5 MR. GREG COLE: Sartwell,
6 S-a-r-t-w-e-l-l.

7 Q. And anybody else?

8 A. Jean Thompson.

9 Q. And anybody else?

10 A. That's it.

11 Q. Okay. Did you speak to any lawyers
12 about this case?

13 A. No.

14 Q. Okay. Did you speak to any other
15 people besides Ms. Sartwell and Mr. Thompson
16 since you left?

17 A. Jean is a woman.

18 Q. I know that -- oh, all right. Jean
19 Thompson.

20 But Lauren Sartwell and Jean Thompson?

21 A. Those are the only two I talked to.

22 Q. What did you talk to Ms. Sartwell
23 about?

24 A. She had foot surgery, and I talked to
25 her about her -- I called her and asked her how

1 her surgery went.

2 Q. Okay. She's a friend?

3 A. Yeah.

4 Q. Okay. And how about Jean Thompson?

5 A. Jean has called me a couple times to
6 try to get ahold of me for Greg.

7 Q. Okay. And would that pertain to
8 matters related to Brican?

9 A. Yes.

10 Q. And by "Greg" you mean Greg Cook,
11 president?

12 A. Greg Cole.

13 Q. Cole, I mean. Right. I knew that, as
14 they say.

15 Okay. When was the first call?

16 A. Maybe a month ago.

17 Q. What did Jean say to you?

18 A. Greg's trying to get ahold of you;
19 will you call him.

20 Q. Is that because Greg had left messages
21 on your phone at home and you didn't wish to
22 return them?

23 A. No. I think the first time he called
24 me I hadn't returned his call because I wasn't
25 in town; and then when Jean called me she just

1 said, Could you call Greg. He's trying to get
2 ahold of you.

3 Q. What did Jean say was the reason Greg
4 wanted to talk to you?

5 A. Over Brican.

6 Q. Did she give you any more specifics
7 than that?

8 A. No.

9 Q. Okay. So that was the first time, and
10 that was about a month ago?

11 A. Somewhere in there. I don't know
12 exactly.

13 Q. Roughly, give or take?

14 A. Yeah.

15 Q. I'm not holding you to a date.

16 Do you recall, was there a second
17 call?

18 A. Yes.

19 Q. And when was that?

20 A. Last week.

21 Q. And Jean called you again?

22 A. Yes.

23 Q. Let me guess, she said, "Hey, you're
24 giving a deposition in this case. Want to talk
25 to you"? Is --

1 A. No.

2 Q. -- that petty much it?

3 A. No.

4 Q. Well, that's good. What did she say?

5 A. It was about her own personal job
6 there.

7 Q. Was it about her fulfilling her
8 responsibilities as it pertained to Brican?

9 A. No.

10 Q. Whether or not she was in good
11 standing to keep her job?

12 A. Yes.

13 Q. Did she express her viewpoint one way
14 or the other?

15 A. Yes.

16 Q. And what did she say?

17 A. She had been written up by Todd.

18 Q. For doing what?

19 A. For not being able to be on the same
20 path as he is.

21 Q. What does that mean?

22 A. Follow --

23 MR. GALLAGHER: Objection. Sorry.

24 A. Just following his direction in the
25 way the company was going to be going, I guess

1 is --

2 Q. So did she tell you that she thought
3 she was getting fired?

4 A. Yes.

5 Q. Has she been fired?

6 A. I don't know.

7 Q. Would you consider yourself a friend
8 of hers?

9 A. Yes. We worked together for 4 years,
10 yes.

11 Q. Do you socialize outside of work?

12 A. No.

13 Q. Okay. What did she say about Brican,
14 if anything?

15 A. She did not say anything about Brican,
16 about that.

17 Q. Okay. Did she talk to you at all
18 about the fact that PSFS and Brican were in a
19 lawsuit?

20 A. I had already known that.

21 Q. How did you already know that?

22 A. From previous conversations with Greg.

23 Q. Okay. So --

24 A. I think --

25 THE WITNESS: (To Mr. Gallagher) I

1 think with you too.

2 A. I'm not exactly sure when all that
3 took place.

4 Q. Okay. When you say "you too," what do
5 you mean, just for the record?

6 A. (Indicating.)

7 MR. GALLAGHER: By counsel, she's
8 pointing at me.

9 A. Yes. Sorry.

10 Q. Do you know his name?

11 A. No -- Mike.

12 MR. GALLAGHER: Michael Gallagher.

13 A. Michael Gallagher.

14 Q. So how do you know it was Michael
15 Gallagher as opposed to Michael Verte?

16 A. Because Greg had told me that's who I
17 would be talking to.

18 Q. So when you heard the name Gallagher,
19 it refreshed your memory?

20 A. Yes.

21 Q. Okay. What else did she say in that
22 second call last week?

23 A. That was just all personal. I believe
24 that was Thursday or Friday last week when she
25 called me.

1 Q. If she's not a personal friend, why
2 would she call you?

3 A. Because she knew that I had been
4 through the same thing.

5 Q. Okay. So you were sort of
6 commiserating with each other about your
7 respective treatment at the company. Fair
8 statement?

9 A. Fair statement.

10 Q. Okay. You thought you were treated
11 unfairly, and it sounds like she thinks she may
12 be being treated unfairly?

13 A. Correct.

14 Q. Okay. Had you had any other
15 conversations with her since then?

16 A. Yesterday she called me to call Greg,
17 because -- to make sure that I was going to be
18 here today.

19 Q. Okay. And was there anything else
20 said besides that?

21 A. No.

22 Q. All right. You said that you had a
23 call with Greg and a call with Michael
24 Gallagher, Mr. Gallagher sitting next to you.
25 Was that one call, or was that two calls?

1 A. I think one call was with the two of
2 you.

3 MR. GALLAGHER: By counsel,
4 Mr. Wertman and I, from your office, had a
5 conversation with Ms. Nuzum a week ago Friday
6 to determine her availability to come in for a
7 deposition.

8 Q. Oh, okay. So you talked with Jeff
9 Wertman in my office --

10 MR. GALLAGHER: On the phone, the
11 three of us spoke.

12 Q. -- and Mr. Gallagher at same time.
13 Okay.

14 Did you have any private conversations
15 at any time with Mr. Gallagher?

16 A. When I worked with the company.

17 Q. All right. We'll get to those in a
18 minute. Well, maybe we won't.

19 Okay. Have you had any conversations
20 with anybody from the time that you learned
21 that you were going to be deposed in this case
22 to now about your testimony?

23 A. No.

24 Q. Did anyone send you documents to look
25 at?

1 A. No.

2 Q. Okay. Your call with Greg, when was
3 that?

4 A. Within the last couple weeks. I've
5 talked to him just a couple times, telling me
6 what -- first all, he was telling me that I was
7 going to be called in for a deposition. That
8 was the first thing. And then the second thing
9 was he wanted to know if I would -- what date I
10 had set. I think that's what he had asked, is
11 if I had set up a date yet.

12 Q. Meaning a date to appear --

13 A. To appear here, yes.

14 Q. -- and have this conversation with me?

15 A. Yes.

16 Q. Okay. Before that did you have any
17 discussions with Greg about the substance or
18 nature of the relationship between Brican and
19 PSFS?

20 A. Prior to my leaving NCMIC?

21 Q. Yes.

22 A. I don't think specifically just with
23 Greg. I think we've had meetings -- we had a
24 group meeting saying, you know, like, we were
25 going to be all okay even though we weren't

1 doing business with Brican.

2 Q. Okay. We'll get to that.

3 Did you ever have any one-on-one chats
4 with Greg?

5 A. Yes.

6 Q. Okay. Were they about Brican?

7 A. No.

8 Q. Okay. I only want to focus right now
9 on Brican.

10 A. Okay.

11 Q. Because then we really will be here
12 until 10:00, and we don't want that, do we?

13 A. Correct.

14 Q. All right. So the extent of the
15 conversations that you would have had with
16 Mr. Cook -- no. No. No -- with Greg would
17 have been the conversation you described at
18 some group meetings; right?

19 A. Correct.

20 Q. Okay.

21 A. I think he pretty much was just going
22 over, you know, where we were focusing on, you
23 know, what we were going to do to focus, you
24 know, to grow the business, pretty much.

25 Q. Okay. Now let's focus on exactly what

1 your job responsibilities were at NCMIC.

2 A. Okay.

3 Q. At the time that you had conversations
4 with Mr. Gallagher. All right?

5 A. Okay.

6 Q. I don't want you to yet tell me about
7 those conversations. We may or may not get
8 there.

9 A. Okay.

10 Q. But describe for me what your
11 responsibilities were.

12 A. I was the manager over the funding
13 team. I had three girls that reported to me,
14 two of which who did funding and review of the
15 documents, and the other girl -- the other lady
16 loaded applications, did UCCs. That's -- our
17 miscellaneous stuff.

18 Q. And that would have pertained to not
19 just Brican, but all --

20 A. All --

21 Q. -- vendors that the company had
22 relationships with?

23 A. Correct.

24 Q. And as manager of the funding team,
25 who did you report to?

1 A. Todd Cook.

2 Q. How often did you talk to Todd?

3 A. Very often.

4 Q. Daily?

5 A. Probably -- yes, daily. We had weekly
6 meetings where it was -- where we were
7 discussing all of the -- just me and him, a
8 one-on-one.

9 Q. And would that have included Brican?

10 A. Not so much. It was -- pretty much
11 where I was focusing was trying to get the
12 lease documents that we send out in order in
13 the computer, making sure that all the computer
14 stuff was updated with all the new information
15 and --

16 Q. So you were really more along --
17 working in, we'll call it, the technical side
18 of closing the transactions, I think is what
19 I'm hearing; right?

20 A. I worked it from application through
21 funding.

22 Q. And would you describe for me Jean
23 Thompson's role.

24 A. She was the account manager. She
25 made -- she would talk to the vendors when

1 there was issues, or if sometimes we needed
2 additional information she would talk to them.
3 Her job was to keep the vendors happy, pretty
4 much.

5 Q. Why? Why do you want to keep the
6 vendors happy?

7 A. So we continue to do business with
8 them.

9 Q. Because they send you leases, and
10 leases mean money; right?

11 A. Correct. Yes.

12 Q. I am not at all trying to diminish the
13 level of your responsibility. I've done
14 equipment lease work for much of my career, but
15 it sounds to me like really what your job was
16 was largely mechanical in terms of going
17 through the same steps every transaction to
18 assure that it complied with company procedure.
19 Is that a fair statement?

20 A. That is true.

21 Q. You weren't making decisions on the
22 portfolio; right?

23 A. No.

24 Q. You weren't making credit decisions;
25 right?

1 A. No.

2 Q. You weren't arranging relationships
3 with vendors; right?

4 A. No. Nope.

5 Q. You had discreet functions and were
6 performing those functions; right?

7 A. Correct.

8 Q. When did you first learn the lawsuit
9 was filed?

10 A. When Greg called me and told me.

11 Q. Before or after?

12 A. Before or after --

13 Q. You left.

14 A. After I left.

15 Q. And you're sure of that?

16 A. Pretty sure. I -- I know that I had
17 met with him prior, looking over stuff, but I
18 do not know -- I did not know it was in a
19 lawsuit.

20 Q. And when you say "him," you mean
21 Mr. Gallagher?

22 A. Yes, Mr. Gallagher.

23 Q. I should, also, go back for a second.
24 Have you had your deposition taken before?

25 A. No. Sorry.

1 Q. Okay. No, not your fault; my fault,
2 actually, because there's certain rules.

3 If you don't understand one of my
4 questions, let me know. All right?

5 A. Okay.

6 Q. And your answers all have to be
7 audible in the extent that you can -- you know,
8 instead of point to Mr. Gallagher and saying
9 "him" --

10 A. State his name.

11 Q. The name would be helpful.

12 A. Okay.

13 Q. Okay?

14 A. Yes.

15 Q. If you need to take a break to use the
16 rest room, let us know. If Mr. Gallagher, you
17 know, is punching you and you're angry about
18 it, let me know. Okay?

19 A. Okay.

20 Q. Although he's a nice guy and wouldn't
21 do that. All right?

22 A. Yes.

23 Q. Okay. Do you recall when you spoke to
24 Mr. Gallagher?

25 A. Sometime middle -- beginning of the

1 year, I would say. Probably sometime in the
2 beginning of the year.

3 Q. Who was present when you had the
4 conversation with him?

5 A. Me and Mr. Gallagher.

6 Q. Okay. So he came into Iowa and into
7 your offices and then went around and talked to
8 people?

9 A. I actually went and met him in an
10 office.

11 Q. Okay.

12 A. It was very private.

13 Q. Do you know who else met with him that
14 day?

15 A. No, I do not remember.

16 Q. What was the substance of the
17 conversation, generally?

18 MR. GALLAGHER: Objection. You don't
19 have to answer that. It's privileged.

20 MR. LICHTMAN: I'm not sure Iowa
21 law -- I know under Florida law she would not
22 be part of the management team to which the
23 privilege would apply, and I don't think that
24 she had any role in the decision-making process
25 leading to the filing of the suit. So I'm not

1 sure that the privilege attaches, because it
2 does not attach in most states to every
3 employee of the company, and I think that I
4 have spent some time laying the foundation to
5 establish that. So I think the question is
6 proper.

7 MR. GALLAGHER: I'm going to direct
8 her not to answer. I direct that it's
9 privileged.

10 Q. Okay. Obviously we have to look into
11 this and determine if Iowa law is different
12 than other state laws. You know, we may need
13 to take your deposition again. I'm not going
14 to sit here today -- well, maybe I will. Maybe
15 what I'll do is ask the questions and he'll
16 assert privilege and then I'll have the record
17 as to what those questions would be, which is
18 probably what I will do.

19 Did he ask you about matters other
20 than Brican?

21 MR. GALLAGHER: Objection. Don't
22 answer. It's privileged.

23 Q. How long did the conversation take
24 place?

25 A. Fifteen minutes, a half-hour, maybe.

1 Q. Did he have documents with him?

2 A. Yes.

3 Q. Do you recall what those documents
4 were?

5 MR. GALLAGHER: Objection.
6 Privileged. Don't answer.

7 Q. Did he give you any memos?

8 MR. GALLAGHER: Objection, privileged.

9 Q. As a result of your conversation with
10 counsel, what did you do next?

11 A. Went back to my desk and went back to
12 work.

13 Q. Did you change anything that you were
14 doing with respect to how you handled the
15 Brican account?

16 A. No.

17 Q. Did you furnish him any information
18 after that respecting Brican?

19 MR. GALLAGHER: Objection.
20 Privileged.

21 Q. Do you know if your e-mails were
22 reviewed at about that time or up to any point
23 in time you left respecting Brican?

24 A. I know that all of our e-mails are
25 company -- company ownership and they can

1 review them at any time.

2 Q. Right. But do you know if they
3 specifically were reviewed?

4 A. That I do not know.

5 Q. Okay. Did you ever have any other
6 conversations with Mr. Gallagher besides the
7 meeting that you had in his office?

8 A. Not until last month.

9 Q. Last month. And what was last month?

10 A. When he -- I talked to Mr. Gallagher
11 and someone from your office.

12 Q. Oh, that call. Okay. All right.
13 Have you ever seen a copy of the
14 lawsuit in this case?

15 A. No.

16 Q. Okay. Let me show you what's been
17 marked as Exhibit 1 earlier today. It's the
18 vendor agreement between PSFS and Brican. If
19 you would, take a moment and look that.

20 A. (Witness complied.) Okay.

21 Q. Okay. Have you seen this document
22 before?

23 A. No.

24 Q. All right. Did you know it even
25 existed?

1 A. I knew that we had a vendor agreement
2 with them.

3 Q. Would it be a fair statement it was
4 not your role to negotiate a vendor agreement?

5 A. That is correct.

6 Q. Okay. And therefore, I presume that
7 you did not have any role in negotiating the
8 agreement?

9 A. Correct.

10 Q. Do you know who at PSFS did negotiate
11 the agreement?

12 A. It says on here Fred Scott.

13 Q. Fred Scott signed it. Do you know if
14 anybody else --

15 A. I know that Brican had started prior
16 to my starting the company, so it would be an
17 assumption to know who started it. I don't
18 know. I know Fred Scott was working on the
19 account.

20 Q. Okay. Let's see if we can clarify
21 something. I thought you started in
22 December 2004.

23 A. Correct.

24 Q. Okay. This agreement is dated
25 July 15, 2005.

1 A. Correct.

2 Q. Are you saying that the PSFS and
3 Brican were doing business even before
4 December 2004?

5 A. Yes.

6 Q. Okay. Do you know if there was
7 another earlier form of this agreement?

8 A. That I do not know.

9 Q. How do you know that they were doing
10 business together before then?

11 A. Because I funded the leases.

12 Q. You mean as soon as you got there you
13 funded leases?

14 A. Uh-huh. Yes.

15 Q. Yeah, one of the rules of the quorum
16 is the uh-huh/huh-uh thing doesn't really work.

17 A. Yes.

18 Q. Okay. Well, would it be a fair
19 statement that you're not generally familiar
20 with the form of PSFS vendor agreements, since
21 you've just seen this one for the first time?

22 A. I know that the bigger vendors, they
23 do have the general vendor agreement with them.
24 When it -- when we would do them it would be
25 put on the system that we had one.

1 Q. And you saw on the system that there
2 was a vendor agreement with Brican?

3 A. Yes. Yes.

4 Q. Was it on the system for what period
5 of time?

6 A. I do not know when it -- usually it's
7 right after we get the vendor agreement signed
8 it's put on the system.

9 Q. So assume that I don't know your
10 system -- and I don't --

11 A. Uh-huh.

12 Q. -- and it got booted up and you wanted
13 to find where on the system it says general
14 vendor agreement in place, or however it's
15 labeled, where would you see that?

16 A. In the vendor synopsis area.

17 Q. Just a notation that the agreement
18 exists?

19 A. I don't remember what they look like.
20 I'm sorry.

21 Q. That's okay.

22 A. I'm working on a different system now,
23 so I -- I just know that it's there somewhere
24 that tells us that.

25 Q. And it was called the vendor --

1 A. It's like a vendor synopsis.

2 Q. Vendor synopsis.

3 What other data would be located in
4 the vendor synopsis?

5 A. It would have their address, contact
6 people, how they -- maybe how they want to get
7 paid, you know, whether it's ACH or whatever,
8 what kind of equipment they sell. Just a
9 general knowledge of the vendor is what would
10 be in that.

11 Q. Does it describe the nature of the
12 relationship in terms of what documents are
13 effected on a transaction, or executed on a
14 transaction?

15 A. I do not think so.

16 Q. All right. I think you said that PSFS
17 has vendor agreements for its major vendors;
18 right?

19 A. Correct.

20 Q. Is it your understanding that up to
21 the point in time where you left, that Brican
22 was the largest of PSFS's vendors?

23 A. It was a very large vendor.

24 Q. Do you know anyone larger?

25 A. No.

1 Q. Okay. Would you agree that my
2 statement "largest" was accurate?

3 A. Yes.

4 Q. Would that be both in terms of number
5 of leases and dollar volume?

6 A. Yes.

7 Q. Did you ever have discussions with
8 anyone at Brican about whether it was a Florida
9 or a Nebraska company?

10 A. No. I know we went down to Florida to
11 meet them.

12 Q. Did you ever have any discussions with
13 anyone at PSFS that Brican was allegedly a
14 Nebraska company, but was, in fact, a Florida
15 company?

16 A. No.

17 Q. Had you ever heard the word "Nebraska"
18 even come up --

19 A. No.

20 Q. -- in reference to anything about
21 Brican?

22 A. No.

23 Q. Okay. When I use the term "Brican,"
24 do you know what the full name of the Brican
25 entity I was dealing -- that you were dealing

1 with?

2 A. Brican America.

3 Q. Okay.

4 A. And then there was Brican Corporation,
5 which were two separate entities.

6 Q. Okay. Have you heard of Brican,
7 LLC --

8 A. Correct.

9 Q. -- Brican America, LLC?

10 A. Yes.

11 Q. When you say "Brican America," do you
12 mean Brican America, LLC?

13 A. Yes.

14 Q. Is it a fair statement that you've
15 dealt with Brican America, LLC, for the
16 duration of when you were handling the Brican
17 portfolio?

18 A. During that time I -- I can't remember
19 when it happened. They changed their name. It
20 was Brican America Corp. or something, and then
21 they went to Brican America, LLC.

22 Q. And all of the documents that you saw
23 after that point referenced that; right?

24 A. Correct.

25 Q. If there were problems with

1 warranties, would those issues have ever ended
2 up, you know, proverbially on your plate?

3 A. I have had calls, because my name is
4 on the lease. I have had calls on it.

5 Q. Right. And was that a Brican America,
6 LLC, issue?

7 A. It wouldn't have been the Brican Corp.
8 that's located in Canada. It would have been
9 Brican America. They would just call me and
10 ask -- you know, say, something about, you
11 know, something -- maybe it was just their
12 payment or, you know, something like that. And
13 then if I could help them, I would; if I
14 couldn't, I would turn it over to collections
15 or Jean.

16 Q. Okay. Tell me, when you worked with
17 the people at Brican, who did you work with
18 principally?

19 A. Sandra.

20 Q. Do you remember Sandra's last name?

21 A. No.

22 Q. Let's see if I can help you. Ellzey?

23 A. Ellzey, that's it.

24 Q. Okay. Anyone else?

25 A. A Jennifer Robinson.

1 Q. Anyone else?

2 A. Primarily that's it.

3 Q. All right. What kind of things would
4 you work with Sandra Ellzey on?

5 A. If I needed some additional -- maybe I
6 needed a corrected invoice, the documents
7 weren't signed, or I needed additional
8 paperwork is usually what I would have to talk
9 to her about.

10 Q. So she sounds like she had sort of
11 like a technical-type job of following up to
12 assure that your closing files were in good
13 shape; right?

14 A. Yes. There was Sandra, and then
15 Jennifer came in later.

16 Q. Did Jennifer succeed Sandra, or was
17 she in addition to Sandra?

18 A. She was in addition.

19 Q. So she did the same kind of work?

20 A. Yes.

21 Q. Did you find them cooperative?

22 A. Very.

23 Q. How many times a week would you say
24 you were on the phone with them?

25 A. Usually it was e-mail.

1 Q. Oh, okay.

2 A. Occasionally it was phone, but most of
3 the time it was e-mail.

4 Q. Okay. Were you responsible for UCCs?

5 A. My department was.

6 Q. Do you recall what the company's
7 policy was on filing UCCs on Brican
8 transactions?

9 A. We filed them at first on all of them.
10 Then we changed it to where we weren't filing
11 it because the majority of it was software.

12 Q. Okay. And do you know who made that
13 decision?

14 A. Todd -- or I would say that that was
15 probably Todd Cook and the compliance
16 department. I don't know that it was just
17 necessarily him.

18 MR. LICHTMAN: All right. I need
19 two seconds to respond to something. I have
20 kind of like emergencies that I'm dealing with
21 back home. All right?

22 MR. GALLAGHER: Do you want to take a
23 short break?

24 MR. LICHTMAN: I don't need one.

25 MR. GALLAGHER: Do you want --

1 THE WITNESS: No, I'm okay.

2 MR. LICHTMAN: Sorry.

3 Q. Did you ever have any discussions with
4 Sandra Ellzey or Jennifer Robinson about
5 marketing agreements that were in place with
6 PSFS -- excuse me -- with Brican?

7 A. No.

8 Q. Did you know that there were marketing
9 agreements in place?

10 A. Yes.

11 Q. Okay. How do you know that there were
12 marketing agreements?

13 A. The first one that I saw -- when the
14 agreement came in, the first one I saw I went
15 to Todd and I said, I don't know what this is.
16 It's in my -- it's with my lease.

17 Q. And when was that?

18 A. Maybe a year ago. Year and a half
19 ago, maybe.

20 Q. Okay. And what happened next?

21 A. He said that he already knew about it
22 and that it was okay.

23 Q. Do you know how he knew about it?

24 A. Jean had taken it to him.

25 Q. Okay.

1 A. Because I discussed it with Jean
2 later.

3 Q. Did she say anything more than "it was
4 okay"?

5 A. No.

6 Q. All right. Did he ask you to do
7 anything else in terms of obtaining more copies
8 of marketing agreements?

9 A. No. If they came in they were just
10 put with the file.

11 Q. Who was in charge of credit checks?

12 A. Tim and -- there -- it changes.

13 Q. Well, let me be more specific, then.
14 Let's say from the time that you got there, for
15 a couple of years was it one particular person?
16 Was there somebody that had principal
17 responsibility?

18 A. Tim was the manager over that area.

19 Q. What's Tim's last name?

20 THE WITNESS: Help me.

21 MR. GREG COLE: Borseth.

22 A. Borseth.

23 MR. GREG COLE: B-o-r-s-e-t-h.

24 Q. Do you have any responsibility on
25 credit checks?

1 A. No. If they auto approved we went --
2 we would just go on with it. Because our
3 system was set up to do auto approvals, and
4 when they auto approved, they did not go to the
5 credit team.

6 Q. Okay. Do you know who credit checks
7 were conducted on? Was it the lessees, the
8 guarantors? Or would that be outside your
9 knowledge?

10 A. Okay. There's -- that's a two-fold
11 question. There's -- the vendors are separate.
12 They do their own due diligence on that part.
13 And then the customers are in a separate one
14 where they do due diligence on that.

15 Q. Okay. Let me clarify that for you,
16 then.

17 A. Okay.

18 Q. In terms of PSFS making a decision to
19 enter into a lease with a potential lessee, in
20 those cases were the credit checks performed on
21 the lessee or the guarantor or both?

22 A. It would be both.

23 Q. And how do you know that?

24 A. Because we would load that information
25 in. My team would load that information in,

1 and all of our credits were pulled on personal
2 credit.

3 Q. And did you do anything different with
4 respect to the lessee entities compared to the
5 personal guarantors?

6 A. We would pull a Secretary of State for
7 the lessee's name, and we would pull the
8 doctor's licenses for the personal part of it.

9 Q. Did you do the credit scoring on the
10 lessee, also, or check any database?

11 A. It was all based on dollar amounts.
12 If we couldn't find them on Secretary of State,
13 maybe it may have gone further up the ladder,
14 then. If it personally -- if it scored on the
15 personal information we received and we found
16 it on Secretary of State, we did not go any
17 further.

18 Q. Okay. And is it a fair statement part
19 of your responsibility was to, then, input into
20 the system the findings of the
21 creditworthiness?

22 A. We input the application with the name
23 and the Social Security Number and that
24 information; and then the computer, when you
25 hit enter it automatically updated it and would

1 give you the information. If it scored we
2 would, then, convey it. If it didn't score,
3 then it went to credit.

4 Q. Okay. I'm going to assume you had
5 nothing to do with pricing arrangements on any
6 aspect of the transaction.

7 A. No.

8 Q. Or determining spreads; right?

9 A. No, I did not.

10 Q. Did you have any role in ever amending
11 any of the documents with Brican?

12 A. If I needed additional information on
13 the lease, then I would ask them for that.
14 Anything within Brican Corp. -- or Brican
15 America, LLC, where they needed additional
16 information, I did not.

17 Q. Okay. Then let me re-ask the question
18 a different way. Did you ever have any role in
19 amending the vendor agreement with Brican?

20 A. No, I did not.

21 Q. Were you consulted on that at all?

22 A. No, I was not.

23 Q. Did you know who Viso, V-i-s-o, Lasik
24 L-a-s-i-k, was?

25 A. Yes.

1 Q. Who are they?

2 A. It is the marketing agreement company.

3 Q. And you learned that from seeing the
4 documents?

5 A. Seeing the documents and discussion
6 with Jean and Todd.

7 Q. What did Jean and Todd tell you about
8 Viso Lasik?

9 A. Just pretty much that it was the
10 marketing area. We talked about how the
11 screens show an image and those images,
12 companies pay for it, and then those doctors
13 get reimbursed for showing those.

14 Q. Did Todd voice any displeasure with
15 you about the existence of the marketing
16 agreement?

17 A. Not to me, no.

18 Q. Did you understand that the marketing
19 agreement provided that it was going to give to
20 the lessee a sum of money?

21 A. Yes.

22 Q. Okay. Did you view that as being a
23 positive or a negative towards the successes of
24 the leases that you were writing?

25 A. Me and Jean discussed this and said

1 that it would help the doctors make their
2 payment, but, you know, somewhere along the
3 long it would have to stop. You know, how far
4 could that go with making somebody else's
5 payment?

6 Q. You could go 5 years, which is the
7 term of the lease; right?

8 A. Correct.

9 Q. Okay. Was there anything besides
10 that?

11 A. No.

12 Q. During the course of the time that you
13 were employed by the company did you ever hear
14 about those payments ceasing?

15 A. No.

16 Q. Were you in charge of anything related
17 to lease defaults?

18 A. No.

19 Q. Who handled defaults?

20 A. Jolynn Quick and Tim Borseth.

21 MR. GALLAGHER: Q-u-i-c-k.

22 Q. Did you speak with either of them
23 about lease default rate on Brican leases?

24 A. No.

25 Q. That would be completely outside the

1 realm of your responsibility; right?

2 A. Correct.

3 Q. You're sort of compartmentalizing what
4 you do?

5 A. Front end is primarily --

6 Q. -- front end.

7 A. Uh-huh.

8 Q. You said that there was a group
9 meeting with Greg Cole about the relationship
10 between PSFS and Brican?

11 A. No. It wasn't a group meeting over
12 that. It was a group meeting of how we were
13 going to strategically grow the business,
14 because we had cut off Brican and it wasn't --
15 it was a positive thing. We can do it, you
16 know. We got sales. We got -- you know, it
17 wasn't like a, "Oh, no, now that we don't have
18 Brican --" it was not like that.

19 Q. All right. Were you ever told why
20 Brican was cut off?

21 A. Yes.

22 Q. What were you told?

23 A. That it -- we were -- it was over a
24 certain percentage that was allowed by the
25 company.

1 Q. Okay. Meaning that there were too
2 many leases? Is that a simple way of putting
3 it?

4 A. Yes.

5 Q. "Concentration," did you ever hear
6 that word?

7 A. Concentration. Saturated.

8 Q. Okay. Who told you that?

9 A. Todd Cook.

10 Q. When did he tell you that?

11 A. We had talked about it for quite a few
12 months.

13 Q. It was no secret that the company was
14 very heavy in with Brican; right?

15 A. Correct.

16 Q. Did he state any other reason why the
17 agreement was terminated?

18 A. No.

19 Q. Did he say the agreement was
20 terminated because the document before you, the
21 vendor agreement, said that Brican was a
22 Nebraska company when it was a Florida company?

23 A. No.

24 Q. Did you ever see any documents or hear
25 that that was a complaint of Brican -- I mean

1 of PSFS?

2 A. No.

3 Q. Okay. Did you ever hear that anyone
4 at PSFS complained that they wanted to
5 terminate the agreement with Brican because
6 Brican, LLC, was involved?

7 A. No.

8 Q. In fact, everyone at the company
9 pretty much knew Brican, LLC, was involved;
10 right?

11 A. Correct.

12 Q. That was very common knowledge; right?

13 A. Yes.

14 Q. Okay. It was also common knowledge
15 about the existence of the marketing
16 agreements; right?

17 A. Yes.

18 Q. Okay. Did you ever hear anyone
19 complain and say that the agreement with Brican
20 was being terminated because of the existence
21 of the marketing agreements?

22 A. No.

23 Q. At the time that Todd told you that
24 Brican was being terminated because of the
25 concentration issue, did he raise any of those

1 items that I just mentioned -- whether it was
2 Nebraska; Brican, LLC; or the marketing
3 agreement -- as a basis for getting rid of
4 Brican?

5 A. No.

6 Q. Do you recall the time frame when that
7 occurred? Would that have been about April of
8 '08 -- I mean of '09?

9 A. Of '09, yeah, right in -- it was,
10 like, around April 15, maybe, April -- he just
11 came out and told me do not send them money.

12 Q. And up to that point, like even as a
13 couple days before that, it was business as
14 usual; right?

15 A. Yes.

16 Q. If complaints from lessees came in
17 about one thing or another, no matter what the
18 issue was, would that have gone to you, or
19 would that have gone to the back end?

20 A. We were all logged into the phones.
21 It'd just depend on how it rolled.

22 Q. Okay. And then --

23 A. It should have gone to them first, but
24 if they were on their phone, then it would have
25 gone to the next area.

1 Q. Okay. And I assume that the computer
2 system is set up so that if somebody calls up
3 and you've got your screen up and they tell you
4 who the vendor is and their lease number, you
5 can you pull up any account, period; right?

6 A. Yes.

7 Q. And was the procedure at PSFS such
8 that it allowed for the running entry of items
9 on a particular lease, so that if Dr. X, as an
10 example, called and said, "I have this issue,"
11 an entry would be put into that lease field
12 somewhere in the computer?

13 A. We were supposed to notate -- it was a
14 manual operation where we would notate that we
15 talked to the customer, and we would put it in
16 what our discussion was with the customer.

17 Q. And it would always tie into the lease
18 number so you could always track. Like if
19 somebody else from the office spoke to someone
20 3 months earlier, hypothetically it should be
21 in the system; right?

22 A. Yes, you could review the comments.

23 Q. Okay. Does the computer system work
24 that if you wanted to see all comments made by
25 lessees respecting Brican that you could punch

1 a button and, you know, they would all come up,
2 or would you have to individually review each
3 lease?

4 A. Each lease.

5 Q. Okay. Showing you what's been marked
6 earlier today as Exhibit 6 -- and we're going
7 to keep that number for now -- it's an e-mail
8 from you to Jean Thompson in the middle of it.
9 Do you see that?

10 A. Uh-huh.

11 Q. Do you recall the circumstances behind
12 why you sent this e-mail?

13 A. The auditors had came in and had asked
14 to review these accounts.

15 Q. Which auditors?

16 A. I would assume that it was Wells Fargo
17 auditors.

18 Q. Why would you assume it was Wells
19 Fargo auditors?

20 A. I didn't usually deal with the tax
21 auditors.

22 Q. But you did deal with Wells Fargo
23 auditors?

24 A. Yes.

25 Q. And do you recall dealing with Wells

1 Fargo auditors around that time?

2 A. I know that we had them in there.

3 Q. How do you know that?

4 A. They came in about that time every
5 year.

6 Q. Okay. What was Wells Fargo's
7 relationship, to the best of your knowledge,
8 with PSFS?

9 A. That it was our funding source. It
10 was PSFS's funding source.

11 Q. Did they just give you these
12 particular account numbers and say, "We need
13 these," or did they give you a bigger list?

14 A. These were the ones that I could not
15 find. I am sure I had a large list.

16 Q. When you say that you couldn't find
17 them, meaning you couldn't find any documents
18 or you couldn't find certain documents?

19 A. I don't -- we would have had to had
20 something. It was probably fax copy. We
21 probably didn't have the originals. I don't
22 remember exactly what we were needing.

23 Q. Okay. Do you recall at about the time
24 that the auditors were coming in whether or not
25 the concentration issue was raised in

1 connection with the auditors coming in?

2 A. That I do not know.

3 Q. Did you ever hear that Wells Fargo was
4 concerned about the concentration issue?

5 A. Yes.

6 Q. Who did you hear that from?

7 A. Todd.

8 Q. When did he tell you that?

9 A. It was more than once. We had
10 discussed it more than once.

11 Q. So it was common knowledge, in fact,
12 that Wells Fargo was concerned about the
13 concentration issue?

14 MR. GALLAGHER: Objection. You can
15 answer.

16 A. I don't think that it was the Wells
17 Fargo. I took it was more NCMIC than Wells
18 Fargo, but I knew that it was a concern, also.
19 I work at Wells Fargo. I know that it's a
20 concern with concentration.

21 Q. Okay. So Todd told you there was an
22 issue with Wells Fargo and, also, that there
23 was an issue with NCMIC, meaning the parent
24 company?

25 A. Correct.

1 Q. And how did that come about that NCMIC
2 was concerned?

3 A. Because we had a high concentration of
4 one vendor. That's a concern.

5 Q. That's sort of industry-wide, isn't
6 it?

7 A. Correct.

8 Q. Even at Wells Fargo you wouldn't want
9 one of your clients to have a concentration
10 problem --

11 A. Correct.

12 Q. -- right?

13 A. Yep.

14 Q. Do you know, did Wells Fargo tell
15 Brican -- excuse me. Did Wells Fargo tell PSFS
16 to cease its relationship with Brican?

17 A. I do not know.

18 Q. Do you know if NCMIC gave that
19 direction to PSFS?

20 A. Must have, because we quit doing
21 business with them.

22 Q. Okay. You're working on an assumption
23 now?

24 A. I just know that Todd came out and
25 told me do not fund anymore.

1 Q. Did that follow a meeting that he had
2 with NCMIC?

3 MR. GALLAGHER: Objection. You can
4 answer.

5 A. NCMIC and PSFS, to me, is one company.
6 I don't see it as separate.

7 Q. Okay.

8 A. It was just a branding for other than
9 chiropractic, so --

10 Q. All right. Do you recall whether or
11 not Todd was upset about having to terminate
12 the relationship with funding Brican leases?

13 A. Well, he wasn't happy about it.

14 Q. And is that because they were
15 profitable?

16 A. I would believe so.

17 Q. Right. Did you ever hear that there
18 was a very low default rate on Brican leases?

19 A. Yes.

20 Q. The number that I heard today was six
21 out of something like 1,700. Is that
22 consistent with what you heard?

23 A. I knew it was a very low number of
24 defaults.

25 Q. And statistically compared to -- based

1 on your experience in the industry, that's a
2 remarkably low number, isn't it?

3 A. Very remarkable.

4 Q. Especially in this economy; right?

5 A. Yes.

6 Q. As an example, are you seeing default
7 rates at Wells Fargo that sometimes approach
8 10 percent?

9 A. I don't see that end of it, but I know
10 that it used to be very high.

11 Q. Okay.

12 A. I've always been admired by NCMIC's
13 low rate of defaults. It's always been very
14 good.

15 Q. So, to the best of your knowledge, the
16 reason why the relationship between NCMIC --
17 the reason why the funding of Brican leases
18 ceased was entirely because of the
19 concentration issue that you had heard about?

20 A. Yes.

21 Q. And that's because you also know from
22 your experience doing this for -- is it
23 18 years now? -- that the funding sources don't
24 like that; right?

25 A. It's 23 years now.

1 Q. Twenty-three years.

2 A. Uh-huh, yes.

3 Q. You don't look that old.

4 A. Thank you.

5 Q. Twenty-three years. The funding
6 sources don't like it; right?

7 A. Correct.

8 Q. And the parent company didn't like it?

9 A. Correct.

10 Q. Okay. Showing you what's been
11 previously marked as Exhibit 7, do you recall
12 that document?

13 A. I sent -- sometimes I'd send some of
14 these. If it was close to month-end I would
15 send -- or the 15th, I would send -- we would
16 fund off of a fax copy, and then I would follow
17 up for the originals after that.

18 Q. Okay. So this was just sort of
19 commonplace follow-up?

20 A. Correct.

21 Q. Okay. Take a look at Exhibit 9, if
22 you would, please.

23 MR. GALLAGHER: Excuse me. I just --
24 I realize this is a different record, so I'm
25 going to put on the record that we object and

1 waive -- and reserve all rights with respect to
2 this document to the extent it wasn't provided
3 to us in a timely manner. Thank you.

4 MR. LICHTMAN: Okay.

5 Q. Right now all you have to do is read
6 the first paragraph. We'll take them one by
7 one.

8 A. Uh-huh.

9 Q. Have you finished?

10 A. Yes.

11 Q. Okay. Did you hear at around the time
12 of this memo, which was early April 2009, that
13 Todd was looking for another leasing company to
14 purchase a part of the Brican portfolio?

15 A. Yes.

16 Q. How did you hear that?

17 A. Through Jean and Todd.

18 Q. Okay. And the second sentence is,
19 "Your business is doing great and the rest of
20 our portfolio is not growing as fast." Had you
21 heard that as well?

22 A. Yes.

23 Q. Okay. And from Jean and from Todd?

24 A. Yes.

25 Q. That was relatively common knowledge,

1 actually, within PSFS; right?

2 A. Yes.

3 Q. Would it be fair to say that it was
4 almost like most-favored-company status?

5 MR. GALLAGHER: Objection. You can
6 answer.

7 A. A most favorite?

8 Q. Yeah.

9 A. Of course. They were bringing in a
10 lot of business for us.

11 Q. And was there anybody else that was
12 even close in terms of what PSFS was
13 accomplishing --

14 A. No.

15 Q. -- with Brican?

16 A. No. Their credits were good and they
17 made good payments, and so we were actually
18 happy to get them in.

19 Q. I assume you were surprised when all
20 of the sudden they were just cut off
21 completely?

22 A. No. I -- I knew that it was
23 concentrated; and being the manager, I know
24 Todd had shared with me, you know, that it
25 might not be long.

1 Q. And that's because that was the only
2 way to fix their concentration problem; right?

3 A. Correct.

4 Q. Did he ever say anything to you about
5 trying to get Brican to buy back its portfolio?

6 A. No.

7 Q. Did you ever hear that until this
8 moment?

9 A. No.

10 Q. As of early April '04 -- you see the
11 second paragraph?

12 A. Yes.

13 Q. "We absolutely appreciate your
14 business and our relationship. We want to do
15 anything we can to earn your business in the
16 future." As of that date that would have still
17 been accurate?

18 A. Yes.

19 Q. The third paragraph, the first
20 sentence says, Todd has found as he has been
21 contacting these other companies that we have
22 your lease rate priced pretty low. Had you
23 heard that as well?

24 A. Knowing from the industry of leasing,
25 I knew that their rates were very good.

1 Q. Okay. "Their" meaning who?

2 A. Brican's rates were very good.

3 Q. Favorable to Brican?

4 A. Yes.

5 Q. And how is it that you know that?

6 A. Just being in the leasing industry for
7 so many years. I -- it's -- it was a good
8 rate.

9 Q. Okay. And the better the rate for
10 Brican, the more negative the effect it would
11 have in terms of the spread for PSFS; right?

12 A. That is correct.

13 Q. So it sounds like the reality was
14 while it was good business, PSFS didn't really
15 cut the best deal for itself, did it?

16 MR. GALLAGHER: Objection. You can
17 answer.

18 A. I believe at the time when these
19 were -- when that rate was done it was probably
20 when the rates were starting to drop and stuff,
21 and you always -- industry-wide through leasing
22 you give your better vendors a better rate.

23 Q. And this was your best of vendors?

24 A. Correct.

25 Q. I'm going to show you Exhibit 14.

1 Have you seen this letter before?

2 A. No, I've not.

3 Q. Were you aware at the time that PSFS
4 cut off funding to Brican that there were about
5 120 deals that purchase orders had been issued
6 for that were valued at about \$3 million?

7 A. Yes.

8 MR. GALLAGHER: Before you answer that
9 I just want to put PSFS's objection on the
10 record and reserve all rights respect to this
11 document.

12 Go ahead. I'm sorry.

13 Q. Did you have any discussion with
14 anyone at PSFS as to the effect that would have
15 on Brican once PSFS withdrew the funding?

16 A. The discussion that I had with Todd
17 was we had sent the purchase orders on all of
18 these; my name was on those; I sent them; and
19 how will we honor that? Because in the -- in
20 the -- it states that we will pay it within a
21 certain amount of time. I think it was
22 30 days, is what we had it changed.

23 Q. And what did he say?

24 A. He said that we would not be paying
25 them.

1 Q. What did you say?

2 A. Oh.

3 Q. There's an expression on your face
4 that -- when you say "oh," oh what?

5 A. I guess I felt like it was an
6 obligation we had to do it because we had sent
7 those, and that legally binds us. That's how I
8 felt.

9 Q. Did you say that to him?

10 A. Yes.

11 Q. And what did he say?

12 A. We're not paying.

13 Q. And that was the end of it?

14 A. Yes.

15 Q. Okay. Did you have discussions with
16 anybody else about the impact that would have
17 on Brican?

18 A. Yes.

19 Q. Who?

20 A. Jean.

21 Q. What did Jean say?

22 A. We were both very concerned about it.

23 Q. About it hurting Brican, also; right?

24 A. Correct. We were concerned about
25 NCMIC as a whole having those purchase orders

1 out there and how we handle just cutting off
2 Brican the way it happened. It was -- like, at
3 noon it was just done.

4 Q. Do you know who made the decision to
5 cut them off?

6 A. Todd is the one that told me.

7 Q. So what did Jean and you say you saw
8 the result being on Brican?

9 A. We knew that some of the equipment
10 from the purchase orders had already shipped.
11 We had the original leases in to fund them.

12 Q. And was Todd aware of that, also?

13 A. Yes.

14 Q. And he said too bad?

15 A. He would not let us fund them.

16 Q. Is it fair to say that he understood
17 that this would have a serious detrimental
18 impact on Brican's operations too?

19 MR. GALLAGHER: Objection.

20 Q. Did he express that?

21 A. No.

22 Q. Did you?

23 A. I was concerned about us having the
24 purchase orders out there legally not paying.

25 That was --

1 Q. Did you talk to Greg about this?

2 A. No.

3 Q. Okay. Do you know if Jean did?

4 A. No.

5 MR. LICHTMAN: It's getting close to
6 10:00 at night.

7 Q. You attended a meeting at Brican in
8 November 2008, didn't you?

9 A. Correct.

10 Q. At that meeting did representatives of
11 PSFS discuss with Brican the concentration
12 issue?

13 A. No.

14 Q. What was discussed?

15 A. Jack had stated that they were going
16 to -- they were going to have additional sales
17 force and that they planned to increase their
18 business and pretty much how our relationship
19 worked with them.

20 Q. And Todd was at that meeting; right?

21 A. Correct.

22 Q. How did Todd respond to the business
23 plan as proposed by Mr. Vincens and by Jack?

24 A. He was very excited about it.

25 Q. How do you know that?

1 A. He said, bring it on. That's what he
2 said.

3 Q. The marketing agreements were
4 discussed at that time, also, weren't they?

5 A. Yes.

6 Q. Did Todd voice any objection to the
7 existence of the marketing agreements?

8 A. No. They kind of explained a little
9 more of what they were. That was one of the
10 things that was discussed was who this company
11 was and what they did.

12 Q. And Todd was fine with that; right?

13 MR. GALLAGHER: Objection.

14 Q. Your observation was Todd was fine
15 with that?

16 A. No comments were made.

17 Q. No negative comments about it?

18 MR. GALLAGHER: Objection.

19 Q. Right?

20 A. No comments were made at all.

21 Q. By Todd?

22 A. By Todd.

23 Q. Okay. You know Todd pretty well;
24 right?

25 A. Yes.

1 Q. If Todd had something negative to say,
2 he would have said it; isn't that true?

3 MR. GALLAGHER: Objection.

4 Q. You have to answer.

5 MR. GALLAGHER: You can answer. I'm
6 sorry.

7 A. Oh, I would think so, yes.

8 Q. He speaks his mind; right?

9 MR. GALLAGHER: Objection. You can
10 answer.

11 A. Yes.

12 Q. Was there any discussion in that
13 November visit to Brican about the fact that
14 Brican was a Florida corporation and not a
15 Nebraska corporation?

16 A. No.

17 Q. Was there any discussion about the
18 fact that Brican, LLC, was performing services
19 related to the vendor agreement?

20 A. The vendor agreement was brought up,
21 and they discussed it a little bit. I mean, it
22 was no -- it wasn't, like, a lengthy
23 conversation.

24 Q. It appears as if that when you went to
25 that meeting Todd was unaware there was

1 actually a written agreement. Is that your
2 recollection?

3 A. That is correct. I believe that they
4 went and got the copy of it and brought it to
5 him.

6 Q. What did he say then?

7 A. Nothing. He just read it and asked if
8 he could have a copy of it.

9 Q. And I assume they made a copy?

10 A. Yes.

11 Q. Okay. Do you recall what else was
12 discussed at that meeting?

13 A. The part that I was in was pretty -- I
14 know they went to the -- the other -- I was on
15 vacation, and I just met that one meeting. But
16 I know that they went to the factory and saw
17 what was going on there. I don't exactly know
18 what they did there, but mine was pretty much
19 just the business part of it, of what documents
20 I needed, what I, you know -- what I -- what we
21 could do better to work together to make it go
22 quicker and that.

23 Q. To make it even more successful?

24 A. Correct.

25 Q. Because it was pretty successful by

1 then?

2 A. Yes.

3 Q. And that was your only theme of the
4 meeting, wasn't it?

5 A. Correct.

6 Q. Not to tell Brican, "You've been bad.
7 You've done this wrong, and you've done that
8 wrong"; right?

9 A. Correct.

10 MR. LICHTMAN: I'm almost done.

11 THE WITNESS: That's okay.

12 Q. By chance, do you have any documents
13 related to the Brican relationship?

14 A. No.

15 MR. LICHTMAN: Okay. I have nothing
16 else.

17 MR. GALLAGHER: Thank you.

18 MR. LICHTMAN: For the record, so you
19 know, you have the ability to read the
20 deposition to assure the court reporter
21 accurately transcribed your testimony, or you
22 can waive testimony -- excuse me -- waive the
23 reading. The choice is yours.

24 MR. GALLAGHER: We'll read.

25 MR. LICHTMAN: Okay. All right.

1 THE REPORTER: The deposition of Paula
2 Barkley is now complete. When transcribed, the
3 original of the deposition shall be given to
4 Mr. Lichtman.

5 (Deposition concluded at 2:23 p.m.)
6
7

8 (UNLESS OTHERWISE DIRECTED BY COUNSEL OR
9 THE PARTIES HERETO, THE STENOGRAPHIC NOTES FOR
10 THE FOREGOING DEPOSITION SHALL BE DESTROYED
11 AFTER A PERIOD OF 3 YEARS FROM THE DATE OF
12 TAKING OF SAID DEPOSITION.)
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SIGNATURE PAGE

I, Paula Barkley, the witness in the foregoing deposition, do hereby certify that I have read the foregoing deposition upon oral examination given at the time and place herein stated.

Paula Barkley

Subscribed and sworn to before me this ____ day of _____, 2009.

Notary Public

CORRECTION/CHANGE SHEET

I have read the entire transcript of my deposition taken on the 17th day of November, 2009, or the same has been read to me. I request that the following changes be entered upon the record for the reasons indicated. I have signed my name to the signature page and authorize you to attach the same to the original transcript.

Page	Line	Correction or change and reason therefor
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A 10x10 grid of dashed lines on a white background. The grid consists of 10 horizontal rows and 10 vertical columns of dashed lines, creating a coordinate plane or graph paper. The lines are evenly spaced and extend across the entire page.

Date _____ Signature _____

C E R T I F I C A T E

I, Megan May Mitchell, the undersigned,
a Certified Shorthand Reporter of the State of
Iowa and Registered Professional Reporter, do
hereby certify that I acted as the Certified
Shorthand Reporter in the foregoing matter at
the time and place indicated herein; that I
took in shorthand the proceedings had at said
time and place; that said shorthand notes were
reduced to typewriting under my supervision and
direction, and that the foregoing pages are a
full and correct transcript of the shorthand
notes so taken; that said deposition was
submitted to the witness for signature as
requested and that any changes, if any,
requested by the witness are attached hereto.

I further certify that I am neither
attorney nor counsel for, or related to or
employed by any of the parties in the foregoing
matter, 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.

IN WITNESS WHEREOF, I have hereunto set
my hand and seal this _ _ day of _ _ _ _ ,
2009.

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