

EXHIBIT “E”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

NCMIC FINANCE CORPORATION d/b/a
PROFESSIONAL SOLUTIONS FINANCIAL
SERVICES, an Iowa Corporation,

COPI

Plaintiff,

vs.

BRICAN AMERICA, INC., a Florida
Corporation,

Defendant.

_____ /

DEPOSITION OF SANDRA ELLZEY
(Volume 1 of 1)
Pages 1 through 68

Friday, November 13, 2009
9:00 a.m. - 11:00 a.m.
1688 Meridian Avenue, Suite 902
Miami Beach, Florida 33139

Stenographically Reported By:
IRA E. COHEN, FPR
Florida Professional Reporter

APPEARANCES

On Behalf of the Plaintiff:

KATTEN MUCHIN ROSENMAN, LLP
575 Madison Avenue
New York, NY 10022
(212) 940-8800
BY: MICHAEL I. VERDE, ESQ.

On Behalf of the Defendant:

BERGER SINGERMANN
350 East Las Olas Boulevard, Suite 1000
Fort Lauderdale, Florida 33301.
(954) 525-9900.
BY: JEFFREY WERTMAN, ESQ.

ALSO PRESENT:

Yvette J. Harrell, General Counsel
Brican America, LLC

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(NO EXHIBITS MARKED)

1 Deposition taken before IRA E. COHEN,
2 Florida Professional Reporter and Notary Public in and
3 for the State of Florida at Large in the above cause.

4 * * * * *

5 THE COURT REPORTER: Do you swear the testimony
6 you are about to give will be the truth, the whole
7 truth, and nothing but the truth?

8 THE WITNESS: Yes, I do.

9 THEREUPON,

10 SANDRA ELLZEY

11 having been first duly sworn, was examined and testified
12 as follows: . .

13 DIRECT EXAMINATION

14 BY MR. VERDE:

15 Q. I introduced myself earlier. My name is
16 Michael Verde. I am here on behalf of the plaintiff in
17 this action, NCMIC Finance Corporation.

18 I am going to ask you a series of questions. I
19 know that you have been prepared by your attorney and I
20 will not go through the usual speech about what this is
21 about, but there are just two things.

22 One is if you don't understand a question I'm
23 asking or you don't understand what I'm saying, please
24 ask me to repeat it and I will.

25 The second is please wait until I finish asking

1 my question until you answer so we preserve the court
2 reporter's sanity and we're not talking over each other.

3 A. Okay, yeah.

4 Q. Can you please tell me your name, state your
5 name?

6 A. Sandra Ellzey.

7 Q. Can you tell me where you were born?

8 A. I was born in Ecuador.

9 Q. Briefly describe your education.

10 A. I came in 1990. I did elementary, middle
11 school and high school here.

12 I got my AA at Miami-Dade. I am currently
13 attending the University of Miami.

14 Q. How old are you?

15 A. I'm 26.

16 Q. What is your work history?

17 A. I've been working at Brican now almost since
18 2007, three years. Before then I was working for an
19 investment company on Brickell for about a year.

20 Before that I was doing just different little
21 jobs for administration.

22 Q. How did you come to work at Brican?

23 A. I put in my -- I put my resume on Monster.com
24 and I was called by Ray Briscoe in April.

25 I went for an interview and I was hired.

1 Q. Ray Briscoe -- well, let me ask you: What
2 position were you being asked to fill?

3 A. Administrative assistant.

4 Q. What did they tell you the job would entail?

5 A. In the beginning when I met with Ray he told me
6 it was bookkeeping, answering phone calls and filing
7 basically.

8 Q. Does Mr. Briscoe still work for the company?

9 A.. No.

10 Q. Do you know why he's no longer working for the
11 company?

12 A. No, I don't know.

13 Q. When did you first met Jeff Vincens (phonetic)?

14 A. I met Jeff the first day I was interviewed.

15 Q. Did he interview you as well?

16 A. Briefly. Actually, I just mentioned on my
17 resume that I spoke French and he talked to me in French
18 and gave me a job.

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

20 A. Mr. Lemacon was on vacation for the first few
21 weeks I was hired so it was probably two or three weeks
22 after I was hired.

23 Q. Okay. What is your salary or what was your
24 starting salary?

25 A. Thirty-six thousand.

1 Q. I'm sorry, you said your title that you were
2 hired for was what?

3 A. Administrative assistant.

4 Q. Is that still your title now?

5 A. No.

6 Q. What is your title now?

7 A. Corporate administrator.

8 Q. What is the difference in duties?

9 A. Now I oversee the accounting and HR and
10 benefits payroll and anything that has to do with
11 billings out and billings in and taking care of staff
12 salaries.

13 Q. Okay. Have you gotten a raise as a result?

14 A. Currently I am at \$46,000 a year.

15 Q. Who do you report to?

16 A. I work for Jeff Vincens when I report.

17 Q. Where is the office?

18 A. 5301 Blue Lagoon Drive, Suite 520.

19 Q. Which company do you actually work for?

20 A. Brican America, LLC.

21 Q. Do you hold any title at any other Brican
22 company?

23 A. No.

24 Q. The office on Blue Lagoon Drive, are there
25 other companies that work out of that office?

1 A. Yes.

2 Q. Which other companies?

3 A. Well, Brican America, Inc., Viso Lasik Medspa
4 and --

5 Q. Is there a company called Brican Financial
6 Services, LLC that also works out of that office?

7 A. Yes.

8 Q. So there are four companies that all work out
9 of that office?

10 A. LLC, Viso, Inc. and Financial, yes.

11 Q. And you were initially hired for the LLC or the
12 Inc.?

13 A. LLC.

14 Q. Have you always worked for the same company?

15 A. Yes.

16 Q. When you were first hired in 2006 can you give
17 me a description of what you did?

18 A. I was hired in 2007.

19 Q. I'm sorry. 2007, go ahead.

20 A. It was a lot of bookkeeping, data entry. I was
21 only -- I was the only person entering sales into the
22 system and sending out purchase orders and credit
23 applications to Professional Solutions. I did very
24 little customer service.

25 I prepared salary again and all the bookkeeping

1 duties.

2 Q. At the time that you were doing that, and we'll
3 give you a time frame of 2007 when you started working,
4 did you deal much with people from NCMIC Finance?

5 A. Yes.

6 Q. Who did you deal with?

7 A. Primarily Jean Thompson.

8 Q. What did you talk to Jean Thompson about?

9 A. We talked about the status of, you know,
10 applications, how they were approved, who needed
11 financing. You know, we talked girl talk all the time,
12 too.

13 I talked to her a lot.

14 Q. I want to kind of go through what the typical
15 structure of Brican customers were so I can figure out
16 what your role was in that.

17 I'm going to go through this and you tell me if
18 I've got it right or if I got it wrong.

19 At Brican a salesman will approach a potential
20 customer, usually a doctor about possibly purchasing one
21 of the Brican systems, which is a TV screen with the
22 associated electronics to show medical programming.

23 Okay so far?

24 A. Right.

25 Q. If they have a customer who is interested they

1 offer them financing to pay for the screen and the
2 Brican system?

3 A. Yes.

4 Q. Brican itself never allows doctors to pay on
5 time, the doctors always have to pay Brican up front?

6 A. Well, the doctor gets approved by Professional
7 Solutions or whatever company we're leasing with at that
8 time and all the billing would go through that leasing
9 company and --

10 Q. I just want to make sure that what we're saying
11 is the leasing would pay directly?

12 A. Right.

13 Q. The idea being that Brican itself did not allow
14 the doctor to pay on time, Brican required the doctors
15 to pay the full amount up front and obtain financing
16 through another company like NCMIC?

17 MR. WERTMAN: Just let me object to the form.

18 You can answer.

19 THE WITNESS: I can? Well, the client had
20 options. They could go ahead and pay for it up
21 front of they could pay with a credit card or a
22 check or a wire or if they wanted to they could
23 obtain financing from their own bank.

24 Most of the time people would go through the
25 leasing company and we presented them the paperwork

1 for that.

2 BY MR. VERDE:

3 Q. But either way Brican got the \$25,000 or so for
4 the system up front, they got it in a lump sum?

5 A. Yes.

6 Q. Brican itself never allowed doctors to simply
7 pay on time?

8 MR. WERTMAN: Objection to the form.

9 THE WITNESS: I don't understand what you mean.

10 BY MR. VERDE:

11 Q. In other words, Brican in every circumstance in
12 which Brican sold one of their systems they received
13 \$25,000 immediately whether it was from the doctor
14 directly --

15 A. Yes.

16 Q. -- or from the leasing company?

17 A. You mean the finance company, yes.

18 Q. There was never a third option where the doctor
19 simply could say I'll pay you \$500 a month?

20 A. Correct.

21 Q. That did not happen?

22 A. Correct.

23 Q. So at that point when the salesman came back
24 with the paperwork that the doctors were interested in
25 purchasing a system there was an application made to

1 NCMIC to determine whether they would be providing
2 financing for the lease?

3 A. Yes.

4 Q. And sometime someone at NCMIC would approve it
5 and then at that point the responsibility for funding
6 that \$25,000 passed to NCMIC?

7 A. Correct.

8 Q. Where in that stream of money or stream of
9 paperwork, where was your job? What did you do?

10 A. Once the order would come from the marketing
11 consultant we would fax all the paperwork to NCMIC
12 Leasing Company.

13 They would approve it or they would deny it or
14 they would ask us for more information. If they
15 requested more information we would contact the client
16 and tell them we need tax documents or whatever licenses
17 or whatever the leasing company required to finish
18 funding or to finish the approval.

19 Once it was finally approved and we had a
20 purchase order then we would place the order for the
21 equipment and then it would be shipped. Then we would
22 just be in charge of -- I would be in charge of tracking
23 it to make sure once it was shipped out and then once it
24 was delivered.

25 Once we had an approval, therefore which we

1 could make an invoice to Professional Solutions and put
2 the purchase order number and send them proof of
3 delivery and then we would wait for the funding.

4 Q. At the very beginning of your answer you
5 referred to a marketing consultant.

6 A. Yes.

7 Q. Is that a salesman?

8 A. Salesman, yes.

9 Q. Did you ever have any involvement in
10 advertising agreements that Viso was engaging in with
11 the doctors?

12 A. No.

13 Q. Did you know that the doctors were getting Viso
14 advertising money?

15 A. No.

16 Q. When did you first find that out?

17 A. I found that out on April 4, 2007, my first
18 day.

19 Q. How was the business model -- well, let me ask
20 you: Was the business model of Brican ever explained to
21 you?

22 A. Yes.

23 Q. And how did you find out that it was Viso that
24 was purchasing advertising?

25 A. At the time, the first day I found out, which

1 was the first day I was hired, Jack was not there and
2 Jeff gave me two or three pages of printouts that showed
3 all the people that had just been mailed advertising
4 checks. He briefly explained that those were for
5 advertising and at that time Viso - it wasn't Viso at
6 that time. It was PBLEI.

7 **Q. What is that?**

8 A. PBLEI, Palm Beach Lasik and Eye Institute,
9 which is the one in Wellington.

10 He told me these have been mailed out and that
11 was pretty much the first, you know, introduction to the
12 marketing agreements I had.

13 **Q. Did you have any responsibility with regards to**
14 **the marketing agreements?**

15 A. In regards to drafting it?

16 **Q. No, I'm sorry. Did you have any responsibility**
17 **with monitoring the flow of the paperwork or the flow of**
18 **payments for advertising?**

19 A. Well, yes. As far as the flow of payments, we
20 would send out the quarterly payments to clients. We
21 had to make sure we had the information as to who was
22 paid for the advertising and then we would cut the
23 checks accordingly.

24 **Q. Were you ever an employee of Viso?**

25 A. No.

1 Q. Did you ever ask why you were cutting checks on
2 behalf of Viso?

3 A. On behalf of Viso, no.

4 Q. Do you know where the money was coming from for
5 Viso to make those advertising payments?

6 A. The money was -- the money was available from
7 loans either from Brican America, Inc. or from LLC.

8 Q. Were they all at the same bank?

9 A. No, they were all separate banks.

10 Q. Which bank did Brican, LLC use?

11 A. LLC used HSBC.

12 Q. Did Brican, Inc. have a separate bank?

13 A. It had a separate account at the same bank.

14 Q. What bank? They used HSBC. What bank did Viso
15 use?

16 A. Bank of America.

17 Q. Were you involved in making any money transfers
18 from LLC to Inc. or from Inc. to Viso?

19 A. I transferred money to LLC, not to Inc. I
20 didn't transfer money into Inc. or from Inc. to Viso.

21 Q. Who was responsible for that?

22 A. That would be Jack.

23 Q. When you transferred from LLC to Inc. were you
24 told why you were transferring money?

25 A. Yeah. I would print out a document that showed

1 everybody that was to receive a check for their
2 quarterly and what the total was and then we would match
3 that number with whatever Jeff had in his spreadsheet
4 and we would make a recommendation to Jack to make the
5 transfer.

6 Q. So the amount of money you transferred from LLC
7 to Inc. was determined by the amount of money that had
8 to be paid for the advertising agreements?

9 A. Correct. For those quarterly payments.

10 Q. But that would only get the money to Brican,
11 Inc. and the checks were being paid by Viso, how did the
12 money get from Brican to Viso, and referring to checks
13 that were being from Inc.?

14 A. Well, I believe -- let me say this: I believe
15 there were 305 clients that were being cut from those
16 monies and that would be coming from LLC and then I
17 believe Inc. was cutting checks directly to the clients.

18 Q. You said that there was about 305 clients?

19 A. In Inc., you know, that was what I was in
20 charge of paying the marketing for the first set of
21 clients that were approached for marketing agreements.

22 Q. Is that because at some point Brican, LLC
23 became a party that actually received the money?

24 A. I don't understand the question.

25 Q. Sure. You said there were at least 300 that

1 were in agreements and between the two Brican
2 organizations there was somewhere over 16,000 customers,
3 correct?

4 A. Sixteen thousand, no.

5 Q. Sixteen hundred?

6 A. Yes.

7 Q. And you only had 350 of those you said that
8 were Brican, Inc.?

9 A. About 305 of those were being paid advertising
10 from Brican, Inc.

11 Q. Okay.

12 A. The rest were from Brican, LLC, the rest were
13 originally being paid out of Brican, LLC and then those
14 were later paid by Viso.

15 Q. So those 305 customers, those were the first
16 customers?

17 A. Yes.

18 Q. Those were --

19 A. Those were clients that signed for the
20 marketing agreement before January 2008.

21 Q. What happened in January of 2008 that changed
22 this?

23 A. I don't know that but I do know that at one
24 point they said we're no longer going to pay them from
25 Inc., we'll be paying them from LLC on behalf of Viso.

1 Q. So then the checks went out directly from LLC?

2 A. Yes, in the beginning of 2008. Then towards
3 the end, actually all through 2008 they were paid out of
4 LLC. In the beginning of 2009 they were paid out of
5 Viso.

6 Q. Do you know why they were being paid out of
7 Viso instead of LLC?

8 A. No.

9 Q. Are there any other employees from the office
10 who worked just for Viso?

11 A. Yes.

12 Q. Who is that?

13 A. Jennifer Cossio and there's another employee
14 and her name is Ashoka Ganneson.

15 Q. What do they do for Viso?

16 A. Jennifer is the corporate administrator for
17 Viso handling anything from salary to bookkeeping.

18 Ashoka is the national e-commerce director,
19 anything to do with e-mail campaigns and website
20 development.

21 Q. Do they sit near you in the office?

22 A. Jennifer sits right next to me.

23 Q. And Ashoka, where does she sit?

24 A. Ashoka sits next to us but not -- and she's in
25 another office.

1 Q. Did you see any of the paperwork that
2 documented the reasons why Brican, LLC was giving money
3 to Brican, Inc.?

4 A. By paperwork you're talking about the amounts
5 or the loan obligations?

6 Q. The loan obligations.

7 A. I didn't see any Brican loan obligations. I
8 said one company is to pay another. I did understand
9 that there was interest to pay amongst the company and I
10 was involved with how much money to transfer, you know,
11 if Inc. needed funds to pay management fees or quarterly
12 payments.

13 Q. So when you would make transfers of money from
14 LLC to Inc. you were not required to check any
15 documentation to verify the transfers, you were just
16 relying upon instructions that were given to you by
17 supervisors at the company?

18 A. I would make recommendations on how much was
19 necessary and things and they would either do them their
20 self or allow me to do it.

21 Q. And the way you determined how much was
22 necessary was how?

23 A. Depending upon what was -- you know, what Inc.
24 needed to pay out.

25 If it was management fees to shareholders, Jack

1 or Jeff or salary portion, then I would wait until they
2 finished doing the salary calculations and the taxes and
3 everything and then they would make a transfer, I would
4 make a transfer to cover that.

5 If it was advertising then I would give them a
6 tally of what it was we were paying out of Inc. which
7 was then, you know, for the 305 and the rest had to be
8 paid out of Viso and Jack would transfer it to Viso.

9 **Q. Let me break this down a little to make sure**
10 **I'm getting it clear.**

11 **How did you determine to pay for advertising?**

12 A. We had a database in our system for Brican
13 America and in there we would log all of the sales that
14 come in, you know, every state, every client,
15 everything. And on there we can determine what the
16 amount of advertising agreements were and we could
17 determine the start date and when they're to be
18 receiving their first payments, when we start sending
19 checks out and I just click on it and it reports and
20 then I do a tally and take out the ones with zero
21 amounts and I have a number, you know, and then I know
22 how much money that amount is going to be.

23 And then I can say, okay, these are the first
24 305 and I think I need this much money from Inc. and the
25 rest are being paid out of Viso and we need this much

1 money to transfer to Viso.

2 Q. The advertising payments, are they made
3 monthly, quarterly?

4 A. Advertising payments are made quarterly.

5 Q. And the obligation to make those payments is
6 Viso's obligation, they're the one buying the
7 advertising?

8 A. Correct.

9 Q. How did you know how much Viso was obligating
10 itself to pay to the doctors in advertising?

11 MR. WERTMAN: Objection. Go ahead and answer
12 the question if you understand it.

13 THE WITNESS: We would enter that amount when
14 we have a sale come in from the client. As soon as
15 we enter all the information as to what they're
16 buying, whether they have -- you know, we would have
17 a copy of the advertising agreement they have signed
18 and that's what we enter into the database.

19 BY MR. VERDE:

20 Q. Is there anyone from Viso who works with you,
21 who tells you on behalf of Viso how much is owed to the
22 doctors?

23 A. No.

24 Q. You determine that as Brican, LLC?

25 A. Yes.

1 Q. Have you ever had any supervisors reject any of
2 the recommendations you made for funding of monies to go
3 from LLC to Inc.?

4 A. Every quarter -- every quarter Jeff would have
5 a tally and he knows how much he has, you know, he has a
6 separate spreadsheet I guess and he matches what I have.

7 Often I have less or he has more. It never
8 matches to the penny so we always start debating and it
9 always comes to be a little bit more or a little bit
10 less. They never match perfectly.

11 So every quarter we have to have a discussion
12 on how much should be paid.

13 Q. Do you know why they never match?

14 A. Well, clients could be in default. You know, a
15 client passes on the lease to somebody else.

16 It's never going to be perfect.

17 Q. So in the circumstances where there is to be an
18 advertising check that goes out that's not to one of the
19 305 Brican, Inc. customers, how does that money get
20 funded? Does a check go out directly from Brican, LLC
21 or is the money transferred to Viso?

22 A. The money is transferred to Viso.

23 Q. Are you involved in issuing checks to Viso?

24 A. Yes.

25 Q. How many employees work at the Blue Lagoon

1 office?

2 A. I have to count -- it could be --

3 Q. An estimate would be fine.

4 A. Twenty-two, 23.

5 Q. Do they all work for Brican, LLC?

6 A. Well, with the exception of Ashoka and
7 Jennifer, yes.

8 Q. Who do Jack and Jeff work for?

9 A. Brican America, Inc.

10 Q. Do you know why they work for a different
11 company?

12 A. I really don't know.

13 Q. Do you know why they work for Brican America,
14 Inc. as opposed to LLC?

15 A. All I know is I cut their salary and I pay them
16 from Inc.

17 Q. So we have two employees, Jack and Jeff, with
18 Brican America.

19 A. Inc.

20 Q. And we have two employees for Viso and
21 everybody else works for Brican, LLC?

22 A. Yes.

23 I need to rephrase that. Chuck Fraser works
24 for Brican Financial and he's in our office.

25 Q. You anticipated my next question. Does anyone

1 **work for Brican Financial aside from Chuck Fraser?**

2 A. There is a temp that's currently employed by a
3 staffing company. She was with us on a temporary basis.
4 Her name is Jackie Lopez.

5 There is another temp helping her currently
6 and, you know, I can't think what her name is at this
7 time, but we have Chuck from Brican Financial, Jackie
8 and the temp from a staffing agency, her assistant from
9 another staffing agency.

10 Then we have some part-time collections person
11 that works for Brican Financial. You know, he's
12 actually a contractor. He's a vendor that goes and
13 makes collection calls. He's not really employed.

14 **Q. Do you know who pays the rent, which entity**
15 **pays the rent at the Blue Lagoon office?**

16 A. Brican America, LLC.

17 **Q. For all of it?**

18 A. Yes.

19 **Q. Are you aware of other companies making any**
20 **contributions to the payment of rent?**

21 A. Not currently.

22 **Q. Were they at one time?**

23 A. No, they haven't. You know, we haven't
24 determined if they're going to or what percentage they
25 would pay.

1 Q. Is there any office equipment that is dedicated
2 to one company or another or do all the companies share
3 all the office equipment?

4 A. We all share all of the office equipment,
5 although Brican Financial does have a server for all
6 their data for all of their, you know, credit inquiries
7 and some of it's confidential and they only have access,
8 only Brican Financial.

9 Other than that, everything is shared.

10 Q. This is for a credit inquiry for a potential
11 future customer of Brican?

12 A. Correct.

13 Q. How about everybody is on the same computer
14 network for all four companies?

15 A. That I really don't know.

16 Q. Can you bring up information about Viso on your
17 computer screen?

18 A. I currently share Jennifer's screen because
19 she's on maternity leave so I'm taking care of her, you
20 know, whatever bookkeeping has to be done on her part.
21 So I can access her computer from my desk but I don't
22 think that is available to other people but I can't be
23 sure.

24 Q. If Jeff and Jack worked for Brican America,
25 Inc. who supervises you or tells you what to do on

1 **behalf of Viso?**

2 A. They do, too.

3 **Q. Who else, besides Jean Thompson, are there any**
4 **other employees from NCMIC that you speak to frequently?**

5 A. I used to speak to Paula Newsome (phonetic) and
6 Bonnie Peterson on occasion and I would also speak to
7 Nick Mollen (phonetic) who is the collection person
8 there and on a few occasions I would speak with Todd
9 Cook.

10 **Q. When you would speak with Newsome, what did you**
11 **speak to her about?**

12 A. Depending upon what -- you know, if Jean was in
13 the office, you know, I would speak to Jean. If Jean
14 was not there I would talk to Paula about invoices that
15 had been received or invoices that were going to be paid
16 and -- which was normally what I would talk to Jean
17 about but if she was not there then I would speak with
18 Paula.

19 I normally would speak with Jean about clients
20 that had been approved or whether they needed more
21 information or things like that.

22 **Q. When you say whether invoices were being paid,**
23 **what invoices are you talking about?**

24 A. Well, we would submit invoices for Professional
25 Solutions for payments for clients and I would call and

1 see what the status was, whether they had received them
2 because we would send them overnight FedEx or UPS
3 package and whether they had received them or not, and I
4 would talk to Jean and if she was not available then I
5 would talk to Paula Newsome.

6 **Q. What did you speak to Peterson about?**

7 A. Bonnie Peterson was the person in charge of
8 receiving all faxes and logging them in and at times I
9 spoke to her to make sure she received paperwork or she
10 would call me to say I'm missing something or something
11 along those lines.

12 **Q. And Nick Mollen?**

13 A. Nick Mollen, I spoke to him on a few occasions
14 when we had a client that they were actually trying to
15 get, you know, customer service from Brican America and
16 those were clients with questions about marketing
17 agreements or advertising agreements and sometimes, you
18 know, they would just -- we would have some
19 conversations through e-mail. He would send me e-mails
20 or Jean would send them to me, you know, saying contact
21 this client, explain what the marketing agreement was
22 about because the client had contacted them.

23 **Q. And who would initiate the conversations you**
24 **had with Mollen? Would Nick call you?**

25 A. I think I may have called him towards the end.

1 You know, when I say towards the end, March-April, I
2 think I may have called him because I had received
3 information from Jean that there was a particular client
4 who was having some questions on -- advertising
5 questions and I called him on a few occasions.

6 But most of the time the communication would
7 come from e-mails that he would forward to Jean with
8 questions relating to customer service or advertising
9 and then she would send them to me.

10 **Q. Do you recall any kind of questions that they**
11 **were asking about advertising?**

12 A. Yeah. The questions that came about
13 advertising from Jean were constant so it would be that
14 this client needs -- well, it got to the point that this
15 --client needs a reminder about his advertising agreement
16 because, you know, she would tell me who it was and we
17 would call them and we would explain to them, you know,
18 because they didn't understand it. In the beginning
19 before we had a customer service person I was doing the
20 calls.

21 There were some people, maybe less than five,
22 that, you know, she would say, okay, these are
23 delinquent and I would call them and just explain, you
24 know, the marketing agreement. Then I would call her
25 back and she'd say, okay, fine.

1 I said, they're going to get -- they were
2 waiting for their checks and they weren't making their
3 lease payments so I would call them and explain it to
4 them, that they were mailing out the checks to you.

5 Q. And you know from your conversations with Jean,
6 were you able to determine why customers would be
7 calling her about marketing agreements instead of Viso?

8 A. Yes, because they would receive a bill from
9 Professional Solutions before they received the
10 advertising check and they were hesitant to pay the
11 lease obligation before receiving the advertising
12 agreement.

13 So we would have to call them and explain to
14 them that this was a deferral, you're going to get this,
15 it's automatically going to be paid.

16 And then once they understood, you know, they
17 would be fine and they would pay the lease.

18 Q. When did you start having conversations with
19 Jean about the agreements?

20 A. From the beginning I remember the first batch I
21 called on behalf of the first 305 and I talked about, I
22 think I remember, his name was Alfonso Montemayor and
23 those were from, you know, the first batch they had
24 questioned and they were delinquent and I remember I
25 called four or five times and the one I just named, I

1 called her back because there was a second client I
2 explained the marketing agreement and the client said,
3 fine, they will pay it, and then I explained -- you
4 know, I would just explain it to them. It was constant,
5 you know, when we had marketing agreements and any
6 questions these people had when they received their bill
7 they would contact Professional Solutions and then Jean,
8 you know, I guess would get a lot of calls and then she
9 would have them, you know, give us the information and
10 either Dan would call them back, the customer service
11 person, or I would call them back.

12 **Q. When did you start getting inquiries from Jean**
13 **about advertising agreements?**

14 A. I would say from the beginning. Since I was
15 there in April of '07 I think the first check I was
16 responsible for cutting would have been in July or
17 October and the clients would call saying they weren't
18 getting paid, we haven't received a marketing check and
19 these checks, these calls, excuse me, would be referred
20 to me very often.

21 **Q. Did you have a discussion with Jean about what**
22 **the marketing agreement was about?**

23 A. Well, I didn't explain to her in detail what it
24 was about, but she understood. She understood what we
25 were doing that we were planning on opening centers and,

1 in fact, she came here in November. We actually went to
2 a center together and talked about what the centers were
3 going to be.

4 It was standard knowledge that we discussed,
5 you know, this. If any client wasn't paying we would
6 call the client and just remind them what the terms of
7 the agreement were.

8 Q. You said you visited a center with her?

9 A. Yes.

10 Q. When was that?

11 A. November of last year.

12 Q. 2008?

13 A. Yes.

14 Q. Which center was that?

15 A. PBLEI, in Wellington.

16 Q. In Florida?

17 A. Yes.

18 Q. Prior to that did you have discussions with
19 her, do you recall actually talking to Jean about the
20 various centers that were going to be opened up around
21 the country?

22 A. She knew we had them in Charlotte. She knew
23 that we had them in Wellington and we had one in Texas.
24 When she came in November we told them we were opening
25 up one in California somewhere and in Boston and D.C.

1 Q. When you talked to Jean about advertising, did
2 you tell her that it was only advertising for doctors
3 with Viso, that nobody else was advertising on the
4 Brican system?

5 A. I didn't specify the only one that was
6 advertising was Viso but the center was Viso.

7 Q. Did you ever send copies of the advertising
8 agreements to them?

9 A. She received some of our records in error a
10 couple of times and she would say, you know, she would
11 call and she would say this paper is for advertising
12 instead of an invoice and I said, oh, it was sent to you
13 by error.

14 Q. If I understand what you're saying, in other
15 words, when one of your salespeople had a doctor who
16 wanted to buy a Brican system and was waiting for
17 approval by NCMIC for financing, you would send a packet
18 of materials to NCMIC for approval?

19 A. I would send the application to them.

20 Q. And what you're saying is she would sometimes
21 receive in error, you mentioned something about the
22 application?

23 A. Instead of the application sometimes they might
24 get the advertising agreement but it wasn't very often
25 but they would receive packets instead of a purchase

1 order or instead of an invoice. They may have
2 accidentally copied the advertising agreement and sent
3 that to them and they would call and say, hey, you sent
4 me this instead of that and I said, okay, we'll take
5 care of that.

6 Q. How often did that happen?

7 A. Not very often. It was just a handful of
8 times.

9 Q. Were you under instructions not to send
10 advertising agreements to Jean Thompson?

11 A. No. But all they needed to fund was the
12 invoice and the proof of delivery along with the serial
13 numbers of the equipment they received.

14 Q. Who told you what information they needed or
15 what information you needed to send to NCMIC?

16 A. Well, the procedure had been set in place
17 before I started so we just continued the same
18 procedure.

19 Q. Did anybody at Brican or Viso specifically tell
20 you not to send marketing agreements to NCMIC?

21 A. No.

22 Q. With regards to Paula Newsome, did you ever
23 have discussions with Paula about the advertising
24 agreements?

25 A. She was here when they -- you know, they came

1 together in November and she was at a meeting where we
2 were talking about the centers and she didn't come with
3 us on the visit later to Wellington. She was here on a
4 cruise but she was present when we were discussing about
5 what centers were to be added, but I never spoke to her
6 about marketing agreements.

7 Q. Did Jean have any discussions with you in the
8 past year about what she knew about marketing agreements
9 and when she knew or whether she knew Viso was paying
10 for all the advertising?

11 A. We talked about the marketing agreements like
12 it was common understanding so she would say, you know,
13 this client called, he didn't want to pay or this client
14 here, he's calling, he hasn't got his check.

15 That would normally occur, though.

16 Q. Would that normally occur at the beginning of a
17 contract?

18 A. No, that would occur when their first bill was
19 due around 90 days after they were already funded.

20 Q. In other words, the complaint was people didn't
21 want to pay because they hadn't received their
22 advertising money and that normally occurred at the
23 beginning of the lease period?

24 A. Well, because there was a gap, you know, a
25 90-day deferral.

1 Q. And once you got past the 90 days and the
2 advertising money was coming in, did you get a lot of
3 complaints from NCMIC about customers calling?

4 A. No.

5 Q. In the past six months have you had any
6 discussions with Jean Thompson about advertising
7 agreements?

8 A. She, I guess when it was I guess in April, had
9 sent me an e-mail requesting a copy of a new marketing
10 agreement because she said that they felt there had been
11 some changes made or something along those lines.

12 I sent her request over to Jack. He never
13 really had a chance to respond to that because they cut
14 us off two or three days after that e-mail, I believe it
15 was on April 14.

16 Q. When is the last time you spoke to Jean?

17 A. May. May sometime.

18 Q. Do you recall whether that was a phone call
19 or --

20 A. It was an e-mail conversation back and forth.

21 Q. Do you recall what you said to each other?

22 A. The first thing was I wanted to get a copy of
23 the delinquent reports. They usually would send us that
24 so we could remove the people from the advertising list.
25 I would request a form from them saying who was

1 delinquent and we would take the delinquent people out
2 of the list to pay them and then we would issue the
3 checks. I hadn't received that. It was May, around
4 that time, that I requested it.

5 It took her a couple days to get back to me and
6 she gave me the report and then we just chatted a little
7 bit, you know, how are you and that kind of thing.

8 Q. Was there ever a time that you ever said
9 good-bye to each other that we won't be talking any
10 more?

11 A. No, but we did have one conversation where she
12 said she felt -- I think, you know, she never
13 specifically said I won't be talking to you but she said
14 something like I feel they're forcing us to get a
15 divorce because we talk every day; you know, for two
16 years. I think that was her comment.

17 Q. Did she ever express any surprise to you that
18 all of Brican's leases were accompanied by advertising
19 agreements from Viso?

20 A. No.

21 Q. Were you involved at all in the negotiations
22 from Brican and NCMIC which led to the execution of the
23 general vendor agreement?

24 A. No, the general vendor agreement was signed
25 before, I think it was 2005 if I recall.

1 Q. I don't think we need to make this as an
2 exhibit but I will show you what was submitted by the
3 attorneys from Brican America, Inc. as a Rule 26
4 disclosure statement. I want you to look at Section No.
5 8 where you're designated as a witness that says, Ms.
6 Ellzey will testify concerning all matters within her
7 personal knowledge related to the making of agreements
8 between plaintiff and/or the conducting of business
9 between plaintiff and defendant.

10 Do you have any knowledge about the making of
11 any agreements between any of the Brican entities and
12 NCMIC?

13 A. The only agreement -- well, I wasn't there to
14 make any agreements. The only agreement that occurred
15 while I was there was the lease assignment document.
16 That's when we were trying to get the leases to be
17 assigned from Brican, Inc. now as a lessor and Brican,
18 LLC as the vendor and that's when I was there and the
19 only document I drafted while I was there.

20 I didn't have anything to do with the wording,
21 it was done by Professional Solutions.

22 The other thing I was present for was when
23 Lynette had come with Professional Solutions, when we
24 met in November, she wanted us to sign a new vendor
25 agreement and we said we already had one and she just

1 withdrew it and we never even saw it.

2 **Q. You mentioned that one of the agreements you**
3 **said you did have involvement with was a lease**
4 **assignment?**

5 A. Yes.

6 **Q. Can you explain what the change was from the**
7 **way you were going to do business and the way you had**
8 **been doing business up until the time?**

9 A. Well, what it was was Brican America, LLC was
10 the vendor and Professional Solutions was the lessor,
11 and they would lease our equipment to the end user but
12 we were going to have Brican, Inc. be the lessor and
13 Brican, LLC be the vendor and Brican America, Inc. would
14 assign the leases to Professional Solutions. And that's
15 why the assignment was created by Professional Solutions
16 to have that happen.

17 The only thing I could do was the portion that
18 had the wording. The only thing I could change would be
19 who was being assigned, I could add the names of the
20 people and the date and that was it.

21 **Q. Do you know or were you involved in making**
22 **decisions to change the way the transactions were**
23 **structured as to the lease assignments?**

24 A. No.

25 **Q. Who told you that that was being done?**

1 A. Jack.

2 Q. Did they give you any instructions on how that
3 would change the paperwork that you were handling?

4 A. No, actually our funding didn't change. They
5 continued to wire Brican America, LLC the payments.
6 There was changes. We did change who was billing
7 Professional Solutions and in the end Professional
8 Solutions changed all the -- well, on the lease
9 agreements they changed the name from Brican America,
10 LLC to Brican America, Inc., that was the only change.

11 Q. Up until that point did Brican America, Inc.
12 exist?

13 A. Brican America, Inc. was inactive and we
14 reactivated the company in 2008.

15 We started making payments for salaries to Jack
16 and Jeff this year so they could be paid from Brican
17 America, Inc.

18 Q. Before that who were they paid their salaries
19 from?

20 A. Brican America, LLC.

21 Q. Who much in salary were they taking?

22 A. It was a management fee. It was a percentage
23 of the sales. I think it was four and a half percent
24 for each unit.

25 Q. So they each took four and a half percent or

1 **shared four and a half percent?**

2 A. They each took four and a half percent.

3 **Q. That was not salary?**

4 A. Management fee.

5 **Q. Did they have to take or did they take a salary**
6 **on top of that?**

7 A. No.

8 **Q. Did they take bonuses?**

9 A. No.

10 **Q. Do you know whether any of the Brican companies**
11 **lent them money?**

12 A. I'm sorry?

13 **Q. Whether any of the Brican companies lent either**
14 **Mr. Vincens or Mr. Lemacon any money?**

15 A. No.

16 **Q. Were you ever asked to transfer money to their**
17 **personal accounts?**

18 A. No.

19 **Q. And by your estimate, and just an estimate, how**
20 **many Brican systems were sold that were not accompanied**
21 **by an advertising agreement from Viso?**

22 A. I can't estimate.

23 **Q. You can't even ballpark that?**

24 A. I don't know the answer.

25 **Q. Almost every one?**

1 A. A majority had advertising agreements but I
2 don't know the numbers.

3 Q. Off the top of your head, are you aware of any
4 Brican systems that were sold which were not accompanied
5 by Viso advertising agreements?

6 A. Yes, I know that they exist. I know that we
7 have clients that didn't want the advertising agreements
8 but, I don't know how many.

9 Q. To your knowledge, have any doctors not
10 received advertising fees that were promised by Viso?

11 A. No. Well, if they defaulted they wouldn't
12 receive them.

13 Q. If they defaulted on the lease payments?

14 A. Yes.

15 Q. Is that by the terms of the advertising
16 agreement?

17 A. Yes.

18 Q. Aside from the people or the doctors who
19 defaulted, has anybody else, to your knowledge, not
20 received their advertising fees?

21 A. No.

22 Q. To the extent that the doctor had a complaint
23 about the Brican system or the arrangements he has or
24 the payments by Viso or anything, who initially fielded
25 those calls?

1 A. Initially -- well, it would be the customer
2 service department, you know, and if it was a technical
3 issue or whether it was an advertising issue, whatever
4 the case may be.

5 If it was an advertising issue they would bring
6 it to my knowledge and say, such and such didn't get a
7 check, why, and I would just look it up in my system why
8 they didn't get a check and unless there had been an
9 error that we paid somebody else in their company and
10 not the doctor, then it would be because they were
11 delinquent and the reason we knew that they were
12 delinquent is because Professional Solutions would send
13 reports.

14 **Q. Had any doctors ever complained to you about**
15 **the entire structure of the transaction, saying that**
16 **they were not happy with the fact that they had to get**
17 **advertising money to pay the lease?**

18 A. Well, it was explained to them before they
19 signed up so, you know, there had been a handful of
20 calls, I don't know how many actually called and said
21 that this was not explained to me, but for the most part
22 we would give them the documents they signed and we
23 would talk about what the presentation was and then they
24 were okay with it, that it was explained to them before
25 they signed the documents.

1 Q. Is Brican still selling systems?

2 A. Yes.

3 Q. Has the volume of sales increased or decreased
4 in the last six months?

5 A. Decreased.

6 Q. Can you give me a rough estimate of how much
7 it's decreased?

8 MR. WERTMAN: Objection.

9 THE WITNESS: I don't know the number but I
10 know it's decreased but I don't know the percentage.

11 BY MR. VERDE:

12 Q. At the end of 2008, by estimate, how many sales
13 a month was Brican making?

14 A. Two hundred.

15 Q. Do you have an estimate of how many they're
16 making in the last couple of months?

17 A. Well, I don't know. I don't process sales any
18 more that come in so I don't -- you know, since we're
19 not financing through Professional Solutions, I'm not
20 working on that, you know, with the credit applications
21 now.

22 But I don't deal with that area.

23 Q. What exactly do you do now?

24 A. I do everything else. I do all of the salary.
25 I take care of the HR benefits. I take care of the

1 vendors and all the bookkeeping.

2 Q. Does Mr. Lemacon have a secretary?

3 A. No.

4 Q. Does Mr. Vincens have a secretary?

5 A. No.

6 Q. Do you act sort of as their personal
7 administrative assistant as well?

8 A. Not for Jeff. You know, sometimes Jack --
9 well, not really a secretary position. You know, I
10 don't like draft e-mails or stuff on his behalf.

11 Q. Is Mr. Vincens in his office every day?

12 A. I would say so. Not every single day. It
13 depends on where he is.

14 Q. And Mr. Lemacon, is he in the office every day
15 for the most part?

16 A. Yes.

17 Q. At the time that NCMIC was no longer financing
18 these leases, what happened to the leases that were
19 pending, were they eventually financed by someone?

20 A. Yes. We had to get all the leases and we went
21 with a different leasing company to get them redone.

22 Q. Did you have to cancel any of the leases as a
23 result of not being able to obtain financing from NCMIC?

24 A. Cancel because a client no longer wanted to do
25 it?

1 Q. Yes.

2 A. There was a few. I don't know how many but
3 there were a couple of people that changed their mind.

4 Q. But everybody else was able to get alternate
5 financing?

6 A. Yes.

7 Q. Viso was paying for advertising at doctors'
8 offices around the country, right?

9 A. Yes.

10 Q. As we sit here today, Viso is paying for
11 advertising in doctors' offices in California, Illinois,
12 Minnesota?

13 A. Yes.

14 Q. And these are places that we can all agree are
15 far away from Texas, Florida and North Carolina,
16 correct?

17 MR. WERTMAN: Objection. Go ahead.

18 THE WITNESS: Yes.

19 BY MR. VERDE:

20 Q. You personally believe that advertising makes
21 any sense to you?

22 MR. WERTMAN: Objection. You can answer.

23 THE WITNESS: Yes, they were planning on
24 opening up centers and they're trying to get the
25 name Viso out locally.

1 BY MR. VERDE:

2 Q. Have you ever discussed the advertising
3 strategy with anyone at Viso or Brican?

4 A. As far as payments going out?

5 Q. Just the strategy of paying for all of this
6 advertising.

7 A. No, that's above my head, outside my purview.

8 Q. And you understood in 2007 when you joined
9 Brican there was only one location?

10 A. Only one Medspa? We had not launched
11 Wellington yet. It hadn't been opened yet.

12 Q. Are you involved at all in planning or setting
13 up Viso Medspas?

14 A. No.

15 Q. Have you visited any of the Viso Medspas
16 besides the one in Florida?

17 A. No.

18 Q. Are you involved in managing any of the Viso
19 offices?

20 A. Managing the day-to-day documents?

21 Q. Yes.

22 A. No, not really. But currently since Jennifer
23 is on maternity leave I take over her bookkeeping duties
24 but I don't really have control of the day-to-day
25 things.

1 Q. Who's responsible for calculating and keeping
2 track of the amounts of money made by the spas and
3 paying their expenses?

4 A. Currently me, but Jennifer normally would be in
5 charge of that.

6 Q. When did Jennie join the company?

7 A. She joined, I think it was 2008 and I think
8 she's been with us 17 months. I remember her saying
9 before she went on maternity leave that she was 17
10 months. I don't know exactly what date she joined.

11 Q. Let's focus now on the Wellington office.

12 A. Okay.

13 Q. Are you able from your position to determine
14 how many procedures are being done per week in the
15 Wellington office?

16 A. The Wellington office I receive, you know,
17 surgeons' reports when surgeries occur and who has to be
18 paid, the technicians and, you know, things like that,
19 but to determine how many are being done next week, I
20 only know after they happen.

21 Q. Are the doctors who are performing the
22 procedures employees of the spa or are they outside
23 contractors?

24 A. Outside contractors. They're not employees of
25 the spa.

1 Q. Now, there is a big machine that they have to
2 obtain in order to do the Lasix surgery?

3 A. Okay.

4 Q. Are you familiar with what I'm talking about?

5 A. Yeah, I know which machines but I don't know
6 the models.

7 Q. Well, neither do I so that's fair.

8 Do you know whether the machines that actually
9 do the surgery in the Wellington office are owned by
10 Viso or leased by Viso?

11 A. Those are -- the ones that are currently in
12 Wellington is leased, but it's not leased by Viso. The
13 ones leased by Viso is the one in Charlotte and San
14 Antonio. The one in Wellington was open before Viso was
15 launched.

16 Q. Do you know who owns the machine in Wellington?

17 A. Which bank?

18 Q. Well, it's owned by Viso?

19 A. No.

20 Q. Do you know who owns it?

21 A. It's definitely leased but I don't know the
22 vendor, the name of the vendor who's leasing it.

23 Q. Fair enough. And from the fact that you're
24 handling the bookkeeping for the Wellington office, do
25 you recall making any payments to any lease companies or

1 **companies that might have actually owned the machine?**

2 A. There are a lot of leases for Wellington that,
3 you know, I pay out monthly. I don't know which
4 specific lease is -- I know we have furniture, we had
5 some surgical equipment, but I don't know which of the
6 vendors is paid that directly.

7 **Q. From your position are you able to determine**
8 **whether Wellington Spa is operating at a profit or not?**

9 A. I could look at the profit and loss and tell
10 you what it says, but I can't really say what they're
11 operating. You know, that's not really what I do. I'm
12 just covering for her.

13 **Q. Let me put it in more basic terms. Are you**
14 **paying out more expenses for the Wellington office than**
15 **you're taking in in revenues?**

16 A. Currently, yes.

17 **Q. Can you tell me how long that's been going on?**

18 A. No, I don't know for how long.

19 **Q. The same question with regards to the Charlotte**
20 **office. Are you taking in more revenues or are you**
21 **paying out more expenses?**

22 A. Paying out more expenses.

23 **Q. A lot more?**

24 MR. WERTMAN: Objection, form.

25 THE WITNESS: We're paying out more. I don't

1 know if it's a lot more.

2 BY MR. VERDE:

3 Q. The same question as to San Antonio?

4 A. The same thing.

5 Q. Have you had any discussions with either Mr.
6 Lemacon or Mr. Vincens about the fact that Viso centers
7 seem to be losing money?

8 A. No.

9 Q. Have you been involved at all in any planning
10 of Viso centers in other locations?

11 A. No.

12 Q. To your knowledge are those still being
13 pursued?

14 A. No, I don't know.

15 Q. Aside from Ms. Thompson, did you discuss the
16 advertising agreements with anyone else from NCMIC?

17 A. When Todd was here I was present when they were
18 discussing the advertising agreements and which centers
19 we had and which ones were opening.

20 Q. That was in November?

21 A. November 2008, but I didn't speak directly to
22 Bonnie or Paula about advertising agreements. I did
23 speak, like I said before, on occasion with Nick Mollen,
24 about customer service issues that stemmed from that.

25 Q. So the one you spoke to, and just so we are

1 clear, was Newsome, you spoke to her about the marketing
2 agreements?

3 A. Yes.

4 Q. Is that correct?

5 A. Yes.

6 Q. Do you recall what you told her about the
7 marketing agreement?

8 A. No.

9 Paula, you know, we would speak with each other
10 about advertising agreements, what it would have been
11 because she had received, you know, the advertising
12 agreement instead of an invoice or instead of a serial
13 number or something along those lines.

14 We never chatted about the advertising
15 agreements or what it said or anything like that.

16 Q. When you spoke with Mollen, what was the nature
17 of your discussions regarding the advertising
18 agreements?

19 A. It was clients that had a misunderstanding of
20 the marketing agreement and they were not paying their
21 leases because of it and I would have to speak to him on
22 occasion and I had to deal with a client. Most of the
23 time it was in California that had problems.

24 Q. Did he ask you any questions about the
25 advertising agreement whether everybody had one?

1 A. No.

2 Q. Did you ever volunteer any information about
3 that?

4 A. No, no.

5 Q. Aside from Todd Cook's visit her in November of
6 last year, did you have any discussions with him, one on
7 one?

8 A. Not dealing with the advertising agreements.

9 You know, in dealing with Jean I would have to
10 talk with her when they were working on client
11 applications or I needed an approval or an answer I
12 would contact Todd by e-mail or phone call.

13 Q. Have you ever made any transfers of money from
14 any of the Brican or Viso entities to a company called
15 JJR Investments, LLC?

16 A. I haven't done that.

17 Q. Do you know anyone else that has?

18 A. No. I don't know.

19 Q. Do you know who JJR Investment, Inc. is?

20 A. Yes.

21 Q. Who is that?

22 A. It is a company that was found by Jack and Jeff
23 and Ray and I mean that's the only knowledge I have of
24 it.

25 Q. Who is James Conlon (phonetic)?

1 A. James Conlon was a marketing consultant who
2 worked for Brican before I started.

3 **Q. Where you involved in making any payments to**
4 **any companies providing hard equipment?**

5 A. Yeah, there were several vendors that provided
6 equipment that we would have to pay.

7 **Q. Do you recall the names of those vendors?**

8 A. There were several. One was Lectro-Graph and
9 then we had Piece of Connection, and sometimes -- well,
10 also we had Analyst Bay. Also sometimes we had a
11 promotion where we couldn't find the equipment and we'd
12 have to go -- we couldn't get it from any of the
13 suppliers and we would even go to Circuit City.

14 But those were the three main ones.

15 **Q. Who told you which suppliers to use?**

16 A. I would never purchase them. I only paid their
17 bills.

18 **Q. Do you know whether either Mr. Vincens or Mr.**
19 **Lemaccon had any ownership interest in the companies that**
20 **were supplying television sets?**

21 A. I understand that Jack had some ownership in
22 Lectro-Graph, but -- I'm sorry, it's not Lectro-Graph,
23 it's Lectro-Com.

24 **Q. Do you know who Dr. DeCanio is?**

25 A. Do I know him? Yes.

1 Q. Does he work at Viso?

2 A. He works at PBLEI.

3 Q. What is that again?

4 A. PBLEI. He was not an employee, he was the
5 marketing director I think but I don't know the term.

6 Q. Is he frequently at the Blue Lagoon offices?

7 A. Not frequently. Maybe less than once a month.

8 Q. Who is Paul Gallivan (phonetic)?

9 A. Paul Gallivan was the national director for
10 Viso but I don't know the exact title.

11 Q. Is he an eye doctor of some sort?

12 A. Not to my knowledge.

13 Q. He actually operates Viso centers?

14 A. He goes to the centers and kind of commands
15 them but I don't really know -- I don't work for Viso.
16 I do see him in the office once a week. He comes in but
17 I don't really know exactly what his day-to-day
18 operations are.

19 Q. Do you know where he is based?

20 A. I think he lives in Delray. I believe he goes
21 to the Wellington center often and then he flies out to
22 other centers as needed.

23 Q. Are you involved in cutting checks for him as
24 well?

25 A. Salary currently while Jenny is out.

1 Q. What is his salary?

2 A. I don't know. It's pretext. You know, I just
3 submit the payments.

4 Q. Is Mr. Gallivan, to your knowledge, an American
5 or is he from somewhere else?

6 A. He's an American.

7 Q. Who is Brock Randall?

8 A. Brock Randall is a person like he puts on
9 seminars in different states. I think he may be
10 Canadian but he puts on seminars or he used to for the
11 marketing or salespeople who do these trade shows and
12 they hold seminars.

13 MR. VERDE: I'm getting close to the end. Why
14 don't we take a five to 10 minute break and you can
15 stretch your legs. You can go to the ladies' room.

16 (Brief recess taken.)

17 BY MR. VERDE:

18 Q. Back on the record.

19 Ms. Ellzey, I'm going to show you what's been
20 previously marked as Defendant's Exhibit No. 3, which is
21 a general vendor agreement between Professional
22 Solutions, which is NCMIC and Brican America, Inc.

23 Have you ever seen this before?

24 A. Yes.

25 Q. In what context did you see it?

1 A. When we pulled it out to show Lynette we
2 already had one.

3 Q. Have you ever read it?

4 A. No.

5 Q. To this date have you read it?

6 A. No.

7 Q. Let me ask you to look at paragraph six but
8 before you do that, would you agree with me that the
9 marketing agreement is part of the overall agreement you
10 had with doctors that have Brican systems?

11 MR. WERTMAN: Objection.

12 THE WITNESS: The ones who elect it, yes.

13 BY MR. VERDE:

14 Q. Take a look at paragraph six of that agreement
15 that's in front of you, subparagraph C, Brican warrants
16 that there are no other agreements or warranties given
17 to the lessees related to goods or leases written or
18 verbal that are not included in the documents given to
19 PSFS.

20 A. Yes.

21 Q. Do you believe that the advertising agreement
22 would have fallen under the categories of other
23 agreements or warranties related to the leases?

24 MR. WERTMAN: Objection.

25 THE WITNESS: It was -- I mean, before I

1 started they were already in existence and what I
2 was told was, you know, I sent what I was told but I
3 was never requested to provide any other documents
4 or no one ever asked me to send them copies of
5 anything else.

6 BY MR. VERDE:

7 Q. Would you agree, just speaking personally, not
8 as a lawyer or not based upon what the law is or not,
9 just in your personal experience with this company, that
10 the advertising agreements were agreements with the
11 customer and that it was part or related to goods and
12 leases that were being exchanged with NCMIC?

13 MR. WERTMAN: Objection.

14 THE WITNESS: The leases that were signed and
15 everything related to the leases were sent and the
16 agreement was between the doctor and another party,
17 Viso.

18 BY MR. VERDE:

19 Q. The advertising agreement was signed at the
20 same time as the leases?

21 A. Yes.

22 Q. And to your knowledge the salesmen were
23 offering the advertising agreement as part of the
24 leasing package when they made their sales pitch to the
25 doctors?

1 MR. WERTMAN: Objection.

2 THE WITNESS: The ones who wanted to do so did
3 and if they didn't want to, didn't.

4 BY MR. VERDE:

5 Q. My question to you is, to your knowledge when
6 the salesmen approached the doctors they pitched both
7 the lease agreements with Brican and the marketing
8 agreements at the same time?

9 MR. WERTMAN: Objection.

10 THE WITNESS: I'm not in marketing so I don't
11 know whether they did it at the same time or I don't
12 know when it was done. I don't know if it was done
13 at the same time or not or after. I just don't
14 know.

15 BY MR. VERDE:

16 Q. But the complaints that you had from doctors
17 about making lease payments before they began receiving
18 advertising monies didn't that indicate to you that the
19 doctors at least thought that these two agreements were
20 directly related?

21 MR. WERTMAN: Objection.

22 THE WITNESS: Client calls weren't a majority,
23 they were a small amount of clients that had
24 problems and, you know, a majority of them made
25 their payments fine.

1 As a matter of fact, I think the advertising
2 agreements helped Professional Solutions because
3 there was a very low default rate with them.

4 I don't think it was a hindrance with them, I
5 think it was helping them.

6 BY MR. VERDE:

7 Q. When you say that there were a small amount of
8 complaints about the fact that they had not received
9 their advertising money before they made their first
10 lease payments, could you give me an estimate as to the
11 number of people that would have called?

12 A. No.

13 Q. Was it more than 10, less than 10?

14 A. It wasn't -- it wasn't less than 10 but I don't
15 know the number of clients.

16 I recall that before they came in November Jean
17 and Todd had met with the underwriters and they were
18 delighted that we only had, up to that point, one
19 default, one client ended up defaulting and he had three
20 units, but the rest of the clients all made their
21 payments.

22 If they had problems, the small amount of
23 problems once it was explained to them or re-explained,
24 they were fine.

25 Up until that point before they came to visit

1 us we just had one client that defaulted.

2 Q. We may be talking about different things.
3 You're talking about defaults and I'm not talking about
4 defaults.

5 A. Okay.

6 Q. I'm talking about you had mentioned earlier in
7 your testimony Jean Thompson, that you had spoken to
8 Jean Thompson on a number of occasions.

9 A. Yes.

10 Q. Because the doctors had called up complaining
11 that they were getting billed on their leases.

12 A. Correct.

13 Q. Before they had received their first
14 advertising check?

15 A. Right.

16 Q. And now you just said there were just a handful
17 of times that happened or words to that effect, I can't
18 recall exactly what you said but that it didn't happen
19 that often.

20 A. I said that out of 1,600 clients the amounts
21 that have problems was a small amount. It's not 10,
22 it's not less than 10, it's definitely more, but the
23 default, you know, the ones that actually stop paying up
24 until the time they had come to visit was one.

25 Q. I don't want you to focus on defaults. I'm

1 trying to figure out how many called.

2 A. How many called every day?

3 Q. Not how many called every day but how many
4 called that first time to say why I am getting billed, I
5 haven't received the advertising?

6 A. I don't know how many that called, you know,
7 because some of those calls would have come to Dan and I
8 can't give you a number how many there were, I couldn't
9 say if it happened once a month, once every couple of
10 months but, you know, the advertising agreement question
11 came up but it wasn't once a day, definitely not once a
12 day but I don't know how many it was.

13 Q. I'm going to show you what was previously
14 marked as Exhibit No. 7, Defendant's Exhibit No. 7, and
15 it's an e-mail --

16 A. Right. This is the one I mentioned earlier.

17 Q. Hang on. Let me catch up to you. You're
18 already answering my question.

19 A. I'm sorry.

20 Q. This is an e-mail from Jean Thompson to you?

21 A. Yes.

22 Q. Dated April 14, 2009 and this, as you just
23 said, was an e-mail you referred to earlier in your
24 testimony?

25 A. Yes.

1 **Q. Do you recall the circumstances surrounding**
2 **this?**

3 A. Yes, this was around the time right before they
4 cut us off.

5 We had already, me and Jack, already talked
6 about the concentration issue and what was going on with
7 future funding so we already had known that there were
8 problems and they had already brought that to my
9 attention and then I got this e-mail that day and I
10 forwarded it to Jack. I referred him to take care of it
11 and then they cut us off right after that, maybe two
12 days later they stopped funding us. And we never got a
13 chance to do what they wanted after I forwarded this to
14 Jack.

15 **Q. Did you have any telephone conversations with**
16 **Jean about this message?**

17 A. No.

18 **Q. Did you ever have any conversations with Jean**
19 **about changes that had been made to the marketing**
20 **agreement?**

21 A. No.

22 **Q. Have you received in the last few months an**
23 **increasing number of complaints from doctors or lessors?**

24 A. About the same.

25 MR. VERDE: That's all the questions I have.

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Thank you. You're done.

(The deposition was concluded at 11:00 a.m.)

(Reading and signing of the deposition was not
waived by the witness and all parties.)

CERTIFICATE OF OATH

STATE OF FLORIDA,)
COUNTY OF MIAMI-DADE.)

I, IRA E. COHEN, Florida Professional
Reporter, Notary Public, State of Florida, certify that
SANDRA ELLZEY personally appeared before me on the 13th
of November, 2009, and was duly sworn.

SIGNED this 17th day of November, 2009.



IRA E. COHEN, FPR
Notary Public, State of Florida
Commission No: DD522948
Commission Expires: 04-04-2010

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
) ss
COUNTY OF DADE)

I, IRA E. COHEN, Florida Professional Reporter, certify that I was authorized to and did stenographically report the deposition of SANDRA ELLZEY, pages 1 through 63; that a review of the transcript was requested; and that the transcript is a true record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 17th day of November, 2009.

Ira Cohen

IRA E. COHEN

Registered Professional Reporter
Notary Public-State of Florida



WITNESS LETTER

November 17, 2009

Ms. Sandra Ellzey
c/o JEFFREY WERTMAN, ESQ.
BERGER SINGERMANN
350 East Las Olas Boulevard, Suite 1000
Fort Lauderdale, Florida 33301

In Re: NCMIC Finance v. Brican America, Inc.

Dear Ms. Ellzey:

Please take notice that on the 13th day of November, 2009, you gave your deposition in the above cause. At that time you did not waive signature. The transcript is now available at your office for your review.

Please call (305) 373-8404 to schedule an appointment between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, at the U.S. Legal Support office located nearest you..

If you are a party in this action and your attorney has ordered a copy of this transcript, you may wish to read his/her copy of the transcript. In that event, please execute the Errata Sheet, which can be found at the back of the transcript, and return it to us for distribution to all parties. We have enclosed a self-addressed envelope for your convenience

If you do not read and sign the deposition within 30 days, the original, which has already been forwarded to the ordering attorney, may be filed with the Clerk of the Court.

If you wish to waive your signature now, please sign your name in the blank at the bottom of this letter and return it to us.

Very truly yours,

Ira E. Cohen, FPR
Florida Professional Reporter
U.S. Legal Support, Inc.
One Southeast Third Avenue, Suite 1250
Miami, Florida 33131

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I do hereby waive my signature.

SANDRA ELLZEY

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Sandra Ellzey
November 13, 2009

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Sandra Ellzey

November 13, 2009

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Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

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