

EXHIBIT 25

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	Chapter 11
LandAmerica Financial	Case No. 08-35994-KRH
Group, Inc., et al.	Jointly Administered
Debtors.	

Health Care REIT, Inc.	Adv. Pro. No.
Plaintiff,	08-03149 (KRH)

vs.

LandAmerica 1031 Exchange	
Services, Inc.	
Defendant.	

Millard Refrigerated Services,	Adv. Pro. No.
Inc.	08-03147 (KRH)
Plaintiff,	

vs.

LandAmerica 1031 Exchange	
Services, Inc.	
Defendant.	

DEPOSITION OF STEPHEN CONNOR
February 19, 2009

COOK & WILEY, INC.
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Howard Finkelstein
Plaintiff,
vs.
LandAmerica 1031 Exchange
Services, Inc.
Defendant.

Adv. Pro. No.
08-03171 (KRH)

Frontier Pepper's Ferry, LLC
Plaintiff,
vs.
LandAmerica 1031 Exchange
Services, Inc.
Defendant.

Adv. Pro. No.
08-03148 (KRH)

Matthew B. Luxenberg, Trustee
of the Matthew B. Luxenberg
Revocable Family Trust
Plaintiff,

Adv. Pro. No.
09-03023 (KRH)

v.
LandAmerica 1031 Exchange
Services, Inc.

DEPOSITION OF STEPHEN CONNOR
February 19, 2009

1 February 19, 2009

2 Richmond, Virginia

3
4 The deposition of STEPHEN CONNOR, a
5 Witness, taken at the instance of Dr. Matthew
6 Luxenberg, Trustee, before Helen B. Yarbrough, RPR,
7 CCR, a Notary Public for the State of Virginia at
8 Large, beginning at 9:40 a.m., at the law office of
9 McGuireWoods LLP, One James Center, 901 East Cary
10 Street, Richmond, Virginia; said deposition taken
11 pursuant to the Federal Rules of Bankruptcy
12 Procedure.

13
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25

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1 MR. KAMIN: Mr. Connor has been designated
2 by LES as its 30(b)(6) witness in a couple of
3 categories, actually I think only two in the
4 Millard schedule of topics. Mr. Connor has
5 been designated as the 30(b)(6) witness with
6 respect to Category 8, LES's business model.
7 And in connection with the 30(b)(6) notice
8 served by the LES Committee, Mr. Connor is
9 designated as the witness with respect to
10 Category 7, development of the LES 1031
11 business model.

12
13 STEPHEN CONNOR, a Witness, called by
14 Dr. Matthew Luxenberg, Trustee, first being duly
15 sworn, testified as follows:

16
17 EXAMINATION BY MR. GEIGER:

18
19 Q Mr. Connor, my name is Jeff Geiger, and I'm
20 here on behalf of Matthew B. Luxenberg, Trustee for
21 his family trust.

22 Have you had your deposition taken before?

23 A No, not in this particular matter.

24 Q Have you had it taken before in another
25 matter?

1 A Years ago, I believe, yes.

2 Q What I'd like to do first is to run down
3 sort of the protocol as to how we can operate, I
4 think, most efficiently in this deposition.

5 Now, if any time you need a break, please
6 let me know, and we can take a break. Do you
7 understand that?

8 A Yes.

9 Q You also understand that if you do take a
10 break, if there's an open question, I'd ask that we
11 not have that break at that point. Do you understand?

12 A Yes.

13 Q Mr. Connor, I'm going to ask you a series of
14 questions, and when I do, I'm going to take it that
15 you understand the question unless you tell me
16 otherwise. Do you understand?

17 A Yes.

18 Q As you are doing right now, it's easiest for
19 the court reporter if you answer with "yeses" and
20 "nos" and not nods. Do you understand?

21 A Yes.

22 Q Mr. Connor, is there any reason why you
23 cannot give your deposition today for any medical --
24 strike that.

25 Is there any reason why you cannot give your

1 deposition here today?

2 A No.

3 Q You understand that the court reporter gave
4 you an oath that requires you to answer truthfully?

5 A Yes.

6 Q Mr. Connor, in preparation for your
7 deposition, who did you talk with?

8 A Larry Kamin.

9 Q And when did you speak with Mr. Kamin about
10 the deposition?

11 A Yesterday.

12 Q Did you do anything else in preparation for
13 your deposition today?

14 A No.

15 Q Did you review any documents in preparation
16 for your deposition today?

17 A Yes.

18 Q And was that with Mr. Kamin?

19 A It was.

20 Q And what were those documents?

21 A Deferred exchange agreement, some marketing
22 collateral, a couple other documents, some
23 correspondence.

24 Q Can you remember what the correspondence
25 was?

1 MR. KAMIN: I believe that what the
2 witness saw in connection with his witness
3 preparation by his counsel is protected as
4 attorney-client communication, so I'm going to
5 direct him not to answer.

6 MR. GEIGER: Okay.

7 Q Mr. Connor, what is your current position
8 with respect to LES?

9 A I'm senior vice president of LandAmerica
10 Exchange.

11 Q And do you also have a position with
12 LandAmerica Financial Group?

13 A Yes, I do.

14 Q And what is that position?

15 A Senior vice president.

16 Q In your position as senior vice president of
17 LES, to whom do you report?

18 A Pam Saylor.

19 Q And for how long have you been reporting to
20 Ms. Saylor?

21 A Since April 1 of 2008 until Pam's departure
22 one month ago.

23 Q So to whom do you report now?

24 A Bill Evans.

25 Q Prior to her departure, what was

1 Ms. Saylor's position with LES?

2 A She did not have a position with respect to
3 LES prior to April 1.

4 Q Prior to her departure, did she have a
5 position with LFG?

6 A Yes.

7 Q And what was that?

8 A I believe her title was president,
9 commercial services.

10 Q In your position with LES, can you briefly
11 describe what your duties are?

12 MR. KAMIN: Specifically with respect to
13 LES as opposed to LFG?

14 MR. GEIGER: Correct.

15 A To manage the growth, profitability, and
16 servicing capabilities of the company.

17 Q Okay. If you could break that down for me,
18 what does that mean?

19 A Marketing, operations, sales, customer
20 service.

21 Q Was there anybody else that had a higher
22 position in LES other than you?

23 A Pam Saylor was president.

24 Q Of LES?

25 A Of LES.

1 Q And what was your understanding as to her
2 duties?

3 MR. KAMIN: In that respect?

4 MR. GEIGER: As president of LES.

5 A I suppose to have ultimate responsibility
6 for LES in terms of a reporting structure up to the
7 parent company, LFG.

8 Q Where was your office located, Mr. Connor?

9 A Chicago, Illinois.

10 Q With respect to the requirements -- your
11 duties with respect to marketing, can you explain to
12 me what that entails?

13 A Well, in a broad sense, I suppose the
14 presentation of the company to the public, design of
15 marketing collateral, content, look, feel, messaging,
16 everything generally associated with marketing.

17 Q In the course of your duties with respect to
18 marketing, did you approve the marketing materials of
19 the company?

20 A For the most part, yes.

21 Q When you say "for the most part," what do
22 you mean?

23 A Well, it's conceivable that people can
24 publish things or say things or do things. So, yes, I
25 approved all marketing material that the company

1 published for the most part. But did somebody do
2 something? I don't know.

3 Q Were print materials provided to you prior
4 to their publication?

5 A Most of the time, I would say yes. In fact,
6 all the time, should have been.

7 Q With respect to the website, was that
8 content provided to you prior to its publication?

9 A Yes.

10 Q And what do you understand to be the website
11 for LES?

12 A What do you mean?

13 Q For example, what was the domain name for
14 the LES website?

15 A I'm not sure.

16 Q Was there more than one website that LES
17 used in providing marketing materials?

18 A Yes.

19 Q Do you know what any of those websites were?

20 A No. I don't know the domain names if that's
21 what you're asking.

22 Q Well, do you understand that there were
23 multiple domain names that were used by LES with
24 respect to its marketing?

25 A Yes.

1 Q And were those websites controlled by
2 various offices? Strike that.

3 Who had the ability to exercise control over
4 the content of the websites?

5 A The websites were maintained and controlled
6 by Laurina Bukovics in Chicago.

7 Q So it's your understanding that she
8 controlled all of the websites?

9 A Yes.

10 Q Did Ms. Bukovics report directly to you?

11 A Yes.

12 Q Was there anybody else that reported to you
13 with respect to marketing?

14 A No.

15 Q Mr. Connor, you also indicated that you were
16 responsible for managing the growth of the company, I
17 believe is what you testified to. Could you explain
18 to me what that means?

19 A It might mean the decision whether I want to
20 hire somebody in New Orleans or hire somebody in Las
21 Vegas, or is this a market we should be in or not be
22 in.

23 Q And did your -- strike that. You also
24 indicated that you were responsible for the
25 profitability of the company?

1 A Yes.

2 Q And in your responsibility for the
3 profitability, what specific duties did you have?

4 A Mainly the generation of business, of
5 revenue, and the control of expenses.

6 Q What efforts did you undertake to generate
7 business for the company?

8 A I would make decisions as to what markets,
9 meaning geographies or cities, we should be in; who
10 should we hire; monitor their efforts at succeeding
11 and generally support them in the growth of the
12 business.

13 Q I'd like to turn your attention to 2008, in
14 the time frame that followed after January of 2008 and
15 revisit those three areas that you talked about with
16 respect to marketing, managing growth, and
17 profitability of the company. Over the course of
18 2008, what efforts did you undertake to increase the
19 profitability of the company?

20 A We reduced staff fairly significantly. We
21 exited some markets. And I have to think, you know,
22 if that was after January or before, but it would have
23 been in or around this time.

24 Q What precipitated the termination of
25 employees?

1 A Usually non-productivity; I mean not
2 generating enough business.

3 Q You indicated, also, that you exited certain
4 markets in the 2008 time frame?

5 A Yes.

6 Q Do you know which markets?

7 A I don't recall specifically when we exited
8 what markets at what time, no.

9 Q Do you happen to recall what the reasons
10 were for exiting these markets?

11 A Lack of business.

12 Q And what did you attribute the lack of
13 business to?

14 A Some markets were suffering horribly.

15 Q In the course of your duties with respect to
16 marketing in 2008, what efforts did you undertake?

17 Strike that. That's a rather confusing
18 question. I apologize for that.

19 In 2008, did you undertake different
20 marketing efforts than you had done previously?

21 A No.

22 Q In 2008, did you change the marketing
23 materials that you provided to the public?

24 A I don't remember.

25 Q Do you recall receiving marketing materials

1 to review and approve during the course of 2008?

2 A Yes.

3 Q Do you recall ever asking for any changes to
4 be made to these marketing materials in 2008?

5 A Yes.

6 Q What changes do you recall asking be made?

7 A I can recall, for example, in New York they
8 submitted an ad they wanted to run in a magazine that
9 had a graphic that we didn't agree with, we didn't
10 like. I remember that specifically. They had a
11 couple magazine ads that I didn't like the graphics.
12 They weren't consistent with our overall look and
13 design.

14 Q Do you recall any other changes that you
15 requested be made to the marketing materials in 2008?

16 A No.

17 Q Just so I'm clear, so aside from stylistic
18 or design changes you asked to be made, I understand,
19 to several ads in the New York market, no other
20 changes were requested by you?

21 A As I said, there could have been other ads.
22 I don't remember, you know, the day-to-day, what may
23 have been presented to me that we said, no, we don't
24 want to do that, or change it. I do remember the New
25 York ads.

1 Q You mentioned "we." To whom else do you
2 refer?

3 A These would have come up through Laurina
4 Bukovics, these requests, so she would either submit
5 them to me or Brent Allen.

6 Q Are you aware that the marketing materials
7 offered a guaranty to exchangers?

8 MR. KAMIN: Objection to form.

9 A Yes.

10 Q And you understand that those guaranties
11 were offered as a guaranty on behalf of LFG to the
12 exchangers for their funds?

13 A No.

14 Q Are you aware whether or not LES made a
15 guaranty to exchangers for their funds?

16 A Yes.

17 Q And what is your understanding?

18 A That guaranty is contained in, I believe,
19 all the exchange agreements, the standard deferred
20 exchange agreement that LES guaranties the return of
21 the funds.

22 Q So are you aware of any additional written
23 guaranties aside from the exchange agreements made to
24 exchangers?

25 A Yes.

1 Q And who would have issued those guaranties?

2 A Probably me for the most part.

3 Q And would that be in your capacity as senior
4 vice president for LES?

5 A No.

6 Q Would that be in your capacity as a senior
7 vice president for LFG?

8 A Yes.

9 Q Do you recall giving those guaranties in
10 2008?

11 A Yes.

12 Q And do you recall approximately how many
13 guaranties you issued in 2008?

14 A No.

15 Q Would it be fair to say there are over 10?

16 A Yes.

17 Q Over 50?

18 A No.

19 Q So somewhere between 10 and 50?

20 A I think that would be consistent, yes.

21 Q Well, did you issue a written guaranty in
22 your capacity as a senior vice president for LFG to
23 each of the exchangers that exchanged funds with LES?

24 A No.

25 Q Why not?

1 A Because it was not our policy to do that.

2 Q And why was it not your policy to do that?

3 A Because years earlier we had solicited an
4 opinion from E & Y about the characterization if we
5 did that routinely.

6 Q When you referred to characterization, what
7 do you mean?

8 A I think how we would carry that obligation,
9 that guaranty, on our books.

10 Q And when you say "we," here are you talking
11 on behalf of LES or LFG?

12 A LFG.

13 Q So you learned from -- what was his name?

14 A Ernst & Young.

15 Q You learned from Ernst & Young that there
16 was an issue concerning the characterization for
17 accounting purposes as to the issuance of a guaranty?

18 MR. KAMIN: Objection to form.

19 A No, I didn't learn it from them. I learned
20 it from our internal counsel who consulted with them.
21 That's what I understood.

22 Q Why did you ever issue any guaranties if
23 there was a problem -- or an issue, excuse me -- with
24 the characterization?

25 MR. KAMIN: Objection to form.

1 A Because we were authorized to do that on an
2 ad hoc one-off basis when requested.

3 Q So you had to receive a request from an
4 exchanger?

5 A Yes.

6 Q Were there times that you turned down the
7 exchanger's request for a guaranty?

8 A No, not to my knowledge.

9 Q Do you know where those guaranties are kept?

10 A They were maintained in my office in
11 Chicago.

12 Q And do you know where those guaranties are
13 now?

14 A They have been delivered to counsel.

15 Q Did there come a point in time in 2008 in
16 which you stopped issuing these guaranties?

17 A No.

18 Q Do you recall the last time that you
19 executed a guaranty on behalf of an exchanger -- for
20 an exchanger?

21 A No.

22 Q Would it have been in the fall of 2008?

23 A Yes.

24 Q Were you involved in the decision-making
25 process that placed exchange funds into auction rate

1 securities?

2 A No.

3 Q Do you know who was?

4 A No.

5 Q Were you involved at any time in approving
6 the decision to purchase auction rate securities with
7 exchange funds?

8 A No.

9 Q Do you know who was?

10 A No.

11 Q When did you first become aware that LES was
12 purchasing auction rate securities?

13 MR. KAMIN: Objection to form.

14 A April 2008.

15 Q And how was it that you became aware of the
16 purchase of auction rate securities in April of 2008?

17 A When I received my profit and loss statement
18 for the month of March 2008, the amount of revenue
19 generated by the exchange operations was higher than
20 what I expected to see for that month. So I made
21 inquiry to headquarters as to why was this number
22 higher, and I was informed that it was default
23 interest related to the purchase of auction rate
24 securities.

25 Q Who was it that informed you of this?

1 A Ronnie Ramos.

2 Q What actions did you take upon learning of
3 the purchase of auction rate securities by LES, if
4 any?

5 A Nothing.

6 Q Did you follow up with Mr. Ramos concerning
7 the purchase of auction rate securities any time after
8 you learned of this in April of 2008?

9 A No.

10 Q Why not?

11 A I had no reason to.

12 Q Did you receive P and L statements on an
13 ongoing basis for LES?

14 A Yes.

15 Q Did you receive them for April?

16 A Yes.

17 Q How about May?

18 A Yes.

19 Q June?

20 A Yes.

21 Q July?

22 A Yes.

23 Q Through the end of the year?

24 A Yes.

25 Q And did you receive any other budgetary or

1 income statements for LES during 2008?

2 MR. KAMIN: Objection to form.

3 A No.

4 Q So the only statements that you received
5 with respect to the budget for financing issues would
6 be in the P and L statements?

7 A Yes.

8 Q Is there a reason why you only received the
9 P and L statements?

10 MR. KAMIN: Objection to form.

11 A No.

12 Q Did you ever ask for anything other than the
13 P and L statements?

14 A No.

15 Q After you learned of the purchase of the
16 auction rate securities in April of 2008, did you ever
17 request that there be modifications to the marketing
18 materials?

19 A No.

20 Q Did you request any changes be made to the
21 marketing of LES at all?

22 MR. KAMIN: Other than the changes he's
23 testified to already?

24 A Right. We've talked about this earlier.
25 You asked me that.

1 Q Aside from the marketing materials, you
2 indicated that you had a duty to market the company.
3 Did you make any changes to how you marketed the
4 company after you learned of the purchase of the
5 auction rate securities in April of 2008?

6 A No.

7 Q Mr. Connor, could you briefly provide to me
8 your educational background?

9 A I'm an attorney.

10 Q Okay. Where did you go to school?

11 A Capital University Law School.

12 Q Where did you go to college?

13 A Ohio Dominican College.

14 Q When did you receive your law degree?

15 A 1981.

16 Q Where did you pass the bar, if you did?

17 A State of Ohio.

18 Q Have you passed the bar anywhere else?

19 A No.

20 Q Are you an active attorney?

21 A No.

22 Q So it's fair to say you are in inactive
23 status with Ohio?

24 A I am inactive with Ohio.

25 Q After you graduated from law school, where

1 did you go to work?

2 A First three years, I worked for John J.
3 Perrini Company, LPA.

4 Q What was that company's business?

5 A It's a law firm, small law firm, in
6 Columbus, Ohio. And I worked three years for the
7 Firestone Tire and Rubber Company as national
8 commercial transaction counsel, left that in 1987,
9 worked for Guardian Title Insurance Company in
10 Cleveland, Ohio, joined First American Title in 1994.

11 Q What were your duties with First American
12 Title in 1994?

13 A I was commercial manager for a three-state
14 region that included Ohio, Western PA, and Kentucky in
15 their national commercial unit.

16 Q And were you practicing law at that point?

17 A No. I was managing business operations, but
18 I was an active licensed attorney at that time in
19 Ohio, and I was based in Ohio.

20 Q Okay. I interrupted you. After that job,
21 where did you go?

22 A Stewart Title in their headquarters in
23 Houston, Texas, 1988 through 2000; and then early 2001
24 to present, I've worked for LandAmerica.

25 Q What have your duties been -- when you

1 joined LandAmerica, I believe it was 2001 --

2 A Yes.

3 Q -- what was your position at that time?

4 A Senior vice president.

5 Q You've been senior vice president the entire
6 time?

7 A Yes.

8 Q And have your duties, in any measurable way,
9 changed in the course of your position as senior vice
10 president?

11 A Yes.

12 Q How so?

13 A When I first was recruited by LandAmerica,
14 it was to build and manage the tax deferred exchange
15 company. Since that time, 2001, I've taken on three
16 more companies and was actively pursuing a fifth. So
17 I managed four subsidiaries.

18 Q You were designated as the corporate
19 designee with respect to the company's business model.
20 Can you explain to me what that means to you -- excuse
21 me -- what the business model of the company means to
22 you?

23 A Structure of the company, how it operates,
24 how it performs its functions, with an eye towards its
25 profitability and its viability.

1 Q What do you consider to be the business
2 model for LES prior to the bankruptcy?

3 A We were a qualified intermediary, as that
4 term is used under the 1991 safe harbors.

5 Q Is there anything else with respect to the
6 business model other than acting as a QI?

7 A No.

8 Q What was your sense as to how revenue would
9 be generated by LES?

10 A Revenue is generated two ways by what we
11 call a setup fee and interest income.

12 Q How is the interest income derived?

13 A The interest income is derived by taking in
14 the funds, investing the funds, and generating
15 interest from that and then paying out to the customer
16 the agreed-upon rate of interest with the customer
17 pursuant to the exchange agreement. So the difference
18 between the two.

19 Q What is your understanding as to how the
20 exchange funds were to be invested?

21 MR. KAMIN: Objection to form, foundation.

22 Q Are you aware that exchange funds were
23 invested?

24 A Yes.

25 Q Are you aware of how the decision was made

1 to have those funds invested?

2 A No.

3 Q Who made that decision as to how the funds
4 were to be invested?

5 A I'm not sure.

6 Q Other than yourself -- back up. You're
7 senior vice president of the company, and you don't
8 know how the funds are invested; is that correct?

9 A That's correct.

10 Q Did you ever ask anybody about how the funds
11 were invested?

12 A Yes.

13 Q And when did you ask that question?

14 A I don't remember specific dates. I've asked
15 that question at different times in the past.

16 Q Would the past -- you're referring to 2008?

17 A No.

18 Q So you asked the question of how the funds
19 were invested before 2008?

20 A Yes.

21 Q Did you receive an answer?

22 A Yes.

23 Q What was that answer?

24 A As I recall, always in short-term liquid
25 securities, Treasuries, CDs, kind of general

1 description of a policy that I'm completely unaware
2 of.

3 Q Who was it that provided you with that
4 information?

5 A Ronnie Ramos.

6 Q If I recall correctly, you indicated you'd
7 asked on at least one occasion and maybe more
8 occasions about how the funds were invested; is that
9 right?

10 A Yes.

11 Q Why did you ask more than once?

12 A There would be given market conditions or
13 factors in the marketplace where customers would want
14 to know, so we would create a piece, a marketing
15 piece, perhaps, that said what we invested it in or
16 that kind of thing. So I had made inquiries at those
17 times to create those pieces.

18 Q Are you aware that LES used the exchange
19 funds from new exchangers to pay off the old
20 exchangers in connection with their execution or
21 performance of the exchange agreement?

22 MR. KAMIN: Object to the form.

23 A No.

24 Q Did you ever become aware of LES having to
25 use exchange funds that belonged to other exchangers

1 to pay off different exchangers?

2 MR. KAMIN: Objection to form.

3 A No.

4 Q Prior to the filing of bankruptcy -- strike
5 that.

6 Did there come a point in time in 2008 in
7 which you became concerned about the financial
8 viability of LES?

9 A Yes.

10 Q When was that?

11 A October 18th.

12 Q Why does that date stick out in your mind?

13 A Because it was a Saturday, and I was
14 contacted by Ronnie Ramos at my home.

15 Q What did Mr. Ramos say to you?

16 A He made inquiry into how business looked,
17 but what did we see in the near term in terms of
18 receipts of revenues and new transactions.

19 Q How did that cause you concern about the
20 financial viability of LES?

21 A Specifically he asked me why were we not
22 funding the commingled structure at SunTrust as much
23 as the segregated account at Citibank at that point.

24 Q What was your response?

25 A Well, we had recently implemented changes

1 pursuant to Treasury Regulation 468(b), and we had
2 been defaulting to setting up transactions at Citibank
3 in a 468(b) compliant structure, and we had been
4 moving away from the commingled structure as our
5 default.

6 Q With that in mind, why did that cause you
7 concern about the financial viability of LES?

8 A Because he shared with me that we needed
9 to -- that the balances in the commingled structure
10 were low, and we needed to fund those transactions in
11 order to provide liquidity.

12 Q What was your response when he advised you
13 of that?

14 A Well, that's, you know, when I became
15 concerned. He's asking me about the balance levels
16 and the commingled structure, so of course, I was
17 concerned about, well, why are you asking, et cetera,
18 and that's when he shared with me the problems that
19 they had with the auction rate notes.

20 Q What actions did you take after this -- I
21 guess it was a phone call?

22 A It was a phone call, yes.

23 Q What actions after October 18th did you take
24 to address the concern over the financial viability of
25 LES?

1 A Well, the -- we went back to the default
2 model of the commingled structure being our default.
3 That was the main action that we took after that.

4 Q When you say you went to the default of the
5 commingled structure, could you explain to me what
6 that means?

7 A In October of 2008, we would have had -- if
8 a customer came to us at that time with a new
9 exchange, we would have had two ways to service the
10 deferred exchange at that point. One would have been
11 to segregate the funds in a Citibank structure. The
12 second would have been to fund it through the
13 commingled account at SunTrust and invest it directly.
14 We went back to the commingled structure as our
15 default, if you will, where the customer didn't say,
16 "Hey, I want my funds at Citibank," and we would
17 negotiate a rate of interest and put it in our
18 commingled.

19 Q Were there other steps that you took to
20 address what you perceived to be financial concern
21 with respect to LES after this meeting?

22 MR. KAMIN: Object to form.

23 A Yes.

24 Q And what were those?

25 A I instructed Laurina Bukovics to remove the

1 brochures that referred to LandAmerica's stability
2 because they were outdated.

3 Q Why do you say they were outdated?

4 A If you read them, they make statements
5 regarding ratings by rating agencies, amounts of
6 reserves by the underwriters. All those numbers had
7 changed, or those ratings had changed so they were no
8 longer accurate, so I asked her to remove those from
9 the websites.

10 Q Did you ask her to remove any print
11 materials concerning advertising materials that had
12 references to stability?

13 A Not that I recall.

14 Q Did you ask her to remove anything else from
15 the websites?

16 A Not that I recall.

17 Q Did you ask her to remove anything else from
18 the print materials?

19 Excuse me. Did you ask her to remove
20 anything from the print materials?

21 A I don't recall.

22 Q Were there any other steps that you took
23 aside from the return to the default commingled
24 account system and the request that Ms. Bukovics
25 remove references to stability from the websites?

1 MR. KAMIN: Object to the form.

2 A Not that I remember.

3 Q Okay. After October 18th, 2008, did there
4 come any other time in which you became concerned
5 about the financial viability of LES?

6 A No. I mean, from that point forward, I had
7 a concern that, you know, I suppose I would think
8 about; but no, there wasn't another incident or
9 something that caused me any additional concern.

10 Q Well, did you request to review any
11 additional financial information other than the
12 P and L statements?

13 A No.

14 Q Did you have any discussions with anybody
15 from Treasury concerning the financial status of the
16 company?

17 A Yes.

18 Q And when was that?

19 A I don't remember.

20 Q Well, was it after October 18th?

21 A Yes, after that date. Yes.

22 Q Was it with Mr. Ramos?

23 A Yes.

24 Q Was it with anybody else in the department?

25 A I don't remember. I would say Mr. Ramos. I

1 talked to other members of the department, but I don't
2 remember talking to them about that.

3 Q Well, what do you remember about talking
4 with Mr. Ramos?

5 A Just that he would -- would assure me that
6 they were working on it, and you know, they'll get it
7 solved; just general kind of things.

8 Q So he gave you an assurance that the company
9 was going to be okay?

10 A Yes.

11 Q And did you follow up with anybody else
12 about that assurance from Mr. Ramos?

13 A Pam Saylor.

14 Q Okay. And what did you discuss with
15 Ms. Saylor?

16 A Same things I discussed with Ronnie Ramos.

17 Q And what was that?

18 A That he was assuring me that things were
19 being worked on. She indicated to me she knew nothing
20 more or had any other specific information.

21 Q When did you talk to Ms. Saylor?

22 A I would have spoken with her several times.
23 I don't remember the specific dates and times; but
24 she's my boss, so we would speak to each other
25 frequently.

1 Q Did you ever provide her with any assurances
2 as to the financial viability of LES?

3 MR. KAMIN: I didn't hear that. Did he
4 provide her?

5 MR. GEIGER: Yes.

6 MR. KAMIN: "He," meaning Mr. Connor?

7 MR. GEIGER: Yes.

8 A No.

9 Q Aside from Ms. Saylor and Mr. Ramos, did
10 anybody else give you any assurances as to the
11 financial viability of LES?

12 MR. KAMIN: Object to form.

13 A Yes.

14 Q Who were those folks?

15 A Ted Chandler.

16 Q Why did you ask Mr. Chandler about the
17 financial viability of LES?

18 MR. KAMIN: Objection to form.

19 Q Excuse me. Can you describe for me the
20 context of when you discussed with Mr. Chandler the
21 financial viability of LES?

22 A On the phone call on October 18th.

23 Q And what did Mr. Chandler tell you?

24 A That they were working on their end to
25 revolve everything and would get it done.

1 Q Did you talk with Mr. Chandler after
2 October 18th about the financial viability of LES?

3 A No.

4 Q When did you first learn that the company
5 was going to file for Chapter 11 bankruptcy?

6 A Sunday -- strike that. November 25th --
7 24th or '5th; I don't recall, that Monday or Tuesday.

8 Q Who advised you that the company was filing
9 for bankruptcy protection?

10 A I don't remember. It could have been Mike
11 Beverly.

12 Q Who is he?

13 A Associate general counsel. I believe that's
14 his title.

15 Q So is it fair to say you were not consulted
16 about the bankruptcy; you were told the bankruptcy was
17 going to be filed?

18 A That's correct. And to be clear, he kind
19 of -- it was nonpublic information, so I was ordered
20 to close the operations down on Monday.

21 Q In closing down the operations, did you call
22 the various persons who reported to you about the
23 closing of the company?

24 A Yes.

25 Q And why did you do that?

1 A Because I was ordered to.

2 Q Who ordered you to do that?

3 A Mike Beverly.

4 Q And when did you do so?

5 A On Sunday, the 23rd, whatever that day was,
6 Sunday afternoon.

7 Q Did you provide the people that you called
8 about the closing of the company any instructions as
9 to how to proceed?

10 A Yes.

11 Q What were those instructions?

12 A To cease operations immediately, take no new
13 orders, disburse no funds, collect your personal
14 belongings and leave.

15 Q Do you recall speaking with Carla Torres?

16 A No.

17 Q Would you have spoken with Carla Torres?

18 A No.

19 Q Does LES have an ethics officer?

20 A No.

21 Q Does LFG have an ethics officer?

22 A I'm not sure.

23 Q Did you ever have any discussions with
24 anyone regarding filing for bankruptcy? And I'll
25 narrow that down. In 2008.

1 A Yes.

2 Q When was that?

3 A I'm not sure of the dates.

4 Q Was it the spring when you learned about the
5 auction rate securities?

6 A No.

7 Q How about the summer?

8 A No.

9 Q Fall?

10 A Yes.

11 Q Was it before the October 18 phone call?

12 A No.

13 Q So sometime after the October 18 phone call?

14 A Yes.

15 Q And do you remember the context of this
16 discussion about bankruptcy?

17 A No.

18 Q Do you recall who was present in the
19 discussion?

20 A No. Mike Beverly, I think.

21 Q Do you recall whether it was two weeks
22 before the filing of bankruptcy?

23 A No. It would have been a day before or two
24 days before the bankruptcy when I was ordered to shut
25 it down.

1 MR. GEIGER: If we can just take a brief
2 break, I think I'm almost finished up.

3
4 (Recess taken.)

5
6 EXAMINATION BY MR. PAGE:

7
8 Q Mr. Connor, I'm Ron Page. I'm with the law
9 firm of Cantor Arkema. Today, in today's deposition,
10 I'm representing Frontier Pepper's Ferry, LLC and
11 Howard Finkelstein, who have both been identified as
12 lead cases in the litigation in bankruptcy court in
13 this case.

14 Now, I have a few questions for you
15 regarding some decision-making and the business
16 structure of LES. Were there any changes in 2008 from
17 February on, as to how LES would receive and then
18 deposit 1031 exchange funds?

19 A Yes.

20 Q And when did that change take place?

21 A There were more than one changes, I think.

22 Q What was the first change?

23 A It was the ceasing of using Centennial Bank
24 sometime in August of 2008.

25 Q And then what was the next substantive

1 change?

2 A It was the implementation of 468(b), which I
3 think was October 1st, 2008, when we put our 468(b)
4 documents out there.

5 Q And were there any substantive changes made
6 after that?

7 A To the receipt of funds?

8 Q Yes, and how they would then be deposited in
9 one of the accounts controlled by LES.

10 A No, I don't think so.

11 Q Were there any proposed changes from
12 October 1st on, as to how exchange funds would be
13 deposited?

14 A No.

15 Q Now, would you be involved in all
16 substantive communications regarding any changes as to
17 the business model of LES?

18 A Yes.

19 Q Now, on October 17th, there was a
20 communication from Michelle Gluck. And who is
21 Michelle Gluck?

22 A She is the general counsel, I think is her
23 title. If it's different than that, then I don't
24 know.

25 Q Is that for LES or LFG?

1 A LFG.

2 Q On or about October 17th, Ms. Gluck
3 submitted a communication regarding a potential change
4 in how 1031 exchange funds would be received and
5 deposited. Were you aware of that communication?

6 MR. KAMIN: Objection to form.

7 A No.

8 Q Where were you on the days of
9 October 17th through October 20th?

10 A I'm not sure. Chicago, Illinois, on
11 October 18th and 19th.

12 Q The 17th was a Friday, and then the 18th and
13 19th were, of course, the weekend.

14 A Yes.

15 Q So you were in Chicago that weekend?

16 A Yes.

17 Q And were you involved in any communications
18 with other officers and directors of either LES or LFG
19 regarding this communication from Ms. Gluck, regarding
20 the potential change?

21 MR. KAMIN: Objection to form.

22 A I don't know the communication you're
23 referring to.

24 Q The substance of this communication was
25 regarding a potential change in the receipt and

1 deposit of 1031 exchange funds such that they would
2 all be placed in segregated accounts. The default
3 would switch from placing these funds in a commingled
4 account with SunTrust to a segregated account.

5 MR. KAMIN: Do you have a question on
6 that? I'm going to object because I think you
7 are mischaracterizing a lot of things about
8 what you think you are talking about. But is
9 there a question?

10 Q Were you aware of that communication?

11 A No.

12 Q And you had no consultation with any other
13 officers and directors regarding that communication
14 between the 17th and the 20th?

15 A No.

16 Q Moving on, where were LES's central
17 operations?

18 A In different places.

19 Q As far as the Treasury department of LES?

20 A Richmond, Virginia.

21 Q Now, your office was in Chicago. What were
22 the primary responsibilities of the Chicago office?

23 A Operations, hiring, firing, marketing.

24 Q Additionally, LES had a number of regional
25 offices; is that correct?

1 A Yes.

2 Q What were the primary responsibilities of
3 those regional offices?

4 A Marketing, sales, operations.

5 Q And beginning in 2008, approximately how
6 many regional offices did LES operate?

7 A Beginning of 2008?

8 Q Yes.

9 A Five.

10 Q And approximately how many regional offices
11 was LES operating the first week of November 2008?

12 A Five.

13 Q And where were those regional offices? You
14 can just give me the city and state.

15 A Los Angeles, California; Portland, Oregon;
16 Dallas, Texas; Chicago, Illinois; and the Southeast
17 region would kind of be split, Richmond-Orlando,
18 Orlando kind of for sales, Richmond for service and
19 production.

20 Q Did you know Dennis Caron?

21 A Yes.

22 Q And who is he?

23 A Dennis is an employee of LandAmerica in
24 Connecticut, who serves a dual role for the company.

25 Q What is that dual company?

1 A His primary role, I believe, is underwriting
2 counsel for the Commonwealth and Lawyer's brands in
3 Connecticut. His secondary role was, Dennis served as
4 a vice president of the 1031 exchange company.

5 Q And his role with the 1031 exchange company,
6 was that role limited to sales and marketing?

7 A Yes.

8 Q Out of which region did he operate?

9 A The Northeast region was not in a regional
10 structure. Dennis was a part of that region.

11 Q So you had both a regional structure and a
12 non-regional structure?

13 A Yes.

14 Q How did the non-regional structure operate?

15 A The Northeast region, which was
16 non-regional, reported up through the title
17 operations, so Dennis Caron reported to someone on the
18 title side. New York, Boston, were all part of that.
19 We were going to change that, but --

20 Q Didn't get the chance?

21 A We were probably going to do it 1/1/09. It
22 was in the cards.

23 Q Was the Midwest another non-regional --

24 A No.

25 Q Where was their regional office? Chicago?

1 A Chicago.

2 Q Now, you previously testified that there was
3 a change in the marketing materials to remove
4 information from the website as it related to the
5 financial stability of LES and LFG.

6 MR. KAMIN: Objection to form.

7 A Yes.

8 Q Now, was there also a change in the written
9 marketing materials?

10 A No, not that I remember.

11 Q Was there a re-call of any previously
12 published marketing materials which would have been in
13 the hands of regional offices as to LandAmerica's
14 financial stability prior to the change?

15 A No.

16 Q So outdated marketing materials would have
17 been left in the hands of the regional offices and the
18 non-regional offices as to LandAmerica's financial
19 condition?

20 A Yes.

21 Q Who were the primary targets of LES's
22 marketing as far as groups of individuals or
23 professionals?

24 A Generally, attorneys, brokers, directly to
25 developers and corporations.

1 Q By "brokers," what do you mean?

2 A Real estate brokers.

3 Q Now, how did you produce your marketing
4 materials? Were those produced directly by yourself?

5 MR. KAMIN: Objection. Form.

6 A No.

7 Q But you reviewed all marketing materials
8 that were then disseminated?

9 A Yes, for the most part.

10 Q I know Mr. Geiger has talked to you about
11 that dissemination. But if there had been some sort
12 of regional office website that was placed or put up
13 independently, would you have reviewed the content?

14 MR. KAMIN: Objection to form. Objection
15 to form. Assumes facts not in evidence.

16 Q Let's move on.

17 A I don't know.

18 Q Did you review all marketing materials that
19 were produced by individuals employed by LES that
20 would -- strike that.

21 Were there regular meetings between yourself
22 and the primary contacts of the LES regional offices?

23 A Yes.

24 Q And how often were these meetings held?

25 A Regularly scheduled once a month. Probably

1 occurred more often.

2 Q And who would lead these meetings?

3 A Me.

4 Q And how would they be conducted? Would they
5 be in person or over the telephone or some other
6 means?

7 A Both, usually. Sometimes in person.
8 Sometimes on the phone.

9 Q How would you decide whether to be meeting
10 in person or over the telephone?

11 A Travel. Maybe I'm in the area; maybe
12 they're in my area. Opportunity.

13 Q And then would the other primary individuals
14 of the other regional offices dial in to participate?

15 A No.

16 Q So the regularly scheduled meetings would be
17 between yourself and the primarily responsible
18 individuals for the individual regional office?

19 A One-on-one, yes.

20 Q Were there regularly scheduled meetings
21 regarding the non-regional offices?

22 A No.

23 Q How often would you meet with -- or how
24 often in a year -- strike that.

25 How often in 2008 did you meet with or

1 telephonically communicate or e-mail --

2 Actually, let me define "communicate" as any
3 means of communication, be it in person,
4 telephonically, e-mail.

5 -- with Dennis Caron regarding the financial
6 status of his office, his non-regional office?

7 MR. KAMIN: It's a long question. I
8 understand you've defined "communication." Can
9 you ask the question -- can you rephrase the
10 question?

11 MR. PAGE: Certainly.

12 Q Mr. Connor, would you have regularly
13 scheduled meetings with Dennis Caron?

14 A No.

15 Q Approximately how often would you
16 communicate with Dennis Caron regarding the financial
17 workings of his office?

18 A Never.

19 Q What would your communications with
20 Mr. Caron regard?

21 MR. KAMIN: Objection to form.

22 A Underwriting, marketing, technical support.

23 Q Could you estimate how frequently you had
24 communications with Mr. Caron?

25 A No. Twice a year, maybe, average.

1 Q Would that be representative of your
2 communications with other non-regional primarily
3 responsible LES individuals?

4 A Yes.

5 MR. PAGE: I have no more questions.
6 Thank you, Mr. Connor.

7

8 EXAMINATION BY MR. PERKINS:

9

10 Q Mr. Connor, my name is Chris Perkins. I
11 represent the Unsecured Creditor's Committee for
12 LandAmerica Financial Group.

13 I want to follow up on a couple of questions
14 that were asked of you previously. You mentioned that
15 effective April 1st of 2008 you reported to Pam
16 Saylor; is that right?

17 A Yes.

18 Q When did she begin with the company, LES?

19 MR. KAMIN: Objection to form.

20 A April 1st, 2008.

21 Q And why was it that she was brought in to
22 the company?

23 MR. KAMIN: Objection to form, foundation.

24 A She replaced Jeff Selby, the previous
25 president.

1 Q Do you know why Jeff Selby was replaced?

2 A Jeff resigned. He retired.

3 Q So prior to Pam joining the company, did you
4 report to Jeff?

5 A Yes.

6 Q How long had Jeff been with the company?

7 A Prior to me. I'm really not sure. '98,
8 maybe, '97, '96.

9 MR. KAMIN: Objection to form.

10 Objection to the answer. Foundation on
11 the answer.

12

13 (Laughter.)

14

15 Q Where was Pam's office located?

16 A Richmond, Virginia.

17 Q And I believe you indicated that she has
18 left the company?

19 A Yes.

20 Q Do you know where she is today?

21 A She's in Washington, D.C., managing the
22 LandAmerica office in Washington.

23 Q And when you say "LandAmerica office," what
24 are you referring to?

25 A Fidelity bought our title operations. She

1 went with that.

2 Q Okay. And did she move to D.C., to your
3 knowledge?

4 A I don't know.

5 Q You testified previously that part of your
6 duties with the company involved profitability. Did
7 you have any role in putting together 10Qs?

8 A No.

9 Q Did LES file any public 10Q statements?

10 A No.

11 Q Were you privy to any of the LFG SEC
12 filings?

13 MR. KAMIN: Privy to? You mean before
14 they were filed?

15 MR. PERKINS: Before they were filed, in
16 the formulation or drafting of them.

17 A No.

18 Q Was LES's financial information contained
19 within LFG's public filings?

20 A I don't know.

21 Q Nobody at LFG ever came to you and asked for
22 that information to include it in the public filings?

23 A There is one exception.

24 Q What's that?

25 A Reverse exchanges.

1 Q Why was that an exception?

2 A Because we are not holding money. We are
3 holding real estate. On the calendar year when we
4 would cross over, December 31 to January 1, I would be
5 asked to run a report, how much real property were we
6 holding, to put a valuation on it for E & Y to include
7 in the annual. We didn't do it on the quarterly. We
8 just did it on the annual. So that was my only role
9 in providing information that was used in a final.

10 Q Okay. Do you know approximately how many
11 reverse exchanges LES was involved in, in say, 2008?

12 MR. KAMIN: LES in particular --

13 MR. PERKINS: Yes.

14 MR. KAMIN: -- or any other subsidiaries
15 in particular? Okay. LES.

16 A LES, three, four.

17 Q You testified or you mentioned the term
18 "headquarters" earlier. To what were you referring?

19 A Shared Resource Center, Glen Allen,
20 Virginia.

21 Q You mentioned that in April of 2008 you
22 first became aware that LES had invested in ARSs and
23 you inquired of headquarters. Do you remember that?

24 A Yes.

25 Q Who did you inquire of?

1 A Ronnie Ramos.

2 Q And I believe you said you made that inquiry
3 because the P and L statement for March reflected a
4 higher number than you had expected?

5 A Yes.

6 Q And, of course, that would influence the
7 profitability of the company, right?

8 A Yes.

9 Q And I believe you said Ron's response to you
10 was the reason it's higher is because of the default
11 interest related to the purchase of ARSs?

12 A Yes.

13 Q After that discussion and because that
14 impacted profitability of LES, did you make it a point
15 to follow up on the investment of ARSs after April of
16 2008?

17 MR. KAMIN: Objection. Asked and
18 answered.

19 THE WITNESS: I didn't hear what you said.
20 Objection, what?

21 MR. KAMIN: "Asked and answered" is what I
22 said.

23 A No.

24 Q Why not?

25 A I had no reason to.

1 Q You were in charge of profitability for the
2 company, though, weren't you?

3 A Yes.

4 Q And you didn't think it was important to
5 follow up after April on the ARS investments?

6 A No.

7 Q You also testified that you were -- that you
8 managed four total subsidiaries of LandAmerica. LES
9 is one, right?

10 A Yes.

11 Q What are the other three?

12 A LandAmerica UCC Insurance, LandAmerica
13 Commercial Lenders Services, LandAmerica Commercial
14 Search Services.

15 Q What do each of those companies do?

16 A LandAmerica UCC insures transactions related
17 to Article 9 of the Uniform Commercial Code, and
18 Article 8. LandAmerica Commercial Lenders Services
19 targets regional and national banks that are
20 processing small business loan transactions to offer a
21 platform of services related to small business
22 underwriting and lending -- tax, appraisal, title.
23 LandAmerica Commercial Search Services is focused at
24 the real estate needs of the wireless industry in
25 providing title information relative to the siting of

1 wireless cell tower communications.

2 Q How is it that you became the manager of the
3 three other subsidiaries that you just described for
4 me?

5 A I'm talented.

6

7 (Laughter.)

8

9 Q They don't relate at all to 1031, do they?

10 A Somewhat.

11 Q How is it that they relate to 1031?

12 A Running a business is running a business,
13 operations. Spotting talent is spotting talent.
14 Putting business plans in place for one type of
15 business is very akin to another. If you understand
16 commercial real estate and you understand the spectrum
17 of the transaction, you can apply what you learned in
18 1031 to a lot of things.

19 Q Was the thought that by managing these other
20 subsidiaries, it would increase the profitability of
21 the 1031?

22 MR. KAMIN: Objection. Form.

23 A No.

24 Q Would these other subsidiaries result in new
25 business to the LES entity?

1 A They might, yes.

2 Q Did they?

3 A I think we did, yes.

4 Q You testified previously about a telephone
5 call you received on Saturday, October 18th. Do you
6 recall that?

7 A Yes.

8 Q If I understood it correctly, and correct me
9 if I'm wrong, both Ronnie Ramos and Ted Chandler were
10 on that call?

11 A Yes.

12 Q Was there anybody else on that call?

13 A Yes.

14 Q Who else?

15 A Bill Evans and Michelle Gluck.

16 Q And you received that phone call at your
17 home?

18 A Yes.

19 Q Had those individuals ever called you at
20 home before?

21 A No, I don't think so.

22 Q Would you have considered that unusual to
23 get that phone call?

24 A Yes. I consider it unusual that it happened
25 on Saturday, and it happened on my cell phone,

1 so

2 Q Okay. I apologize if you've covered this
3 before. But what was the purpose of the four of them
4 calling you together?

5 MR. KAMIN: Objection to form, foundation.

6 A The three of them -- Bill Evans, Michelle
7 Gluck, Ronnie Ramos -- called me. At some point in
8 the conversation Ted Chandler came in. I don't
9 remember.

10 Q Okay.

11 A The purpose was to discuss the direction of
12 the commingled transactions, the fact that it was
13 decreasing. Why? What did I see in the near term?

14 Q What was your response?

15 A Well --

16 MR. KAMIN: Objection. Asked and
17 answered.

18 A -- as I said before, I kind of went into a
19 468(b) discussion, that we had created a default where
20 we were funding the Citibank and not funding the
21 commingled and that that's probably largely why they
22 were seeing that decrease.

23 Q Did they direct you not to accept any more
24 of the commingled type exchanges?

25 A No.

1 Q Did you discuss whether that was something
2 the company should do?

3 A Not accept commingled?

4 Q Correct.

5 A No.

6 Q I think you mentioned previously that Ron
7 mentioned on that phone call -- I think you said he
8 shared with you the problems with the ARS notes. Do
9 you recall that?

10 A Yes.

11 Q What exactly did he say?

12 A I don't remember.

13 Q Do you remember generally?

14 A Yes.

15 Q Can you tell me what it was?

16 A That was it, that --

17 Q He said there's a problem with the ARS
18 notes?

19 MR. KAMIN: Objection to form. He said he
20 doesn't recall.

21 A I don't recall the wording he used or how
22 the subject was broached.

23 Q How did he describe the problem?

24 MR. KAMIN: Objection to form.

25 A That we had a dwindling amount of funding

1 coming into the commingled accounts.

2 Q But what was the problem that Ron described
3 to you with respect to the ARS notes?

4 A I don't remember.

5 Q Could it have been that the ARS market had
6 become illiquid?

7 MR. KAMIN: Objection to form.

8 A It could have.

9 Q You don't recall whether or not that's what
10 he told you?

11 A That, I believe, was part of the discussion,
12 that they were unable to sell these notes or get
13 liquidity, or they're challenged.

14 Q And when you say "they are challenged," who
15 are you referring to?

16 A The Treasury group, Evans and Ramos.

17 Q Did Ron tell you what, if any, plan they had
18 to address that?

19 A No.

20 Q Did you ask?

21 A I did, but he would never provide specifics
22 about what they were doing. Just assurances, "We're
23 working on it."

24 Q So it was more informative for you, just to
25 let you know what was going on? Was that your

1 impression?

2 A Well, to direct me to change the default
3 back to the commingled.

4 Q Did Ron tell you anything with respect to
5 the loans of money from LFG to LES?

6 A No.

7 Q Are you aware that LFG loaned money to LES
8 at some point?

9 A Yes.

10 Q When did you become aware of that?

11 A After the announcement of our sale to
12 Fidelity on November 7th, that public announcement.

13 Q Did Ron mention to you that part of the
14 effort to address the liquidity problem involved
15 swapping ARSs with the underwriting companies?

16 A Yes.

17 Q What did he say about that?

18 A That we could get liquidity by swapping the
19 notes with the underwriters.

20 Q And did he explain to you how that would
21 work?

22 A No.

23 Q Did you inquire further about the details of
24 how that swap would work?

25 A No.

1 Q Did Ron mention whether a Nebraska insurance
2 regulator was involved in that process?

3 A I don't recall if he did or didn't. He
4 might have.

5 Q Were you a member of the LFG investment
6 funds committee?

7 A No.

8 Q Did you ever attend any investment fund
9 committee meetings?

10 A No.

11 Q Are you familiar with that committee?

12 A No.

13 Q Is this the first time you've ever heard
14 about it?

15 A Yes.

16 Q So you didn't know that that committee even
17 existed?

18 A No. I might have guessed it did. We're a
19 public company.

20 Q Did you ever have any contact with SunTrust
21 Bank or "Citi" regarding the investment of ARSS?

22 A No.

23 Q Did you ever have any contact with either of
24 those financial institutions at all?

25 A Yes.

1 Q What kind of contact?

2 A Just relative to business, business
3 relationships. This goes back years ago. Doing their
4 exchange work.

5 Q Did any of your contacts ever involve any
6 discussion about investments?

7 A No. No.

8 Q You've executed a nondisclosure?

9 A Yes.

10 Q How did that come about?

11 A After the Saturday phone call -- I can't
12 remember if it was the Monday or Tuesday, following
13 business day -- it was submitted to me.

14 Q Who submitted it to you?

15 A You know, I forget. It could have been
16 Amber Stevens, who is Gluck's assistant, or it could
17 have been Mike Beverly. It was one of those two.

18 Q But it came from Michelle's office?

19 A It came over Michelle's signature.

20 Q And was it e-mailed to you? Did it arrive
21 in the mail, or do you recall?

22 A E-mail.

23 Q Is it your recollection that either Amber or
24 Michael mailed you the form?

25 A Yes.

1 Q And what did the e-mail say?

2 A I don't remember.

3 Q Did you execute the document that day?

4 A No.

5 Q No?

6 A (Witness shakes head in the negative.)

7 Q Why not?

8 A I don't know.

9 Q When did you execute it?

10 A I think a week later.

11 Q Why did you wait so long?

12 A I wanted to consult with my attorney.

13 Q And did you do that?

14 A Yes.

15 Q Who was that?

16 A John Mino.

17 Q What was the last name?

18 A Mino, M-I-N-O.

19 Q Do you know what firm he's with?

20 A Calfee, Halter & Griswold.

21 Q Where is that? Chicago?

22 A Cleveland.

23 Q Cleveland? When you received the e-mail

24 with the nondisclosure agreement, did the e-mail

25 convey to you why you were being asked to sign it?

1 A I don't remember.

2 Q At any point in time did anybody explain to
3 you why you were being asked to sign it?

4 A The nondisclosure itself is -- your
5 question, again?

6 Q Did anybody ever explain to you why you were
7 being asked to sign a nondisclosure agreement?

8 A No.

9 Q Did you ever inquire?

10 A Yes.

11 Q When?

12 A Five, six days later when I signed it.

13 Q Who did you inquire?

14 A With Mike Beverly.

15 Q Did you call him?

16 A I don't remember.

17 Q What did you ask Mike?

18 A I don't remember what I asked him.

19 Q You don't remember how you got in touch with
20 him, and you don't remember what you asked him?

21 A No, not now, I don't.

22 Q But you had some questions about whether you
23 should sign the agreement?

24 A Yes.

25 Q What were those questions that you had?

1 A You know --

2 MR. KAMIN: I mean, these are questions
3 that he put to his lawyer. I think we're maybe
4 treading on --

5 MR. PERKINS: I'm not asking what legal
6 advice his lawyer gave him.

7 Q I just want to know what questions you had
8 in your mind when you got this document and you were
9 being asked to sign it.

10 A I kind of looked at it like a loyalty test,
11 like a McCarthy test. I signed it because I'm an
12 employee of the company, but I almost resented the
13 fact that they were asking me to sign it.

14 Q Why is that?

15 A Because I didn't think I needed to, but I
16 did.

17 Q Why did you think you didn't need to sign
18 it?

19 A I would never breach the confidences that I
20 had in my duties as an officer at LFG and at LES.

21 Q Did you feel like you didn't have a choice
22 but to sign it?

23 A Yes.

24 Q Did the nondisclosure agreement relate in
25 any way to the Fidelity transaction?

1 A No.

2 Q What did it relate to?

3 A Just the matter of the auction rate
4 securities, their knowledge, their existence.

5 Q Do you know if any other individuals with
6 LES executed similar agreements?

7 A Yes.

8 Q Who else?

9 A Brent Allen.

10 Q Anyone else?

11 A I'm not sure.

12 Q What about with LFG?

13 A I'm not sure.

14 Q Did you talk to Brent Allen about the fact
15 that the two of you had been asked to sign --

16 A Yes.

17 Q What was the substance of that discussion?

18 A I don't remember. Just that we had both
19 signed it and were working on these issues.

20 Q Did you have a discussion with him prior to
21 signing the agreement?

22 A I had many discussions with Brent.

23 Q After you received the agreement, did you
24 have an opportunity -- and before you signed it, did
25 you have an opportunity to talk to Brent about whether

1 he got one, whether he signed it, whether you should
2 sign it, that type of thing?

3 A I don't recall.

4 Q But after the fact, after you had both
5 signed it, you had discussions with him about that?

6 A Yes.

7 Q Do you know whether he felt the same way
8 about the agreement that you described to me
9 previously?

10 A I don't know.

11 Q I'm sorry?

12 A I don't know.

13 Q Where is that agreement today?

14 A The original?

15 Q Sure.

16 A I don't know.

17 Q Have you provided it to your counsel?

18 MR. KAMIN: The original?

19 A To John Mino?

20 Q No; to Mr. Kamin or anybody in his group.

21 MR. KAMIN: The original of the agreement?

22 MR. PERKINS: Any copy of the agreement.

23 I'm just looking for a copy of the agreement.

24 Q Do you know if it's been produced?

25 A I believe it has, yes.

1 MR. PERKINS: Give me just a moment,
2 please.

3 MR. GEIGER: Is that agreement going to be
4 produced?

5 MR. KAMIN: I don't know the status of it.
6 I don't know if it's been requested. I can't
7 answer that question today.

8 MR. GEIGER: Can you inquire?

9 MR. KAMIN: Yes, I can inquire.

10 MR. GEIGER: Thank you.

11 MR. PERKINS: Thanks, Mr. Connor. That's
12 all I have.

13 MR. POST: I do need to take a five-minute
14 break, but I think my exam will be pretty
15 quick.

16

17 (Recess taken.)

18

19 MR. PERKINS: Before we start, I just want
20 to put a request on the record for that e-mail
21 and the nondisclosure agreement that Mr. Connor
22 testified to previously.

23 MR. KAMIN: Okay.

24 MR. PERKINS: Thank you.

25

1 EXAMINATION BY MR. POST:

2

3 Q Good morning, Mr. Connor. My name is Eric
4 Post. We met off the record briefly; but again, I'm
5 an attorney at Kelley, Drye & and Warren in New York,
6 and I represent a company called Millard Refrigerated
7 Services, Inc.

8 I have a few questions for you today, and
9 the same ground rules that Mr. Page went over with you
10 will apply. So if you don't understand a question,
11 will you please let me know that; and if you need a
12 break, will you please let me know that as well?

13 A Sure.

14 Q Are you familiar with the Federation of
15 Exchange Accommodators?

16 A Yes.

17 Q What is that organization?

18 A It's a trade organization for qualified
19 intermediaries, national exchange companies, or 1031
20 exchange companies.

21 Q And is LES a member of that organization?

22 A No.

23 Q Has it ever been a member of that
24 organization?

25 A Yes.

1 Q At what time was it a member?

2 A I don't know when it's membership began.

3 Q Do you know when it ended?

4 A Yes.

5 Q When did it end?

6 A Sometime in early December 2008.

7 Q So do you have any idea how long LES has
8 been a member of that organization?

9 A No.

10 Q Do you know if it was a member the entire
11 calendar year 2008 until the time it ended that you
12 just mentioned?

13 A Yes.

14 Q So is it fair to say, then, in the months of
15 September, October, November 2008, LES was a member of
16 the Federation of Exchange Accommodators?

17 A Yes.

18 Q Are you familiar with the fact that that
19 organization has a code of ethics and conduct?

20 A Yes.

21 Q Have you seen or reviewed the code of ethics
22 and conduct at any time?

23 A No.

24 Q Do you know if anyone at LES has done so?

25 A No.

1 Q Do you know if reviewing that document would
2 fall under any particular individual's duties and
3 responsibilities at LES?

4 A No.

5 Q Do you know who the person was who was
6 responsible for signing LES up as a member in the
7 first place?

8 A Me. In the first place, no.

9 Q At any point in time?

10 A Yes.

11 Q Who was that?

12 A I would renew the membership annually.

13 Q How many times do you think you reviewed the
14 membership annually?

15 A Reviewed?

16 Q Renewed.

17 A I'm not sure. Maybe every year I was here.
18 I'm not sure.

19 Q Approximately for how many years?

20 A Eight years.

21 Q Was there any break during that period where
22 LES was not a member --

23 A I don't know.

24 Q -- or did not renew its membership?

25 A I don't know.

1 Q But you're sure that they were a member for
2 calendar year 2008?

3 A Yes.

4 Q Do you have an understanding as to what's
5 involved in being a member of that organization?

6 A No.

7 Q So why did you renew the membership year
8 after year?

9 A It's a trade organization that represents
10 the interests of the QI industry. I thought that we
11 should be a part of it. It's the only trade
12 organization.

13 Q Had you heard or were you ever aware of the
14 fact that the FEA had a code of ethics and conduct?

15 A Yes. I think yes.

16 Q But you never looked at it or read it; is
17 that correct?

18 A Not that I remember, no.

19
20 (Connor Deposition Exhibit No. 1 is marked.)
21

22 MR. POST: I've handed the witness a
23 document that's been marked as Connor
24 Exhibit 1.

25 Q Mr. Connor, can you -- you don't have to

1 read the whole thing. But can you take a moment just
2 to familiarize yourself with the document and let me
3 know when you're ready.

4 A (Witness reviewing document.)

5 Q You are welcome to read the whole thing if
6 you'd like to.

7 MR. KAMIN: Maybe you can hear what he has
8 to ask about it and see what you want to read.

9 Q First, let me ask, do you recognize this
10 document?

11 A I've seen documents like this, yes.

12 Q Have you seen this document before, Connor
13 Exhibit 1?

14 A I can't say that I have.

15 Q What did you mean when you say you've seen
16 documents like this?

17 A This piece that says at the top "LandAmerica
18 1031 Exchange Services, the Financial Stability of
19 LandAmerica," we have a piece that we developed like
20 this. So that's what I mean.

21 Q How about the text of the document? Do you
22 recognize any of that?

23 A I'd have to go all the way through it and,
24 line by line, compare it to everything else, but it
25 looks familiar, yes.

1 Q How about just looking at the headings?

2 A They look familiar, yes.

3 Q I'd like you to focus your attention in the
4 right-hand column at the top. There's a heading that
5 says "Funds Held In Trust." Do you see that?

6 A Yes.

7 Q You testified earlier that you were
8 responsible for reviewing and approving marketing and
9 advertising; is that correct?

10 A Yes.

11 Q Did you review and approve that text that
12 says "Funds Held In Trust"?

13 A I probably did.

14 Q Is it your understanding that LES held its
15 customer's exchange funds in trust?

16 A No.

17 Q Can you explain to me why you would have
18 reviewed and approved that text if you don't think
19 that's what the company did?

20 A If you read the language underneath it,
21 we're using the term "trust" in a more general,
22 pedestrian type manner, that funds were entrusted to
23 LandAmerica.

24 Q So it says "Funds Held In Trust," but you
25 didn't mean to convey the message that the funds were

1 held in trust; is that correct?

2 A That's correct; in a trust.

3 Q If I recall correctly, earlier you mentioned
4 that you went to law school and you are an attorney;
5 is that correct?

6 A Yes.

7 Q So you have an understanding, as an
8 attorney, of what a trust is?

9 A Yes.

10 Q Do you perform or did you at any time --
11 strike that.

12 Did you at any time perform any functions
13 for either LES or LFG as an attorney, or were you
14 acting solely in a business capacity at all times?

15 A Solely in a business capacity.

16 Q Prior to the filing of the bankruptcy
17 petition, was LES operating in all 50 states?

18 A What do you mean by "operating"?

19 Q Did they do business with customers in all
20 50 states?

21 A I don't know.

22 Q You mentioned earlier that there was some
23 scaling back in certain regions, so I was just trying
24 to get a sense of the scope of the geographic
25 operations.

1 A Okay.

2 Q You don't know whether LES had customers in
3 all 50 states or not?

4 A No, I don't know..

5 Q Do you know whether LES had employees in all
6 50 states or not?

7 A Yes.

8 Q Is the answer yes, they did have employees
9 in all 50 states?

10 A No, they did not.

11 Q They did not. Have you had any
12 communications with anyone at Millard Refrigerated
13 Services?

14 A No.

15 Q Had you heard of the company prior to this
16 lawsuit?

17 A Yes.

18 Q Can you tell me about that?

19 A Ed Zaval mentioned to me that he had some
20 transactions with Millard.

21 Q When was that?

22 A Sometime in October. I don't remember when.

23 Q What was the substance of your conversation
24 with Mr. Zaval in October?

25 A I don't remember what we were talking about,

1 but he reported to me that he had three large
2 transactions coming up with them. That's all I
3 remember. So I had heard of them.

4 Q Other than the fact that Mr. Zaval mentioned
5 that he had three large transactions coming up with
6 Millard, do you have any other recollection of what he
7 said to you or what you said to him?

8 A No.

9 Q And other than that one conversation that
10 you had with Mr. Zaval concerning Millard in October,
11 did you have any other conversations with anyone
12 concerning Millard, either prior to or after that
13 conversation that you just told me about?

14 A Yes, I did.

15 Q I'm excluding conversations you would have
16 had with your counsel concerning this lawsuit.

17 A No.

18 Q Did you ever have a conversation with Brent
19 Allen that concerns Millard?

20 A That's my counsel.

21 Q You're considering Mr. Allen your in-house
22 counsel at LES?

23 A Yes.

24 Q And that's in connection with the lawsuit,
25 or did you have a conversation with Mr. Allen about

1 Millard prior to the lawsuit?

2 A Prior to the bankruptcy?

3 Q Sure.

4 A I don't remember if I did.

5 Q Did you have a conversation with Mr. Allen
6 between the time of the filing of the bankruptcy
7 petition and the time of the filing of Millard's
8 lawsuit concerning Millard?

9 A I don't know when Millard filed their
10 lawsuit.

11 Q Did you have any conversations with
12 Mr. Allen concerning Millard that did not involve your
13 seeking his legal advice?

14 A No. No.

15 Q How many conversations did you have with
16 Mr. Allen concerning Millard?

17 A One, I think.

18 Q And the sole purpose of that conversation
19 was either him conveying legal advice to you or you
20 seeking legal advice? Is that your understanding or
21 your recollection?

22 A Yes.

23 Q Did Mr. Allen convey any facts to you that
24 were unrelated to legal advice that you were seeking
25 or that he was providing?

1 MR. KAMIN: I'm going to instruct you not
2 to answer that question.

3 MR. POST: Grounds?

4 MR. KAMIN: I think the same conversation
5 he's talking about is very clearly in
6 connection with legal advice, and we are not
7 going to parse it as to one sentence.

8 MR. POST: I'm trying to probe whether it
9 was or whether it wasn't. That's all.

10 MR. KAMIN: He's already testified that it
11 was, and your question is, I think, is there a
12 sentence that he gave you that included some
13 fact related to legal advice, and I'm not going
14 to parse it. His testimony was very clear. It
15 was solely in connection with obtaining legal
16 advice.

17 Q Other than your conversation with Mr. Zaval
18 and your conversations with Mr. Allen that involved
19 legal advice, have you had any other conversations
20 with anyone other than legal counsel concerning
21 Millard?

22 A No.

23 Q Were you involved in the discussions or the
24 decision to establish a relationship between LES and
25 Citibank whereby control accounts and subaccounts

1 would be opened for the purpose of holding exchange
2 funds?

3 A No.

4 Q Did you at some point become aware that that
5 relationship was established?

6 A Yes.

7 Q And how did you become aware of that?

8 A Discussions with Ronnie Ramos.

9 Q Was there a particular event or circumstance
10 that precipitated Mr. Ramos' bringing that to your
11 attention?

12 A Yes.

13 Q What was that?

14 A The implementation of Treasury Regulation
15 468(b).

16 Q What do you recall about what Mr. Ramos said
17 to you?

18 MR. KAMIN: On the subject of the Citibank
19 program?

20 MR. POST: Yes.

21 A I spoke with Ronnie regarding establishing a
22 relationship with a recognizable national commercial
23 bank, preferably one that did not compete with us on
24 the exchange side, and he had whittled it down, and I
25 think Citibank was his preference. So I was aware

1 that he was going to them, you know, to establish this
2 program, and was aware of that, and he would provide
3 updates to us.

4 Q Did he make you aware of any of the details
5 concerning the business terms between LES and
6 Citibank?

7 A Yes.

8 Q What did he say to you about that?

9 A Well, we put in place a fed fund structure
10 in different accounts that could earn at different
11 rates based off of the fed fund. I forget how many
12 accounts we had. Six? So I was aware of that.

13 Q I think there was actually nine.

14 A There was a number. I don't remember the
15 number.

16 Q You testified earlier about two ways or two
17 primary ways that LES generates revenue. One is
18 through setup fees, and the other is through the
19 difference in interest rates or what's been referred
20 to as a spread. Is that a fair characterization?

21 A Yes.

22 Q Are you aware of whether there were any
23 circumstances, particularly with the segregated
24 exchanges at Citibank, where, on certain accounts, LES
25 would only earn a fee and did not make a spread?

1 A You know, I don't remember, but there might
2 have been at the high end. That might have been the
3 number nine, if you go one through nine. I don't
4 remember. But that could have been.

5 Q So it's possible that there were some
6 accounts where the taxpayer received all of the
7 interest on the funds and paid all of the taxes on
8 that interest?

9 A Yes.

10 Q And LES received zero?

11 A With Citibank, yes.

12 Q Are you personally aware of any -- strike
13 that.

14 I'm not asking with respect to any specific
15 account; but generally, are you aware if there was any
16 account where that occurred?

17 A With any account that's currently in
18 bankruptcy?

19 Q Any segregated account at Citibank where the
20 account holder received all of the interest and LES
21 received none of the interest and only received a fee.

22 A No. I'm unaware of --

23 Q Would it surprise you if that was the case?

24 A No.

25 Q Was that within LES's business model?

1 A Yes.

2 Q Did you have to approve the contract between
3 LES and Citibank before it was executed?

4 A No.

5 Q Who had the authority to finalize that
6 detail and approve it?

7 A I don't know.

8 Q I want to go back to some of your earlier
9 testimony where you indicated that there was a default
10 product, and that may have switched and then went back
11 to what it was before; and I just want to ask a few
12 questions about that subject, clarify your testimony,
13 because my understanding from some of the prior
14 witnesses' testimony is a little different, and it may
15 be your testimony is different, or it may be that your
16 testimony is consistent, and I just need to clarify
17 it.

18 My understanding --

19 Just let me tell you, so we're
20 communicating.

21 -- from prior witnesses was that the
22 commingled account at SunTrust were exchange
23 agreements that were set up such that the exchange
24 funds would be deposited in a commingled account at
25 SunTrust, that that was always the default product

1 even after the 468(b) regulations came about, and that
2 the Citibank accounts were set up in response to
3 468(b), and there would be certain customers whose
4 exchange funds would go into Citibank either because
5 it was required or because the customer requested it
6 or perhaps some combination of both but that, at all
7 times, the commingled account still remained the
8 default; and whenever possible and consistent with the
9 regulations, the funds would still go into SunTrust
10 unless a customer requested specifically that they go
11 into Citibank or somebody internally at LES felt that
12 it was required that the funds go into Citibank.

13 What I understood you to say was something a
14 little different. What I understood you to say was
15 that after the "regs," the default product was
16 switched to the segregated account such that all money
17 was going into the segregated accounts, and then the
18 default product got switched back.

19 So do you understand what I've just said?

20 A Yes.

21 Q Okay. With that understanding, can you now
22 let me know whether my understanding from the prior
23 witnesses' testimony is correct or if you need to
24 clarify your testimony from before?

25 MR. KAMIN: Objection to the form.

1 A I don't know what --

2 Q Do you know what I'm asking?

3 A But I don't know what your understanding of
4 the prior witnesses' testimony is.

5 Q I just explained it to you.

6 A But I didn't hear their testimony; so
7 whether you have a correct understanding, I have no
8 idea.

9 Q I'm not trying to characterize their
10 testimony or tell you whether it's accurate or
11 inaccurate. What I'm telling you is that was my
12 understanding. That's what I took from what some
13 people said; and what I'm trying to get at, is my
14 understanding factually correct? Is my understanding
15 consistent with the way you understood the default
16 product to be?

17 A As I testified earlier, our default product
18 was the SunTrust commingled account --

19 Q Okay.

20 A -- until, I believe I testified October 1,
21 2008, and then it became Citibank.

22 MR. KAMIN: For all accounts?

23 THE WITNESS: Virtually all, yes.

24 MR. KAMIN: That's your testimony.

25 Q Would that include accounts both over

1 \$2 million as well as accounts under \$2 million?

2 A Under \$2 million, they would go to the
3 commingled account. These are for transactions that
4 exceeded the 468(b) limits.

5 Q So it was your understanding that
6 Citibank -- as of October 1st, segregated accounts in
7 Citibank became the default product for exchangers
8 whose exchange funds exceeded \$2 million?

9 A Yes.

10 Q Was there ever a circumstance even where the
11 exchange funds exceeded \$2 million that they may not
12 be required to go into the segregated accounts?

13 MR. KAMIN: Objection to form. You want
14 to limit that to a time period?

15 A Could you ask your question again, please.

16 Q Sure. Was it your understanding after
17 October 1, 2008, that default products for every
18 exchange where the funds exceeded \$2 million was the
19 segregated account at Citibank?

20 A Yes.

21 Q And despite the fact that you understood
22 that to be the default product, was there a
23 circumstance where funds exceeding \$2 million might go
24 elsewhere, either because the customer requested it or
25 any other reason?

1 MR. KAMIN: Is he personally aware of that
2 situation?

3 MR. POST: Right.

4 A I'm not personally aware of that situation.

5 Q Are you aware that was a possibility?

6 A Yes.

7 Q So when you said "default product," you
8 don't mean that it was a policy or that that was
9 mandatory, correct?

10 A That is correct.

11 Q How long was the time period between when
12 you understood the default product to have changed on
13 October 1st, 2008, until the default product went back
14 to being the commingled account at SunTrust?

15 A On, like, the 20th or 21st of October.

16 Q What is it about the 1st of October that
17 makes you think that's the date that things changed?

18 A Because we had a directive to our offices
19 that we were changing our systems over that day, the
20 online production system. 468(b) went into effect
21 October 8th, so . . .

22 Q So in other words, as of October 1st, the
23 various forms, including the exchange agreements, that
24 were modified to accommodate 468(b) were available to
25 people?

1 MR. KAMIN: Objection to form.

2 Q Is that --

3 A Yes.

4 Q Is that what you're saying?

5 A Yes.

6 Q And what is significant about October 20 or
7 21st, around that time frame, that makes you think
8 that's when the default product went back to being the
9 SunTrust commingled account?

10 A That's when I conversed with my reports that
11 that's what we were going to do.

12 Q And who is that?

13 A My reports?

14 Q Yes.

15 A David Lingerfelt, Jordan Cantor (phonetic),
16 Rosa Esqueda, Noel Hara.

17 Q Brent Allen?

18 A Yes, Brent Allen.

19 Q Ed Zaval?

20 A No. He's not my report.

21 Q Is that something that you told them?

22 A Yes.

23 Q Did you receive a directive from someone
24 else that you were passing on to them?

25 A Yes.

1 Q Who did that directive come from?

2 A Ted Chandler, Ronnie Ramos.

3 Q Did you say Ted Chandler and Ronnie Ramos?

4 A Yes. Michelle Gluck, Bill Evans. It was
5 all in that Saturday phone call.

6 Q Who did the directive come from on
7 October 1st that the default product was going to be
8 changing?

9 A Me.

10 Q Well, you said you had received a directive
11 from someone.

12 A No. I was implementing the execution of
13 468(b). The government issued the directive, so we
14 were just putting our new forms in place.

15 Q Were there any instructions given to
16 salespeople to start selling the segregated product
17 versus the commingled product?

18 A I would assume yes, from the directives I
19 gave to my reports, that we were going back to that
20 default.

21 Q Well, I don't want you to assume.

22 MR. KAMIN: He didn't hear the question, I
23 don't think.

24 A I don't know.

25 Q Did you hear the question?

1 A Yes. You asked were there directives given
2 to salespeople.

3 MR. KAMIN: Which date? Can you hear the
4 question read back?

5 A Why don't you repeat your question.

6 MR. KAMIN: I don't think he answered your
7 question.

8 Q Do you think you answered my question?

9 MR. KAMIN: Can I hear the question read
10 back? We're playing games.

11 Listen to the question.

12
13 (The court reporter read back as follows:)

14
15 "Question: Were there any instructions
16 given to salespeople to start selling the
17 segregated product versus the commingled
18 product?"

19

20 A No.

21 Q Were there any instructions to salespeople
22 to continue trying to sell the commingled product
23 unless it appeared that a segregated account was
24 either necessary or requested by the customer?

25 A I don't know.

1 Q Was it your understanding, as a result of
2 468(b), that in transactions where the exchange funds
3 exceeded \$2 million, segregated accounts were
4 required, or is that something that just LES preferred
5 to do?

6 MR. KAMIN: Objection.

7 A I don't understand your question. If you
8 could . . .

9 Q As a result of 468(b), changes were made,
10 one, namely, that a different type of account was
11 opened up at Citibank where there was a master
12 account/subaccount structure; is that correct?

13 A Yes.

14 Q And the purpose of that is so in certain
15 cases for certain exchanges the funds could be held in
16 segregated subaccounts; is that correct?

17 A Yes.

18 Q My question is, was it your understanding
19 that as a result of the regulations, exchanges where
20 the funds exceeded \$2 million, those funds were
21 required to be in segregated accounts, or is it just
22 that LES preferred to do it that way?

23 MR. KAMIN: Objection to form.

24 A That's two questions.

25 MR. KAMIN: There's two choices that

1 aren't necessarily --

2 Q I can break it down for you.

3 A Do that.

4 Q Is it your understanding that as a result of
5 the 468(b) regulations, in all cases where the
6 exchange funds exceeded \$2 million, those funds were
7 required to be placed in segregated subaccounts?

8 A No.

9 Q What then determined whether, in those type
10 of transactions, the funds would go into segregated
11 subaccounts or not?

12 MR. KAMIN: Objection to form.

13 A I would assume conversation with the
14 customer.

15 Q So based on customer request?

16 A Yes.

17 Q What was your understanding of what would
18 happen in the case of an exchange where the funds
19 exceeded \$2 million and there was no customer request
20 to put the funds in a segregated account?

21 MR. KAMIN: Do you want to put a date on
22 that?

23 MR. POST: After October 1st, 2008.

24 A If the funds exceeded \$2 million, it would
25 have been directed to Citibank.

1 Q And then after either October 20th or 21st,
2 that would have changed; is that correct?

3 A Yes.

4 Q You are not sure of the date?

5 A I'm not, no.

6 Q Is there any way we could find out what the
7 date was where what you've referred to as the default
8 product changed?

9 A Yes.

10 Q How would we do that?

11 A Probably my calendar.

12 Q You are referring to an electronic Outlook
13 calendar or a paper calendar?

14 A Yes, Outlook.

15 Q Is it possible that it occurred earlier than
16 the 20th, or are you sure that it was either the
17 20th or the 21st?

18 A The 20th or the 21st.

19 Q Why are you sure of that?

20 A Because the 19th is a Sunday. I didn't have
21 a conference call with my reports on Sunday.

22 Q So would it come as a surprise to you if, in
23 fact, other witnesses testified under oath that the
24 commingled account at SunTrust was always the default
25 product?

1 MR. KAMIN: Objection to form.

2 A Yes.

3 Q Can you think of any reason why people in
4 Treasury would underwrite accounts or might have
5 understood that to be the case?

6 MR. KAMIN: Objection to form.

7 A No.

8 MR. POST: Off the record. Just take two
9 minutes. I may be done here.

10

11 (Recess taken.)

12

13 BY MR. POST. (Continuing)

14 Q Prior to the bankruptcy filing, did you ever
15 see letters authored by Michelle Gluck, indicating
16 that LES was acting as a fiduciary to its customers?

17 A No.

18 Q Do you recall seeing any other documents,
19 whether they were e-mails or correspondence or memos,
20 indicating that LES was acting as a fiduciary or even
21 just using the word "fiduciary"?

22 A No.

23 Q Have you seen any such materials since the
24 filing of the bankruptcy?

25 A Materials? Which materials?

1 Q Using the word "fiduciary" in connection
2 with describing LES's relationship with its customers.

3 A Yes.

4 Q When did you see those?

5 A This morning, I think.

6 Q In your meeting with Mr. Kamin in
7 preparation for your deposition?

8 A Yes.

9 Q That was the first time you've seen those?

10 A Yes.

11

12 (Off-the-record discussion.)

13

14 BY MR. POST: (Continuing)

15 Q Mr. Connor, is there any other place we
16 might look in addition to your electronic calendar
17 that would indicate the date on which you believe a
18 change occurred in the default product in October?

19 A No.

20 Q In other words, there were no -- strike
21 that.

22 Were there any e-mails or memos or written
23 documents reflecting that change around that time
24 period?

25 A Not that I remember.

1 MR. POST: I have no further questions at
2 this time. I thank you for your time and your
3 testimony.

4
5 (Recess taken.)

6
7 EXAMINATION BY MR. COSGROVE:

8
9 Q Mr. Connor, my name's Ryan Cosgrove, and I
10 represent the Official Committee of Unsecured
11 Creditors of LandAmerica 1031 Exchange Company.

12 And you'll understand if I refer to
13 LandAmerica 1031 as "LES"?

14 A Yes.

15 Q You were recruited to build and manage LES
16 when it got started; is that correct?

17 A No.

18 Q I thought you testified earlier that you
19 were recruited to start your responsibilities with LES
20 by building and managing the 1031 exchange company.

21 A Yes.

22 Q And was LES already in existence at that
23 point?

24 A Yes.

25 Q When were you brought in to LES to build and

1 manage the 1031 company?

2 A My start date was March 2001, March 1 or
3 March 6, something like that, 2001.

4 Q And was that the beginning of your
5 affiliation with LES?

6 A Yes.

7 Q What is your understanding of what LES did
8 prior to March 2001?

9 A What do you mean?

10 Q What business functions did LES have prior
11 to March 2001?

12 A It conducted exchanges.

13 Q So when you said that you were recruited to
14 build the 1031 exchange model, what did you mean by
15 that?

16 MR. KAMIN: Objection. That wasn't his
17 testimony.

18 Answer if you can.

19 A I was hired to grow the company.

20 Q So you were hired to build on an
21 already-existing exchange structure?

22 A Yes.

23 Q And what was the nature of the exchange
24 company prior to March 2001?

25 MR. KAMIN: Objection. Lack of

1 foundation.

2 A I don't know what you mean.

3 Q You said that you were brought in to grow
4 the company. What exactly -- strike that.

5 What was your understanding of how you were
6 wanted to grow the company?

7 A I was hired to put in place and execute on a
8 business plan to grow the company, and that's what I
9 did.

10 Q And what were the elements of that business
11 plan?

12 A There were many elements, typical business
13 stuff -- operations, marketing.

14 Q What do you mean by "operations"?

15 A Servicing of business.

16 Q And by that, by "servicing," do you mean
17 expand the number of services that LES provided?

18 A No.

19 Q What do you mean by that?

20 A Hire people who would interact with the
21 customers to conduct tax deferred exchange business.

22 Q Did the number of -- let me back up. You
23 testified earlier that there are a number of different
24 structures of exchanges that LES offers; is that
25 correct?

1 MR. KAMIN: Objection. Form. You want to
2 know if that was his testimony or if that's a
3 fact?

4 MR. COSGROVE: I'm asking if that's what
5 he testified to earlier.

6 A I don't remember.

7 Q LES offered a number of different
8 structures, ways of structuring a 1031 exchange,
9 correct?

10 A Yes.

11 Q For example, LES would structure an exchange
12 so that funds were placed in the commingled account at
13 SunTrust, or they would be structured to have a
14 qualified escrow agreement, or they would be
15 structured to have the funds placed in the segregated
16 account, in addition to other structures, correct?

17 A Yes.

18 Q Did you participate at all in developing the
19 different structures for the exchanges?

20 A Yes.

21 Q Which different structures were you involved
22 in the development of?

23 A All of them.

24 Q And who did you work with in order to
25 develop those structures?

1 MR. KAMIN: Over the eight years that he's
2 with the company?

3 MR. COSGROVE: Yes.

4 A A lot of people. It's a long list.

5 Q Okay. Well, let me back up. Can you name
6 for me off the top of your head all the different
7 structures of exchanges that LES offered?

8 A No.

9 Q When you arrived at LES in March 2001, did
10 LES offer any structures other than placing funds into
11 a commingled account?

12 A Yes.

13 Q Did they offer the option of placing funds
14 into a segregated account at that time?

15 A Yes.

16 Q Did they offer the option of placing
17 funds -- of having a separate escrow, qualified escrow
18 agreement?

19 A I don't remember.

20 Q What involvement did you have in the
21 development of the structure where funds were placed
22 in a segregated account?

23 A What involvement did I have?

24 Q Yes.

25 MR. KAMIN: Objection to form.

1 A Complete involvement.

2 Q Okay. You testified that placing funds into
3 a segregated account was an option that was provided
4 before you arrived at LES, correct?

5 A Yes.

6 Q How did that structure change, if at all,
7 after you arrived?

8 A Never did.

9 Q Okay. So then what do you mean when you
10 said that you were involved in the development of that
11 type of exchange structure?

12 A We had basically two offerings when we
13 closed down, but I could say we had 10 million
14 offerings because if you came to me and said, "I want
15 my money to be at Frost Bank in Texas," we'd put it up
16 with Frost Bank in Texas. So that's what I'm saying.
17 That's always been there.

18 Q So what you're saying, by "the development
19 of the different structures," is you were involved in
20 meeting the demands of the customers to the extent
21 they varied from -- let me stop it at "meeting the
22 demand of customers."

23 A Yes.

24 Q Have you had training with respect to the
25 requirements of qualifying for a 1031 exchange?

1 MR. KAMIN: I'd like to hear the question
2 again.

3 MR. COSGROVE: Can you read it back,
4 please.

5
6 (The court reporter read back the last
7 question.)

8
9 MR. KAMIN: Objection. Form.

10 A No.

11 Q With respect for -- I'm sorry. With respect
12 to whether an exchange structure met the requirements
13 for tax deferred status under a 1031 exchange, would
14 you rely on others to let you know whether those met
15 those requirements?

16 A We didn't provide that service to our
17 customers.

18 Q You didn't provide what service?

19 A The question you just asked, whether a
20 property qualifies for an exchange.

21 Q Not a property.

22 A A transaction?

23 Q Yes.

24 A Whether it qualifies?

25 Q Yes.

1 A We never provided that service for our
2 customer.

3 Q LES had a number of forms of exchange
4 agreements, correct?

5 A Yes.

6 Q And were you involved in the drafting of
7 those agreements at all?

8 A No.

9 Q But you understand that -- is it your
10 understanding that those agreements were drafted in
11 order to meet the requirements for tax deferred status
12 under a 1031 exchange?

13 A Yes.

14 Q So LES did concern itself with meeting the
15 requirements of a 1031 exchange, correct?

16 A Yes.

17 Q Okay. And it was a concern of LES that when
18 it set up an exchange for one of its customers, then
19 that would meet the demands for tax deferred status
20 under 1031?

21 A Yes.

22 Q Okay. So what I'm asking is when you set up
23 a structure -- when you set up an exchange, did you
24 personally consider the tax implications of that
25 exchange, or was that other people in the company that

1 concerned themselves with that?

2 MR. KAMIN: Objection to form.

3 A Those are two questions. I did not
4 personally concern myself with the tax implications of
5 a customer's exchange.

6 Q Okay. LES acted as a qualified intermediary
7 or a QI for the facilitation of 1031 exchanges,
8 correct?

9 A Yes.

10 Q What is your understanding of what a QI is?

11 A QI is any party that is not disqualified,
12 who takes control and possession of a taxpayer's
13 relinquished property, sells it, transfers it,
14 receives the funds, and acquires replacement property
15 or property of like kind within the parameters of
16 Section 1031.

17 Q And is it your understanding that a QI --
18 the functions of a QI fall under one of the safe
19 harbors for a 1031 exchange?

20 A Yes.

21 Q And do you know of any other safe harbors
22 for a 1031 exchange?

23 A Yes.

24 Q What other safe harbors are you aware of?

25 A There's four of them. One is a standby

1 letter of credit or other credit facility to secure
2 the performance of a QI. The second is a qualified
3 escrow or qualified trust. We never, ever, at any
4 time used that, the qualified trust. The third is a
5 qualified intermediary, which is the safe harbor that
6 we structure our company with. And the fourth is a
7 growth factor, which means that you can earn interest;
8 the taxpayer can earn interest without being deemed to
9 be in receipt of the funds. Those are the four.

10 Q You said that LES never engaged in an
11 exchange involving a qualified trust, correct?

12 A Yes.

13 Q Did LES ever consider engaging in any
14 exchanges where there was a qualified trust?

15 MR. KAMIN: Objection to form.

16 Q To your knowledge.

17 A No. I don't know of any.

18 Q Are you aware if any of LES's customers ever
19 asked that their funds be placed in a qualified trust?

20 A No.

21 Q Are you aware of any policies or reasons
22 that LES had for not engaging in the qualified trust
23 arrangement?

24 A No.

25 Q Are you aware of any discussions that LES or

1 members of LES had with respect to the qualified trust
2 arrangement?

3 A Yes.

4 Q Are those many conversations?

5 A No. No.

6 Q Is that less than five that you recall?

7 A It would be less than five, probably, yes.

8 Q Can you tell me -- was it one conversation?

9 A This is eight years.

10 Q Okay. Do you recall any specific
11 conversations that you had with anyone regarding a
12 qualified -- regarding structuring exchanges as a
13 qualified trust?

14 A Yes.

15 Q Okay. When was the first conversation that
16 you recall?

17 A It would be eight years ago, probably when I
18 started with the company, and just looked at the
19 business model and spoke with counsel at that time.

20 Q Was your conversation seeking legal advice?

21 A Not necessarily. Maybe. I don't remember.

22 Q Okay. I don't want to get into any
23 privilege. But could you just tell me if you
24 discussed any reasons why LES would want to or would
25 not want to engage in exchanges involving qualified

1 trusts?

2 MR. KAMIN: I understand he's asking you
3 about business reasons for engaging in these
4 transactions that were discussed, not legal
5 reasons. You can answer that, but again, stick
6 to the question.

7 THE WITNESS: The business.

8 A We felt that engaging in a qualified trust
9 was just an extra layer that was unnecessary. We
10 scanned the competitive landscape. No one does them,
11 virtually no one in the QI business. So if you did
12 it, you are doing something no one else is doing. So
13 it's an extra layer, an extra step.

14 Q Do you recall any other conversations that
15 you had beyond when you first started?

16 A No.

17 Q Was it ever your understanding that LES had
18 a fiduciary relationship with any of its exchange
19 customers?

20 A No.

21 Q I believe you testified to this earlier.
22 But you don't recall ever approving or seeing the term
23 "fiduciary" used in any of LES's marketing materials;
24 is that correct?

25 A That's correct.

1 Q If someone presented you marketing material
2 that referred to LES's relationship with its customers
3 as fiduciary in nature, would you have objected to
4 that use?

5 A Likely, yes.

6 Q And why is that?

7 A Because we don't have a fiduciary
8 relationship.

9 Q Okay. And is it your understanding -- what
10 is your understanding of whether LES -- I'm sorry.
11 Strike that.

12 Were you ever told by anyone in the company
13 to market LES's exchange product -- I'm sorry. Let me
14 rephrase.

15 Is it your understanding that LES did not
16 hold any of its customers' exchange funds in a trust?

17 A Yes.

18 Q And were you ever told to avoid using the
19 term "trust" in any marketing materials?

20 A Not that I remember.

21 Q Do you recall having any discussions over
22 whether the term "trust" should be used in marketing
23 materials or whether it should not be?

24 A No.

25 Q You testified earlier that LES offered a

1 structure where the taxpayer or the exchange customer
2 would receive all the interest accrued from the
3 exchange funds, and LES would only receive a fee.

4 MR. KAMIN: I don't believe that was his
5 testimony.

6 Q Do you agree that that was your testimony?

7 MR. KAMIN: That there was such a
8 structure?

9 A I don't -- I don't believe there was a
10 structure like that.

11 Q Do you agree that that was an option that
12 LES would have been willing to provide?

13 A Yes.

14 Q If LES offered that option, what is your
15 understanding of what the fee would be for that
16 structure?

17 A No understanding.

18 Q Is it your understanding that the fee would
19 be --

20 A Higher.

21 Q -- higher?

22 A Probably.

23 Q Were you involved in the development of the
24 segregated exchange structure in order to comply with
25 468(b) of the tax code?

1 A Yes.

2 Q And what changes, if any, did LES make to
3 the pre-existing segregated exchange structure in
4 order to meet the requirements of 468(b)?

5 A I don't remember all of them, but you have
6 the documents.

7 Q From your recollection, what are the changes
8 that you can recall?

9 MR. KAMIN: Objection to form. That's not
10 a stand-alone question. Could you rephrase the
11 question so it can embody changes for what to
12 what?

13 MR. POST: I think the term "segregated
14 exchange structure" is unclear because I think
15 there's more than one.

16 MR. KAMIN: I'm not sure whether you meant
17 documents or structure. That's why I'd like to
18 rephrase the question.

19 Q It's your understanding that when I refer to
20 468(b), that refers to a change in the tax code that
21 went into effect in October of 2008; is that correct?
22 Or do you agree?

23 A It's not a change in the code. It was
24 regulations issued on the code. There's a difference.

25 Q Right. Thanks. What is your understanding

1 of the requirements of 468(b) with respect to -- I'm
2 sorry. Strike that.

3 Okay. Generally speaking, LES, at all times
4 you were at the company, offered a structure where an
5 exchange customer could have its funds placed into a
6 segregated account; is that correct?

7 A Yes.

8 Q And in that segregated account structure,
9 there was also a model where LES would pay some of the
10 interest earned on those segregated funds to the
11 taxpayer and would retain some of the interest earned
12 on those funds for its own profit; is that correct?

13 A No.

14 Q What was incorrect about my statement?

15 A There's many different segregated models
16 over the life of LES.

17 Q Was what I just referred to a model --

18 A Yes.

19 Q -- that LES offered?

20 And did LES do away with that model
21 beginning in October of 2008?

22 A We developed models that were 468(b)
23 compliant. So, yes.

24 Q And specifically, what models did you
25 develop in order to comply with 468(b)?

1 A That funds in the -- that exceeded.
2 \$2 million would be directed to Citibank to one of
3 the, as someone pointed out, nine options we had
4 there. It would go into that account. That was our
5 468(b) segregated product.

6 Q And did LES collect any of the interest paid
7 on those funds for its own profit?

8 A Yes.

9 Q And how was that structured; do you know?

10 A No, I don't remember how it was structured.

11 Q Okay. You testified earlier that you
12 renewed LES's membership in the Federation of Exchange
13 Accommodators. Is that a correct statement of your
14 testimony?

15 A Yes.

16 Q And will you understand if I refer to the
17 Federation of Exchange Accommodators as "FEA"?

18 A Yes.

19 Q When you renewed that membership, did you
20 ever have to sign anything?

21 A I don't remember.

22 Q To your knowledge, were you the only person
23 involved in maintaining that membership with the FEA
24 since you arrived in March of 2001?

25 A Yes.

1 MR. COSGROVE: No further questions.

2
3 EXAMINATION BY MR. POST:

4
5 Q Mr. Connor, in Mr. Cosgrove's questioning,
6 he asked you a number of questions about different
7 products that were offered or not offered to
8 customers. I just want to clarify your answers to
9 some of those questions.

10 It's my understanding that you have personal
11 knowledge as to what products were available but not
12 necessarily what products were offered because you did
13 not get involved in speaking with customers directly
14 or handling sales directly. Is that correct?

15 MR. KAMIN: Objection. Form.

16 A Offered and available. Kind of the same
17 thing.

18 Q Do you understand the question?

19 MR. KAMIN: I don't think you understand
20 the question.

21 A I don't think I understand what you mean.

22 Q In other words, you weren't privy to the
23 specific conversations between salespeople and
24 customers; and therefore, you don't have personal
25 knowledge of what any of the salespeople offered to

1 the customer in any particular transaction; is that
2 correct?

3 A That is correct.

4 Q And your personal knowledge consists solely
5 of what products the company had available for those
6 salespeople to offer or not offer in their discretion,
7 correct?

8 A Correct.

9 MR. POST: Okay. I just wanted to clarify
10 that. Thank you.

11 MR. KAMIN: Anyone else?

12

13 AND FURTHER THIS WITNESS SAITH NOT.

14

15 (The deposition ended at 1:03 p.m.)

16

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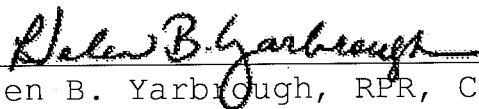
25

1 COMMONWEALTH OF VIRGINIA,
2 CITY OF RICHMOND, to wit:

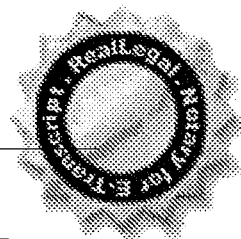
3
4 I, Helen B. Yarbrough, a Notary Public for
5 the Commonwealth of Virginia at Large, do hereby
6 certify that the foregoing deposition of Stephen
7 Connor was duly sworn to before me at the time and
8 place set out in the caption hereto.

9 Further, that the transcript of the
10 deposition is true and correct, and that there was
11 one exhibit filed with me during the taking hereof:

12 Given under my hand this 20th day of
13 February, 2009.

14
15 

Helen B. Yarbrough, RPR, CCR
Notary Public for the
Commonwealth of Virginia at Large
VCRA Certification #0313016



16
17
18
19
20 My Commission expires:
21 July 31, 2009
22 Notary Registration Number: 158897
23
24
25

1 STATE OF _____,
2 _____, to wit:

3
4 I, Stephen Connor, do hereby certify that
5 I have read the foregoing pages of typewritten
6 matter numbered 1 through 115, and that the same
7 contains a true and correct transcription of the
8 deposition given by me on the 19th day of February,
9 2009, with the exception of the noted corrections,
10 to the best of my knowledge and belief.

11
12 _____
Date Stephen Connor

13
14
15
16 Subscribed and sworn to before me this
17 _____ day of _____, 200__.

18 My commission expires
19 _____.

20
21 _____
Notary Public