

EXHIBIT G

TIMOTHY MCGINN

INVESTIGATIVE TESTIMONY OF
TIMOTHY MCGINN
WOODBIDGE, NEW JERSEY
APRIL 29, 2009

ATKINSON-BAKER, INC.
COURT REPORTERS
500 North Brand Boulevard, Third Floor
Glendale, California 91203-4725
(818) 551-7300
www.depo.com

REPORTED BY: JILL A. PRAML-BUSSANICH,
CSR NO. XI01807

FILE NO.: A301C1C

1 FINANCIAL INDUSTRY
2 REGULATORY AUTHORITY
3 CASE NO. 2008-011-7152

4 IN RE)
5 THE MATTER OF:)
6 TIMOTHY MCGINN)
7)
8)
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

Investigative testimony of TIMOTHY MCGINN,
taken on behalf of FINRA, District 9 at 581 Main
Street, 7th Floor, Woodbridge, New Jersey,
commencing at 3:00 p.m., April 29, 2009, before Jill
A. Praml-Bussanich, CSR No. XI01807.

A P P E A R A N C E S

FOR FINRA:

FINRA

BY: STEVEN E. ROWEN, Senior Examiner
MICHAEL NEWMAN, Senior Regional Counsel
MICHAEL H. PAULSEN, Examination Manager
581 Main Street, 7th Floor
Woodbridge, New Jersey 07095

FOR TIMOTHY MCGINN:

STRADLEY, RONON, STEVENS & YOUNG, LLP
BY: DAVID C. FRANCESKI, JR., ESQUIRE
2600 One Commerce Square
Philadelphia, Pennsylvania 19103-7098

1 I N D E X

2 Witness: TIMOTHY MCGINN

3 Examinations Page
4 BY MR. ROWEN 5

5

6 E X H I B I T S

7 Number Description Page

8 1 Letter Dated January 21, 6
9 2009

10 2 Letter Dated November 4, 12
11 2008

12 3 Diagram 32

13 4 Confidential Private 33
14 Placement Memorandum

15 5 Subscription Agreement 46

16 (EXHIBITS NOT ATTACHED)

17 INFORMATION REQUESTED

18 Page Line

19

20

21 QUESTIONS INSTRUCTED NOT TO ANSWER

22 Page Line

23

24

25

1 TIMOTHY MCGINN,
2 having first been duly sworn, was examined
3 and testified as follows:
4

5 MR. ROWEN: We're on the record at
6 approximately 3:00 p.m. on April 29, 2009.
7

8 EXAMINATION

9 BY MR. ROWEN:

10 Q. Will the witness state and spell his
11 full name for the record?

12 A. Timothy McGinn, M-c G-i-n-n.

13 Q. We're here to interview Mr. McGinn in
14 connection with FINRA's routine examination in Case
15 Number 2008-011-7152 of McGinn, Smith & Company,
16 Incorporated, CRD Number 8453.

17 My name is Steven Rowen, Senior Examiner
18 with the member regulation department of FINRA.
19 With me today is Michael Newman, Senior Regional
20 Counsel with FINRA. And Michael Paulsen,
21 Examination Manager with FINRA.

22 This is an investigation by FINRA to
23 determine whether there have been any violations of
24 Association rules or Federal securities laws.

25 At this time I would like to have this

1 marked as Exhibit 1.

2 (Letter Dated January 21, 2009 was
3 received and marked FINRA Exhibit 1 for
4 identification.)

5 Q. BY MR. ROWEN: I'm handing you
6 Exhibit 1. It's a copy of a letter on FINRA
7 letterhead dated January 21, 2009 requesting your
8 testimony in this matter pursuant to FINRA Rule
9 8210.

10 FINRA Rule 8210 requires you to answer the
11 staff's questions and answer them truthfully.
12 Failure to do so could lead to the imposition of
13 disciplinary proceedings.

14 Mr. McGinn, are you represented by counsel
15 today?

16 THE WITNESS: Yes.

17 MR. ROWEN: Would counsel identify
18 himself?

19 MR. FRANCESKI: Same counsel as
20 before. Dave Franceski. I represent Mr. McGinn.

21 And again, with respect to the 1/21/09
22 letter, it states the deposition would be on
23 February 19, 2008. And by mutual agreement of
24 everyone around the table, we have chosen today as
25 the continuation date.

1 Q. BY MR. ROWEN: This staff controls the
2 record. And, as such, the court reporter will only
3 go off the record at our instruction.

4 Should anyone here want to go off the
5 record for any reason, address your request to me.
6 And, if appropriate, I'll instruct the court
7 reporter to go off the record.

8 At any time you wish to consult with
9 counsel, say so, and we can make this room or
10 another available for that purpose.

11 We take breaks at reasonable intervals. If
12 anyone here needs a break for any reason, address
13 your request to me and I'll try to accommodate you.

14 If you do not understand a question, say
15 so, and I'll rephrase it, if necessary.

16 Please remember to give a verbal response
17 to my questions, as the court reporter cannot record
18 a nod of the head.

19 Are there any other names by which you are
20 known?

21 A. No.

22 Q. What is your educational background?

23 A. I have a bachelor's of science in
24 mechanical engineering.

25 Q. What year was that?

60a70add a0b4 4000 0200 45740004-24

1 A. 1971.

2 Q. How many years have you worked in the
3 securities industry?

4 A. 35, 34.

5 Q. What securities licenses do you
6 maintain?

7 A. 7, 63, 24. I'm a registered options
8 principal. I'm a financial principal. That's it.

9 Q. What other licenses or designations do
10 you maintain?

11 A. None.

12 Q. Are you currently registered with a
13 broker-dealer?

14 A. Yes.

15 Q. Who?

16 A. McGinn, Smith & Company.

17 Q. What capacity?

18 A. I'm chairman of the board.

19 Q. How long have you been employed with
20 McGinn, Smith & Company?

21 A. I was a founder of McGinn, Smith in
22 1980. I left McGinn, Smith in 2003 to run another
23 company. And returned to McGinn, Smith & Company in
24 October of 2006.

25 Q. Please describe your responsibilities

h0-70ndd e0h4 4000 0406 ab740004e44

1 at McGinn, Smith?

2 A. I basically run the investment banking
3 practice at the firm.

4 MR. NEWMAN: Is that your operating
5 title, chairman of the board?

6 THE WITNESS: Yes.

7 Q. BY MR. ROWEN: What means do you use
8 to communicate with others regarding business
9 matters?

10 A. Depends on who the others are. Maybe
11 you can be more precise.

12 Q. Customers, other personnel, clients
13 or --

14 A. Most of my communications are
15 telephonic. I do use e-mail from time to time. Not
16 particularly enamored of the mechanism. And, of
17 course, there are written letters.

18 Q. Do you use instant messaging?

19 A. No.

20 Q. What other entities are you affiliated
21 with?

22 A. M & S Partners, various entities, CMS,
23 various entities that the firm has associated with.

24 Q. What entities -- start with entities
25 outside the firm affiliations. Are you involved

1 with --

2 A. None.

3 MR. NEWMAN: Have you ever been sued
4 before?

5 THE WITNESS: Yes.

6 MR. NEWMAN: How many times?

7 THE WITNESS: I don't know. Three,
8 four times.

9 MR. NEWMAN: Can you describe those
10 occasions?

11 THE WITNESS: Well, I was sued by the
12 former Mrs. McGinn, but we'll leave that off the
13 table for the moment. Matrimonial matter.

14 I've been sued by Key Bank.

15 I've been sued by an outfit known as
16 Waterford Mortgage.

17 I have been sued by a former employee
18 by the name of Keith Shiconi (phonetic).

19 I think that's it.

20 MR. NEWMAN: How about arbitrations?

21 THE WITNESS: You know the
22 arbitrations, I was party to an arbitration that
23 dates back to maybe 1981 or 1982, which was a very
24 minor dispute over small amounts of money. And I
25 was too young and too proud to not fight it, which

1 was stupid.

2 Subsequent to that, all the
3 arbitrations, although I may have been named, were
4 handled by my partner, who runs the brokerage side
5 of the business.

6 And most of the arbitration activities
7 were associated with the brokers' side of the
8 business.

9 MR. NEWMAN: That's Mr. Smith?

10 THE WITNESS: That's correct.

11 MR. NEWMAN: Have you ever testified
12 before?

13 THE WITNESS: Sure.

14 MR. NEWMAN: Can you explain the
15 occasions?

16 THE WITNESS: Testified in the context
17 of a deposition or a trial or --

18 MR. NEWMAN: Either.

19 THE WITNESS: I have been deposed in
20 several of the matters that I just articulated.

21 I have testified before the grand jury
22 as it related to a former business associate who was
23 a state Senator, senate majority leader.

24 I testified before a grand jury in a
25 trial, a jury for a former -- regarding a former

1 customer of the firm by the name of Alter B.
2 Laurence, who ran an insurance company.

3 I think that's it.

4 MR. NEWMAN: Have you ever been named
5 or -- have you ever been charged by a regulatory
6 agency, state securities agency with any violations?

7 THE WITNESS: No.

8 MR. ROWEN: At this time I would like
9 to have this marked as Exhibit 2.

10 (Letter Dated November 4, 2008 was
11 received and marked FINRA Exhibit 2 for
12 identification.)

13 Q. BY MR. ROWEN: I'm handing you
14 Exhibit 2 in this matter. This is a copy of a
15 statement signed by David Smith detailing his
16 business affiliations.

17 As I mentioned earlier inquiring into your
18 business affiliations, there are a number of
19 entities listed on here.

20 I'm looking to find out what entities
21 listed on this response have you been affiliated
22 with in the last three years?

23 A. Well, first of all, I was not
24 affiliated with any of the entities under subsection
25 D: First Independent Income, First Excelsior, First

1 Albany, First Advisory. All of those entities were
2 created when I was not it at the firm. So, my
3 involvement there is de minimus, if any.

4 In terms of more recent transactions, I
5 have been involved in a business known as TDM Cable
6 Funding, all of which, when I answered earlier, I
7 don't view as outside the investment banking
8 function of the firm.

9 But, to be more specific, TDM Cable
10 Funding, McGinn, Smith Transaction Funding Corp.,
11 and Cruise Charter Ventures, LLC.

12 Q. What is your affiliation with MS
13 Partners?

14 A. I'm a general partner, founder.

15 Q. What is your role as general partner?

16 A. There are two partners in MS Partners,
17 myself and Mr. Smith. It is an entity that is
18 probably 30 years old. And makes various
19 investments in all manner of things.

20 MR. NEWMAN: It's an LLC?

21 THE WITNESS: It's a New York State
22 general partnership.

23 Q. BY MR. ROWEN: What is your role in MS
24 Capital Holdings?

25 A. I think essentially the same. MS

1 Capital Holdings probably is 20 years old. And we
2 have used that for various functions along the way,
3 to hold different assets.

4 MR. NEWMAN: General partnership?

5 THE WITNESS: I think it's a C Corp.
6 actually.

7 MR. NEWMAN: What is your ownership
8 position?

9 THE WITNESS: 50 percent.

10 Q. BY MR. ROWEN: You noted earlier your
11 lack of involvement in the items listed under Point
12 D: First Independent Income Notes, First Excelsior
13 Income Notes, First Albany Income Notes and First
14 Advisory Income Notes.

15 What relationship, if any, do you have with
16 those entities?

17 A. I don't believe I have any
18 relationship with those entities.

19 MR. NEWMAN: Are you affiliated in 107
20 Associates?

21 THE WITNESS: To the extent that --
22 107 Associates is an entity that I invested money
23 in. I lent money to. So, I am a lender to that
24 entity.

25 107 Associates is also owned I believe

1 by MS Holdings Corp., not MS Capital, but MS
2 Holdings Corp. And I am a shareholder in MS
3 Holdings Corp.

4 MR. NEWMAN: MS Holdings is a part
5 owner of 107 Associates?

6 THE WITNESS: Yes. That's correct.

7 MR. NEWMAN: You're -- you have an
8 interest in MS Holdings?

9 THE WITNESS: That's correct.

10 MR. NEWMAN: What is your interest in
11 MS Holdings?

12 THE WITNESS: 30 percent.

13 MR. NEWMAN: Do you know that 107
14 Associates issued notes to First Independent Income
15 Notes, First Excelsior Income Notes, First Albany
16 Income Notes, First Advisory Income Notes?

17 THE WITNESS: I don't think so.

18 MR. NEWMAN: Do you know that 107
19 Associates issued notes to First Independent
20 Income --

21 THE WITNESS: Yes, I do know that.

22 MR. NEWMAN: First Excelsior?

23 THE WITNESS: Yes. 107 Associates was
24 a borrower from each of those. They did issue
25 notes.

1 MR. NEWMAN: You at least have -- have
2 involvement with those entities?

3 THE WITNESS: To that extent.

4 MR. NEWMAN: What do you know about
5 that, the borrowing?

6 THE WITNESS: It was used to complete
7 a transaction in the long-term care insurance
8 sector, which was done in October of 2007.

9 MR. NEWMAN: What was your involvement
10 in that decision, to borrow money from those
11 entities?

12 THE WITNESS: My involvement was one
13 of a collaborative effort with Mr. Smith to get that
14 transaction closed. And to the extent that --

15 MR. FRANCESKI: Which transaction?

16 THE WITNESS: The acquisition of the
17 insurance company.

18 And to the extent that we needed cash
19 to do that, I was certainly aware of it.

20 As I said, I run a small partnership
21 account called Mr. Cranbury. And Mr. Cranbury also
22 went, I think, a half million dollars to 107
23 Associates for this purpose.

24 MR. NEWMAN: Mr. Cranbury is you and
25 Mr. Smith?

1 THE WITNESS: Yes.

2 MR. NEWMAN: 50 percent each?

3 THE WITNESS: No. There is a third
4 investor as well.

5 MR. NEWMAN: Who is that?

6 THE WITNESS: Burton Fisher.

7 MR. NEWMAN: What is the percentage
8 ownership?

9 THE WITNESS: 80 percent for
10 Mr. Fisher, 10 percent for myself and 10 percent for
11 Mr. Smith.

12 MR. NEWMAN: When was Mr. Cranbury
13 formed?

14 THE WITNESS: 2006, October maybe of
15 2006.

16 MR. NEWMAN: Whose idea was it to form
17 it?

18 THE WITNESS: Mine.

19 MR. NEWMAN: Why?

20 THE WITNESS: We saw several
21 opportunities in the marketplace. And Mr. Fisher
22 had been a client of ours and mine for 30 years.
23 And we decided to do something together.

24 MR. NEWMAN: Why did Mr. Fisher have a
25 greater stake?

1 THE WITNESS: Because Mr. Fisher's net
2 worth is much larger than me and Mr. Smith.

3 MR. NEWMAN: Who makes investment
4 decisions for Mr. Cranbury?

5 THE WITNESS: I would say 90 percent
6 of the investment decisions are made by myself, in
7 collaboration with Mr. Smith, but I'm the more
8 active managing member.

9 MR. NEWMAN: Did Mr. Fisher give you
10 discretion?

11 THE WITNESS: Absolutely.

12 MR. NEWMAN: You have written
13 discretion?

14 THE WITNESS: Yes.

15 MR. NEWMAN: Does he have a brokerage
16 account?

17 THE WITNESS: Yes.

18 MR. NEWMAN: Let me finish the
19 question. I know you know where I'm headed.

20 How long has he had a brokerage
21 account at McGinn, Smith?

22 THE WITNESS: 25 years.

23 MR. NEWMAN: When was 107 Associates
24 formed?

25 THE WITNESS: June of 2000 -- maybe

1 May of 2007.

2 MR. NEWMAN: What was your involvement
3 in its formation?

4 THE WITNESS: I was a founding member.

5 MR. NEWMAN: Whose idea was it?

6 THE WITNESS: Mine probably.

7 MR. NEWMAN: Why?

8 THE WITNESS: At the time we were
9 looking at a different investment, which we ended up
10 not making. And it was an investment in an
11 intellectual property fund. And we created the
12 entity to make that investment, and never made it.

13 MR. NEWMAN: Why didn't you use
14 Mr. Cranbury to make that investment?

15 THE WITNESS: Because there were other
16 investors that evidenced an interest in doing
17 something in the intellectual property space. And I
18 chose to create a new entity to make the investment.

19 MR. NEWMAN: Has 107 Associates
20 generated any revenues?

21 THE WITNESS: On an accrual basis,
22 yes.

23 MR. NEWMAN: What type of revenues?

24 THE WITNESS: 107 Associates has only
25 one asset. And that is the investment in CMS. And

1 the acquisition of the securities associated with
2 that investment.

3 MR. NEWMAN: Has 107 Associates repaid
4 any of the note holders, any of its note holders?

5 THE WITNESS: Principal?

6 MR. NEWMAN: Any interest?

7 THE WITNESS: Yes.

8 MR. NEWMAN: Who?

9 THE WITNESS: The four funds listed
10 here have received interest.

11 There was a fellow by the name of
12 Kaufman whose received interest.

13 I don't believe that Mr. Cranbury has
14 received interest.

15 So, those are the ones who have
16 received cash interest. There have been no
17 principal payments made on that transaction.

18 MR. NEWMAN: Does 107 Associates have
19 a bank account?

20 THE WITNESS: I'm sure it does.

21 MR. NEWMAN: You don't know?

22 THE WITNESS: I can't say for certain,
23 but my guess is it does have a bank account.

24 MR. NEWMAN: Are you a signatory on
25 that account?

1 THE WITNESS: Probably.

2 MR. NEWMAN: Do you know where the
3 account is located, the bank?

4 THE WITNESS: M & T Bank.

5 Q. BY MR. ROWEN: What is Coventry Care
6 Link?

7 A. Coventry Care Link is a -- an entity
8 that is effectively a managing general agent for the
9 sale and the processing and back office functions
10 related to long-term care insurance.

11 Q. What is your relationship with
12 Coventry Care Link?

13 A. I have -- I sit on the board of CMS,
14 which is the holding company that owns both Coventry
15 Care Link and the insurance companies that we
16 acquired in October of 2007.

17 Q. What involvement have you had in the
18 bridge loan note offering of Coventry Care Link?

19 A. The date of which was?

20 Q. 2007, February 7, 2007.

21 A. Very little. The Coventry Care Link
22 relationship was developed during the period of time
23 that I was not at the firm.

24 And subsequent to that, most, if not all,
25 of the activities related to CMS and Coventry Care

b070edd 0044 4000 0405 4b740004-44

1 Link were executed by my partner, Mr. Smith.

2 Q. What is your involvement in the
3 private placement activity at McGinn Smith?

4 A. I basically source, negotiate,
5 structure, document and bring to the sales staff
6 transactions, and have done so since October
7 of 2006.

8 Prior to leaving the firm, I performed
9 similar functions from 1981 through 2002.

10 Q. When you say bring transactions, are
11 you meaning you're bringing customers or bringing
12 entities looking to be placed?

13 A. Yes. Bringing entities to be placed,
14 and from time to time bringing investors as well.

15 Q. Are you the representative on the
16 accounts of these investors?

17 A. In some instances I am. In some
18 instances I work with the brokers who are the
19 representatives on the accounts.

20 Q. Did you solicit sales of Coventry Care
21 Link bridge loan notes?

22 A. No.

23 Q. You mentioned earlier CMS. What is
24 your role with CMS Financial Services?

25 A. I am a director.

1 Q. When did this -- when did you begin at
2 the position?

3 A. October of 2007.

4 Q. What was your relationship with CMS
5 Financial Services prior to that time?

6 A. None.

7 Q. How did your relationship with CMS
8 Financial Services begin?

9 A. Well, it began with an involvement of
10 the firm McGinn Smith, and Mr. Smith's very complete
11 involvement with Coventry Care Link and CMS and so
12 forth.

13 Also, we attempted to do a -- completed a
14 capital raise for CMS, which allowed us to close
15 that transaction I think on October 9 or 10, 2007.

16 MR. NEWMAN: In terms of the -- are
17 you familiar with the fact that Coventry Care Link
18 issued notes in approximately 2003? Are you aware
19 of that?

20 THE WITNESS: Yes.

21 MR. NEWMAN: How did you become aware
22 of that?

23 THE WITNESS: Well, although I had
24 left the firm on a day-to-day basis, I was still at
25 that time I think a 50 percent partner in the firm.

1 My offices in the new company were in
2 the same building. We're on the third floor.
3 McGinn Smith is on the 5th floor.

4 I have spoken to David Smith about
5 business activities and other matters daily for the
6 last 40 years, 38 years. So, I was aware that the
7 transaction was occurring.

8 I also had done business with Bob
9 Holtermann, the guy -- the fellow who is the CEO of
10 Coventry Care Link 20 years ago and know Bob well.
11 So, it was certainly in my view at that time.

12 MR. NEWMAN: When you left McGinn
13 Smith, how long were you gone for?

14 THE WITNESS: Three and a half years.

15 MR. NEWMAN: You returned what year?

16 THE WITNESS: October of 2006.

17 MR. NEWMAN: During that period when
18 you were not affiliated with the firm, you
19 maintained your ownership interest?

20 THE WITNESS: I reduced it from 50 to
21 30 percent. I sold 20 percent to Tom Livingston.
22 The current ownership is 50, 30, 20.

23 MR. NEWMAN: When you were gone, you
24 were physically located in the same building as
25 McGinn Smith?

1 THE WITNESS: Yes.

2 MR. NEWMAN: What did you do during
3 that period?

4 THE WITNESS: I ran a public company
5 known as Integrated Alarm Service Group.

6 MR. NEWMAN: You were CEO?

7 THE WITNESS: Chairman and CEO.

8 MR. NEWMAN: Public company?

9 THE WITNESS: Yes.

10 MR. NEWMAN: Where was it traded?

11 THE WITNESS: NASDAQ.

12 MR. NEWMAN: Why did you leave that
13 company?

14 THE WITNESS: Company was sold.

15 MR. NEWMAN: You were aware of the
16 fact there was a note offering by Coventry Care Link
17 in 2003?

18 THE WITNESS: Correct.

19 MR. NEWMAN: In terms of the note
20 offering which took place in 2007, what was your
21 involvement in that note offering?

22 THE WITNESS: I was not involved with
23 the offer, per se. I knew it was happening, but I
24 was -- it was not on my desk.

25 MR. NEWMAN: You said you were the,

1 basically, the head of investment banking for the
2 firm?

3 THE WITNESS: Yes.

4 MR. NEWMAN: How many people
5 underneath you in that function?

6 THE WITNESS: Directly under me I have
7 one, two, three other investment bankers, general
8 counsel, associate general counsel, some admin, some
9 staff. So, maybe seven or eight.

10 MR. NEWMAN: For the 2007 Coventry
11 Care Link offering, were you aware or do you have
12 any knowledge of a presentation being made by
13 Mr. Holtermann to the sales force for Coventry Care
14 Link?

15 THE WITNESS: Are you talking about
16 the note offering or the October --

17 MR. NEWMAN: The note offering.

18 THE WITNESS: If you're asking me if I
19 specifically remember that, the answer is no. But I
20 would assume that there was such a presentation made
21 by Holtermann to the sales staff.

22 MR. NEWMAN: The assumption is based
23 on what?

24 THE WITNESS: Typical practice.

25 MR. NEWMAN: The people -- the

60-70-44-004 1000 0100 11/15/10

1 registered individuals to be more precise at your
2 firm who sold the Coventry Care Link notes, were any
3 of those individuals under your direct supervision?

4 THE WITNESS: No.

5 MR. NEWMAN: Who were the individuals
6 that sold those notes?

7 THE WITNESS: I have no idea.

8 MR. NEWMAN: You have no idea is what
9 you're saying, based on your knowledge and
10 experience in the firm, who would have been the
11 people selling those notes?

12 THE WITNESS: There probably were guys
13 by the name of Ribinavich (phonetic), Ryan, Shiconi
14 (phonetic), maybe Anthony, last name Anthony.

15 MR. NEWMAN: Series 7 brokers?

16 THE WITNESS: Yes.

17 MR. NEWMAN: Who supervises them?

18 THE WITNESS: Mr. Smith.

19 MR. NEWMAN: For the CMS offering, are
20 you aware of a presentation made by Mr. Holtermann?

21 THE WITNESS: Yes.

22 MR. NEWMAN: What do you remember
23 about that?

24 THE WITNESS: I remember that it was
25 dreadful; that it was not well done; that it was

1 long and tedious, four adjectives.

2 MR. NEWMAN: Did -- was there a
3 PowerPoint?

4 THE WITNESS: I don't know if there
5 was a PowerPoint.

6 MR. NEWMAN: He was the one doing the
7 presentation essentially?

8 THE WITNESS: That's correct.

9 MR. NEWMAN: Was there any discussion
10 of risk associated with the offering?

11 THE WITNESS: There was -- there is
12 always discussion of risk associated with any
13 offering.

14 MR. NEWMAN: What do you remember
15 about that discussion?

16 THE WITNESS: The discussion relative
17 to risk for the offering ran to the general aspects
18 and characteristics of the business.

19 The business was long-term care
20 insurance. Long-term care insurance had not, to
21 that date, received glowing commentary by analysts.
22 It had not been a sector in the insurance business
23 that performed particularly well.

24 We were acquiring a very small
25 company, in Stroudsburg, Pennsylvania, roughly

1 \$45 million in assets for 1.1 times books.

2 There was a concern that scale is very
3 important. How are you going to compete? How are
4 you going to sell? Can you price effectively? What
5 kind of returns are there going to be? What kind of
6 investment returns will there be? What is the risk
7 profile of the investment portfolio? Who is
8 management the investment portfolio? Typical kind
9 of analysis.

10 MR. NEWMAN: What was the financial
11 and operational condition of Coventry Care Link at
12 the time of this CMS offering?

13 THE WITNESS: Dreadful.

14 MR. NEWMAN: Can you elaborate?

15 THE WITNESS: Coventry Care Link had
16 made a -- had racked up losses over the years. It
17 was a company that used to be formed to market
18 long-term care insurance, and various services
19 associated with it. It had not done a particularly
20 good job.

21 Mr. Smith had determined correctly so,
22 in my opinion, that the only way to solve the
23 Coventry Care Link problem was to grow big, grow big
24 by acquisition. Grow big into the underwriting
25 side, as opposed to just the sales side of the

1 business.

2 We engaged a broker to find a company
3 for us that met certain parameters. He did so.

4 We entered into an agreement -- when I
5 say we, I mean Coventry Care Link and a crowd. We
6 entered into an agreement to acquire of the assets
7 of that company.

8 We ended up getting it done in
9 October. We did it by placing \$15 million in a
10 trust preferred. And also I think bringing about
11 \$6 million to the table through this offering that
12 you have in front you somewhere.

13 MR. NEWMAN: Were you aware at the
14 time of CMS what the status was regarding the
15 earlier note offerings by Coventry Care Link?

16 THE WITNESS: Yes.

17 MR. NEWMAN: What was your knowledge
18 about that?

19 THE WITNESS: The knowledge was that
20 there was to be an exchange of those notes, an
21 obligation of -- its a rather complex -- give me a
22 piece of paper, and I'll draw you a picture.

23 Complex arrangement whereby the
24 insurance companies would provide the collateral to
25 the trust preferred. The trust preferred would then

1 make a -- up here you have CMS. And then you had
2 the insurance companies here, which were being
3 acquired. And over here you had Coventry Care Link.

4 The insurance company had a surplus of
5 \$20 million, let's say. It issues a 15 million
6 trust preferred. The trust preferred effectively
7 had first lien on this \$20 million.

8 Subsequently, the insurance company --
9 the holding company for the insurance company, the
10 actual insurance companies are down here. There are
11 two of them. Issues a Series B or a Series C, I
12 forget the term, to the holders of the debt that was
13 over here. And they were in second line to the
14 trust preferred issue.

15 Their collateral position, their
16 security position was significantly enhanced by
17 doing this transaction.

18 MR. NEWMAN: Who is they?

19 THE WITNESS: The note holders.

20 MR. NEWMAN: The Coventry Care Link
21 note holders?

22 THE WITNESS: Yes. In addition to
23 which those note holders received some portion of
24 the common equity of CMS.

25 So, that was the exchange.

1 MR. NEWMAN: Why don't we mark this as
2 an exhibit.

3 MR. ROWEN: We'll mark this as
4 Exhibit 3.

5 (Diagram was received and marked FINRA
6 Exhibit 3 for identification.)

7 MR. NEWMAN: Was there any disclosure
8 to McGinn Smith or prospectus to CMS investors that
9 the Coventry note holders had not received their
10 principal payments as of 2008, when the -- 2007, as
11 of the CMS offering, there had not been any payments
12 of principal to the note holders and the two note
13 offerings by Coventry?

14 THE WITNESS: Off the top of my head,
15 I can't tell you. I'm sure it's in the book.

16 MR. NEWMAN: Would you agree that's an
17 important fact for a prospective investor in CMS?

18 THE WITNESS: Yes.

19 Q. BY MR. ROWEN: Did you conduct any
20 solicitation or sales in the CMS offering in 2007?

21 A. Yes.

22 Q. How many?

23 A. One that I can remember.

24 MR. NEWMAN: Who was that?

25 THE WITNESS: It was a group River

1 Ridge Capital. It's a hedge fund run by some former
2 Goldman Sachs guys, domiciled in New York City.

3 MR. NEWMAN: How much was their
4 investment?

5 THE WITNESS: I solicited. They
6 didn't make it. I failed.

7 Q. BY MR. ROWEN: What was your
8 involvement in the creation of the private placement
9 memorandum for CMS Financial Services?

10 A. Zero.

11 Q. What due diligence did you conduct
12 into that placement?

13 A. Did I personally conduct in that
14 placement, none.

15 MR. ROWEN: I'd like to have this
16 marked as Exhibit 4.

17 (Confidential Private Placement
18 Memorandum was received and marked FINRA Exhibit 4
19 for identification.)

20 Q. BY MR. ROWEN: I'm handing you
21 Exhibit 4. This is a cover page and relevant pages
22 of a CMS Private Placement Memorandum dated
23 September 1, 2007.

24 Are you familiar with this private
25 placement?

1 A. Yes.

2 Q. Please turn to page 105 of Exhibit 4
3 and review the bottom paragraph.

4 A. Okay.

5 Q. What was your awareness of this
6 condition of the private placement?

7 A. We had been negotiating a tax credit
8 arrangement with Connecticut. And at the time of
9 this writing, September 1, 2007, that had not been
10 concluded.

11 Q. When you say "we," who are you
12 speaking of?

13 A. I'm talking about essentially
14 Mr. Holtermann and Mr. Smith.

15 Q. Are you aware why this was included as
16 a condition of the offering?

17 A. Basically, we felt that it was
18 important to protect ourselves to the extent that we
19 made people aware that there was this potential, but
20 not necessarily certainty of procuring the benefits
21 from this Connecticut tax credit program.

22 Q. Who determined that this needed to be
23 included as a condition of the offering?

24 A. I would -- I did not write this
25 document, so I'm going to tell you what my guess is,

1 and my guess is counsel. And that counsel could
2 have been in-house counsel, Mr. Joseph Carr. It
3 could have been Mr. Holtermann, who is an attorney.
4 It could have been a woman who worked for Holtermann
5 by the name of Gerry Mullen, who is also an
6 attorney.

7 Q. What is the status of CMS Financial
8 Services and the Connecticut tax credit plan?

9 A. I'm not sure.

10 Q. Are you aware of the disclosure
11 supplement that went to investors in CMS Financial
12 Services regarding Connecticut tax credit program?

13 A. I'm aware that we at some point, it
14 must have been early in October, very close to the
15 closing day sent out a negative response document to
16 the investors asking them to send it back if they
17 chose not to go forward.

18 Q. Why was that done as a negative
19 consent?

20 A. It was a timing issue.

21 Q. What do you mean by that?

22 A. We were under a lot of pressure to get
23 this deal closed. We had gotten several extensions
24 in the -- for the closing date. The transaction --
25 the underlying asset itself had performed very well.

1 Its surplus had increased. The seller was a fellow
2 by the name of Ron Landis (phonetic). And began
3 discussions with other potential buyers.

4 We felt it was very important for us to get
5 the transaction closed and seize that opportunity,
6 as well protect the note holders that we had -- the
7 firm had previously sold instruments to?

8 MR. NEWMAN: The Coventry Care Link
9 note holders?

10 THE WITNESS: Yes.

11 MR. NEWMAN: What involvement did you
12 have in the decision to utilize a negative consent
13 methodology?

14 THE WITNESS: I was -- I personally
15 was not involved in those deliberations. This was
16 considered by myself and by Mr. Smith and others as
17 sort of a legacy transaction.

18 When I came back to the firm, I was
19 doing other things. I had a number of transactions
20 that I was working on, so in terms of distribution
21 of duties and responsibilities, this did not fall on
22 my plate.

23 Q. BY MR. ROWEN: Were you aware at the
24 time that --

25 A. Yes.

1 Q. -- a negative consent letter --

2 A. Yes.

3 Q. -- were being sent out?

4 A. Yes.

5 MR. NEWMAN: Did you have any concerns
6 about that?

7 THE WITNESS: Not really. This was
8 being done to protect us from someone coming back
9 three years from now or five years from then and
10 looking for rescission. We decided to go forward
11 without that protection.

12 It was a risk that we took. That we
13 felt that the -- the rest -- as you can see, this is
14 page 105. That the rest of the disclosures and the
15 discussion of the business inside this document was
16 significant, was appropriate, was complete. And we
17 took comfort in that.

18 MR. NEWMAN: Were there any concerns
19 voiced about that approach? Did anyone have a
20 different opinion within McGinn Smith utilizing the
21 negative consent route?

22 THE WITNESS: Not that I recall.

23 MR. NEWMAN: Did you understand the
24 firm was changing the terms and conditions of the
25 offering that was presented to the investors?

1 THE WITNESS: To the extent that it
2 was changing, it did not impact, in our view, the
3 elements of risk to the investor. It impacted
4 elements of the risk to the firm.

5 They had an opportunity to wave their
6 hand and say take me out. No one did.

7 MR. NEWMAN: How was that
8 opportunity --

9 THE WITNESS: Negative consent, sure.

10 MR. NEWMAN: How was that letter sent?

11 THE WITNESS: I'm sure it was sent
12 either -- I would guess it was sent through the
13 mail.

14 MR. PAULSEN: Any type of delivery?

15 THE WITNESS: I don't run the mail
16 room. I would guess it was first class delivered.

17 Q. BY MR. ROWEN: Read the very last
18 sentence of page 105, "Only those subscribers who
19 satisfy the subscriber relief conditions will become
20 investors in the securities."

21 Based on that line, was that a concern this
22 was a legitimate investment --

23 THE WITNESS: It was, because only
24 those subscribers that satisfied the subscriber
25 relief conditions. The subscriber release condition

1 was if you don't want to be in the deal, tell us you
2 don't want to be in the deal. That's the subscriber
3 release condition.

4 Q. BY MR. ROWEN: You feel based on this
5 paragraph, that that was the subscriber release
6 condition?

7 A. Yes.

8 MR. PAULSEN: Is it your testimony
9 that an investor's lack of response to your negative
10 consent letter is their subscriber release?

11 THE WITNESS: Correct.

12 Q. BY MR. ROWEN: The fact you didn't
13 have written consent for the release of their funds
14 from escrow from any of customers was not a concern
15 that this -- that it changed the -- truly changed
16 the term of the offering?

17 THE WITNESS: We elected to proceed
18 employing the negative consent.

19 MR. NEWMAN: We know you elected to
20 proceed. I guess the question was a little
21 different.

22 You want to read the question back.

23 Q. BY MR. ROWEN: You elected to
24 proceed -- what was the opinion regarding whether
25 the written consent called for in the private

1 placement memorandum was satisfied by the negative
2 consent letters and, therefore, the condition and
3 the term of the offering was met?

4 A. Let me say we were -- the firm is
5 surrounded by attorneys, both our own and Holtermann
6 and Mullen. They were all aware of it. And
7 proceeded based upon the advice of counsel, and
8 based upon what we believed to be the correct path
9 to take.

10 MR. NEWMAN: Did the firm receive a
11 legal opinion about the negative consent approach?

12 THE WITNESS: I don't know.

13 MR. NEWMAN: You understand the
14 question?

15 THE WITNESS: I presume you mean a
16 written opinion from counsel?

17 MR. NEWMAN: Right.

18 THE WITNESS: My answer is I don't
19 know. And my suggestion would be to call
20 Holtermann, Carr, Mullen and ask them that question.

21 MR. NEWMAN: Holtermann was not
22 representing the firm? He was the principal of the
23 issuer. He was not counsel to McGinn Smith?

24 THE WITNESS: He was not counsel to
25 McGinn Smith.

1 MR. PAULSEN: You mentioned before you
2 began to say something with regard to being --
3 what's contained on page 105, perhaps as if to say
4 it's so far back in the offering document that maybe
5 it carried less importance?

6 THE WITNESS: Not at all. What I
7 meant to infer was that if this is on 105, that
8 would suggest to me there are 104 pages preceding
9 this. In 104 pages I would further argue that there
10 was very complete, very elaborate disclosure of risk
11 factors, of the nature of the business, of the plan
12 for the business, of the principals involved in the
13 entity, and their background and history and their
14 business. So, this was a very thorough document.

15 MR. PAULSEN: Notwithstanding all the
16 information contained in pages 1 to 104, the firm
17 still proceeded to issue or send a negative response
18 letter contrary to what was required by the offering
19 memorandum?

20 MR. FRANCESKI: It was not contrary.
21 It was in place like this.

22 MR. PAULSEN: Read the last statement
23 beginning with, "On the basis." Can you read that?

24 THE WITNESS: "On the basis of such
25 information, each subscriber will be asked to give

1 written consent for the release of his or her funds
2 from escrow. Only those subscribers who satisfy the
3 subscriber release condition will become investors
4 in the securities."

5 MR. PAULSEN: Asked to give written
6 consent for the release.

7 So, the firm issued a negative
8 response letter. By them not responding, is that
9 implying you're receiving or is it in any way, shape
10 or form receiving written consent?

11 MR. FRANCESKI: They can't ask that.
12 They issued a supplement. That question makes no
13 sense in light of the documentation that -- put the
14 supplement in front of him and ask him. They
15 replaced this with the supplement.

16 I shouldn't be arguing. I can do that
17 another day. But that question makes no sense to
18 me.

19 MR. NEWMAN: It makes sense to us.

20 MR. FRANCESKI: I don't mean to
21 denigrate the question.

22 MR. PAULSEN: To your knowledge, when
23 was that supplement given to investors?

24 THE WITNESS: I don't know.

25 MR. NEWMAN: It's the firm's position

1 it can change the terms and conditions of the
2 offering through a supplement to an original --
3 after the money has been invested already by the
4 customers based on certain disclosures; is it the
5 firm's position it can change the conditions of an
6 offering through a supplemental disclosure document?

7 MR. FRANCESKI: After the money is
8 invested?

9 THE WITNESS: After the money is
10 invested, but not released from escrow. The money
11 had not been released from escrow when we issued
12 this supplemental document.

13 I assume, my answer to you I don't
14 know the exact date of when that supplemental
15 material was distributed. But, to the extent that
16 money is sitting in an escrow, it's not invested.

17 MR. PAULSEN: Is it your testimony you
18 can issue a supplemental to the offering document
19 without obtaining agreement from the investor as to
20 its agreeing to that change?

21 THE WITNESS: That's not what
22 happened. We did by virtue of the negative consent
23 effectively get the investors consent to proceed.

24 MR. PAULSEN: So, are you saying the
25 supplement was issued with your negative consent?

1 THE WITNESS: I haven't seen the
2 supplement. If you show me, I might be more
3 decisive in my answers.

4 I don't recall a supplement. It's not
5 something on the tip of my head. Show it to me,
6 I'll read it.

7 MR. FRANCESKI: I think the negative
8 consent clause is in the supplement. That's what
9 the supplement is all about.

10 MR. NEWMAN: Right.

11 MR. PAULSEN: So then, what I'm saying
12 is that the -- your -- the supplement was looking to
13 change the terms and the conditions of the offering.
14 And is it your testimony you were not required to
15 receive a written consent for the change of -- of
16 that term of the offering?

17 THE WITNESS: It is my testimony that
18 the supplement -- I believe the supplement discussed
19 the negative consent. We communicated that negative
20 consent, and we proceeded accordingly.

21 MR. PAULSEN: I don't know if I
22 received the answer to my question.

23 MR. FRANCESKI: That's the best the
24 witness is going to give you.

25 Q. BY MR. ROWEN: I want to get back to

1 107 Associates.

2 Since 107 Associates' creation, what
3 business has it been involved in? What has been its
4 activities?

5 A. The only asset was the investment in
6 CMS.

7 Q. Why was it created at the time?

8 A. It was created before that, as I
9 testified earlier. It was created in May 2007 to
10 make an investment in an intellectual property fund.
11 It did not make that investment.

12 Subsequently, when five months later when
13 we were looking to close this transaction, we
14 employed 107 Associates as an entity to make an
15 investment in CMS.

16 Q. Who was involved in that decision?

17 A. Myself and Mr. Smith.

18 Q. What payments has 107 Associates
19 received back from CMS to date?

20 A. CMS paid interest payments that flowed
21 through to each of the four funds that are
22 identified in Exhibit 2 under Paragraph D, as well
23 as interest to the Kaufman group.

24 Q. What payments has 107 Associates
25 received from CMS?

1 A. They received those payments from CMS
2 and subsequently made the distributions to these
3 four funds, as well as the Kaufman group.

4 Q. Did you receive any payments either
5 individually or through an entity, including McGinn
6 Smith affiliates, through CMS?

7 A. No.

8 Q. Through any other entity, including
9 McGinn Smith affiliates?

10 A. That emanated from CMS?

11 Q. Yes.

12 A. No.

13 Q. Did you receive or any McGinn Smith
14 entity receive commissions from CMS?

15 A. Yes. McGinn Smith & Company as the
16 placement agent received commissions for its role as
17 placement agent.

18 MR. ROWEN: I'd like to introduce this
19 as Exhibit 5.

20 (Subsription Agreement was received
21 and marked FINRA Exhibit 5 for identification.)

22 Q. BY MR. ROWEN: I'm handing you
23 Exhibit 5. This is a copy of the CMS Financial
24 Services Corp. subscription agreement and
25 questionnaire for 107 Associates.

1 Are you familiar with this document?

2 A. Yes.

3 Q. Are you familiar with -- you're
4 familiar with this investment?

5 A. Yes.

6 Q. What was your awareness of the amount
7 of funds that had already been raised at the time of
8 the investment?

9 A. I was completely aware of the amounts
10 of funds that was raised at the time of investment.

11 Q. How much of a factor was that in the
12 decision to make the investment for 107 Associates?

13 A. It was the driving factor.

14 MR. FRANCESKI: What was the driving
15 factor?

16 THE WITNESS: The amount of capital
17 that had been raised other than this investment.

18 Q. BY MR. ROWEN: Is it your
19 understanding without this investment, sufficient
20 funds had not yet been raised to break escrow?

21 A. Yes.

22 Q. I'm going to hand back to you
23 Exhibit 4.

24 If you could please review the first
25 paragraph of Exhibit 4, the PPM Financial Services

1 Corporation on page 107, first paragraph.

2 A. Okay.

3 Q. Did you consider whether 107
4 Associates' investment was consistent with this
5 disclosure?

6 A. I assume you're referring to the
7 paragraph which is a one-sentence paragraph which
8 reads as follows, "Purchasers of the securities may
9 be made by the placement agency and its officers and
10 directors and by the company's officers and
11 directors"; is that correct?

12 Q. Yes.

13 A. I don't see where these are mutually
14 exclusive events.

15 Q. Did you feel this was a sufficient
16 disclosure to have an affiliated entity make the
17 investment that enabled an escrow to be broken and
18 made the sale go through?

19 A. First of all, I'm not familiar with
20 any prohibition by affiliates making investments.
21 We're advised by counsel there is no prohibition
22 about affiliates making investments to get over that
23 bar.

24 If, however, that's not the case, then the
25 answer to your question is yes. I am comfortable

1 with that sentence as it is. It's consistent with
2 what we did in 107 Associates.

3 MR. ROWEN: At this time we'll take
4 break.

5 (A short recess was taken.)

6 MR. ROWEN: Back on the record at
7 approximately 4:11.

8 Q. BY MR. ROWEN: Who is Joseph Bruno?

9 A. Joseph L. Bruno is the former Senate
10 majority leader in the State of New York, a former
11 consultant to McGinn Smith & Company. And a friend
12 of Mr. McGinn and Mr. Smith.

13 Q. Can you expand on the consultant
14 relationship you had with Mr. Bruno?

15 A. I'll start with a little background in
16 terms of New York State legislature.

17 The New York State legislature is a
18 part-time legislature. It pays its representatives
19 accordingly.

20 78 percent of the people who are elected
21 officials in the legislators are attorneys and run
22 private practices to supplement their income.

23 Mr. Bruno is not an attorney. He ran a
24 telephone Internet company that was a public company
25 for a number of years. That was subsequently sold.

1 And Mr. Bruno did not have a secondary source of
2 income.

3 I knew that. I knew that he had made
4 certain investments in real estate in the early '90s
5 that were putting him in a position of economic
6 stress. And I approached Bruno to see if he would
7 be interested in forming some sort of alliance with
8 McGinn Smith & Company.

9 Q. When did you approach Mr. Bruno?

10 A. I think it was 1992.

11 Q. Expand on communications at the time
12 in 1992 when you approached Mr. Bruno, the
13 relationship that was presented?

14 A. I basically said to Senator Bruno, we
15 are interested in procuring investment advisory
16 accounts wherein there would be a third-party
17 investment advisor who would run large accounts.

18 And McGinn Smith & Company would be
19 compensated by bringing the account to the IA by way
20 of commission dollars.

21 You, Joe Bruno, will act as a guy that
22 calls and sets up appointments. I'll go and pitch
23 the investment advisor with the investment advisor.
24 We'll pay you a salary for doing that. And we'll
25 all get rich together.

b6-78add 4064 4000 0405 -15740004-44

1 We didn't all get rich together. We
2 carried the relationship for a period of perhaps 12
3 years. It did not make money for the firm. And we
4 terminated the relationship in either 2004 or 2005.

5 Q. You paid Mr. Bruno a salary?

6 A. Yes.

7 Q. To him individually?

8 A. No. Basically to his consulting
9 company, the name of which escapes me at the moment.

10 Q. How was that relationship set up? How
11 was that -- was there a contract between --

12 A. Handshake.

13 Q. What was the agreement?

14 A. The agreement called for us to pay him
15 a certain sum of moneys, and he would use his best
16 efforts to get us in front of accounts that would
17 generate commission dollars through an investment
18 advisor.

19 Q. Who else was involved in setting up
20 this relationship, this agreement?

21 A. Certainly David Smith was aware of it.
22 Bruno also indicated to us that he ran it past his
23 ethics people, and that they signed off on it.

24 It was no secret. It was no secret in a
25 small town like Albany that Bruno had become

1 affiliated in some form or fashion with McGinn Smith
2 & Company.

3 Q. You spoke of an ethics committee
4 signing off on this. Do you have documentation of
5 that?

6 A. I don't, no.

7 MR. NEWMAN: Was there a letter
8 between the firm and Mr. Bruno outlining the
9 agreement or discussing the agreement?

10 THE WITNESS: I doubt it. You know, I
11 mean I doubt it. I had known Joe for a long time.
12 He knew me and we trusted one another. It was a
13 handshake deal. I doubt very much there was a
14 letter.

15 MR. NEWMAN: Have you seen the
16 indictment?

17 THE WITNESS: I have.

18 MR. NEWMAN: There is a reference in
19 the indictment to a letter between McGinn Smith and
20 Mr. Bruno.

21 Were you familiar with that?

22 THE WITNESS: I wasn't. I'm not
23 familiar with the letter, if it exists. I'm not
24 familiar with it.

25 Q. BY MR. ROWEN: How were payments to

1 Mr. Bruno or his company reflected in McGinn Smith's
2 books and records?

3 A. As payments for consulting services.
4 We've provided all of that information, I think,
5 probably to you as well as the FBI and the US
6 attorney. It's all in what we provided, copies of
7 cancelled checks, our ledger from 2004 back to 1993.
8 Or as far back as we kept records.

9 Q. Over the course of the arrangement,
10 what services did Mr. Bruno or his company provide
11 to McGinn Smith?

12 A. Well, basically, he did introduce us
13 and investment advisors to a couple accounts that
14 did generate some business. They were
15 non-governmental accounts.

16 We made it very clear with Joe that we did
17 not want to pitch any government, state government
18 agencies, any pension funds, any common funds,
19 comptroller-related funds of the State of New York.
20 We wanted to be totally outside of that and we were.

21 So, there were a couple Taft Hartley
22 accounts that we opened.

23 Q. How many accounts?

24 A. I think two or three.

25 Q. Revenues McGinn Smith received

1 regarding these accounts?

2 A. I think it was over of the course of
3 12 years, it was something in the order of maybe 5
4 or \$600,000.

5 Q. What was the nature of these revenues?

6 A. Commissions.

7 Q. Commissions on --

8 A. On equity trades.

9 Q. Equity trades of these accounts?

10 A. Right.

11 Q. Can you describe to me how these
12 accounts were set up with McGinn Smith?

13 A. Sure. The accounts were run by a firm
14 in Connecticut called Wright Investor Services.

15 I think early on we at the time cleared
16 through Bear Sterns & Company. And I think maybe
17 one of the accounts was domiciled at Bear Sterns.

18 Subsequently they were collapsed in the
19 Wright Investors Services common portfolio. And we
20 would get business directed to us by the Wright
21 Investor Services traders. We would execute through
22 Bear Sterns, and we would be paid commissions at
23 whatever rate they dictated, which was typically
24 four, five, six cents a share.

25 Q. Were these accounts of Wright or

h0-70add 0004 4000 0400 00740004-44

1 accounts of the entities that were referred by
2 Bruno?

3 A. The beneficial owners of the accounts
4 were the Taft Hartley pension funds, the hospitality
5 workers or Teamsters.

6 Wright was the investment manager. Wright
7 made the investment decisions, and the sells and
8 limits orders and market orders and dictated what
9 commission we could charge.

10 Our back office people got the call from
11 the Wright trader, processed the trade, and went
12 forward.

13 MR. NEWMAN: What ongoing discussions
14 did you have with Mr. Bruno, if any, once this
15 arrangement was setup in terms of the arrangement
16 itself?

17 Was he asking you or your firm how
18 much business was coming in? How is it going, or
19 anything like that?

20 THE WITNESS: It's a good question.
21 Not as much as we would have liked.

22 In fact, there came a point in time
23 when the business tailed off quite considerably.
24 And we implored Bruno to go back to Wright and say
25 you guys are not living up to your end of the

1 bargain. You have to do more business.

2 He did that to some extent. I
3 subsequently learned, and I didn't learn this until
4 the summer of 2008, that he had concurrently become
5 an employee, either him personally or his consulting
6 firm, of Wright.

7 So, in my view, it was a little double
8 dipping going on.

9 I wasn't really happy with that, but
10 by this time it was water over the dam. We had
11 terminated the relationship. And I didn't make a
12 big deal about it.

13 MR. NEWMAN: How did you learn about
14 it?

15 THE WITNESS: He resigned publicly.
16 It was a press conference. At this point -- there
17 are three guys that run the State of New York, the
18 governor, Senate majority leader and the speaker of
19 the assembly. Anything they do is news worthy. And
20 there is cameras and microphones. I saw it on TV.

21 MR. NEWMAN: It was -- there was some
22 ongoing discussions about the amount of business
23 that was flowing from him --

24 THE WITNESS: Not in 2008, but prior
25 to that. In fact, if you look at the sequence of

1 payments to Bruno, they started off at maybe \$3,000
2 a month, \$2,000, \$3,000. They went to 5 or 6,000.
3 Then we cut him back to I think 3,000 again, because
4 we weren't getting revenues, and we kept being
5 promised by Wright that the revenues would come.
6 But you can't pay your secretary with promises.

7 At one point we said enough of this.
8 We can't deal with it anymore.

9 MR. NEWMAN: It started about three,
10 went to five, then three?

11 THE WITNESS: Yes. Three or six or
12 something like that.

13 MR. NEWMAN: Why was it bumped up?

14 THE WITNESS: It was three before he
15 was majority leader. It was three when he was a
16 rank and file Senator, one out of 73.

17 I suspect it's like Tiger Woods after
18 he bought the first Master's, Nike paid him a lot of
19 money.

20 MR. NEWMAN: Did he come to you and
21 say, look, I'm in a different position now.
22 Increase the payments? Or, did you do that on your
23 own? Or, was there a discussion with the two of
24 you?

25 THE WITNESS: I'm sure there was a

1 discussion. I wasn't -- Joe is not a bashful guy.
2 1994, when he became majority leader, we had a
3 discussion. And I wasn't really anxious to pay him
4 an awful lot of more money. He was anxious to make
5 more.

6 He made the case that his notoriety
7 had increased, and so on and so forth. That's
8 pretty hard to rebut. So, we agreed to pay him
9 \$6,000 a month.

10 MR. PAULSEN: Did the payments also
11 fluctuated based on the activity and/or commissions
12 generated through the business at Wright?

13 THE WITNESS: Not at all.

14 MR. PAULSEN: What was the reason to
15 decline from six back to three?

16 THE WITNESS: We looked at it as a
17 profit center. And we looked at how much we had
18 paid to a guy who helped us get those accounts. We
19 looked at how much we had earned from those
20 accounts. And the result had parentheses around it.
21 And we're not going to continue to pay this kind of
22 salary while we have parentheses.

23 There was no fluctuation at all. In
24 fact, if you look at the sequence of payments, they
25 are consistent as you ever find.

1 MR. PAULSEN: As you stated earlier,
2 they did change -- they went from three to five to
3 six back to three?

4 THE WITNESS: That's correct.

5 MR. NEWMAN: What you're saying, it
6 didn't change on a monthly or weekly basis?

7 THE WITNESS: Or even a yearly basis.
8 It changed over time, because we had an opportunity
9 to look at the profitability of this business. And
10 we said this is not as profitable as we like. We
11 are going to cut costs. We're not going to pay this
12 guy as much to be the liaison or talk to people or
13 whatever other reason.

14 And there were other functions, too.
15 Joe was supposed to assist in our investment banking
16 activities for small and mid-sized companies. Well,
17 when he became the senate majority leader, A, we
18 thought that business practice would improve and
19 increase. It didn't. And, B, there was no signs of
20 that turning around.

21 When we dropped him down from six to
22 three, it was because we had not made money on the
23 brokerage side. And it was unlikely that we were
24 going to ever get anything on the investment banking
25 side as a result of companies that he may have known

b6-7b-dd-004-0008-0008-00710071e11

1 and introduced us to.

2 I'll tell you one more thing while I'm
3 at it. Joe Bruno, in defense of Joe Bruno, unlike
4 the Jesuit priest I studied under, never took a vow
5 of poverty. He had every absolute right to make
6 money and to make money outside the state
7 legislature. That's my -- the end of my soap box.

8 Q. BY MR. ROWEN: The times when the fees
9 fluctuated, what communications were had with
10 Mr. Bruno regarding these fluctuations?

11 A. They went up and they then came down,
12 but over a period of probably ten years. I would
13 say that over that period of time, steady state is
14 much more accurate description of the payments.

15 The communications with Bruno very simple
16 and direct. Joe, this isn't working. We have to
17 cut expenses. We're ratcheting this down.

18 MR. NEWMAN: What was the overall net
19 as a result of this arrangement in terms of its
20 profitability?

21 THE WITNESS: I think we ended up
22 losing over a dozen years maybe \$150,000.

23 MR. NEWMAN: According to the
24 indictment, the firm paid him over \$600,000.
25 Commission would have been 450, rough estimate.

1 THE WITNESS: Yes.

2 MR. NEWMAN: Did he bring any
3 investment banking business into the firm?

4 THE WITNESS: No.

5 Q. BY MR. ROWEN: What was your
6 involvement with the time the relationship ended?
7 Is that during the time you were not actively with
8 the firm?

9 A. Yes.

10 Q. What was your involvement in the
11 decision to end the relationship?

12 A. Well, again, I was the chairman of the
13 board of the firm. I was the guy who brought Bruno
14 in to begin with. I stayed close to Bruno over that
15 period of time.

16 He's a friend. He's a dear friend. And I
17 was supportive of him politically. And so it was
18 not unusual for me to be the guy who had to swing
19 the axe. And I had no problem with that.

20 MR. NEWMAN: When is the last time you
21 spoke to him, Mr. Bruno?

22 THE WITNESS: On his birthday, which
23 was maybe three weeks ago, turned 80.

24 MR. NEWMAN: Have you spoken to his
25 criminal defense attorney?

h0e70edd-00d1-4008-8408-0b740024-44

1 THE WITNESS: I've spoken to one of
2 them. He has two. He has a guy named Bill Dryer,
3 an attorney out of Albany and an attorney out of
4 Washington, Lowell. Lowell is a heavy hitter guy in
5 a lot of these cases. I've not spoken to Lowell. I
6 have spoken to Dryer.

7 MR. NEWMAN: In terms of the inception
8 of this arrangement, do you recall having a meeting
9 in a restaurant with Mr. Bruno and the advisory
10 firm?

11 THE WITNESS: Well, I do recall having
12 a meeting at the place called the University Club
13 with Bruno and a partner of Bruno's in the real
14 estate business, and a partner of mine in yet
15 another real estate business and some other things
16 and a guy whose first born is my godson, so I know
17 these people very well.

18 We had a meeting which predated our --
19 my arrangement with Joe Bruno. And I wanted to have
20 another set of ears there. That's why I invited
21 this other guy, whose name is Jim Featherstonehall
22 (phonetic).

23 MR. NEWMAN: Why did you want to have
24 another set of ears?

25 THE WITNESS: It's always helpful to

1 have another set of ears when you're talking about
2 business matters. And sometimes people's memories
3 aren't consistent a year down the road.

4 MR. NEWMAN: I'll take a minute to see
5 if there is anything else.

6 See if there is anything else you want
7 to add at the end.

8 MR. ROWEN: Go off the record at 4:31.
9 (A short recess was taken.)

10 MR. ROWEN: Back on the record at
11 4:41.

12 At this point we're finished with our
13 questioning. You can add or clarify any points you
14 made today?

15 THE WITNESS: I would like to withdraw
16 the word salary as it related to any of the
17 compensation paid to Senator Bruno's consulting
18 company. Consulting fees, and recorded as such in
19 our general ledger.

20 MR. FRANCESKI: Was he ever an
21 employee of McGinn Smith?

22 THE WITNESS: No.

23 MR. NEWMAN: Was he ever registered
24 with McGinn Smith?

25 THE WITNESS: No.

hQn7Qn4dL-0h4J40R-040R-0h740R24-44

1 MR. NEWMAN: Was he ever sent a W-2 by
2 McGinn Smith?

3 THE WITNESS: No.

4 MR. FRANCESKI: That's all.

5 MR. ROWEN: FINRA reserves the right
6 to recall you, should we need additional
7 information.

8 Please do not talk about this
9 testimony with anyone except for counsel.

10 THE WITNESS: Very good.

11 MR. ROWEN: Off the record at 4:42.

12 (Ending time: 4:42 p.m.)
13
14
15
16
17
18
19
20
21
22
23
24
25

b9c79cdd-c9b4-4098-9d96-abf710821e11

REPORTER'S CERTIFICATE

I, JILL A. PRAML-BUSSANICH, CSR No. XI01807, Certified Shorthand Reporter, certify; That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me; That the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

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

I declare under penalty of perjury under the laws of New Jersey that the foregoing is true and correct.

Dated this 11th day of May, 2009.

JILL A. PRAML-BUSSANICH,
CSR NO. XI01807