
PB EXHIBIT
24
12-8-11
Field Compliant
PENGAD 800-631-6989

JUDICIAL MERIT SELECTION COMMISSION)
)

In the Matter of: EDWARD MILLER)
Candidate for)
CIRUIT COURT JUDGE) **WITNESS AFFIDAVIT**
) **FORM**
)

I will appear to testify concerning the qualifications of the above-named candidate and will produce all documents in my possession, if any, which will further develop or corroborate my testimony. I will appear by video conference depending upon COVID and also if Judge Miller retaliates and makes my entry into South Carolina a threat to my life or liberty, as he has done to other complainant(s) in or about 2014. Edward Miller holds At Large Seat #4 in the 13th Judicial District and term expires 6/30/2021.

I understand that this written statement and all supporting documentation, if any, must be completed and returned to the Judicial Merit Selection Commission by the deadline for complaints in order for the Commission to hear my testimony, and that the deadline for complaints is **12:00 Noon, Monday, November 2, 2020.** I understand I must be available to testify at the Public Hearing.

In regard to my intended testimony, I will offer information as to the following:

(1) Set forth your full name, age, address, and both home and work telephone numbers.

Arthur M. Field, J.D., Ph.D., age 67, 5489 Atlantic Vw, St. Augustine, FL 32080
864 419 6609 only phone

(2) Set forth the names, addresses, and telephone numbers (if known) of other persons who have knowledge of the facts concerning your testimony.

Kathryn Taillon, 5489 Atlantic Vw, St. Augustine, FL 32080 864 419 2516
Allyson Field, 3100 S.E. 168th Ave, #24, Vancouver, WA 98683 843-259-7084
Davyd Field, 7 Shadetree Court, Greer, SC 29651
Hon. Micajah Caskey, 146 State St., W. Columbia, SC 803-724-3624
Hon. Bruce Bannister, 401 Pettigru St., Greenville, SC 29601 864-298-0084
Bradford Martin, Esq., 201 W. McBee Ave., Greenville, SC 29601 864-552-9990
Gwen Martin, Esq., 201 W. McBee Ave., Greenville, SC 29601 864-552-9990
Jeff Dunleavy, Esq., 918 S. Pleasantburg Dr., Greenville, SC 864-271-7410
Thomas Stephenson, Esq., 207 Whitsett St., Greenville, SC 29601 864-370-9400
Henry Van Dyke, 501 Thornblade Blvd., Greer, SC 29650
Richard Lackey, 1 Pristine Drive, Greer, SC 29650
Evangelos Orfanedes, 697 Battery Edge Drive, Summerville, SC
Luke Boake, Esq., 401 Pettigru, Greenville 8642980084
Laura Teer, Esq., 207 W. McBee Ave, Greenville 29601
864-552-9990

PATRICK FOWLER, COLUMBIA, SC 803-281-0742
David Kimbrell, 2 Kilgore St., Greenville, SC 29611
Kirsten White, address unknown, Mauldin, SC 864 420 7555
Charles Grose, Esq., 404 Main St., Greenwood, SC 29646
Court Reporter Caroline Hiskell
Court Reporter Susan Hudgins

(3) State the nature of your testimony regarding the qualifications of the above-named judicial candidate, including:

(a) specific facts relating to the candidate's character, competency, or ethics, including any and all allegations of wrongdoing or misconduct on the part of the candidate;

See attached Complaint and Exhibits, incorporated here as if fully set forth
Including Excerpts from Official Transcripts and Court Clerk Records

(b) specific dates, places, and times at which or during which such allegations took place;

See attached Complaint and Exhibits, incorporated here as if fully set forth

(c) names of any persons present during such alleged actions or possessing evidence of such alleged actions; and

See attached Complaint and Exhibits and above witness list
In addition thereto: Rodney Pillsbury, Esq; Jerry Saad CPA; Stanley Case, Esq.
And numerous others identity unknown

(d) how this information relates to the qualifications of the judicial candidate.

Numerous repeated violations of the Canons of Judicial Conduct
Shocking to the public, members of the bar, legislators and others

(4) Set forth a list of and provide a copy of any and all documents to be produced at the hearing which relate to your testimony regarding the qualifications of the judicial candidate.

See Exhibits attached to the Complaint
Exhibits A to H are excerpts from Official Transcripts, Court Records And Record on Appeal
Exhibit D includes letters to or from Court Reporters
All are true copies

Other documents may be produced if relevant

(5) State any other facts you feel are pertinent to the screening of this judicial candidate.

Judge Miller's comments, statements, actions, demeanor were vastly beyond the Limits set by the Judicial Canons and shocked the attorneys and public.
At all times his actions were motivated by revenge for filing a grievance against him in 2012. He raised such matter sua sponte and made it clear he sought vengeance for the grievance. His conduct demonstrated extreme bias, lack of respect for witnesses, the facts, the evidence and the law.
He disclosed the existence of a secret state grand jury investigation in violation of law.
See attached Complaint and Exhibits incorporated here.

I understand that the information I have provided herein is confidential and is not to be disclosed to anyone except the Judicial Merit Selection Commission, the candidate, and counsel.

WAIVER

I further understand that my testimony before the Judicial Merit Selection Commission may require the disclosure of information that would otherwise be protected by the attorney-client privilege. Therefore, in order that my complaint may be fully investigated by the Commission,

I hereby waive any right that I may have to raise the attorney-client privilege as that privilege may relate to the subject of my complaint, but reserve all Fifth Amendment rights and any right against self-incrimination in the U.S. or South Carolina constitutions. I further understand that by waiving the attorney-client privilege for this matter, I am authorizing the Commission to question other parties, including my attorney, concerning the facts and issues of my case.

Signature

State of Florida
County of St. Johns

St. Augustine, FL

Sworn to me this 17th day of June, 2020

L.S.

Notary Public of Florida

Notary Public State of Florida
Pamela Lawson
My Commission GG 365958
Expires 10/04/2023

My commission expires: 10/4/2023

OPPOSITION TO RE-ELECTION OF EDWARD MILLER TO ANY JUDICIAL POST

COMPLAINT OF JUDICIAL MISCONDUCT IN OPPOSITION TO THE RE-ELECTION OR RE-APPOINTMENT OF EDWARD MILLER TO ANY JUDICIAL POST WITHIN SOUTH CAROLINA INCLUDING BUT NOT LIMITED TO THE 13TH JUDICIAL CIRCUIT OR ANY AT LARGE SEAT, OR AS A SENIOR JUDGE

By: Arthur Field c/o 5489 Atlantic Vw, St. Augustine, FL (referred to as "Field" below)

JUNE 13, 2020

To the South Carolina House Judiciary Committee and any Sub-Committee Overseeing Judicial Appointments and Judicial Conduct:

Please accept the following significant complaint concerning the conduct and extreme bias and repeated and ongoing violations of the Canons by Edward Miller as observed by me and numerous people including attorneys, House members, and members of the public in relation to 2008-cp-23-3665 and 2015-cp-23-01263 and other related matters. These issues are so egregious they must be acted upon immediately. Judge Miller has exhibited this behavior for 8 years. Other similar complaints have been lodged with this Committee against Edward Miller. In 35+ years of practicing law in Connecticut and New Jersey, I never witnessed any member of the judiciary as incompetent or biased as Edward Miller. He regularly exhibits a total disregard for the facts, evidence and law. In my opinion, he is unfit to be a judge and any and all future appointment should be denied, including acting as a Senior Judge. I fear his retaliation for filing this objection. The following statements are true to the best of my knowledge and belief and made in good faith.

BACKGROUND:

- No trial was ever conducted in 2008-cp-23-3665 or in 2015-cp-23-01263. Judge Miller presided for only 32 days in 3665 prior to ratification of the Global Settlement Agreement mediated by Justice Stilwell. Judges Graveley and Stilwell presided over 1263.
- No hearing on the merits ever occurred in such matters.
- No evidence regarding Field's 1999-2008 'misconduct' has ever been tendered.
- Field was dismissed from #3665 in August, 2009 and was never made a party to such action again. Nevertheless, numerous punitive hearings have been conducted against Field by Judge Miller in the context of such case. In December, 2017, Field was dismissed with prejudice from such matter, but Judge Miller scheduled a punitive hearing against Field for February 28, 2020 even though Field is not a party to such matter.
- Field's indictment was not public until May, 2012 and contained no allegation of improper use of funds, theft or embezzlement.

- 3 different prominent members of the community submitted Affidavits attesting to Judge Miller's lack of impartiality and extreme, obvious bias.[1]
- Judge Miller has exhibited extreme disdain at all times for Field and his counsel amply demonstrated in the record and violated numerous Canons set forth below.
- Judge Miller stated during hearing in March, 2017 that "Field will be writing that book from prison." This statement was deleted from the Official Transcript. In September 5, 2017 hearing, Judge Miller did not deny having made the statement but castigated Field for attempting to have such statement transcribed. Miller claimed statements he made on the bench were covered by 'judicial privilege'. (No such privilege exists for in-court comments.)
- In December, 2017, Judge Miller threatened he would find Field in contempt for any testimony about to be given by Field, thereby further demonstrating gross bias.
- In December, 2017---January, 2018, Judge Miller deliberately blocked Field's application to transfer probation to Florida as of right advising DPPPS he intended to hold Field in criminal contempt even prior to any hearing or evidence being submitted.
- In July, 2018, Judge Miller held Field in 'criminal contempt' based on a 'Rule to Show Cause'. No such Rule existed and the evidence was inadmissible and clearly failed to reach the standard of 'beyond a reasonable doubt'. Since the contempt proceeding was 'initiated' by Judge Miller based on testimony in November, 2017, it was unconstitutional for Judge Miller to sit as the trier of fact and sentencing judge. All objections by attorney Caskey were rejected by Miller.
- Judge Miller found Field in criminal contempt over a $17,000 check being held by Allyson Field's attorney, House Majority leader Bruce Bannister, who confirmed the check had been in his possession the entire time, and there was no basis for any contempt action.
- Judge Miller fined Field $1 Million or 6 months in prison for stating 'Field didn't know how an insurance policy was canceled but Allyson Field reinstated such policy immediately upon receiving notice'. The policy insured Allyson Field and was not material to any matter before the court. Judge Miller informed House Majority Leader Bannister

[1] Judicial Canons are found in S.C.R.Civ.P. 501 with *Commentary*. Exhibit references are to Certified Transcripts.

on July 2, 2018 that he gave Field 6 months because that was the longest sentence he could impose without a jury, since he was aware no jury would convict Field based on the meager evidence of contempt.

- Judge Miller imprisoned Field despite SCAR Rule 246 and an immediate appeal being filed. Then, Judge Miller denied bail claiming Field was a threat and menace to society based on Field's hospitalization in September, 2016—almost 2 full years prior to the bail hearing. Judge Miller was fully aware of the pending appeal and disregarded it.
- Judge Miller's extreme bias consistently causes him to fail to act in accord with the Canons of Judicial Conduct. He consistently expresses, erroneous or distorted conceptions of facts and law grossly influencing all his decisions in this matter since 2011 (examples depicted below). Independent, informed observers attested to such acts and the lack of impartiality in 2013 and 2017--20 and believe Judge Miller is highly biased and undermines the public confidence in the judiciary.

The great weight of evidence shows Judge Miller's extreme bias. There are numerous instances of Judge Miller's animus toward Arthur Field, Kathryn Taillon, Allyson Field and such person's individual attorneys; and Judge Miller's obvious favoritism toward CIF, its counsel and Class; in violation of S.C.R.Civ.P. 501 (also 28 U.S.C. §455), and his misrepresentation of facts or law, including, but not limited to:

A. CANON 3(B)(2) AND SIXTH AMENDMENT violations:

a. Regularly permitting persons in the gallery to offer unsworn testimony without subjecting such persons to confrontation or cross-examination (e.g. examination EXH. A, p. 47, ll. 2-5; p.57-67; EXH. C, p. 99, ll.4-23; EXH. D, pp.17—23; pp. 60-68);

b. Conducting an *ex parte* 'special meeting' on December 14, 2011 in Field's (*pro se*) absence and calling Field's letter to the court as "self-serving and not worth going through" thereby denigrating Field (EXH. A, p. 46, ll. 21—25) even though such 'special meeting' was not a hearing on a motion or other matter and the Receiver had asked Field not to attend (EXH. G, p.97, fn. 2);

c. Introducing and permitting Asst. Attorney General Creighton Waters—a non-party--to speak at such Dec. 14, 2011, 'special meeting' from the Gallery and calling Waters 'my good friend' and "an outstanding law enforcement member" and informing the

public of the existence of a secret State Grand Jury investigation into Field in direct violation of S.C.C.A. §14-7-1720, indicating numerous *ex parte* communications between Judge Miller and A.A.G. Creighton Waters and implying Field was guilty prior to any indictment (EXH. A, pp.3-4; p. 4, ll. 16-19; p.6, ll. 11-14; pp 7, 11. 12—p.8, ll.14; p. 13, ll. 10-15; p. 29, ll. 23-24; p. 54, ll. 16-25) and stating to the gallery: "There is not a pot of gold out there and that's why—I shouldn't say this but when this amount of money is gone, authorities look into it." (EXH. A, p. 68, ll.22—24) and "Again, Mr. Waters is here if you all want to speak to him…" (EXH. A., p. 69, ll. 24-25) and permitting Creighton Waters to acknowledge the secret State Grand Jury investigation (EXH.A, p. 7, ll. 15—p. 8, ll.15; EXH.G, p.99, par.f.; p. 105, par. u) and then Judge Miller confirming that "And the other thing I would point out to you is the fact that Mr. Waters is here and y'all just have to make a reasonable inference about that." (EXH. A, p.8, ll.25—p.9, ll. 2; EXH.G, p. 100, ll. 3-5);

d. Repeatedly implying Field would go to jail even before any indictment (e.g. EXH. A, p. 58, ll. 1-3; p. 61, ll. 23-25) and telling note holders only to rely upon Saad and Creighton Waters "Again, let me remind you, don't waste any time speaking with your tax advisor." (EXH. A, p. 61, ll. 6-7);

e. Holding a hearing in Field's (*pro se*) absence on September 29, 2016 on a Rule to Show Cause--despite certain knowledge from Taillon's attorney Stephenson and the Carolina Center for Behavioral Health Hospital that Field was involuntarily hospitalized (EXH. C, p.7, ll. 23—p.8, ll. 8; p. 66, ll. 2—p.67, ll.22) and stating "I don't know that I can believe that Mr. Field was involuntarily committed." (EXH. C, p.14, ll. 6-7; p. 11, ll.4--10); then, proceeding with the Show Cause hearing, admitting testimony and 29 Exhibits and reviewing same without affording a *pro se* party the right to object to such admission of testimony and/or evidence, in violation of Field's Sixth Amendment rights, the Rules of Evidence, and Canons 3(B)(2), (5) and/or (7) (EXH. C, p.13, ll. 20—24; p.14, ll.10-11; p.95, ll.20-21 re 29 exhibits; p. 98, ll.8—11 admitting 29 exhibits into evidence) and taking testimony from Taillon, Field's spouse, in violation of the spousal privilege and without cautioning her against self-incrimination (EXH. C, pp.18—25, p. 57);

f. **Stating in March, 2017, at CIF's Motion to Ratify the GSA that if Field did not settle, Judge Miller already knew how he was going to rule against Field on a pending contempt motion, thereby threatening Field with criminal sanctions if Field did not achieve settlement** (EXH. D, p. 69) after having earlier commented he would put Field in prison which he had deleted from the Official Transcript and after again denying a Motion to Recuse (EXH. D, p. 31), see below, Sec. E, subpar. (b);

g. Making Field a 'party' to previously dismissed C.A. 2008-cp-23-3665 based upon a 'Rule to Show Cause' without a new Summons and Complaint when such is expressly forbidden by S.C.R.Civ.P. 64, *et al.*, and continuing such actions with 2 or more Rules to Show Cause with no pending jurisdiction over Arthur Field or other persons made subject to 'Motions to Comply' with a tentative, but unratified Settlement;

h. On November 27, 2017, soliciting and entertaining the July 2017 Motion to Comply immediately following ratification of the Global Settlement Agreement, dismissing Field and all others with prejudice and releasing all claims by CIF or the Class against Field, Taillon, Allyson Field, which would have included such 'Motion to Comply' and again denying a Motion to Recuse (EXH. F, pp.6-7, etc.);

i. Causing Field's imprisonment on a 'criminal contempt' based upon the assertion by Field that he was unaware why State Farm insurance had cancelled a policy, which was timely reinstated with no harm to any party, which matter involved a check issued by State Farm for $17,000 being held by Allyson Field's attorney Bannister, as attested to by Bannister. The sole 'evidence' of any wrongdoing was the statement by State Farm witness Gina Tate that 'she understood from a third party that Field had cancelled the insurance'. Such statement was contradicted by the records of State Farm corporate office, which had *sua sponte* terminated the third party coverage and by Field's timely email to State Farm attempting to cure its accidental termination;

j. Interfering with Field's transfer of probation by informing DPPPS in December, 2017—January, 2018, that he intended to hold Field in criminal contempt prior to any hearing being held, or any formal charges being levied and then prosecuting such contempt himself, and ruling on it;

k. Causing Field's immediate incarceration on July 5, 2018 despite being aware an appeal had been filed of such sentence and S.C.A.R. 246 provides for stay of any

enforcement of the sentence if appeal has been filed and also to avoid mootness pending the resolution of such appeal, *Turner v. Rogers*, 564 U.S. 431(2011) citing *Berry v. Ianuario*, 314 S.E.2d 308(1983), and *In re Decker*, 471 S.E.2d 459,461(1995) and *In re Bart*, 82 S.Ct. 675(1962)(civil contempt stayed to avoid mootness which would result from expiration of sentence pending appeal) and *Becker v. U.S.*, 451 U.S. 1306,1312(1982)(same as to criminal contempt).

l. Refusing to conduct an immediate bail hearing and then denying bail claiming Field was a menace and threat to society without any evidence of any actual harm or intent to harm any member of the public as a result of the $17,000 check.

B. CANON 3(B)(4) violations:

a) Consistently acting in a combative and aggressive attitude towards Arthur Field and his attorneys (*Transcripts* September, 2013, January, 2017, March 17, 2017) and repeatedly denigrating Field's veracity prior to admission of evidence (e.g. EXH.F, p. 6, ll. 15-16);

b) Demeaning Field's attorney Bradford Martin and screaming at him to "sit down" when Martin objected to unsworn persons testifying from the gallery (September, 2013);

c) Castigating Field's attorney Rep. Micajah Caskey and Allyson Field's attorney House Majority Leader Bruce Bannister in email in January, 2018, for exercising their Legislative privilege in accord with the Order of the Supreme Court and indicating clear bias against such attorneys in email sent to them;

d) Making conclusions about the facts and merits without having ever conducted an evidentiary hearing. E.g. "And if I'm not mistaken, wasn't it presented that these were collateral loans? … So it was floated out there that these were collateral loans and in fact they were not." (EXH. A, ll.20—25) which statements were totally incorrect—all loans were collateralized per the Uniform Commercial Code and based upon advice and opinion of multiple counsel in South Carolina, New Jersey, Connecticut, etc.;

e) On September 17, 2013, calling Field a criminal and accusing him of stealing $40 Million, [see *Affidavit of Lackey*, (EXH. G, p. 941, par.5) and *Affidavit of Van Dyke*, (EXH.G.,p. 943, par. 4), **Judge Miller stating "Well, Mr. Field, we know why you are here. You are here because you stole over $40 million and pled guilty to it."** (EXH. G, p.942, *Affidavit of Orfanedes*, par. 4). Judge Miller denied admission of these

Affidavits of leading members of the public and had the Court Reporter delete the first 5 pages of the Transcript of the 9/17/13 hearing effectively expunging the comments and then denied a motion to secure the recording tape of the proceeding. Field never 'pled guilty to stealing $40 Million';

f) Making sarcastic comments concerning Field, his wife and daughter on a regular basis (e.g., EXH. E, p.15, ll.4--9); and "Speaker in gallery: 'And I think the family is equally manipulative." **"Judge Miller: I agree with you completely—I've been telling Mr. Saad all these years as we went through this, he [Field] will be held accountable in this life or the next—they [Receiver] don't have the evil genius that he [Field] has**..." (EXH. C, p. 100, ll.4--17);

g) Aggressively and impermissibly berating and/or badgering witnesses Kirsten White and Kathryn Taillon (defendants in 2015-cp-23-1263 but not parties to #3665) on a regular basis (EXH. C, p.68, l.25—p.27, l.2; p.93, l.7—p.95, l.4; EXH. E, p. 26, ll.10--p.27, ll.25);

h) Denigrating the medical reports filed by the Carolina Center for Behavior and its physicians, and that of John Milas, M.D. concerning Field's ailments, without any evidence to contradict such expert reports. (EXH. C, p.14, ll.3-10);

i) Preventing independent persons and Field's counsel from supplementing missing portions of Transcript when such portions demonstrated extreme bias, as attested to by those independent persons in Affidavits, which Judge Miller refused to admit into evidence. (EXH. G, pp.96-113; p. 517; pp. 941—943);

C. CANON 3(B)(5), CANON 3(B)(7) and CIVIL RIGHTS violations:

j) Judge Miller stating, "You (the gallery) made investments with the intent to rely on those investments and they're not there. They've been inappropriately removed from your possession. I just want you to know everyone involved in this case is aware of that." (EXH. A, p.3, ll.8--12) and "There is no pot of gold out there. All the 38 million dollars...we don't know where it all went..." (EXH. A, p.29, ll. 18—22) despite the lack of any evidence of misuse, theft, or embezzlement;

k) Stating, "I will just tell you some of the most complex dodging and weaving shell game type stuff that I've seen and I've been involved in when I was a lawyer for 25

years...this is as sophisticated a shell game as I've seen." (EXH. A, p.5, ll.3-8) and "I would just say that his shell game would have continued on without anybody knowing had the economy not gone south. That's my judgment in the matter." (EXH. A, p. 69, ll. 16—19);

l) Stating **"...In 2009...Mr. Field refused to give up his Fifth Amendment rights. If he's innocent, I don't know why he would need those..."** (EXH. A, p. 67, ll. 5—9; EXH. G, p.107). This is a clear violation of Field's civil rights. See, *SEC v. Graystone Nash, Inc.*, 25 F.3d 187,190(3rd Cir. 1994) and *Ohio v. Reiner*, 523 U.S. 17(2001);

m) Stating **"So let me get this straight, your client [Field] stole $40 Million and now he's the victim?'** (EXH. B, p.7, ll. 8-25) (Field was not indicted for theft, larceny or embezzlement). When challenged by Field's attorney Brad Martin, "I'm sorry, sir. What did you just say?" Judge Miller replied, **"I said your client stole forty million dollars and now he claims to be the victim."** Attorney Martin questioned Judge Miller, "Your Honor, are you claiming that you have knowledge that my client stole forty million dollars?" To which, Judge Miller rudely replied "Mr. Martin, you're not going to ask me questions in this proceeding. Thank you very much." Attorney Martin then suggested Judge Miller recuse himself due to his obvious bias, which Judge Miller refused to do. Judge Miller again rudely replied, "You don't have to posture for the media." (EXH. B, p.7, ll. 20—p.8, ll.12);

n) Consistently stating Field was culpable of stealing funds and other criminal acts, prior to hearing any evidence and stating he had independently investigated Arthur Field's indictment and was convinced Field had stolen money without any evidence thereof and demonstrating he had determined the issues in the Rule to Show Cause prior to hearing any evidence and was further convinced Field had not turned over records without any proof such records were missing or even what those records were (EXH. B, p.3, ll.23-25; p. 25, ll. 2-21; p, 44, ll. 7-16; p. 80, ll. 9-14: Judge Miller: "[Saad] wants the records...If your client would turn it over or had turned it over...we wouldn't be here."; Mr. Martin: "Your Honor, again, I would object to that comment again showing bias." Judge Miller: "Mr. Field, I suggest you watch your behavior."; p. 105, ll. 11-13, "This is about your client's failure to cooperate." p. 118, ll. 10-25);

o) Stating: in response to an unsworn witness saying **"[Field] is very smart, manipulative and narcissistic. He's an evil person ..." Judge Miller replied "Well, I agree with everything you said...I think he knows [the difference between right and wrong]. He just doesn't care."** (EXH. C, p. 99, ll.15—p.100, ll.2);

p) Stating, "How could you understand the complexities of how the monies have been moved and shuffled and I promise you, ladies and gentlemen (the gallery), you have not heard a tenth of it. It's like peeling layers off an onion." (EXH. A, p.53, ll. 5--9). Judge Miller never 'heard' any of it. He simply invented this fantasy;

q) Stating **Arthur Field has "money somewhere, Luxembourg, hidden away in the Caribbean or something. We can't find it. The only person that would know where it is sits right there. And he's not going to tell us. Yes sir.",** without any evidence of such funds (EXH. D, p.68, ll.10-13) (none such existed);

r) Stating **"And if you ...read any of the documents about how this was accomplished--I called it a shell game many years ago. And I am more convinced today that it's a shell game than I have ever been."** (EXH. D, p.68, ll.8-9).

s) Stating **"[Field] has monkeyed with the judicial system for the last six or eight years...much to the chagrin of class members who have lost life savings in a Ponzi scheme basically**." (EXH. C, p.12, ll.18-25; p.20, ll.23-25 reference to A2013-2676 with no evidence of any Ponzi scheme ever presented);

t) Ordering a privilege log be produced involving over 20,000 files within 10 days and denying a motion for a reasonable extension of time despite being informed in Motion and Affidavits that one computer had been rendered inaccessible, confirmed by the "computer expert" Perry (EXH. D, p.47, ll.3—6; Caskey *Affidavits of Caskey and Field,* 12/27/16);

u) Destroying Arthur Field's statutory and constitutional due process rights to attorney-client privilege as to all material on Field's or Taillon's personal computers relating to privileged communications to or from Field (and/or Taillon—a non-party) as a client, or as an attorney, in violation of the Fourth Amendment and S.C.R.E. 501, *Ross v. Med. Univ. of S.C.*, 317 S.C. 377,383, 453 S.E.2d 880,884(S.C. 1994);

v) Assisting plaintiff's witnesses in testimony (EXH. D, pp.28—34) through 'ill-advised' questions, interference and comments over the objection and numerous renewed

Motions for Recusal of attorney Caskey (EXH. D, p. 31, ll. 3-7; p. 60, ll. 15--17) thereby displaying animus towards Field and Caskey and a total lack of impartiality;

w) Expressing dissatisfaction with the outcome of Field's criminal matter and indicating he intended to rectify such 'miscarriage' in the course of the civil proceedings before him and then interfering in Judge Graveley's conduct of 2015-cp-23-01263 –e.g. when it was stated by Kirsten White or her attorney that such matter would be dismissed based upon the statute of limitations, Judge Miller replied 'Not if I have anything to do with it.', according to Kirsten White and her attorney;

x) Upon information and belief, preventing Field's Motion to Recuse from being placed on the court docket and instructing the Clerk to put the June, 2012, Motion and/or October 27, 2014 Affidavit in the file, but not scan and docket such motion, as discovered by Field and Taillon on February 5, 2016 when reviewing the Clerk's file see EXH. I. And, further, directly or indirectly causing the Clerk to remove Field's April, 2013 Motion to Recuse from the file and the docket;

y) Upon information, reviewing inadmissible evidence from State Farm Insurance in December, 2017, without affording Field's counsel opportunity to object and then permitting the entry of inadmissible testimony of State Farm agent Gina Tate in July 2, 2018 over objection and conducting a hearing on an impromptu 'contempt' without giving notice to any party or to Field a 'contempt' hearing would be conducted and sitting as the trier of fact in such 'sua sponte' matter despite the U.S. Supreme Court's directive that no judge may try a criminal contempt that judge has initiated;

z) Upon information, advising State Farm witnesses what to testify to as to the substance of their testimony directly or *ex parte* through counsel for CIF and the Class;

aa) Threatening Field and his counsel and Taillon and White on numerous occasions;

bb) The above reflect more transgressions than mere incorrect decisions of fact or law affecting this case.

D. CANON 3(B)(7) violations:

a) Conducting numerous *ex parte* discussions, including with Attorney General personnel, stating "Having heard that and I've heard it three or four times and I still do not have a complete understanding of it... When I say shell game, a lot of these people

are connected in other matters....There are a lot of things we can't tell you because it might impair our ability to pursue some of this stuff...And I'm telling you....the work that the attorneys have done, they have gone through computers, deleted emails... reams of convoluted documents..." (EXH. A, p.29, ll. 9-24)[2];

b) Admittedly conducting numerous *ex parte* discussions with Mr. Saad, and attorneys for CIF and/or the Class, including, but not limited to: April 19, 2012, wherein Judge Miller instructed Saad to bring Rule to Show Cause against Arthur Field and to sue Field, his wife Taillon, the Field children, and others in RICO in federal court in South Carolina and to bring civil action against Arthur Field in New Jersey, and then denying such *ex parte* communications were improper. **"I'm in fairly regular communication with the receiver in this case.** Mr. Field has alleged that that is improper *ex parte* communication..." (EXH. C, p. 10, ll.12-14);

c) Saad admitted to Field on two occasions Saad has 'his good friend Judge Miller on 'speed dial' and speaks to him about the case on a regular basis' and tells Judge Miller "what to do";

d) Saad admitted to Kirsten White that 'his good friend Judge Miller does what Saad asks him to do' and that he 'speaks to Judge Miller regularly about the case'.

e) Apparently coordinating with Saad and attorney George Brandt the course of the proceedings in advance on September 5, 2017 and in December, 2017;

f) Saad and his attorneys or CIF's attorneys, or Class Counsel, do not fall within the limited 'exceptions' for court personnel or scheduling set forth in Canon 3(B)(7);

E. CANON 3(B)(1) AND/OR 3(B)(8) violations:

a. Refusing to hear Field's Motion to Recuse dated June 13, 2012 (EXH. G, pp. 96-113);

b. Ordering the Clerk to place a Motion to Recuse into the file but not on the calendar and then Ordering the Clerk "do not clock, but place in file" an Affidavit filed by Field (EXH. I) concerning Field's Motion to Recuse filed April 15, 2013, which was never placed on the Motion Calendar despite payment of motion fee and proper filing;

---

[2] "Judges must scrupulously avoid *ex parte* communications whether or not they consider them." *Taylor v. Public Convalescent Service*, 245 Ga. 805, 267 S.E.2d 242 (1980). No subpoena had ever been issued for any of my documents, emails or computers. Saad, in 2012 and again in 2016, brought a Rule to Show Cause falsely claiming I had failed to provide him with computers, documents and emails.

c. Failing to issue a decision on Motion to Dismiss Rules to Show Cause or to approve Global Settlement since March 17, 2017 hearing, and using such Rules to Show Cause as a form of threat, or judicial duress to force Field and others to enter into a Settlement Agreement, acting beyond the scope of professional/judicial conduct after Saad made it clear that such criminal contempt was already decided by Judge Miller (EXH. D, p. 9, ll. 19—25; p.25, ll. 23—p. 26, ll, 15; p.62, ll. 18-21; p. 69, ll. 3-7), *Ledford, supra.*;

d. Treating such unapproved Agreement as a binding Order for purposes of conducting the August, 2017 "Motion to Comply" and subsequent hearings after having refused to approve the Agreement to resolve all matters and such agreement was explicitly conditional upon Miller's approval and calling such agreement 'executory' despite knowing Rule 23(c) requires express approval prior to any settlement being a binding order (EXH. E, p.6, ll.3—23; EXH. F, p.6-8, etc.);

e. Repeatedly denying Motions to Recuse with no basis or pronounced decision and not fairly and equitably considering same.

f. Permitting Receiver Saad to improperly administer Capital Investment Funding, LLC for 11 years without filing public accountings, or distributing funds to creditors, and, upon information and belief, possibly benefitting personally from such action.

F. CANON 3C violations:

a) Likely directly or indirectly interfering with the verbatim reporting of the September, 2013 Transcript and then denying Motion to Correct the Transcript and then denying the right to supplement with Affidavits, and then permitting the Court Reporter to destroy the tape of the Transcript after challenge was made to such in violation of S.C.A.R. 607(i) and/or Court Reporter Manual Section XIIIC (EXH. G);

b) Deliberately interfering with the due administration of justice and law with the verbatim reporting of the September 17, 2013 Transcript causing the deletion of numerous statements while on the bench prior to the initial statements of Field's counsel Bradford Martin, and then preventing the Court Reporter from correcting the Transcript and then refusing to admit the Affidavits of members of the public attesting to such omissions;

c) Deliberately interfering with the due administration of law with the verbatim reporting of the March, 2017 Transcript causing the deletion of the statement made while on the bench during Receiver Saad's presentation, when Judge Miller audibly commented "Field will be writing that book from prison." (EXH. D, Omitted from Page 13 thereof between line 6 and line 7, after formal request to Court Reporter Susan Hudgins to be sure to insert such comment.) Such statement was not germane to the proceeding and was loud enough to be heard by persons in the court room and was not covered by any limited privilege involving statements made to a court clerk in judicial chambers and was admitted to by Judge Miller on September 5, 2017 (EXH. E, pp. 4, ll.21-p. 5, ll.15);

d) Chastising Field for requesting a verbatim Transcript of the March, 2017 proceeding from the Court Reporter Hudgins and incorrectly alleging statements made on the bench were privileged. (EXH. E, pp. 4--5), further demonstrating the existence of such statement, the accuracy of Field's request, and Judge Miller's direct interference with the Court Reporter's duty to make a verbatim transcript of the entire proceeding;

e) Ordering a licensed (non-media) court reporter/stenographer and member of the public to leave the court room, thereby intentionally preventing Arthur Field and his counsel from making a private record of the proceedings involving substantial constitutional rights, when numerous instances of incorrect Transcript reporting were known to Judge Miller, who may have caused same. (EXH. E, pp.4, ll. 3--11), while simultaneously permitting CIF attorney Pillsbury to video the proceeding using his laptop computer;

f) Disregarding the clear provisions of the GSA and indicating at all times he didn't trust anything Arthur Field said; and consistently acting as a solicitor, not a jurist;

g) Prolonging the underlying matters to attempt to find Arthur Field in contempt and without any pending, valid Rules to Show Cause based on prior existing valid Court Orders and absent clear and convincing evidence of willful behavior by Field in alleged violation of such 'Order' (EXH. F);

h) On January 25, 2018, intentionally and deliberately interfering with Arthur Field's constitutional rights under the Interstate Compact Agreement by willfully misrepresenting facts to the Department of Pardon, Probation and Parole Services, or permitting a misconception of fact/law to continue, by stating in email "I am firmly opposed to allowing the transfer of Mr. Field's probation out of this state. I have a

pending motion involving Mr. Field…" This replied to a DPPPS query stating, "It is our understanding that Your Honor is expected to schedule a hearing for Mr. Field regarding contempt of court." Field's transfer under the Compact Rule 3 was mandatory unless there existed pending criminal charges against Field—none existed and there was no 'contempt of court hearing scheduled'. No such hearing was contemplated when Field applied for transfer on November 1, 2017, tentatively approved by DPPPS on December 8, 2017;

i) Judge Miller prosecuted a criminal contempt against Field without issuing a Rule to Show Cause or other pleading to inform Field of the allegations and charges against him in December, 2017 to July, 2018;

j) Judge Miller wrongfully sentenced Field to the maximum term possible without a jury trial, because Judge Miller informed attorney Bruce Bannister on July 2, 2018 by telephone that he was aware no jury would convict Field of criminal contempt and acknowledging that any term in excess of 6 months required a jury trial;

k) Thereafter, Judge Miller denied bail despite the pending appeal and knowledge that Field was a 65-year-old professional in poor health, who had not committed any violent act, and was convicted of uttering a single 'false statement' to the court in testimony.

MEMBERS OF THE PUBLIC ATTEST TO JUDGE MILLER'S BIAS.

a. Three well-informed observers who attended numerous hearings involving Field filed Affidavits attesting to Judge Miller's obvious bias and inability to act in an impartial and fair manner as required by the due process rights embodied in the Constitution and also attesting to portions of the Transcript which were missing but which were clearly heard and recalled by them wherein Judge Miller called Field a criminal at the outset of a hearing, thus demonstrating extreme bias. (EXH. G, pp.941-943). *In re Muchison*, 349 U.S. 133(1955); *Mallett v. Mallett*, 323 S.C. 141, 473 S.E.2d 804(App. 1996) (EXH. G, pp.941—943).

b. Judge Miller wrongly rejected these Affidavits of community and industry leaders; (10/27/14 hearing);

c. Judge Miller prevented the Court Reporter from including these comments in the Transcript, according to Reporter Caroline Hiskell and she informed Field she had been ordered not to deliver the recording of the proceeding to Field or counsel by Judge Miller. See Exhibit I.

G. EXTERNAL CAUSES:

a. **All of this was promulgated as purposeful, vengeful acts in response to the Judicial Grievance filed by Arthur Field in 2012;**

b. Judge Miller, *sua sponte,* raised the matter of the grievance in the September, 2013 hearing, but then refused to allow attorney Martin to question Field concerning the grievance, which was based upon Judge Miller's extreme bias in the December 14, 2011 'special meeting' and the egregious violations of Field's constitutional and civil rights described elsewhere (EXH. B, p. 167, ll.7—p.168, ll.9);

c. **Judge Miller also repeatedly expressed extreme displeasure with the result of Field's criminal sentence by Hon. Cordell Maddox in 2013, affirmed by the Court of Appeals on April 4, 2018 and by the Supreme Court March 15, 2020. Judge Miller stated he was fully familiar with the State Grand Jury indictment, even though such is inadmissible hearsay, and drew his conclusions extrapolating from such Indictment—an impermissible independent source investigated by Judge Miller and not relevant to any matter;**

d. Upon information, obtaining further 'evidence' from statements made publicly or *ex parte* to Judge Miller by D.A.G. Creighton Waters or A.A.G. Brian Petrano and/or their assistants or investigators or from Saad or CIF or Class counsel or members of the Class or gallery or general public or media in December, 2011, March, 2012, April, 2012, etc.;

e. Judge Miller expressed great frustration with Field's *litigious behavior* in other courts, even though Field was a defendant, not the plaintiff therein, and such matters were not before Judge Miller, so any information obtained was hearsay;

f. **These are each sufficient extrajudicial source(s) of bias warranting and demanding disqualification and immediate demotion from the bench.**

H. LEGAL STANDARD re RECUSAL FAILURE AND CANON VIOLATIONS:

"A judge is required to recuse himself in any proceeding in which his impartiality might reasonably be questioned. The appropriate inquiry is not whether the judge is in fact impartial, but whether, applying an objective standard, the judge's impartiality might be questioned by a reasonable, well-informed observer who assesses all the facts and circumstances." *U.S. v. DeTemple*, 162 F.3d 279,286(4th Cir. 1998); S.C.R.Civ.P.501 Canon 3(E)(1). Actual bias need not be proven. The appearance of bias is sufficient. *Capertown, supra*[3]; see *Judicial Merit Selection Comm'n Report: The Hon. F.P. Segars-Andrews, Family Court, 9th Jud. Circuit* (2009). "At the center of the judicial role is the requirement that judges be fair to each side and partial to neither." John P. Freeman, *Appearance of the Impropriety, Recusal and the Segars-Andrews Case*, 62 S.C.L.Rev. 485,512(2011). Judge Miller has never been fair to any person involved in this matter including but not limited to Allyson Field, Davyd Field, Kathryn Taillon, Kirsten White, all of whom are witnesses to these violations.

Due process requires criminal contempt must be decided by an independent judge. *Mayberry v. Pennsylvania*, 400 U.S. 455(1971). **The Supreme Court held that the judge before whom the contempt allegedly occurred may not hear the case.** The standard is objective, i.e. whether an independent observer might conceive the judge could be biased, which is undoubtedly the case here. *Capertown, supra*, 129 S.Ct. at 2261-2262. Also, *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813,825(1986)(clarifying the

[3] *Capertown* effectively overruled *Brailsford v. Brailsford*, 669 S.E.2d 342(Ct. App. 2008). A "risk of bias" is sufficient to warrant disqualification per U.S. Supreme Court Justice Kennedy.

Court was "not required to decide whether in fact the judge was influenced" but only whether the situation and his position would offer a temptation to an average judge not to rule fairly.) And, *U.S. v. Meyer,* 462 F.2d 827(D.C. 1972)(recusal required in contempt motion, especially when judge has demonstrated prior animus towards 'contemnor'); *Clark v. State,* 697 S.W.2d 895(Ark. 1985)(contempt reversed for failure of judge to recuse himself when judge initiated contempt charge).

"A judge must not independently investigate facts in a case and must consider only the evidence presented." *Commentary* Canon 3(B)(7). "The neutrality requirement helps to guarantee...life, liberty or property ...by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him." *Marshall v. Jerrico, Inc.*, 446 U.S. 238,242 (1980). Off-the-record briefings, such as the ones with Saad or his attorneys and/or the State Attorneys General and their investigators in March/April 2012, and those following (including those freely admitted by Saad) constitutes forbidden personal knowledge of a case requiring recusal. *Edgar v. K.L.,* 93 F.3d 256,259(7th Cir. 1996). The private review of Field's indictment and the State Farm 'records'—both containing inadmissible hearsay—also demanded disqualification. See, *U.S. v. Microsoft Corp.*, 56 F.3d 1448(D.C.Cir. 1995).

"Under Canon 3(E)(1)(a), a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to, instances where he has a personal bias or prejudice against a party." *Patel v. Patel*, 359 S.C. 515, 599 S.E.2d 114(S.C. 2004).

> Any conduct that would lead a reasonable [person] ... to the conclusion that the judge's impartiality might reasonably be questioned is a basis for the judge's disqualification. Thus, an ...appearance of impropriety... that would reasonably lead one to question the judge's impartiality in a given proceeding clearly falls within the scope of the general standard.... The question is not whether the judge is impartial in fact. It is simply whether another, not knowing whether or not

the judge is actually impartial, might reasonably question his ... impartiality, ...*Burton v. Mottolese*, 267 Conn.1,30, 835 A.2d 998(2003) cert.den. 541 U.S.1073(2004).[4]

"The judge may not, having decided a case, advocate for or, as in this case, materially assist one party at the expense of the other. Such advocacy creates the appearance, and perhaps the reality, of partiality on the part of the judge." *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 815 N.E.2d 286 (Ohio 2004). "If a court, through its question of a witness, interjects a 'negative impression' of the defendant...or conveys 'skepticism' of the defendant or his evidence, then the court has crossed the line from active trial management to 'unfairly lending a court's credibility' to the [plaintiff's] case." *U.S. v. Godwin*, 272 F.3d 659,678(4th Cir. 2001). "This creates an irrevocable and impermissible 'impression of partiality' or 'apparent favor or disfavor for one side or the other.' *U.S. v. Head*, 697 F.2d 1200,1210(4th Cir. 1982). "When a judge cross-examines a defendant and his witnesses extensively and vigorously (e.g. *Transcripts*, January, 2017, March, 2017), he may present to others an [impermissible] appearance of partisanship." *U.S. v. Lefsih*, 16-4345(4th Cir. 8/14/2017)(vacated due to Judge's examination of witnesses) citing *U.S. v. Martinovich*, 810 F.3d 232,240(4th Cir. 2016) and *U.S. v. Parodi*, 703 F.2d 768,776(4th Cir. 1983); also, citing *Godwin, supra,* 272 F.3d at 677. Also, *In re Johnson*, 921 F.2d 585,587(5th Cir. 1991)(comments made reflecting a dislike for defendant where judge took offense at actions of defendant demands recusal). There can be no question Judge Miller detests Field and demeans his attorneys, as is clear to any reasonable observer, thus demanding disqualification. 28 U.S.C. §144. Threatening Field with

---

[4] See, also, *U.S. v. Cherry*, 330 F.3d 658,665(4th Cir. 2003); the majority of federal circuits require recusal even when the issue of reasonable question of impartiality is a 'close call', which it is not herein. See, e.g., *Republic of Panama v. Amer. Tobacco Co.*, 217 F.3d 343,347(5th Cir. 2000). This case is similar to *U.S. v. Antar*, 53 F.3d 568,573(3rd Cir. 1995), where the Court reversed a refusal to recuse in a securities fraud case, "It is difficult to imagine a starker example of when opinions formed during the course of judicial proceedings display a high degree of antagonism against a ...defendant....In determining whether a judge had a duty to disqualify himself...our focus must be on the reaction of a reasonable observer. If there is an appearance of partiality, that ends the matter." *Id.* at 576. "It is highly unlikely "the trial judge could impartially decide the recusal issue given his apparent combative and defensive attitude exhibited...**We are convinced prudence and judiciousness would have dictated the trial judge disqualify himself.**" *Mallett, supra.*

prosecution and/or contempt and/or imprisonment in March, 2017, if Field did not acquiesce in the Global Settlement was a gross violation of all Canons. See, *Ledford v. Dept. of Public Safety, Employer and State Accident Fund*, 2018-001677, Shearhouse #39,8-13(S.C. 10/2/219).

The facts and Judge Miller's obvious anger concerning the 2012 Judicial Grievance create a high probability of bias which caused all aforesaid violations of the Canons. *U.S. v. Morris*, 988 F.2d 1335,1337(4th Cir. 1993). When Judge Miller stated "Field will be writing the book from prison" he demonstrated his malicious intent to find some way to sentence Field at some point in the future in the course of a civil matter in 2017 (Field having been dismissed therefrom in 2009 and the case settled).

The foregoing numerous and obvious violations of the Canons of Judicial Conduct and the need to promote public confidence when a judge's impartiality might be reasonably questioned combined with the Due Process Rights and the 6th and 14th Amendments demand immediate and permanent suspension and/or removal of Judge Miller from all judicial duties. S.C.R.Civ.P. 501, Canon 1, 3(E)(1)(a), *Koon v. Fares*, 379 S.C.150,156, 666 S.E.2d 230,234(2008); *Lefish, supra*.

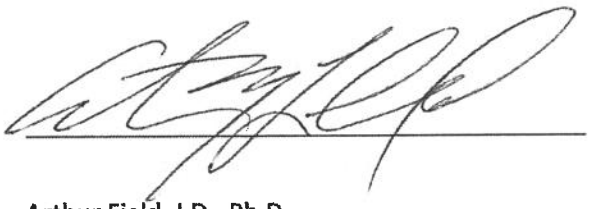
Other witnesses to this misconduct:

Attorneys: Jeff Dunlaevy, Bruce Bannister, Thomas Stephenson, Bradford Martin, Gwen Martin, Luke Bannister—all of Greenville; Micajah Caskey of Columbia; Charles Grose of Greenwood;

members of the public: Henry van Dyke, Richard Lackey, Angelou Orfanedes, David Kimbrell, now or formerly of Greenville; Davyd Field of Greer; Kirsten White of Mauldin; Kathryn Taillon of St. Augustine, Florida; Allyson Field of Vancouver, WA.

OPPOSITION TO RE-ELECTION OF EDWARD MILLER TO ANY JUDICIAL POST

Respectfully and in fear of further retaliation from Judge Miller:



Arthur Field, J.D., Ph.D.

5489 Atlantic Vw, St. Augustine, FL 32080

864 419 6609

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)))	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
William F. Tomz and Frances W. Tomz, Individually and as Class Representatives, Plaintiffs, versus Capital Investment Funding, LLC and Arthur M. Field, Defendants.	)))))))))	Case No. 2008-CP-23-3665 IN SUPPORT OF RENEWED MOTION TO RECUSE

EXHIBIT A

TRANSCRIPT EXCERPTS

12/14/11

This shall not be construed as consent to personal or subject matter jurisdiction or a waiver of any defense or right of Arthur Field or any other related non-party.

STATE OF SOUTH CAROLINA	)	SPECIAL MEETING
	)	2008-CP-23-35514
COUNTY OF GREENVILLE	)	
	)	
	)	
Capital Investment Funding	)	

December 14, 2011
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, Judge.

A P P E A R A N C E S

Jerald Saad, Esquire
Appointed Receiver

Creighton Waters, Esquire
Assistant Attorney General

Stanley Case, Esquire
Class Action Counsel

Gene Covington, Esquire
Class Action Counsel

CAROLINE HISKELL
Circuit Court Reporter

P R O C E E D I N G S

THE COURT: Welcome, ladies and gentlemen, I hope you are all doing well. As you all are aware and I'm aware you would like to hear the status of your case. It's perfectly understandable. And I also want to tell you that I am also aware of your frustration. If I haven't heard about it, I could have guessed it.

You made investments with the intent to rely on those investments and they're not there. They've been inappropriately removed from your possession. I can understand your frustration. I just want you to know everyone involved in this case is aware of that.

It probably doesn't ease your pain any, but at least you know we are aware of it.

I kind of just want to go over a little bit of background in the case from my prospective. These cases were filed, the first lawsuit, I believe, was filed on the coast and then more suits were filed and because of the location of the defendant, under the law, the cases were moved up here and consolidated into a class action. And then the rules of the class followed and the cases preceded.

Another judge was given this case to begin with, he was removed, and I was substituted. I was substituted shortly before the settlement of the case, the

global settlement. When I came into this and didn't exactly know what kind of fish tank I was getting thrown into. It was a very complicated matter and I tried to get up to speed. Fortunately, there are a lot of very competent qualified people that are representing you and doing everything they can to cover the proceeds.

But in any event, the global settlement, which was reached after a couple of hard days of mediation, mediated by retired appellate court judge, Samuel Stilwell, which I have the utmost respect for, and the Order was signed on August 27, 2009. In that order, Mr. Jerry Saad was appointed receiver.

Now, there are a number of other folks. The two class co-counsel are up here, Mr. Case, Mr. Covington, and I would recognize some other folks up here you all may recognize. I would recognize Mr. Creighton Waters with the Attorney General's Office and I know you all have questions you'd like to ask him. At the appropriate time I will return to them.

What I would like to do and what I will tell you I've seen and this is -- as you can understand -- while this case is under my jurisdiction, we do handle a lot of other cases. I am not and can not be personally involved in a lot of the work that's gone on in this case. Mr. Saad has done an extraordinary job. Mr. Saad and the

person that are working with them, and you may be introduced to some of them or may know some of them as well, have done an extraordinary job. And it is -- I will just tell you some of the most complex dodging and weaving shell game type stuff that I've seen and I've been involved in, when I was a lawyer for 25 years I was a defense lawyer and I've seen quite a few, but this as sophisticated a shell game as I've seen.

In any event, what we will do today is I'm going to ask Mr. Saad to come up so that I guess -- Jerry, if you want to come up here? Would you be comfortable up here? He's going to give you some idea about some of the things that have gone on.

Now, I want to tell you and I know that y'all are interested in the bottom line. I want to tell you that there is no disbursement that's going to be made today. Mr. Saad is going to post on the Internet, January 15th it will be up and available, a balance sheet so to speak. And I want to tell you that there are a number of things that we can not tell you. You might say, why? We're members of the class. Well, although each of you would like to know all the information but I think that you will understand and trust each of you to have to ability to invest. You are intelligent folks and you can understand, even though you might not like it, you can

understand why everything can not be disclosed to you from even the receiver's point of view because it might impact the ability to recover in the future.

So I guess I'm asking you to continue a level of trust in me as overseeing this case and the people who are doing the hard work in trying to recover your money. Having said that, we are going to tell you some things about what has already occurred, a little historical stuff, and you'll get a flavor for the complexity that these folks have been faced with and what they uncovered in certain things. You'll just have to make reasonable inferences about what will happen in other things that I'm not going to allow them to tell you about because it might impair our ability in going forward.

And you just have to trust that we are working for the benefit of this class.

So, Jerry, let me get you to come on up and we do have a little bit of an agenda. I hope I'm following it. There are couple of things, I guess, before Jerry starts talking that we really ought to talk about. There some matters that are outside the scope of the actual receivership. I know that there's an issue that a lot of you face with respect to the IRAs. Now, I am not an expert in that matter.

The other thing that I will tell you in that

matter is that we are not allowed to give advice. Ethically a judge is not allowed to give advice to anybody in any matter. I hope you can understand why. Mr. Saad is a receiver for the court and I'm not allowing him to give advice, specific advice, but that IRA issue is outside, while we're sympathetic to all these problems that y'all have, that is outside of really what the scope of the receivership is all about. It may be a result of what's happening, but it's outside the scope of receivership and I'm going to ask Jerry to give you a little bit of information about that in just a second.

The other thing, and I guess I might as well do it now, is -- Creighton, would you just stand up and I'm going to let Creighton speak to you if you would.

MR. WATERS: Most of y'all haven't met me, my name is Creighton Waters. I'm an attorney in the criminal division of the Attorney General's Office. And one thing I know that everybody has a lot of concern about is, is there an investigation and what the status of that investigation is and questions along those lines. Unfortunately statutory rules prohibit me from confirming the existence of an investigation or giving any update or status to the investigation. That's not a rule that I made, it's a rule that's in the statute.

So, unfortunately, I can not comment on the

status or the existence of any investigation. What I can tell you that is that in any case where there are allegations of criminal activity, the Attorney General's Office takes that very seriously. I understand that's probably a very unsatisfying answer for many of you but because of the lack of detail, but again, these are statutory rules that exist to protect the integrity of the process and I'm not at liberty to violate those even if they are frustrating. I ask you to understand that that's the best I can offer you.

I'll be here after the proceedings have concluded. If anybody wants to approach you, I'd be glad to talk with you, but, again, I'm not going to be able to offer any specifics because of those rules.

THE COURT: Thank you very much.

Let me just say this, ladies and gentlemen, he can't talk with you about and he can't talk with me about it. That's how stringent these rules are and y'all ought to be very thankful in the big picture we have persons with kind of integrity who follow the rules exactly as they are written. So it ought to restore some faith that you have in our system. And I will tell you that Mr. Saad is cooperating with any appropriate persons with whom he needs to cooperate with.

And the other thing I would point out to you

is the fact that Mr. Waters is here and you all just have to make a reasonable inference about that. I think that about covers that.

Jerry, would you tell us a little bit about the IRA issue without giving any advice.

MR. SAAID: I understand through the process having received email and calls from several note holders that several note holders --

THE COURT: Is that on?

MR. SAAID: Is this better? I'm not used to this. I'll give you some of the background information. The records that I have shows that there was about 141 note holders that had their investments in IRAs and the IRAs have their own set of patch rules and part of the problem that I know was coming up is people were getting letters and notices about 1099s issued to the Internal Revenue Service reporting taxable income from these distribution of the notes coming out of the IRAs to the individuals named directed. So I contacted a company that was holding predominantly all of this IRA accounts which was called Physeve(ph) which later changed their name of Lincoln Trust Company and became familiar with what was going on so I'll give you a broad stroke background.

In 2011 there was approximately 30 note holders who notified the custodian that they wanted to

MR. SAAD: I'll add this to. I'll be happy to talk with your personal tax advisor to explain matters. I'm not charging my time to do that to the class because the class doesn't all benefit from that, only individuals do. But the time should be minimal and accounts have a way of talking to each other. I can explain it easier directly to them so if you do plan on talking to them and they have questions, I'm happy to give them the benefit of my knowledge of the situation.

THE COURT: Now, there are a number of qualified people that are also working with Mr. Saad in this investigation from our perspective aside from any other investigation that might be going on, and Kurt Staghal(ph) that's sitting over there in the box with the yellow tie on. He is an attorney. He's been intimately involved in a lot of this.

There's another gentleman that's been working with him. He is also an attorney, Mr. Robert Pole and he's not here today. They have done very impressive work.

Okay, Jerry, go ahead.

MR. SAAD: I think it would probably benefit all to kind of paint a broad picture of what was in the company when I took over August 27, 2009. As everybody is probably aware there was a confession of judgment that was part of the mediated settlement agreement which accounted

could just pick up and look and see. It took extensive amount of digging, looking through records, traveling to Georgia looking at opposing counsel records down there to understand how all this could have occurred. And this is not the only time -- I believe this is not the only time this type of thing has occurred in this case and that's why we are spending time to go search, seek, and recover whatever we can.

THE COURT: Having heard that and I've heard it three or four times and I still do not have a complete understanding of it. When I say shell game, a lot of these people are connected in other matters and it's moving around and it's hard to keep up with which cup has got the pea under it. And what they have done in the last two years -- this is what your receiver has done. He has uncovered information, try and trace the funds and where they went, what happened to them and I just want to -- there is no way to sugar coat the thing. There is no pot of gold out there.

All the 38 million dollars we're trying to find it, but ladies and gentlemen, we don't know where it all went. We know eighteen million is up in New Jersey. There are a lot of things we can not tell you because it might impair our ability to pursue some of this stuff, but I wanted Jerry to give you an idea the flavor of what he's

and it was suggested we drop the price to three hundred thousand and we think it'll although there's not a lot moving up there. So we think we'll get somewhere around three hundred for those properties. If we fire sold, we'd probably get a hundred. All those numbers added together immediate liquidation about seven hundred thousand and orderly liquidation about a million four. So combined we're looking at about a million four if we stopped, liquidated and got what we could and moved on. If we could got through and orderly liquidation, we think we could get three million dollars and that's without considering recovery of any lawsuits.

THE COURT: All right. I wasn't sure before but now I know why they call them bean counters. A little attempt at humor.

MR. SAAD: I resemble that remark.

THE COURT: Thank you very much, Jerry.

I hope what he has recited to you gives you some notion of the effort that has been put in on your behalf in trying to marshal the assets and evaluate them and determine how best to dispose of them. We have set aside some time for Mr. Author Field to make some comments if he wanted to. He had declined to be present. He sent a letter and I'm not going to read it. It's self-serving and it's not worth going through. There is nothing

substance in it.

Having said that, are there any comments or questions from Mr. Cannel or Mr. Case. If he's addressed what your question was but anything y'all want to tell the class or ask the receiver.

MR. COVINGTON: I want to ask him a couple of questions and read him a couple of questions that have been sent to me.

THE COURT: Sure.

MR. COVINGTON: Can you tell these folks, thirty eight million dollars that has been put in by everybody, what would you expect in an orderly liquidation what somebody would get? Pennies on the dollar, fifty cent, can you speak to that.

MR. SAAD: It would be pennies on the dollar. The numbers that I just summarize, three million dollars, and from that three million dollars recovered, it's going to be costs involved.

MR. COVINGTON: That's if we liquidate it now?

THE COURT: Orderly.

MR. SAAD: I say that but obviously we can't do it in one felt swoop, but if we said take no more action accept to go make deals and get whatever you can and make the money where ever you can. But I probably can

complex.

As far as opting out, I don't know if anyone here wants to opted out but I will tell you this think about it and what has been done. I know you haven't heard all this until now and maybe you can understand why. How can you express this over the Internet? How could you understand the complexities of how he monies have been moved and shuffled and I promise you, ladies and gentlemen, you have not heard a tenth of it. It's like peeling the layers off an onion. So if you want to opt out consider whoever you go to get them to represent you is going to get the whole onion and they're going to have to peel it away themselves because the rest of the class members are not giving away their work product. You all own this information.

We're guarding it for you and we're using it for your benefit and I hope you agree we've got the right people doing it. I am confident that that's what's going on.

Now, Mr. Case anything you want to say.

MR. CASE: No, sir, I would just like to have my original client stand up Mr. Troy Bridges. He is one of five families that came to me. Mr. Bridges and his group are one of the original investors and he has been to le of the hearings when we got a claim dismissed in

Georgia and we are continuing our efforts.

MR. COVINGTON: I think Your Honor authorized us to put the list on the Internet. I was going to put that on when I got back today.

THE COURT: Let me just tell you that his is an interim draft copy. The real one, bottom line numbers, is going to come out January 15 and we did agree to do that. We will put draft on it but the numbers are going to be there and Jerry has read it of what we have and what has been spent.

MR. COVINGTON: And the court reporter is going to give us a copy of this hearing and put that on the Internet as an attachment for anybody who couldn't come or people who are disabled and wanted to read something about what went on.

THE COURT: Fair enough. Now, ladies and gentlemen, we're going to let y'all ask questions. We'll answer them as best we can. I do want to tell you that Mr. Creighton Waters has been here in his capacity with the Attorney General's Office with an outstanding law enforcement member who I've known for over 30 years and I've got the upmost respect for him. They've heard everything we've said -- I don't now what all they've heard but I want to tell you that they are here, okay, and they don't go willy nilly anywhere and they are paying

has been stayed but still active. We just can't do anything right now until we file a motion to have it -- I'm sorry -- the stay lifted and we're in the process of doing that now and working that goal.

In essence what's happened is money that went up there from the terms of this lawsuit, it appears that there was not any way to get a secured position ahead of the banks that had perfected collateral, so when the bankruptcy was filed, the banks were in prior position. As the foreclosure occurred, the banks got the money and equity about the bank loans so there's nothing left for CIF out of the bankruptcy.

MR. GEORGE: Then why are you pursuing it further? Why are you spending any time at all when there is not chance of recovery?

MR. SAAD: Because there are individuals involved and the claim that was filed was that these individuals conspired and did acts that were fraudulent to prevent CIF from having perfected collateral.

THE COURT: And if I'm not mistaken, wasn't it presented that these were collateral loans.

MR. SAAD: I believe in the perspective I believe that they were.

THE COURT: So it was floated out there that these were collateral loans and in fact they were not.

MR. GEORGE: Some people might go to jail inaudible).

THE COURT: They might.

MR. GEORGE: That's eight million but then here's seventeen million. Where are you collecting the ther seventeen million, Mr. Saad?

MR. SAAD: Well, the eleven million of it is osmos. Seven million was for these related companies hat was developing property on Lake Kiwi and such which ncludes this convoluted story when I was talking about LP. So all that activity that went on, not just the one described, is still under investigation and it may result in lawsuits, but again, that's part of the process. And that's where I'm saying there's no guarantee of recovery of any of that.

MR. GEORGE: But there is still a possibility of recovery somewhere.

MR. SAAD: And that's what we weigh, the likelihood versus the cost, and it's almost daily chores I talk with my counsel and we look at these things and that's why I'm saying today the evaluation is those actions are worth pursing. We are developing those actions. There may come a time we get enough facts to say that's enough there and we can't recover or pull the trigger, file the suit and let's go at it.

Unfortunately, litigation is very labor intensive. It's drawn it, but there is only one benefit of being in federal court, though, that long period is typically compressed to have the time period in state court, which is why we'd rather be in federal and not state.

THE COURT: Yes, ma'am, your name.

MS. RICE: Jacqueline Rice. Do I understand it would be left up to Mr. Saad to decide whether to pursue suing Author Field.

MR. COVINGTON: Yes, we would all talk about that.

MS. RICE: And if you decided, yes, what would it benefit the class monetarily.

MR. COVINGTON: That's they key question, is it worth suing him and does he have anything to collect.

MR. SAAD: That's part of the evaluation when we look at suing anybody and that's what's the end game. There a lot of people and companies we see that we could pursue and we decide not to because the likelihood of recovering any cash is small. You might get a judgment and its nice to have but it doesn't buy a cup of coffee.

THE COURT: And let me say that early on in the receivership, Mr. field was cooperating to an extent with Mr. Saad, providing information, and telling him

about people and that sort of thing. There is nothing else he can offer. We wanted to get as much information as we possibly could. That's a decision has not been made and certainly if a decision has been made, you will know about it.

SPEAKER (Inaudible): Mr. Saad, you addressed the collateral problems with the loan, but could you also tell us if those loans were insured, liability insurance.

MR. SAAD: I never asked the question, quite frankly, and I don't have documents to indicate that they would have been looking at the nature of how those loans were packaged. All that we have been dealt with have been a formal loan package all handed by the Pfeiffer Loan Law Firm. There would have been lender's title insurance on this property so that the title we'd have an opportunity to question the title insurance company which is actually one of the things we are looking at with the Spartanburg property. But beyond that I don't know if any -- I've seen any kind of insurance on the loan itself.

MR. DIVAS: My name is Joe Divas. I got a question for Mr. Saad going back to the IRS situation. You said that there was going to be some corrected 1099s going on. Would those be mailed or would we have to demand those?

MR. SAAD: No, they will be filing those with

the IRS and sending those directly to you. Those should be coming out this week. I've talked to the gentleman yesterday and they've been processed and they are mailing them and you should be getting yours by early next week at the latest.

THE COURT: Again, let me remind you, don't waste any time speaking with your tax advisor.

MR. CRAWFORD: I'm Charles Crawford. Let me ask you a couple of questions here. My wife was told by Mr. Fields and the company a few weeks before they went bankrupt that there is no way you could lose your money, no way. We got 10 times out there than what we got on the books. Well, evidently, Mr. Fields would have had to have known about the Lancaster Corporation and I understand this is hearsay and you can't believe hearsay on everything but several of these companies was owned by him or partially owned by him so he was kind of financing his own bankruptcy situation with the money of other people.

I have sympathy for these lawyers, I do. I have never heard of such a mess. If the went to the mental institution, I would understand why. Like one of the emails and I did not send the emails but it's hard to understand why Mr. Fields is not resting in a jail cell.

THE COURT: Again, there are a lot of people to feel that way and I again -- I understand the

sentiment. I do.

MR. GEORGE: I wonder if Mr. Saad could put a time line on what he calls orderly liquidation.

THE COURT: Let me also just say that what he's talked about are assets. They are not potential claims that might be out there.

MR. SAAD: The biggest issue with that question is the state of the economy and I think to a very large extent the loss that has been incurred has been to a large extent as a result of the economy. For example, if the property that we had a second mortgage on for the value of two million dollars, we had a first mortgage of a million two and our second mortgage was four hundred thousand, in normal times we could sell the property and get full discovery even if we got a discount. But as we've seen in today's market prices has plummeted particularly in commercial property.

So the answer to your question, it's longer now than it would ordinarily be and I would estimate a two year period because we've had virtually no inquires about a lot of the properties. Nobody is buying.

And with that in mind, we've ratcheted down our price a couple of times but you don't want to keep doing that because people will just keep waiting. So if we waited another year to look at a pricing and address

the market in two years we'll be able to sell the rest of it. What we can't get in a year to 18 months or so, we would go ahead and drop the price after that.

MR. GEORGE: Was that afforded by the real estate brokers and realtors when you appraised the property?

MR. SAAD: I will confer with them on the two years. That's kind of my gut feeling but I did have conversations a couple of weeks about moving a property to . very reputable realtor who we've got the properties listed. He's a very successful client of ours, realtor and good developer. Resident is moving some but the commercial activities is probably down by 90 percent. What they were selling at the pace they were selling before at the commercial property they are doing about 10 percent of that volume now. The price is not 10 percent, the price is maybe down 30 to 50 percent, but the number of transactions is 90 percent lower.

Banks are hard to lend now. They require much more equity then they used to, the terms are a lot harder and everybody is scared to buy.

MR. GEORGE: It sounds like you would have ouble selling the property even at a fire sale basis.

MR. SAAD: No, because in talking with him, ne and some of the people he deals with, he goes and buys

the stuff. They're still buying. If you get it cheap enough, we'll buy it. I think that bottom market is there because of the bottom fisher and they got ready cash and I seen his activities and he's bought a ton of real estate. He goes to the banks and makes really good deals. They'll buy them fifty cents, forty cents on the dollar.

MR. GEORGE: While you're only saying we could get pennies on the dollar, that sounds like a lot of money to me.

MR. SAAD: But don't get the percentages confused, though, because when you're only getting two or three percent the reality is most of the loans that were out there were not in first position. So when you're right here at a market value of a million dollars and somebody's in at six hundred and we're in here at two above that, there's a eight hundred thousand total, then you're covered. But if the market drops down and that person goes from six hundred to five hundred, so he's got a 15 percent drop but you got a hundred percent drop. You got nothing.

MR. GEORGE: Does that mean you don't bother to pursue any property that you don't hold the first lien on.

MR. SAAD: No. That has happened is the

risking anything and they're getting forty-five percent instead of a third?

MR. COVINGTON: They are risking their time.

MR. MAULMAN: But forty-five percent and thirty percent is standard.

MR. COVINGTON: Let me assure you that that rate was negotiated hard with them and other people who take those kind of cases. That was the best case scenario.

MR. MAULMAN: That was Bland ---

MR. COVINGTON: Bland and Richter.

MR. SAAD: They are well experienced in what they do. They sue other lawyers and that in itself is a specialty and that in itself brings a higher premium.

MR. MAULMAN: I understand. As far as any lawsuit against Author Fields, has the statute of limitation been tolled? Don't you only get a three year statute?

THE COURT: Things may be coming to light which may cause an -- initiate a cause of action. Things are being discovered through pursuit of these other matters.

MR. MAULMAN: I realize that the AG's office can not confirm or deny the existence of an investigation but I realize that you guys said it before that we don't

even have access to some of this information and some of the confidential documents, but does the AG have access to that information if they wanted to have access, if there was an investigation?

THE COURT: I don't know if you all remember but we sat in this courtroom when we settled this matter in '09 and that was how we were able to get an agreement was that Mr. Field refused to give up his Fifth Amendment Rights. If he's innocent, I don't know why he would need those but that was written into the agreement and we got into -- well, I was kind of in a pickle because of the law with respect to the State Grand Jury and there's a specific judge who -- it's a long story, but the bottom line is there is no Fifth Amendment Right for a corporation and these were corporate documents and I will say that the -- I think I said before that Mr. Saad will continue to cooperate with any appropriate person in pursuit of all relevant issues surrounding the failure of CIF.

MR. MAULMAN: Part of the settlement was there was no agreement not to sue Author Field.

THE COURT: Hang on a second. I will read from Page 9 of the settlement order. "In consideration of Dr. Field being dismissed without prejudice in the above actions, he agrees to forego the severance pay allegedly

due to him under his settlement agreement. The parties also agree that in the event that class counsel initiates a claim against Dr. Field, he should be entitled to all cross-claims, counterclaims that would have been available to him. But it will also allow him to revive any claims to severance pay, indemnification, cross-claims to CIF in addition to any other defenses cross-claims or counterclaims."

It was anticipated but not prohibited. It was part of the negotiated resolution.

MR. MAULMAN: Thank you for all your hard work.

SPEAKER (inaudible): Do I understand you to say that the income (inaudible).

THE COURT: Let me say if all of you class members say that I've had a enough and I want to go to sleep at night and not worry about this and we want it over. If you say that, we can pull the plug at any time. What Mr. Saad has told you is he thinks its worth continuing and this has been -- it's hard to describe how much effort that has been put into this and he thinks it's worth pursuing. There is not a pot of gold out there and that's why -- I shouldn't say that but when this amount of money is gone authorities look into it.

SPEAKER (inaudible): For those of us about

the distribution and should we file (inaudible).

THE COURT: Let me just say I'm not going to let Jerry answer that. He is an arm of the court and he can not give advice we are prohibited from doing that. All we can tell you is to please talk to your tax advisors and they can talk to Jerry and he can explain to them where we are. We can not be in a position to give advise and I apologize for that.

I want to thank you all for coming up here. I've talked about how we understand your frustration. We are not in your shoes and can't live the pain that you all feel but we all are diligently pursuing this and you do have professionals with a lot of integrity who are out trying to remedy a wrong. You have to please trust us and I'll tell you if anybody in here could wave a magic wounds and get the money back, we would do that. I would just say that this shell game would have continued on without anybody knowing had the economy not gone south. That's my judgment in the matter.

It's like when the lake levels get down low you kind of see what's under the surface and that's kind of where we are. So we are trying to pursue it and we will have another meeting at some point. We'll try to keep you as informed as we can. Again, Mr. Waters is here - you all want to speak to him and say hi to him. Thank

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)))	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
William F. Tomz and Frances W. Tomz, Individually and as Class Representatives, Plaintiffs, versus Capital Investment Funding, LLC and Arthur M. Field, Defendants.	)))))))))	Case No. 2008-CP-23-3665 IN SUPPORT OF RENEWED MOTION TO RECUSE

EXHIBIT B

TRANSCRIPT EXCERPTS

9/7/13

This shall not be construed as consent to personal or subject matter jurisdiction or a waiver of any defense or right of Arthur Field or any other related non-party.

STATE OF SOUTH CAROLINA	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	2008-CP-23-3665
Tomz	TRANSCRIPT OF RECORD
-vs-	
Capital Investment Funding	

September 17, 2013
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, Judge.

A P P E A R A N C E S

Stan Case, Esquire
Class Action Counsel

Bradford Martin, Esquire
Attorney for Arthur Field

CAROLINE HISKELL
Thirteenth Circuit Court Reporter

PROCEEDINGS

THE COURT: Okay.

MR. MARTIN: Good afternoon, Judge. I had filed a motion for continuance. I don't know if you want to hear that or not.

THE COURT: You can say what you'd like about it.

MR. MARTIN: First of all I'd like to say that I'm new to this case and this case is old. I would like to get a continuance to take depositions, to get documents reviewed. The allegations in this case for the rule to cause covers as tremendous amount of time, in a tremendous amount of cases from New Jersey to bankruptcy courts and involves thousand and thousands of pages of documents. And the only way to present my client's side of this is to have that discovery.

There is he said, she said, they gave me this, he didn't give me that and all kinds of factual issues that need to be resolved. It shouldn't be resolved on a rule to show cause and I just need that time to prepare in order for you to have a fair and impartial way of making a decision.

THE COURT: That motion is denied. We been living with this case for four years, five years. All your client has to do is turn over what he agreed to turn

not even be here today. This is an action that is designed to harass my client and you, as the judge, have the power under Rule 45 to protect a non-party and we're asking that you do that and put into the record the appropriate sanctions for this effort. It's totally inappropriate under the rules in South Carolina for due process.

THE COURT: So let me get this straight, your client stole forty million dollars and now he's the victim?

MR. MARTIN: I'm sorry, sir. What did you just say?

THE COURT: I said your client stole forty million dollars and now he claims to be the victim.

MR. MARTIN: Your Honor, are you claiming that you have knowledge that my client stole forty million dollars?

THE COURT: Mr. Martin, you're not going to ask me questions in this proceeding. Thank you very much.

MR. MARTIN: I would then have to remind you that we are entitled to an impartial judge to decide these issues. If this Court is indicating to me that you have a bias in this case, then I am duty bound under my rules for representing my client to ask you to consider whether or not you can be fair. This has nothing to do with him

stealing or not stealing. He is here in a civil matter in which you have signed an order and we have clearly and unequivocally shown you that under the law of South Carolina he is here inappropriately and jurisdiction does not fit here. This is not a criminal proceeding. He is not under any criminal indictment before you today. I am not prepared to deal with any criminal matters and therefore I would request the Court to simply put away any bias that may exist, decide the issues based on the law because we are a country of laws.

THE COURT: We know that. You don't have to posture for the news media.

MR. MARTIN: I'm not posturing for anybody, I am representing my client ---

THE COURT: Thank you.

MR. MARTIN: And I am asking for a ruling on my jurisdiction.

THE COURT: Alright.

MR. BRANDT: I will speak to the issue of the service of the rule to show cause. We have with us today the process server who actually served Mr. Field and she is prepared to testify and we're prepared to examine her for the Court to make a determination if there has been service.

THE COURT: Alright.

has asked for.

MR. MARTIN: How can you say that, Your Honor. You do not have the evidence before you.

THE COURT: I've got Mr. Saad's affidavit.

MR. MARTIN: Is that from the holy script. Don't I have the right to depose Mr. Saad. It is filled with inaccuracies and misrepresentations to this Court. They are taking advantage of you, Your Honor.

THE COURT: Let me explain to you the underlying case, Mr. Martin.

How many people had their money taken?

MR. CASE: 688.

THE COURT: 688 people entrusted their money to your client. That money is gone. The receiver has been trying pursuant to this global mediated settlement to recover the funds. Your client signed a court order and specifically agreed in that court order to cooperate and to turn over all the documents. He has not done that.

MR. MARTIN: How do you know that, Your Honor. I want to have the opportunity to prove that he's turned over everything and way more than what you ordered.

THE COURT: I'll tell you what. We'll put Mr. Saad on the stand.

MR. MARTIN: That is not due process, Your Honor.

judge in Anderson had jurisdiction over that. That's also Rule 12(b). If there's a federal court action and there's documents regarding that action, then he has a way of getting those documents and I would say that this is inappropriate for Mr. Field to answer a rule to show cause about other actions.

THE COURT: If I'm not mistaken, in the global mediated settlement that your client signed incorporated the concept -- the specific language actually but I don't have that right in front of me -- that your client cooperate fully.

This is an action at this time, as I understand it, of Mr. Field obstructionist activity prohibiting the receiver from pursuing the collection of the assets of the receivership. So your objection is noted for the record and it is overruled.

MR. MARTIN: If I can, for the record, put that the global mediated settlement agreement says Mr. Field agrees to testify as a witness only. He agrees only to provide documents within 10 days. You have signed an order in 2010 where this same receiver said everything that was required has been done by Mr. Field and he is not a party. For the record, Your Honor, that stopped and anything that happens in other cases that's for those judges to decide.

do the direct examination and they are double-teaming me. I would say that Mr. Case has to make the objection under the rules.

MR. CASE: I object to the relevance of this line of questioning.

MR. MARTIN: Your Honor, it's relevant is they brought it in. He's talking about Trazon.

THE COURT: Are you talking about the history of the transaction. He wants the records, that's what we're here for. If your client would turn it over or had turned it over as he agreed to do in a court order that he consented to, we wouldn't be here.

MR. MARTIN: Your Honor, again, I would object to that comment again showing bias ---

THE COURT: Mr. Field, I suggest you watch your behavior.

MR. FIELD: I'm sorry, Your Honor, I get frustrated. You know that. I have tried for four years to cooperate with this Court.

MR. MARTIN: I am trying to do in cross-examination since he's claiming ---

THE COURT: You don't need to tell me what you're theory is, just ask him appropriate questions with respect to this rule to show cause.

MR. MARTIN: Have you made a ruling on this

lawsuits in New Jersey. We're talking about trying to recover documents from Mr. Field.

THE COURT: Sustained.

MR. CASE: And obstruction of efforts to the receiver.

MR. MARTIN: Well, Your Honor, there is no way my man can defend himself, since he's been allowed to testify as to what happened in New Jersey, if we can't go into the facts. If you're not going to let me go into the facts, I guess I need to propher those some how.

THE COURT: Not in this proceeding. We are not trying that case. This is about your client's failure to cooperate pursuant to the global mediated settlement. I sustained the objection. Move along.

BY MR. MARTIN:

Q. Which of the documents do you claim you do not have?

A. The ones that I do not have.

Q. The ones that you don't have. And which ones don't you have?

A. I believe I've answered this before.

Q. Specifically dealing with this New Jersey business.

A. Now, you're talking about New Jersey. I don't think I've claimed anything about not having documents

THE COURT: What tab is that? Tab 8.

MR. BRANDT: Yes, Paragraph 24.

MR. MARTIN: I would object to any testimony regarding an action in New Jersey is a New Jersey action. This is an action in where Mr. Field is sued and he has a right to defend himself. The action has been dismissed in his favor and has been dismissed by the appellant court system and has absolutely nothing to do with the issues that are before the Court ---

THE COURT: It has a lot of do with it if he's making allegations about the receiver that are not true.

MR. MARTIN: These allegations were not admitted. The third-party complaint was not allowed in court.

THE COURT: He signed it and he wrote it.

MR. MARTIN: And it has to do with the case in New Jersey, not anything to do with this case.

THE COURT: And it's the receiver trying to marshal the assets and it's your client not complying with the global mediated settlement agreement and cooperating with the receiver to collect the assets for the 688 or 689 people who lost a lot of money and for the record note that Mr. Field has pled guilty to criminal enterprise with respect to that.

A. Absolutely for hours and hours.

Q. Have you ever been served with any such documents?

A. No, and I don't understand why.

Q. Have you ever been asked to?

A. No.

Q. Have you ever filed a grievance against the receiver or counsel?

A. No. Nor assisted in one.

THE COURT: How about the judge?

THE WITNESS: You want me to say it on the record?

THE COURT: Yes.

THE WITNESS: Yes, sir, I did. I filed a grievance.

THE COURT: How many of them?

THE WITNESS: Just one against you.

THE COURT: How many judges?

THE WITNESS: One against you and one against Judge Few and I withdraw both.

THE COURT: No, sir, you didn't withdraw.

THE WITNESS: I withdrew Judge Fews.

THE COURT: No, you didn't.

THE WITNESS: Yes, I did.

THE COURT: Well, you did not withdraw one

against me. It was summarily dismissed.

BY MR. MARTIN:

Q. What was the grounds of the motion against Judge Miller since he brought it up?

THE COURT: That doesn't have anything to do with what we're talking about here.

MR. MARTIN: You just put it in the record.

THE COURT: No, sir, I'm not allowing you to go there.

MR. MARTIN: Fair enough.

BY MR. MARTIN:

Q. Have you ever represented any order of this Court to anyone?

A. Not to my knowledge at all as far as I understand the order. I am not a South Carolina lawyer and I was not represented by any lawyer here. I represented what I thought the order to say but it was the judge who ruled on the order, not me.

Q. There was a claim that you assured authority to reputiate the rescended, revoke and withdraw the legal action filed against you. Tell us what your relationship with CIF is at the present time?

A. I'm not 90 percent member and under the law I can undeclar the (inaudible).

Q. Was that done in any way or limit or prohibit CIF

STATE OF SOUTH CAROLINA)) COUNTY OF GREENVILLE)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
William F. Tomz and Frances W. Tomz, Individually and as Class Representatives, Plaintiffs, versus Capital Investment Funding, LLC and Arthur M. Field, Defendants.	Case No. 2008-CP-23-3665 IN SUPPORT OF RENEWED MOTION TO RECUSE

EXHIBIT C

TRANSCRIPT EXCERPTS

9/29/16

This shall not be construed as consent to personal or subject matter jurisdiction or a waiver of any defense or right of Arthur Field or any other related non-party.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s).:2008CP2303665
	)	
William F. Tomz, et al,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Capital Funding, LLC, et al,	)	
	)	
Defendant.	)	
	)	

September 29, 2016
Greenville, South Carolina

B E F O R E:

HONORABLE EDWARD W. MILLER, Judge.

A P P E A R A N C E S:

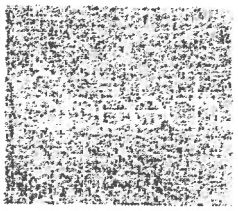
STANLEY T. CASE, Esquire
Attorney for the Class Action Plaintiffs

GEORGE BRANDT, III , Esquire
Attorney for Jerry T. Saad

TOM STEPHENSON, Esquire
Attorney for Kathryn Taillon

Teresa B. Johnson, CVR-M, CM
Certified Court Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are taken and produced via



CAT 7

MR. STEPHENSON: Your Honor, may I speak?

THE COURT: Yes, sir, Mr. Stephenson.

MR. STEPHENSON: For the record, my name is Tom Stephenson. I do not represent Arthur Field. I have never represented Arthur Field. I'm not here on behalf of Arthur Field. I'm here because his wife, Kate Taillon, was subpoenaed and she asked me to come.

THE COURT: Okay.

MR. STEPHENSON: So what I am going to tell you is based on what I have been told. I was informed, as were counsel for Mr. Saad, that Mr. Field was in the Carolina Center for Behavioral Health. I'm informed it's some sort of mental hospital. He's been there for about a week on a daily basis, from 9:00 to 3:00. I furnished with a letter because it was furnished to me and I didn't want to surprise anybody.

A week or so ago, I sent that letter to you. Several days ago.

And so he was there from 9:00 to 3:00. Yesterday, I was informed that he was committed by the Carolina Behavioral Health Center. I'm going to read the letter. Today, Mr. Field's

treatment provider at the Carolina Center for Behavioral Health deemed it necessary to hospitalize Mr. Field for his own safety. Mr. Field's discharge date is yet to be determined. I did secure this letter. I talked to his people. I believe it is genuine and I'm glad to hand it up to the Court ---

THE COURT: Okay.

MR. STEPHENSON: --- if the Court wants to see it. I am also informed that a global settlement was entered into before mediator Harry Goldberg, mediator from Columbia. I did not participate in this mediation. My client did not participate in this mediation. Others did not participate in this mediation. But the mediation settlement purports to settle everything. I understand that Mr. Field was there. This global settlement provides that my client, his wife, will pay $10,000 in cash --

MR. BRANDT: Please the Court, Your Honor. I'm not sure we need to go into this.

THE COURT: Wait. Let him finish. Let him finish.

MR. BRANDT: Excuse me.

THE COURT: Go ahead. Go ahead

MR. STEPHENSON: That bothers me.

THE COURT: Hey, hey. Just --

MR. BRANDT: I beg your pardon.

MR. STEPHENSON: The settlement agreement says my client will pay $10,000, I think, to Mr. Saad and will authorize a mortgage to be placed on a house which she owns. She's willing to sign it. She will sign it today. It also requires other people to do certain things. I am informed everybody, including Mr. Field, will sign it. I'm also informed and I have in my possession, a power of attorney that authorizes Ms. White to sign on his behalf. This power of attorney was entered into on July the 12th of 2012. It's not something he entered into today. It was something that was entered into some time ago.

This power of attorney, according to what I have been told, is probably filed at the RMC office and therefore it could be acted upon. Again, I'm not here for him. Okay? I'm here because my client asked me to be here. There she is. I'm also informed that Ms. White is also here unrepresented. There she is.

THE COURT: Okay.

MR. STEPHENSON: Now, I attempted to persuade these fine gentlemen to call you this week and apprise you of all that and see where you wanted to go. None of them wanted to do it.

THE COURT: Well, let me -- let's straighten -- let me put some background on the record. Mr. Saad was appointed as receiver in this case, so he acts on my behalf. This case has been assigned to me. It was assigned to me in '08 or '09 when Judge Few had to recuse himself. I've been involved in it ever since. I'm in fairly regular communication with the receiver in this case. Mr. Field has alleged that that is improper ex parte communication, which, in my mind, demonstrates a fundamental lack of understanding of what a receivership is.

But having said that, I am aware of the mediation that you all have engaged in. Not you, Mr. Stephenson, but the parties have engaged in. I am aware that, uh, some of the terms of that proposed global settlement are, uh, -- which has not been executed and I understand that -- let me just say this, this case needs to be put to rest. It has caused

more anxiety and hard feelings over a long period of time than almost any other civil case I have ever been involved in.

Having said that, based on Mr. Field's conduct over the past seven or eight years and the fact that all of a sudden, he has committed to a mental institution on the eve of this rule to show case after having reviewed the affidavit, I find it -- I find that very curious. I will say this, I will not accept an attorney in fact signature on a settlement agreement involving this case. I agree that this matter needs to be resolved.

I don't mean to be pointed with you, Mr. Stephenson. But if he's been committed to a mental institution, then there's no way that this agreement could stand scrutiny in the future. He could come back, and based on his past conduct, he would come back and try to overturn this agreement if he thought it was to his advantage. That is my experience with him that -- in my personal dealings with him. So there's no way that that agreement is going to get signed today or approved today. He's got to do it.

I don't have any idea -- I don't know who the witnesses are. It seems to me that that power of attorney must have been executed at about the time that Mr. Field was going to enter a plea of guilty in the State Grand Jury proceedings in this case. I have no idea what the purpose of it is, whether or not it's been rescinded. All of that would have to be fully examined. So that's the groundwork that -- some background that I would put on the record with respect to this rule to show case.

I totally agree that this matter should be concluded. The 600 or so class members are getting pennies on the dollar. There is money there that has been hidden and diverted, unaccounted for. If Mr. Field had been forthright, we wouldn't -- this would have been over a long time ago. But he has monkeyed with the judicial system for the last six or eight years.

So what I would propose to do today, we can't -- I hope everybody hears that -- this case needs to end, I'm sure, much to the chagrin of class members who have lost life savings in a Ponzi scheme basically. But we

need to proceed with this -- the purpose of this rule to show cause hearing with the understanding that at some point this case needs to be resolved if there's any way we can get it resolved.

So does that sort of -- now, Mr. Stephenson, what would you like to say?

MR. STEPHENSON: I'm sort of here unwittingly.

THE COURT: Right.

MR. STEPHENSON: I don't represent Arthur Field. I was trying to be of help to the court and ---

THE COURT: And you are. You are.

MR. STEPHENSON: --- to everybody as to what his situation is claiming to be. I'm not representing him.

THE COURT: Right. Right. And I appreciate you being here. But this is a matter -- what I would propose to do is -- y'all intend to call witnesses?

MR. BRANDT: Yes, sir.

THE COURT: Okay. Then I would propose to go forward with whatever you're intending to do. If we have to -- I intend to reconvene the

hearing when Mr. Field has been released and certified that he's competent. And we'll come back. Right now, we're just going to go forward with collecting evidence with respect to the issues that are presented in the rule to show cause. I don't know that I can believe that Mr. Field was involuntarily committed. I have -- based on his past, I would have to have medical proof that that was the case. So with all due respect, we will proceed with the hearing. Okay.

All right. Mr. Brandt.

Thank you, Mr. Stephenson.

MR. BRANDT: Please the Court. Your Honor, I would like for Ms. White, who is a witness in this case, to be sequestered and I would like to call Ms. Taillon to the witness stand.

THE COURT: Okay. Ms. White, if you will, wait in one of the rooms right outside the courtroom, thank you very much.

(WHEREUPON, Ms. White exits the courtroom.)

THE COURT: Come on around if you would. Put your left hand on the Bible. Raise your right hand.

I have to do it.

2009 and ask if you can identify that.

A I can identify what it says on it.

Q Okay. What is it?

A It's an account statement for York Mortgage Funding.

Q How much money is in the bank?

A 10,108.90.

Q Okay. There is a check that had been written out on June 19th ---

A Okay.

Q --- reflected on here. Is that correct?

A I guess. I don't remember.

Q I'm going to show you attached to it a copy of that check and ask if that looks like a York Mortgage Funding check.

A It says York Mortgage Funding on it.

Q Okay. For how much?

A It looks $2.

Q And who is it made payable to?

A Secretary of State.

Q And who signed it?

A It looks like Arthur Field.

Q Okay. That's your husband, is that correct?

A Yes.

MR. BRANDT: I'd like to introduce this as

Exhibit number 2, please.

(WHEREUPON, Plaintiff's Exhibit 2 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q I'm showing you another one dated as of August 31st, 2009. How much money was in the account on that time?

A 10,108.90.

Q Okay. Same address for the --

A Yes.

Q So you were receiving these, is that right, at Thornblade?

A Well, York -- it was York Mortgage Funding. It was going to Thornblade Boulevard.

Q Okay. Well, you resided there?

A Yes.

Q So you received it there?

A It came to that address, yes.

MR. BRANDT: I'd like to have that marked please.

(WHEREUPON, Plaintiff's Exhibit 3 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q Here's another one, ma'am. This is one is dated your balance as of 1/29/2010 for York Funding.

A Yes.
Q Same thing?
A Uh-huh.
Q How much money was in the account?
A 10,108.90.
Q Okay.
MR. BRANDT: I'd like to introduce that please.
(WHEREUPON, Plaintiff's Exhibit 4 is marked for identification and admitted into the record.)
THE COURT: You've handed up two copies.
MR. BRANDT: I'm sorry.
BY MR. BRANDT:
Q I'll show you another one, ma'am, dated as of March 31st, 2011 and ask if you can identify that.
A Yes, the account was closed out.
Q Okay. I'd like to introduce that. Same address, is that right?
A (No audible response.)
(WHEREUPON, Plaintiff's Exhibit 5 is marked for identification and admitted into the record.)
BY MR. BRANDT:
Q I'm going to ask if you can identify this.
A I can identify it. It's a check.
Q Okay. Who is it made payable to?

A I can't read it.
Q I'll represent to you that it's made payable to you.
A Okay.
Q Okay. And it's for how much?
A It's for the account balance.
Q Okay.
MR. BRANDT: If we may have this marked please.
(WHEREUPON, Plaintiff's Exhibit 6 is marked for identification and admitted into the record.)
BY MR. BRANDT:
Q This is Exhibit 6. I ask if you can identify the attachment, which is part of Exhibit 6.
A It looks like it's the account and it was closed out.
Q Okay. And whose signature is on that?
A That's Arthur Field's.
Q Okay. So Arthur Field had the authority to sign -- to close out the account?
A I would have to look at the signature cards, but I would assume he would. I mean, I don't know. It was that long ago that I can't remember. I'm assuming there were signature cards.
Q It's got the same account number.

A Okay.
Q And it's got your name on the check?
A Uh-huh.
Q Is that correct?
A Yes.
Q And this is Exhibit 6. So that means you received the funds and deposited it into your account, is that right?
A I did receive the funds.
Q You did?
A It was made out to me. I did work for York, and I typed notes for them for several years and I never received a pay check.
Q Okay. I'm going to ask if you can identify this.
A Okay. It looks like a signature card.
Q Okay. And whose signatures are on there?
A My name and Arthur's name.
Q Okay. And are those your social security numbers?
A I know that's mine. I don't remember what his is. I would assume it is.
Q And the date on this account was opened on May 9th, 2002; is that correct?
A It says May 8th.

Q May 8th, 2002. Does it appear that you signed on May 9th, 2002?

A That's what it looks like.

MR. BRANDT: Okay. I'd like to introduce that please as Exhibit 7, I believe.

(WHEREUPON, Plaintiff's Exhibit 7 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q Now, you worked with York Funding, correct?

A Uh, yeah. I did notes and I kept the books for I don't remember how many years.

Q Okay. You participated in it from its inception; is that correct?

A I don't remember. I truly don't remember.

Q You don't remember anything about --

A I don't remember when I started participating.

Q Okay. Do you recall having a banking relationship with BB&T of South Carolina as shown by these documents?

A I -- I must have. My name is on it. I can't remember doing it now.

Q How many accounts did you open under York Funding?

A I don't know. One? I mean, I have no idea.

I don't remember.

Q Okay. What other banks did you open accounts in other than BB&T?

A In 2003?

Q Well, any time.

A In 2003, I truly don't remember what bank accounts I opened. I'm sure York was a business and that was an account. Usually, each business has a separate account. I don't know. I didn't open every business account. I don't do that. I mean, I just don't remember.

Q Let me ask you if you can identify that.

A This looks like what you just showed me. Is that correct?

Q Look at the account number on there, ma'am, on the front page.

A Okay.

Q Right there. Is it different? What are the last four digits of that?

A 779.

Q Okay. That's different than the other one, is it not?

A I guess so.

Q And is it your signature?

A That is my signature.

Q And is that your husband's signature?
A That looks like my sig --
Q Okay.
A It looks like my husband's signature.
Q Same date as the other one?
A Yes.
(WHEREUPON, Plaintiff's Exhibit 6 is marked for identification and admitted into the record.)
BY MR. BRANDT:
Q So there was more than one bank account. You don't remember, but there was at least another bank account?
A I don't remember. I apologize, but I don't remember.
Q Well, you took $10,000 out of that account, correct?
A I guess. I mean, that's what the check says.
Q What did you take out of this account that was just produced?
A I don't know.
Q You don't have any idea?
A I don't remember. I know I did work for York and I never got paid for York and I know that that account was sitting dormant for, I think, a few

could have been prepared by his attorney.

Q Ma'am, this is a rule to show cause filed summoning Mr. Field to come to court. You understand that?

A Yes.

Q And you lived with Mr. Field?

A Yes.

Q Okay. And did you have an opportunity to read the affidavit submitted by Mr. Saad in this?

A I've read parts of it, yes.

Q I'd like you to look at this document please.

A Okay.

Q I'll represent to you, ma'am, that these are a series of documents and notes that are similar to records for York Funding and ask if you will look through there and see if you recognize these to be records of York Mortgage Funding LLC.

A They appear to be -- well, it says Capital Investment Funding on this too.

Q Take your time.

A It looks like both. I mean, you've got York and there is York. And these must be from the files, what it looks like that was in all these files, which I don't have, but you have.

that right?

THE WITNESS: I do. Not right now though.

THE COURT: Do you know where he is?

THE WITNESS: Right now?

THE COURT: Yes.

THE WITNESS: Yes, Carolina Behavioral Center.

THE COURT: And how long has he been there?

THE WITNESS: As an inpatient -- he's been a patient there since I believe it was last week. He was admitted to the emergency room on Tuesday night. Then I brought him into Carolina Behavioral Center the next day.

THE COURT: What was the admission for Tuesday night?

THE WITNESS: I've got the medical records with me. If you would like, I could show them to you. I've got the admission. It was --

THE COURT: Well, you could just tell me.

THE WITNESS: It was a panic attack. It was a mental breakdown. It was -- he -- he -- he was shaking, like, uncontrollably and he could barely walk.

THE COURT: You know the cause of that?

THE WITNESS: Stress. I mean, he's been under a lot of stress. There's a lot of lawsuits. We're trying and we've been trying to mediate this and trying to finish it and we thought we were very close to an agreement that everybody is on board with. And we were all set to go with this and then it keeps breaking down and we don't know why. We're all set.

If you don't think I can sign on his behalf, it will have to wait until he gets out because he's -- I visited him yesterday. I'm sorry if you don't think it's true, but I've seen him and he's -- you know, it's not a fun place to be.

THE COURT: You have any idea what the prognosis is? How long he's going to be there? When he's going to get out?

THE WITNESS: Well, he was talking -- he had -- he was speaking with a psychiatrist yesterday. I have yet to see the notes on it. But unfortunately, visiting hours are only on Wednesdays and on Saturdays. I saw him yesterday, but I didn't have any notes. I know that he actively wants to settle this so that we could just finally shut the door on this and

A And I don't know if it's the one to which you are referring.

Q Were you ever -- let me ask you if you can identify this.

I'd like this marked please.

(WHEREUPON, Plaintiff's Exhibit 26 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q Take your time to look at that.

A I'm not quite sure what it is. I see my name on it. I'm not quite sure what it is.

Q Okay. This is the document, I will represent to you, that was filed on December 31st, 2013 in Capital Investment Funding versus Arthur Field, et al, which would include you as a defendant.

A Okay.

Q And it was filed electronically on December 21st, 2013, and it appears, if you will look on the last page, that you signed it.

A Okay.

Q Is that your signature?

A That is my signature.

Q Okay. So you were aware of this lawsuit then?

A Yes. Now, that I see which one you are

referring.

Q Okay. Looking at this lawsuit, on page 3 of 7, there is a discussion that says White learned of the default on December 30th, 2013 through an acquaintance and never received, nor reviewed, any pleading in this matter. It appears that one day later, this motion to set aside the default and to dismiss was filed by you in the federal court.

A Can you please go back to that sentence?

Q Yes, ma'am. I've got a copy of it right here for you.

A Are they the same thing?

Q Yes.

A Uh, I'm not sure what that means. I don't remember the contents of this document.

Q You signed it?

A Yes, I imagined I knew what it was at the time. Right now, I don't. I'm not quite sure what it is.

Q Did you do the research necessary to prepare this document?

A No.

Q Who did?

A I don't remember it.

Q Isn't it true, ma'am, that Arthur Field

prepared this in its entirety and got you to sign it and you signed it?

A I don't know for sure who prepared it. I really don't. It was not me.

Q What contact did you have with Mr. Field regarding this?

A I don't remember. This was years ago. I do not remember.

Q Okay.

A I don't remember.

(WHEREUPON, Plaintiff's Exhibit 27 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q I'm going to show you this and ask if you recognize that. See if it's your signature on the last page of this document.

A That is my signature.

Q Okay. And what is this styled?

A I'm sorry. What was the question?

Q What does it say it is? It's a motion to dismiss by you.

A Yes.

Q And this is filed in your case, signed by you. The date that it was filed was two months later on February 14th, 2014. Did you do the research

necessary and did you prepare this document?

A No.

Q Isn't it true, ma'am, that Mr. Field prepared that document and got you to sign it?

A I think that's -- that's possibly what happened. I didn't prepare it.

THE COURT: Well, let me just interrupt. If you didn't do it, who did it.

MS. WHITE: I don't know because I wasn't there.

THE COURT: You signed it?

MS. WHITE: I did.

THE COURT: Who had you sign it?

MS. WHITE: Arthur had -- I guess it was Arthur.

THE COURT: No guessing about this.

MS. WHITE: Well, each document -- I don't remember each one individually, but I think it was him.

THE COURT: Did anyone else present you documents to sign?

MS. WHITE: I see what you're asking. No.

THE COURT: But you clearly did not prepare these documents?

MS. WHITE: No.

THE COURT: Arthur Field presented them to you for your signature, is that right?

MS. WHITE: Yes.

THE COURT: And these are filed electronically. Did you do it from your computer?

MS. WHITE: I don't know if it was ever done from my computer, if I had a copy of it, I'm not sure. I just can tell you I didn't prepare it.

THE COURT: But they were presented to you -- I'm not trying to put words in your mouth.

MS. WHITE: Right. I'm trying to comprehend what you are saying and I'm trying to remember.

THE COURT: Well, this is vital.

MS. WHITE: Okay.

THE COURT: You did not prepare them. Tell me -- tell me -- and I'm just telling you, now is the time to make a clean breast of this.

MS. WHITE: Yes, sir. That is what I'm trying to do. I really am.

THE COURT: Are you sure that Arthur

Field is the one that presented these documents to you for your signature to be filed with the court?

MS. WHITE: Yes.

THE COURT: Okay. I'm sorry to interrupt.

(WHEREUPON, Plaintiff's Exhibit 28 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q I'm going to prepare -- I'm going to show you a brief dated the same day that was filed, and ask if this was your signature on this document.

A Yes.

Q Was this too prepared by Arthur Field, given to you for your signature and electronically filed in this case?

A I believe it was, yes.

Q Okay. And you did not prepare it?

A No.

Q And he gave it to you.

(WHEREUPON, Plaintiff's Exhibit 29 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q I'm going to show you another one, ma'am, this was dated and electronically filed on July 8th, 2014 in the same case and ask if that is signa --

MR. STEPHENSON: That's correct, Your Honor.

THE COURT: And that indicates that the -- you adopt and incorporate for this hearing all the exhibits and your affidavit as submitted, is that right?

MR. STEPHENSON: Yes, sir.

MR. BRANDT: And I think I moved to introduce all the documents that we presented. I just wanted to make sure.

THE COURT: Yes. I've got 1 through 29. All right. We will reconvene this hearing when we learn that Mr. Field is available.

To the noteholders, uh, I just want to thank you all for -- I don't remember you all. You probably remember me. Probably have my picture on the wall and you use it as a dartboard. I don't blame you.

But -- Buck, could you step aside? I can't see.

I want to thank you all for being here. I want to -- I hope you all appreciate the efforts that Mr. Saad and the legal teams have gone through to try and collect this. I hope you all can see the incredible difficulties that, uh,

they faced. I wish I had better news for you. I will tell you that you all have any sentiment with respect to the settlement of the case -- are y'all --

SPEAKER: What do you mean?

THE COURT: Well, what we're talking about doing is putting this -- putting an end to it, all these lawsuits. We can't find where the pot of gold is. I think I just -- at some point, we've got to, for your piece of mind, put the thing to rest.

SPEAKER: I agree with you. I do. Matter of fact, he's still doing damage.

THE COURT: Okay. Yes, ma'am.

SPEAKER: I know the money is not coming. I know the money is gone. He is very smart, manipulative and narcissistic. He's an evil person and a very good chameleon. I have seen him -- judge, I have seen him interchange money to people and then on the other side giving this appearance of having no money, taking advantage of people. He plays to whatever. He doesn't know the difference between right and wrong.

THE COURT: Well, I agree with everything you said except the last part about knowing the

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 14th day of November, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Teresa B. Johnson

Official Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)))	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
William F. Tomz and Frances W. Tomz, Individually and as Class Representatives, Plaintiffs, versus Capital Investment Funding, LLC and Arthur M. Field, Defendants.	))))))))	Case No. 2008-CP-23-3665 IN SUPPORT OF RENEWED MOTION TO RECUSE

EXHIBIT D

TRANSCRIPT EXCERPTS

3/17/17

This shall not be construed as consent to personal or subject matter jurisdiction or a waiver of any defense or right of Arthur Field or any other related non-party.

c/o 310 Thornblade Blvd.
Greer, SC 29650 (864) 234 2130
6/23/2017

Court Reporter

Re: March 17, 2017 Hearing before Judge Miller
13th Judicial Circuit, Greenville
2008-cp-23-3665 *Tomz v. Capital Investment Funding, LLC*

Susan Hudgins
Court Reporter
PO Box 273
Moore, SC 29369

Dear Ms. Hudgins:

I hereby request the transcript of the Hearing held before Hon. Edward Miller at roughly 2:30 p.m. on March 17, 2017 in Greenville. Please be sure to include all comments made by Judge Miller, whether to counsel, witnesses or his court clerk.

I also request an electronic copy of the entire voice recording of the hearing.

I will assure payment of the cost of transcription and production of the electronic record. If there is an additional fee for expediting this, please advise.

If you have any questions, please contact me directly. Kindly let me know cost and payment terms or arrangements.

Many thanks for your assistance.

Sincerely,

Arthur M. Field

c/o 310 Thornblade Blvd.
Greer, SC 29650 (864) 234 2130
7/1/17

Re: March 17, 2017 Hearing before Judge Miller
13th Judicial Circuit, Greenville
2008-cp-23-3665 *Tomz v. Capital Investment Funding, LLC*

Susan Hudgins
Court Reporter
PO Box 273
Moore, SC 29369

Dear Ms. Hudgins:

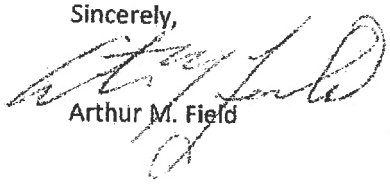
Thank you for your swift and courteous reply. Enclosed is a money order for $70 as requested for the expedited transcript.

Please be sure to transcribe the off-hand comment(s) made by Judge Miller. During the presentation made by Mr. Saad describing a book to be written by me, His Honor quietly, but distinctly and audibly, said to his Clerk: "Field will be writing that book in prison." I could easily hear this sitting at counsel table. It is essential his exact words be transcribed and I appreciate any effort you must employ to accurately report that remark interjected during Saad's presentation and any others audible on the recording.

It is also essential you preserve the original recording in the event this matter becomes the subject of an appeal.

Many thanks for your assistance.

Sincerely,



Arthur M. Field

Cc: M. Caskey, Esq.

c/o Greer, SC 29650 (864) 419 6609
Jan. 25, 2018

Re: September 5, 2017 Hearing before Judge Miller and
March 17, 2017 Hearing before Judge Miller
13th Judicial Circuit, Greenville
2008-cp-23-3665 *Tomz v. Capital Investment Funding, LLC*

Susan Hudgins
Court Reporter
PO Box 273
Moore, SC 29369

Dear Ms. Hudgins:

Please prepare a verbatim Transcript of the hearing held at 2pm in the above matter. Let me know the anticipated cost and I will obtain a Money Order for you. Delivery should be made within the time and manner prescribed in S.C.A.R. 207. You may leave a message at 864 419 6609 or email me at arthurfield424 @hotmail.com. I requested a copy previously on September 11, 2017. This Transcript is needed for appeal dated 1/22/18. Since I believe this is a second copy, please charge me the copy price provided in the Court Reporter Rules Manual.

On July 1, 2017, I requested a verbatim Transcript of the above hearing, which you provided. I requested that all statements made during the course of the proceeding be transcribed in accord with Section VI of the Court Reporter Manual. In reviewing the Transcript I observed that an audible statement was omitted from page 13. Challenge is made to the omission of the clearly audible statement heard by one or more persons in the court room and I again request you correct the record.

Pursuant to Section XIIIC and S.C.A.R.607(i), I hereby request the September 5, 2017 audio recording and the March 17, 2017 audio recording both be retained until further notice in the event any appeal should result from any party.

Many thanks for your assistance.

Sincerely,

Arthur M. Field

Cc: M. Caskey, Esq.
G. Brandt, Esq.
S. Case, Esq.
Clerk, Court of Appeals

c/o 310 Thornblade Blvd.
Greer, SC 29650 (864) 234 2130
9/9/2017

Re: March 17, 2017 Hearing before Judge Miller
13th Judicial Circuit, Greenville
2008-cp-23-3665 *Tomz v. Capital Investment Funding, LLC*

Susan Hudgins
Court Reporter
PO Box 273
Moore, SC 29369

Dear Ms. Hudgins:

On July 1, 2017, I requested a verbatim Transcript of the above hearing, which you provided. I requested that all statements made during the course of the proceeding be transcribed. In reviewing the Transcript I observed that an audible statement was omitted from page 13.

The Official Court Reporter Manual of the State of South Carolina Section II, D states "The court reporter is responsible for providing appellants and other parties with a timely, accurate, verbatim record of court proceedings;..." Section VI, A,3 states "All aspects or phases of proceedings in civil cases must be recorded verbatim. ..." Section VI D states "The court reporter is responsible for obtaining a clear, complete and understandable record of the court proceedings...."

Challenge is made to the omission of the clearly audible statement heard by one or more persons in the court room.

Pursuant to Section XIIIC and S.C.A.R.607(i), I hereby request the Transcript be retained until further notice or not be destroyed without notice to me in care of the above address.

Many thanks for your assistance.

Sincerely,

Arthur M. Field

Cc: M. Caskey, Esq.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

WILLIAM F. TOMZ AND FRANCIS W. TOMZ, INDIVIDUALLY AND AS CLASS REPRESENTATIVES,	)	
PLAINTIFFS,	)	2008-CP-23-03665
-VS-	)	TRANSCRIPT OF RECORD
CAPITAL INVESTMENT FUNDING, LLC, AND ARTHUR M. FIELD,	)	
DEFENDANTS.	)	

MARCH 17, 2017
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE EDWARD W. MILLER

A P P E A R A N C E S:

ATTORNEYS FOR PLAINTIFFS:

GEORGE BRANDT, III, ESQ.
STANLEY T. CASE, ESQ.
GENE M. CONNELL, JR., ESQ.

ATTORNEY FOR DEFENDANTS:

MICAJAH P. CASKEY, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

modified. The original order of restitution requiring Arthur Field to pay two point nine -- two point eight seven seven (2.877), I think, is the exact number and some change.

And what this settlement is intended to do is to replace the remaining restitution payments and substitute all the payments that we're going to get in here for restitution. It also, we believe, has the effect of making this Global Settlement subject to all the laws and conditions of restitution oversought by, you know, parole and so forth.

The second part is -- that's a condition, which I'm sure Judge Miller will address, is that this Settlement Agreement will be void if Judge Miller decides in his view that he ---

(Cell phone rang)

MR. SAAD: There are things that ---

MR. FIELD: Excuse me. I'm sorry. I turned it off. My apologies.

MR. SAAD: There are actions that Arthur has done that's -- on the rule to show cause that are at a level of contempt that he will want to issue sanctions. So that's going to be Judge Miller's duty to weigh, benefits of the settlement versus whatever actions he sees are appropriate for the rule to show cause in the matters that we've brought before him in the last three years.

profits he might make if he ever sells, or publishes, or produces any work, book, movie from this or anything related to CIF. It's a longshot. And the likelihood is, you know, I don't think anybody should expect anything out of it, but if he ever does, and he certainly is capable of writing, and writing s something come about.

My to me many times you want tc l, go write a book about t and it could sell a lot becausc s been -- and it certair ient value.

Tl citution order to be modifi nbers of CIF, which are Arthur Field, Brad Kelley, [illegible]ey, Log Cabin Financial and, I think there's one more. I can't remember. They all -- Oh, Calvin Williams. They all have to give up their membership interest so that we don't have them as owning part of CIF once we do the settlement.

There's a little bit more details as we go along and, you know, we could probably spend another hour or two going through the details, but I want to just highlight a few more intricacies.

As I said, Thornblade house will be deeded to CIF. Arthur Field and Kathryn Taillon will -- we will allow them to stay there rent free until October 31st. They want them

are you?

MR. MASSEY: I'm Gary Massey. My father was Floyd H. Massey.

THE COURT: Okay. Member of the Class?

MR. MASSEY: Yes, sir.

THE COURT: All right. I'm going to give y'all a chance to talk in just a minute.

MR. MASSEY: All right.

THE COURT: Okay. But for the attorneys for any of the Defendants is who I'm first addressing.

MR. CASKEY: Nothing from the Defendant, Your Honor.

THE COURT: All right. Thank you. All right. Yes, sir.

MR. MASSEY: Jerry Massey from South Carolina. My father, Floyd Massey, had a substantial ---

THE COURT: If you could keep your voice up.

MR. MASSEY: My father is Floyd H. Massey.

THE COURT: Yes, sir.

MR. MASSEY: Had a substantial amount invested in Capital Investment. My question for you, Mr. Saad, is you've been working on this for how many years now?

MR. SAAD: Almost nine.

MR. MASSEY: Nine years. On a scale of one to ten, this settlement, how it sits with you, what is your honest number on where this falls, on a scale of one to ten? Is

your -- I guess I would say your approval of it, where would it be?

(Pause)

THE COURT: Let me just ---

MR. MASSEY: That's an honest question.

THE COURT: I think it is an honest question, but let me just step in. You're asking -- and I've said this many times. And I think members of the Class, you've heard me say it before. Mr. Saad and the attorneys involved in this have worked diligently. And, you know, I don't know that we need to get into emotional ---

MR. MASSEY: I don't think that's an emotional number.

THE COURT: Well, ---

MR. MASSEY: I think it's a very subjective number. I'd just like to know his opinion of ---

THE COURT: Okay. Well, ---

MR. MASSEY: Of one to ten.

THE COURT: You comfortable doing that, Mr. Saad?

MR. SAAD: Yeah, I'll ---

THE COURT: Okay.

MR. SAAD: --- address it. Because it's -- it's not a direct question. It's, I mean, what are we measuring? My comfort with it? I believe it's the right thing to do. I believe we have mental fatigue. You know, if you're in an airplane and you got mental fatigue, the wing's going to

fall off sooner or later and the thing's going to crash.

This -- this will go on, and on, and on, and on. And I sit through depositions, and I sit through hearings. And I view what a waste of energy, what a pure waste of energy to fight for something like this when I know the money's not going to be there.

But I kept -- I believe it was the right thing to do to get us to this point because I think what my goal and what I was internalizing, you know, I profess this to everybody, but I always viewed to get that house because I think it's a statement to the noteholders.

He lived in a nice house. And I've heard it over and over again from too many of the noteholders. And so I see this as a symbolic victory that Arthur is relinquishing, you know, his primary asset. And it's a big one. And it hurts.

I think he's -- I think it -- I think it's a meaningful taking from him. And so that's why I think it's the right thing for the Class.

I don't think -- do I think this is fair? Life is not fair. People get hit by cars. They have heart attacks. Y'all were not treated fairly, but it happens. So I'm not here to make things fair to you. I'm just doing the best I can. And I think this is the best we're going to do.

MR. MASSEY: Okay. So what's that number? If you put one to ten?

ratio, this man spent five days in jail. That's a travesty in the history in the annals of the courtroom. And I for one am going to do everything I can to make the citizens of South Carolina aware of this travesty.

I will say this, these shareholders and all of us, it's like when my father came to Mr. Fields, he thought he was getting the fine wine. I don't know how many of you have ever tasted a muscadine, but it looks like a grape. Once you bite into it, it's bitter and it's bad.

And what Mr. Fields did was not only unethical, it was so selfish and deceitful. And he has not paid anything -- very -- hardly anything for it.

The chapters that should be written would be about the people that are in their own prison like my mother for the rest of her life. She's eighty-five years old and there's nothing for her to live on. She's in her own prison.

And all these folks that are in nursing facilities or in their apartments or they can't get the care they need because they invested everything they had. Are you kidding me? Are you kidding me?

Yes, I will fight until Hell freezes over for the lives of these people because he took not only their money, but he took their souls. He took their lives. He took their future.

Yes, it's much more valuable. Listen, money is not the

MR. SAAD: We'll probably get something on the high side of a million three. And then we've got to pay attorney's ---

MR. MASSEY: No, I'm not talking about that number. The one to ten.

MR. SAAD: I'm sorry. What?

MR. MASSEY: The one to ten.

MR. SAAD: I say if we're measuring if it's the right thing to do, I'd say it's a -- it's a nine.

MR. MASSEY: Okay. Can I respond to that?

THE COURT: Yes, sir.

MR. MASSEY: You mentioned that it would hurt Mr. Field. You also mentioned he could write a book, write a movie. Let me tell you what the plot for that movie should be. The plot should be these countless members, this class action suit, like my father, who worked twenty-five years in the mill, worked two jobs, had four hundred thousand dollars -- everything he had he invested with this man because he trusted him.

My mother, you talking about -- listen, I'm going to say this. Bernie Madoff will be in prison for the rest of his life. If you look at the average shareholder who lost, what Mr. Fields did is triple what the average shareholder had. He had thousands, thousands of clients.

If you look at the hundreds of clients and do the

ratio, this man spent five days in jail. That's a travesty in the history in the annals of the courtroom. And I for one am going to do everything I can to make the citizens of South Carolina aware of this travesty.

I will say this, these shareholders and all of us, it's like when my father came to Mr. Fields, he thought he was getting the fine wine. I don't know how many of you have ever tasted a muscadine, but it looks like a grape. Once you bite into it, it's bitter and it's bad.

And what Mr. Fields did was not only unethical, it was so selfish and deceitful. And he has not paid anything -- very -- hardly anything for it.

The chapters that should be written would be about the people that are in their own prison like my mother for the rest of her life. She's eighty-five years old and there's nothing for her to live on. She's in her own prison.

And all these folks that are in nursing facilities or in their apartments or they can't get the care they need because they invested everything they had. Are you kidding me? Are you kidding me?

Yes, I will fight until Hell freezes over for the lives of these people because he took not only their money, but he took their souls. He took their lives. He took their future.

Yes, it's much more valuable. Listen, money is not the

only thing we're talking about here today. This is, you know, this whole process stinks to high Heaven. And I can tell you, we've all bitten into a muscadine.

And we know the difference between muscadine wine and truly fine wine. And we're not getting that today. And it's got to change.

And whatever it takes to overcome all of his little, you know, antics to try to avoid taking responsibility as a man -- you know, what -- God's word says that a righteous man does what's right even though it costs him, even if it hurts.

Zacchaeus, when the Lord, you know, told him to come down from the tree, went to his house, he said, listen, everything I've taken, I'll give three times what I've taken. He did what was right. A good name is to be cherished more than anything.

This man needs to make his name right. And he needs to do what's right by these people. And this stinks. It's wrong.

THE COURT: Okay. Thank you very much.

(Members in the audience said amen)

THE COURT: Is there anyone else from the Class who would like to address Mr. Saad or make any statement?

MR. SPATES: I have something I'd like to say.

THE COURT: Yes, sir.

MR. SPATES: I'm Dennis Spates (phonetics). And I found something new -- learned something new. Mr. Fields was sentenced to ten years in jail. He spent five days. I was -- I always thought crime doesn't pay. Well, Mr. Fields and Judge Maddox proved that statement wrong. It does pay.

He stole thirty-eight million dollars from the citizens of South Carolina and he's going to give back one point nine million or two point nine. Now, I don't think that's right.

THE COURT: All right. Anyone else?

(No response)

THE COURT: I have a couple of questions. I've got some serious concerns. What is the anticipated effective date of this Global Settlement Agreement? Upon his full -- the payment of everything that's agreed to?

MR. SAAD: If -- it would be no later than December 31st, 2018, but he has the twenty thousand dollars incentive to make it December 31st, 2017.

THE COURT: Okay.

MR. SAAD: And that's just on the eighty-five thousand dollar payment. Everything else -- all the documents to effect the deal have been signed and are now held in trust. So we have a signed deed. We have signed assignments of mortgages and notes. We have -- we have the leases ---

THE COURT: Well, my question is this. I understand the financial. But in order to approve this, this GSA

you've got to go through the process. And the likelihood of recovering that is diminishing greatly.

THE COURT: Okay.

MR. SAAD: And the fact that his daughter is the deed holder on the Thornblade house, it as originally purchased through funds that touch some of these defendant companies, but ultimately it was in Kathryn's name, and then she deeded it to Allyson even though Allyson didn't live there in 2012, I think. So to get that property away from Allyson, it's another lengthy process of -- and you've got to show -- you've got to prove that it was taken to defraud creditors.

And there's appeals. And appeals, Arthur's very good about filing appeals. But that's -- so that's what we're facing. That's why I say, do I think it's fair? No. But do I think it's the best we're going to get? Yes, I do.

THE COURT: Okay.

MR. SAAD: Monetarily.

THE COURT: Okay. All right. Well, ...

(Pause)

MR. SAAD: Five years restitution. It was a hundred a ninety-two thousand dollars. So we're getting substantially more, a million plus.

THE COURT: All right. Thank you. I'll tell y'all right now I'm not going to approve this settlement today, if I approve it at all. And I think a lot of you, I don't know

how you all feel, but I think you now understand that this money is -- disappeared. And where it is, we have been unable to find it. And there have been diligent efforts to do that.

And I believe there have been diligent efforts to hinder that search. I have no financial skin in the game in this, but what I -- the skin in the game I have in this involves these pending rules to show cause and potential contempt of court. And I would love to see all of y'all get your money back. We just don't think that's going to happen.

But there have been, I think some serious matters and prevarications instituted by Mr. Field in violation of orders of this Court, which in my mind is very, very serious. Every effort that we've made to follow the paper trails has been resisted. And I understand that the computers were turned over, is that right, Mr. Saad?

MR. SAAD: Yes, sir.

THE COURT: And a search was performed. I guess what we're doing is morphing into the rule to show cause. And so I -- tell me what the search of the computer revealed.

MR. BRANDT: Well, if it please the Court, Your Honor. I'm Buck Brandt.

THE COURT: Yes, sir.

MR. BRANDT: I represent Mr. Saad as receiver in this

A. I started the Computer Forensics Unit in 2002. And since then I've had training in cell phone forensics, computer forensics. I've done over a -- thousands of devices of cell phones and computers.

THE COURT: Okay. All right. Did you examine any computers in this matter?

A. I did.

THE COURT: Okay. Would you tell us about that, dates and times and what you -- what all you did.

A. On 17 December I met with Mr. Fields at 9:05 am at the parking lot in Wells Fargo over on the parkway. And I took possession of some computers of his, which I've got he signed for that I took them, and when I gave them back he signed for them.

I waited to hear that you had an order giving me permission to go ahead and start searching them. Which once I did I started looking for deleted -- I was told that that was the main issue was any deleted things after two pm on December 8th, 2016.

So using my software forensic program, EnCase, I noticed -- one of the first things I noticed was that there's a program called CCleaner, which is a -- it's a utility that you run on your computer that cleans up temporary files, broken files and can overwrite things that are deleted in your unallocated space or deleted area.

It's used for -- we actually use that program on our forensic computers because we do a lot of child porn cases. So we'll run that to clean out our cache, information like that. So it's a program I'm familiar with.

I did notice that there were -- that it had been run on 12/15 at 9:29 am. And this is a copy of my report. You can -- that's your ---

THE COURT: All right. Thank you.

A. This screen shot right here, Your Honor, is the -- you can see the program CCleaner right there was run -- last access was 12/15 on 16 at 9:29 was when it was run.

THE COURT: Okay. Does anybody want to take a look at that? Shawn, can you run about, I don't know, three or four copies?

(Pause)

THE COURT: All right. Let's go ahead -- let's mark that.

(Whereupon Court's exhibit 1 was marked)

THE COURT: Well, these guys -- they can share. Thank you, Shawn. All right. Go ahead, Mr. Perry.

A. I was stating on the 12/15 that there were some forty-four thousand files that had been overwritten. So I can't -- I can't tell you what -- what those files were that were overwritten.

THE COURT: Okay.

A. Whether it was pictures, or documents, or utilities, there's just no way of knowing. This here gives you -- it shoes you an example of the over -- when it overwrote the files it gives it a name.

And these -- if you were to go through all forty-four thousand of them, none of these Z's -- and that's the name of the file. You can see over here, this is the area of a data. It's blank because it's been overwritten.

THE COURT: Okay.

A. So ...

THE COURT: All right. Shawn, I guess, make about five copies of that. You got any other ones that you want to ---

A. I'm sorry?

THE COURT: You got any other ---

A. Yeah, there was two more screen shots.

THE COURT: And, Shawn, let's go ahead and make -- you out of paper? You need some paper? Do you need some more paper?

(Pause)

THE COURT: All right. Yeah, Mr. Caskey.

MR. CASKEY: Yes, sir. I just wanted to -- Micah Caskey. I wanted to note for the record a renewal of our motion for recusal. We seem to be going ---

THE COURT: New grounds?

MR. CASKEY: We seem to be going into the rule to show

cause issues, Your Honor.

THE COURT: We are, yeah.

MR. CASKEY: And given that it's a continuation of that hearing that we addressed some months ago, I just want to renew that motion for recusal based on the grounds that we covered in the last hearing.

THE COURT: Okay. Denied.

MR. CASKEY: Thank you, sir.

THE COURT: Let's just make them one exhibit. So here's the -- here's the marked. It's going to be -- are there four pages?

A. Yeah, there were four screen shots.

THE COURT: Okay. So four page -- one exhibit, four pages.

(Whereupon the documents were attached collectively as Court's exhibit 1)

THE COURT: Okay. Go ahead.

A. There were two type of web based emails that were deleted on 12/12 at 7:01 am, which were a Hotmail and a OWA, which stands for Outlook Web Access. And that's on screen shot three. You can see the mail servers and the little round thing with a slash, means it was deleted, but it also says over here last access on this date. And over here file was deleted.

THE COURT: Okay.

A. And then it was run on 12/15.

THE COURT: All right. So your department uses that particular application?

A. CCleaner?

THE COURT: Yes.

A. Correct.

THE COURT: All right. Is there -- how do you -- did it wipe clean the entire hard drive or just specific files?

A. It does. You actually can go into the settings and pick specific type files to have it wiped. Then you can have it wipe the unallocated space, which is the deleted area without touching any of your stuff that's on your computer itself.

THE COURT: Okay.

A. So ---

THE COURT: But the ones you're referring to were -- they had not been deleted. They were files ---

A. They were files that had been deleted, ---

THE COURT: Okay.

A. --- but had not been overwritten. The name of the files had not been overwritten, but the content was overwritten.

THE COURT: Okay. All right. And does this CCleaner -- can it initiate -- can it just start on its own?

A. If you go into the settings when you first load it on

your computer and you go to settings -- well, at any time you have it, you can go into the settings and you can set it to run upon booting your computer up. However, but you have to go in and manually actually set it to do that. However, if that had been the case, the last access date for CCleaner should have been the 17th and not the 15th.

THE COURT: Okay.

A. Because if it -- if it auto ran on the 15th it should have auto run on the 17th.

THE COURT: Okay. All right. Anybody want to ask any questions of Mr. Perry?

MR. CASKEY: Yes, Your Honor.

THE COURT: All right.

MR. CASKEY: May it please the Court?

Cross Examination by Mr. Caskey:

Q. Thank you, Mr. Perry, for being here today.

MR. CASKEY: Again, for the record, it's Micah Caskey.

Q. I just have a couple of questions. Which laptop are we talking or which computer are we talking about here?

A. This was the ASUS.

Q. This is the laptop?

A. Yes.

Q. Okay. And are you familiar with the purpose of that laptop, what my client used that laptop for?

A. I'm sorry. I may ---

MR. CASKEY: Yes, sir.

THE COURT: Don't interrupt.

A. One computer would not -- I could not get it to read. It would not fire up. I couldn't get it to connect. There was a problem with it, whether it was the boot record or some type of problem with it. The second one was this one.

And then I had a desk -- desktop that was -- the Martins had at the law firm. And I did not -- I haven't done that one because they had it in their possession during the time of -- what we're referring to, the time-frame.

In other words, they had the computer. Therefore, he couldn't have deleted anything off of it. So I didn't do anything on it.

Q. So the Court ordered you to analyze that computer and you didn't do it because you didn't think that it could have been part of the deleted scope of that, right?

A. Couldn't be.

Q. Couldn't be. Unless he went into the office of the attorneys and accessed it, right?

A. Pretty much, yeah.

Q. Well, we wouldn't know that because you didn't even test that?

A. That's correct.

Q. Okay. So in the sum of the three computers that this Court ordered you to analyze, you've -- you analyzed one, is

specifically said, this is the one that I have run the software programs on because of the virus. I said, and this other one, which contained -- is the laptop, contains all the CIF material.

Q. Thank you, Dr. Field.

MR. CASKEY: Your Honor, I don't have any further questions.

THE COURT: Y'all have any questions?

MR. BRANDT: No, sir.

THE COURT: Anybody else have any questions they want to ask him?

MR. CASKEY: None from the Defendant.

THE COURT: All right. You can step down. All right. Anything else?

MR. CASKEY: Your Honor, we just renew all previous objections and motions in this case.

THE COURT: Okay. Same rulings. All right. Any comments from any of the members of the Class, anything y'all want to say? Yes, ma'am. If you would, state your name for the record.

MS. DENTON: Yes. I'm Janet Denton. And my husband was George Denton. And we invested, I think, because my husband was developing Alzheimer's. And we went to get our money and -- which was maturing, and they told us that we couldn't do it, that it had -- we had to have acted within a

certain period of time previously.

But I went home and read the letter that was presented to us. And I was in my -- we were in our rights to get our money at that time.

He got worse. He was put in a nursing home. And this affected him really greatly because we had always worked really hard for our money. And this was something we had depended on when we retired.

And I would just like to know when he moves to Florida what type home is he going to live in? Where is the money coming from? And would he like to live on his Social Security for the rest of his life? Because that's what I'm having to do.

THE COURT: Yes, ma'am.

MS. DENTON: Thank you.

THE COURT: Thank you. Anyone else? Yes, ma'am.

MS. LOCKHART: I'm Nancy Lockhart. I'd like to know why we're just now checking his computers? Why are we -- we've waited nine years. Why are we just now checking them?

THE COURT: Well, ---

MS. LOCKHART: And one other question.

THE COURT: Yes, ma'am.

MS. LOCKHART: Why don't we sell his house now? Why is he allowed to live in it until October? And also the daughter, why not start now? Why wait another year?

THE COURT: Okay. Valid questions. The computers were -- it was -- they're -- we didn't obtain the right to do that except through the litigation, okay? And I can't speak to what the State Grand Jury -- what they looked at, what they could do. We were limited in a lot of ways, if you remember, because of a pending criminal investigation. That has some of the -- something to do with what's -- the delay in this.

The next -- your second -- oh, I'm not party to the negotiations for this proposed Agreement. So what went into that, it's a give and take on both sides.

I will tell you that I think what Mr. Saad has said about the analogy of mental fatigue is very real. And I imagine you all are feeling some of that too. It has been -- the amount of angst that has been imposed on the people involved in this litigation has been -- it's pretty enormous.

And so I have not decided whether I will agree to this or not. I don't particularly like the idea of the way this is being driven, that -- but I'm going to take it under advisement and think about it.

And, you know, at some point everything's got to come to an end. And that's sort of, I think, where, you know, is it now or do we go on for another five years with more of the same? Because I can promise you it will be the same.

Some people just know no other way. So is there anything else we need to -- anything from the Class attorneys?

MR. CASE: No, sir, Your Honor.

MR. PILLSBURY: Your Honor, if I may. Rodney Pillsbury. I'm CIF counsel in the State Court case also in the Federal Rico case.

Just wanted the Court and the noteholders to know that we -- we've been actively negotiating everything on every element. I mean, if you look at the Settlement Agreement, it is how many pages? Fifteen before you get to signatures? Sixteen pages of detail, after detail, after detail. And exactly what you expressed from the outside looking in is very valid.

What I can tell you is I was the point person in negotiations working with Jerry September through December, carried over into December. And he spent countless hours. And he hasn't paid himself a dime in years on this file. He's doing it to finish and to bring closure and do the best that he can for all of you.

I mean, I could tell you every meeting I've had with him, that has been his number one concern. And so just from working side by side with him, I can tell you that there wasn't an aspect of this that he didn't give that he wasn't thinking what is in the best interest of the noteholders?

And even the timing of moving out, there were reasons

pro and con. There were statements made. And at some point you just concede certain things in order to get the entire deal done.

But I know, you know, I can't tell you the number of hours that Jerry has had, probably more than two hundred or so, I mean, literally while he's trying to run a CPA practice trying to get every detail nailed down. And so I just wanted everybody to know that this wasn't something that was just sort of thrown together at the last minute.

And there are some details that have some heartburn in them, but -- and I think, you know, we can probably answer any questions that you may have privately about any particular details, but I can tell you that it was absolutely done trying to extract everything that he believed was reasonably obtainable. Thank you.

THE COURT: Yes, sir.

MR. CONNELL: Your Honor, I felt maybe I should say something since I started this. I'm Gene Connell.

THE COURT: Yes, sir.

MR. CONNELL: Back nine years ago my neighbor came to me about a Capital Investment Funding that -- and had a problem with that. He's Mr. Tomz, who started this lawsuit. Since that time and in the last nine years there have been five law firms involved in this thing including a law firm in New Jersey.

And we -- I want to point out something for y'all. Mr. Pillsbury spent five years looking at documents, trying to trace any emails, trying to figure out whether somebody in Germany might have some money, trying to figure out whether there's some secret bank accounts. So -- so the Court understands, it's not us giving up, it's us not being able to find anything else after nine years other than what we have and maybe this money that might be available in New Jersey.

I mean, we're not giving up on y'all. We have spent -- I've been in since the beginning. And I want to point out all these people here have been in it all the way through. And we have looked at everything, millions of pages of documents, records, emails.

Your Honor's been in the case all this time. You're the second judge. I had -- I got a subpoena from the State-wide Grand Jury. Your Honor remembers about that. I had gotten some documents.

So our point is is that this is the best that we can find with what we have. We have looked at everything we can think of.

If y'all want to come -- the files in my office, I think, are at least six banker's boxes. I'm sure that -- I don't know how many you have. A hundred and twenty banker's boxes. How many do you have, Mr. Pillsbury?

MR. PILLSBURY: A lot.

MR. CONNELL: Lots. In one -- in one part of the Federal case, I was looking at it yesterday because we're still involved with that, there are three hundred and seventy some filings between us and Mr. Fields and the Court.

And we've had this case in Federal Court, we've had it State Court. It was in Horry County. It is -- it has been investigated as much as any case I can remember. I've probably done a dozen consumer fraud class actions in my practice.

So so far all of y'all -- we did not -- this is not something we entered into lightly. There were two mediations. We all came to them. This is all we could find at this point.

THE COURT: Okay. Yes, sir.

MR. DONALD: Just one quick statement. My name is Ray Donald.

THE COURT: Okay.

MR. DONALD: After this, if the Court settles it, agrees with it or not, would there be any way for anybody in the Class -- I think we would all like to have some sort of a number from Mr. Saad or Mr. Connell, whoever, that says -- we've had one payment already of approximately two and a half to three percent. In two years, whatever the date is,

can you give us some sort of a number -- is there going to be -- because right now one point five million on thirty-nine million, that's less than three percent.

I mean, is it three cents on a dollar? Is it five cents on a dollar? Is it two cents on a dollar? And when can we see some sort of a -- if it's nothing from New Jersey, that's -- that's a blessing if we get anything from New Jersey. But today with what you have, when will we see a payment and approximately how many cents on the dollar do you plan on paying out after you pay all the legal fees and all that stuff?

That's, I think, what the Class would like to hear. A concrete date, a concrete number is all we're asking for. If we lose our, excuse my English, but our fannies, I'm not going to say another word, but if we lose that, we've lost that. Tell us today what we can go home and buy a refrigerator with, you know? Buy ninety-nine dollars worth at Home Depot, but buy something. Let us know.

Can I pay my home owner's insurance? You know? I'm not going to buy a home anymore, but maybe I can pay my insurance. That's all we would like to know.

THE COURT: Okay. Well, I'm sure when the time comes Mr. Saad can do that. He's -- he is very good at that. I would point out too, to the Class members, if you're concerned about the diligence of the efforts to recover

these funds, the State Law Enforcement Division did an extensive investigation.

So it's not just been the private -- these gentlemen and their -- everyone that associated with them. It's also been the State that has done an investigation.

And if you all have followed the -- read any of the documents about how this was accomplished -- I called it a shell game many years ago. And I am more convinced today that it's a shell game than I have ever been.

There may be money somewhere, Luxembourg, hidden away in the Caribbean or something. We can't find it. The only person that would know where it is sits right there. And he's not going to tell us. Yes, sir.

MR. SPATES: Dennis Spates. According to -- when he got his ten year sentence he made an agreement with Judge Maddox that he would help find the money to get out of jail. Well, according to what you've said so far, you said earlier, he's done everything he could to keep from helping.

So as far as I'm concerned he's broken his agreement with that parole and should go back to jail for ten years and see if maybe he can come up with some ideas now.

THE COURT: Okay. Well, I doubt ---

MR. SPATES: Ten years is nothing for that kind of money.

THE COURT: Yeah. I doubt that you're alone in that

sentiment. That is not -- that issue's not before me. And so is there anything else anybody wants to say?

It's been a long arduous process. And I am taking this matter under advisement. I have already made a conclusion with respect to contempt of court and whether -- how I act on that, I'm going to think about. Okay. If there's nothing else, we'll be adjourned.

MR. BRANDT: Thank you, Your Honor.

MR. CASE: Thank you, Your Honor.

(Hearing Ended at 12:27 pm)

(End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 17th day of March 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 9, 2017

Susan W. Hudgins

Circuit Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)))	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
William F. Tomz and Frances W. Tomz, Individually and as Class Representatives, Plaintiffs, versus Capital Investment Funding, LLC and Arthur M. Field, Defendants.	)))))))))	Case No. 2008-CP-23-3665 IN SUPPORT OF RENEWED MOTION TO RECUSE

EXHIBIT E

TRANSCRIPT EXCERPTS

9/15/17

This shall not be construed as consent to personal or subject matter jurisdiction or a waiver of any defense or right of Arthur Field or any other related non-party.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

WILLIAM F. TOMZ AND
FRANCIS W. TOMZ.

PLAINTIFFS,

-VS-

CAPITAL INVESTMENT
FUNDING, LLC AND
ARTHUR M. FIELD,

DEFENDANTS.

2008-CP-23-03665

TRANSCRIPT OF RECORD

SEPTEMBER 5, 2017
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE EDWARD W. MILLER

APPEARANCES:

ATTORNEYS FOR PLAINTIFFS:

GEORGE BRANDT, ESQ.
STANLEY CASE, ESQ.

ATTORNEY FOR DEFENDANTS:

MICAJAH CASKEY, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

THE COURT: Yes, sir.

MR. BRANDT: Please the Court, Your Honor?

THE COURT: Well, before we get started, I was informed that somebody walked in and said that they were here to be a court reporter.

MR. CASKEY: Your Honor, Micah Caskey for the Defendant. The Defendant did hire Ms. Vickie Stewart, who's seated -- sitting in the first row ---

THE COURT: Well, you may ask her to leave the courtroom. Under Rule 605 I'm not allowing a recording of these proceedings. We have an official transcript, okay?

MR. CASKEY: Yes, sir.

(Whereupon Ms. Stewart exited the courtroom)

THE COURT: All right. I just -- for anyone else in here, I am not permitting the recording of this outside of the transcript that will be provided by the court reporter. So if anyone has a recording device, you need to turn it off. And if I find that it is -- there has been a recording, I will treat it as contempt of court, criminal contempt of court.

And I'll also tell Mr. Field that when you requested the transcript from the last hearing, you asked for the court reporter to transcribe remarks made between myself and my law clerk. Those are not part of the record, and they were not provided to you. And it is inappropriate for you

to know what they -- what is said between me and my law clerk. You understand that? Mr. Field?

(Whereupon Mr. Field conferred with his attorney)

MR. FIELD: I understand what you said, Judge. Yes.

THE COURT: Well, do you understand it's inappropriate for that to be included in any record?

MR. FIELD: I wouldn't know, Judge. I don't ---

THE COURT: Are you telling me that you didn't ask the court reporter to transcribe remarks?

MR. FIELD: I felt that it was important to transcribe everything that was said in court. Perhaps I was wrong.

THE COURT: We do not transcribe the conversations that you have with your attorney, nor with your adversaries' attorneys. And you do not transcribe the private conference I had with my law clerk.

MR. FIELD: Yes, Your Honor. It's fine. I apologize.

THE COURT: Okay. Mr. Brandt.

MR. BRANDT: Please the Court, Your Honor? I'm Buck Brandt. And I'm here representing Mr. Saad in this matter. The -- there are actually five issues before the Court today. And I don't know how the Court is going to take up these issues or leaves some out there or whatever.

There's an issue of a rule to show cause where a hearing was held sometime in the past where we were requesting that various people be held in contempt of court.

primarily Mr. Field. The Court reserved the ruling in that matter.

In addition, Your Honor, on, I believe it was March 17th, 2016, a motion was filed before the Court to approve an 88-page agreement that the parties had negotiated over a period of approximately one year that is an executory contract that provided for parties who are signatories to the contract to do certain things. Since that executory contract was executed, the parties who were required to do certain things had not done certain things.

And as a result of that we have filed motions against -- regarding Kirsten White to comply with the terms and conditions of the agreement, a motion as to Arthur -- Allyson Field, Kathryn Taillon and Arthur Field to comply with the terms and conditions of the agreement, and an amended motion regarding Arthur Field to comply with the terms and conditions of the agreement. That is what we're here for today.

We are ready, willing and able to comply with the terms and the conditions of the Global Settlement Agreement and move forward with the settlement of this case, but for reasons that we do not know, that has not happened. So I don't know how the Court wishes to proceed.

If the Court wishes us to step back and talk a minute and try to resolve these issues, I'm happy to. If the Court

THE COURT: The house ...

MR. BRANDT: The house being the property at Thornblade. And ---

THE COURT: The house belonging to Mr. Field.

MR. BRANDT: That's correct. Well, actually belonging to his ---

THE COURT: His wife, his daughter, whatever.

MR. BRANDT: --- his daughter.

THE COURT: Yeah, the ---

MR. BRANDT: It is my understanding, Your Honor, that an insurance claim has been made. And the insurance company has actually provided a check to Mr. Field that is now in Mr. Bannister's trust account, I have been told. Don't know when it was put there. Don't know how much it was.

But it is my understanding that the parties have agreed that that insurance claim for the damage done to the house will be assigned to my client. My client will then take over that claim and proceed to resolve the claim with the insurance carrier both by negotiating a settlement for the claim and by making the necessary repairs to the property for the damage done to the house, not by Mr. Field, but by the leak that was done to the house.

It is my understanding that the agreement is that my client and his repair people will have the access necessary to go to Mr. Field's house within seventy-two hours of

ago, I did not think I was obligated to sell my house unless the Global Settlement Agreement was approved by you and Judge Maddox. I don't understand why I would sell my house if the Global Settlement Agreement was not approved ending all of this, any future actions.

I agreed to sell my house in exchange for the Global Settlement Agreement ending everything. I just simply don't understand why I would sell my house if the agreement is not approved.

THE COURT: Did you prepare this document?

MS. WHITE: Yes.

THE COURT: Unlike previous filings?

MS. WHITE: I prepared that document myself over a period of three days because it is what I understood. And it still is my understanding.

THE COURT: Well, you executed the Global Settlement Agreement, right? You signed it. I'll show you the original. I ---

MS. WHITE: Yes.

THE COURT: --- have it right here.

MS. WHITE: I am unclear as to what takes place before the Global Settlement Agreement ---

THE COURT: I'm ---

MS. WHITE: --- is approved, if that makes sense.

THE COURT: You signed it, right? I'm not -- I'm not

MS. WHITE: Yes, I signed it.

THE COURT: Okay. And you graduated from Furman University, correct?

MS. WHITE: I have a bachelor's degree.

THE COURT: Okay. From Furman University.

MS. WHITE: But not a law degree.

THE COURT: Ma'am, did you graduate from Furman University?

MS. WHITE: Yes, I did.

THE COURT: Okay. You're -- and you are pro se, correct?

MS. WHITE: Yes, I am.

THE COURT: You were married to a lawyer, correct?

MS. WHITE: I was seven years ago.

THE COURT: And you have submitted some -- well, you've already testified that Arthur Field presented documents for you to file in this case, is that right?

MS. WHITE: I did.

THE COURT: Did you consult with him about the terms of this agreement?

MS. WHITE: (Negative nod).

THE COURT: Who -- how did you decide to sign this agreement? Who did you talk to?

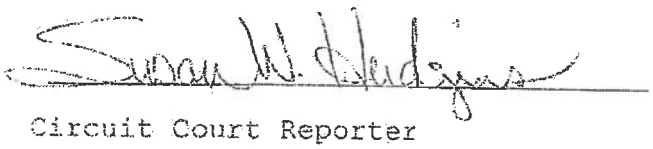
MS. WHITE: I actually did ask my ex-husband and he

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 5th day of September 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 6, 2018



Circuit Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)))	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
William F. Tomz and Frances W. Tomz, Individually and as Class Representatives, Plaintiffs, versus Capital Investment Funding, LLC and Arthur M. Field, Defendants.	)))))))))	Case No. 2008-CP-23-3665 IN SUPPORT OF RENEWED MOTION TO RECUSE

EXHIBIT F

TRANSCRIPT EXCERPTS

11/27/17

This shall not be construed as consent to personal or subject matter jurisdiction or a waiver of any defense or right of Arthur Field or any other related non-party.

STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT
COUNTY OF GREENVILLE

Willaims F. Tomz,

Plaintiff,

vs.

EXCERPT OF RECORD
2008-CP-23-3665

Capital Investment Funding, LLC,

Defendant.

November 27, 2017
Greenville South Carolina
Sworn Testimony of Arthur Field

B E F O R E:

The Honorable EDWARD W. MILLER

ELECTRONICALLY FILED - 2018 Jul 19 12:28 PM - GREENVILLE - COMMON PLEAS - CASE#2008CP2303665

of CIF as a named insured and shall immediately deliver to CIF a certificate and shall have all proceeds of such policies and renewal to and be paid directly to CIF. Now, this is a side bar.

THE COURT: Let me just ask you this.

MR. CASKEY: Yes, sir.

THE COURT: Your client just stated that CIF was on the policy, and that, when it was renewed, somehow they didn't get placed on the policy.

So I'm going to request or I'm going to order that you all contact this insurance company and show that what he just told me is true and correct.

It's very difficult, Mr. Caskey, to nail down your client and what he says. But that was a clear statement he made under oath, and I would like -- I want to find out if it's true, because he is now blaming the insurance company for not including CIF on the renewal of the policy.

MR. FIELD: If I may, Your Honor?

THE COURT: Well, let me just tell you Mr. Field, you're under oath.

MR. FIELD: I know.

THE COURT: Mr. Field, I'm not through

ELECTRONICALLY FILED - 2018 Jul 19 12:28 PM - GREENVILLE - COMMON PLEAS - CASE#2008CP2303665

speaking. You're under oath. And if I find out that you're misrepresenting facts to me, I will take appropriate sanctions, and I will not be light.

So speak to your attorney before you get up and talk.

MR. CASKEY: Your Honor, Dr. Field is going to take my advice and discontinue his comments to the Court today. We will be happy to comply with that instruction, Your Honor. That being that we get the documentation from the insurance company regarding the distribution of proceeds, and --

THE COURT: Well, no, no, no. When CIF was placed on the policy. And I -- because he clearly stated that CIF was listed on the policy and, when it was renewed, somehow they were not.

MR. CASKEY: And, Your Honor, if I may. I have a copy of the declarations page which it is noted here that it was amended March 14th of 2017 in which it identifies CIF as the mortgagee.

The named insureds here, which is, I think, the problem in the distribution are Arthur Field, Katie Talon, and -- it just says Kate here. Okay, excuse me. Field, comma,

ELECTRONICALLY FILED - 2018 Jul 19 12:28 PM - GREENVILLE - COMMON PLEAS - CASE#2008CP2303665

Arthur, and Alison and Talon, comma, Kate.

So I think, unless I misunderstood Dr. Field's comments, the issue here was that CIF was not named as an additional insured, even though they were listed on the policy as the mortgagee.

Nonetheless, Your Honor, we'll clear this up.

THE COURT: Well, no. It's a moving target. It's always a moving target.

MR. CASKEY: We're happy to get this cleared up with the insurance company, Your Honor.

THE COURT: All right, great.

Mr. Pillsbury, I told you I would give you chance to response to that. What is it that you want to say?

MR. PILLSBURY: Your Honor, the first thing is, he started with that I called him and left him a message.

THE COURT: This would have been right after the hailstorm in March.

MR. PILLSBURY: I do not talk to Mr. Field on the phone for these very reasons. Ever since there were some accusations made by Miss Talon's counsel, I had discontinued any --

ELECTRONICALLY FILED - 2018 Jul 19 12:28 PM - GREENVILLE - COMMON PLEAS - CASE#2008CP2303665

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
William Tomz and Francis W. Tomz	)	CASE # 2008-CP-23-3665
Individually and as Class Representatives	)	
	)	
Plaintiffs,	)	
vs.	)	**NOTICE OF MOTION AND**
	)	**MOTION TO RECUSE**
Capital Investment Funding, LLC	)	
And Arthur M. Field	)	
	)	
Defendants.	)	

EXHIBIT G

OFFICIAL RECORD ON APPEAL
EXCERPTS AND AFFIDAVITS

Appellant
G
10/27/14 sH

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AFFIDAVIT OF RICHARD A. LACKEY

PERSONALLY appeared before me, Richard A. Lackey, who being duly sworn, deposes and says as follows:

1. My name is Richard A. Lackey and my address is 1 Pristine Drive, Greer, South Carolina, in the Thornblade community.

2. I hold a Bachelor's of Science degree from Georgia Tech University, as well as a Master's degree. I was Vice President of Operations for Swiss-Tex Foam Packaging from 1974 to 1988. For the past 26 years, I have served as President/CEO of Del-Tec Packaging, Inc.

3. My company has financially supported the Greenville Pops, an orchestra run by Arthur Field.

4. I attended a hearing on September 17, 2013, at 2:00 p.m. at the Greenville County Courthouse in the case of *William F. Tomz v. Capital Funding, et al.*, C/A No. 2008-CP-23-3665.

5. I noticed that the courtroom had a large camera in it. Shortly after coming in to the courtroom, the Judge started making negative comments directed at Arthur Field. He stated Arthur was a criminal and that he had stolen $40 million from victims. These statements happened at the beginning of the hearing, before any of the lawyers had spoken or witnesses testified.

6. I had never seen a judge act in such a way. As a business owner, I had been involved in litigation, and it troubled me greatly that a judge would seem so biased against a person from the start of a case.

7. I was troubled by this behavior, by the judge, and felt he should probably recuse himself from this case based on these comments.

Richard A. Lackey

Sworn to before me this
18th day of September, 2014.
Parvathy Chandrasekar.
Notary Public of State of SC
My commission expires: 9/8/2020.

PARVATHY CHANDRASEKAR
NOTARY PUBLIC
COM. EXP. 9-8-2020
SOUTH CAROLINA

Appellant
H
10/27/14 SH

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF EVANGELOS C. ORFANEDES
COUNTY OF GREENVILLE)

PERSONALLY appeared before me, Evangelos C. Orfanedes, who being duly sworn, deposes and says as follows:

1. My name is Evangelos C. Orfanedes and I reside at 104 Antigua Way, Greer, SC 29640. I am a retired Vice President for Rockwell International, and I have a Bachelor's degree from the University of Virginia, and a Master's in Business Administration.

2. I have known Arthur Field for several years.

3. I was present at a hearing in downtown Greenville at the Courthouse at 2:00 p.m. on September 17, 2013. It was in the case of *William F. Tomz v. Capital Investment Funding et al* C/A No. 2008-CP-23-3665. The case was against Mr. Field.

4. At the very opening of the hearing, the judge entered the Courtroom from a door behind the desk, and immediately begin stating words to the effect of "Well, Mr. Field, we know why you are here. You are here because you stole over $40 million and pled guilty to it." On these initial comments, the judge gave me the impression that he came into the Courtroom with the attitude that Arthur was a criminal and would be "nailed to the cross."

5. These comments were made before Arthur's lawyer began speaking.

6. I was appalled at the judge's comments and behavior, and it seemed to me that the judge was in an adversarial relationship with Arthur, rather than being an impartial judge. I have never seen this kind of behavior in a courtroom before in my many years of business experience.

Evangelos C. Orfanedes

Sworn to before me this
11 day of September, 2014.
Lauren White
Notary Public of 6/11/2024
My commission expires: Greenville County, South Carolina

LAUREN WHITE
NOTARY PUBLIC
MY COMMISSION EXPIRES 6/11/2024
SOUTH CAROLINA

1

Appellant
I
10/27/14 SH

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AFFIDAVIT OF HENRY C. VAN DYKE

PERSONALLY appeared before me, Henry C. Van Dyke, who being duly sworn, deposes and says as follows:

1. My name is Henry C. Van Dyke, and I reside at 506 Thornblade Boulevard, Greer, SC. I have Bachelor's and Master's degrees in Civil Engineering, and I am a retired Senior Vice President of Fluor Daniel Corporation.

2. I have known Arthur Field for many years, as we are neighbors in the Thornblade neighborhood in Greer, South Carolina.

3. On my own accord, I attended a motion hearing held on September 17, 2013, at 2:00 p.m. at the Greenville County Courthouse in the case of *William F. Tomz v. Capital Funding, et al.*, C/A No. 2008-CP-23-3665. I understood that the hearing required Arthur Field to respond to issues regarding his production of documents.

4. Soon after the judge entered the courtroom, he said a number of disparaging remarks regarding Mr. Field. These included referring to Mr. Field as a criminal and that he had stolen millions of dollars from his note holders. The exchange between the judge and the defense attorney was very surprising and appeared to be biased.

5. In my opinion, the judge was frustrated with Mr. Field's continued legal actions with the Receiver and with the court.

Henry C Van Dyke
Henry C. Van Dyke

Sworn to before me this
18th day of September 2014.
Notary Public of South Carolina
My commission expires: 1-30-2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL E. WICKENSIMER
2013 DEC 11 AM 8 55

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

ENTERED COMPUTER

Case No. 2008-CP-23-3665

Capital Funding, LLC and Arthur M. Field, of whom Arthur M. Field is the Appellant ..... Appellant,

v.

William F. Tomz and Francis W. Tomz, individually and as class representatives ..... Respondents.

NOTICE OF APPEAL

Arthur M. Field appeals the Orders of The Honorable Edward W. Miller dated October 1, 2013, and November 7, 2013, granting Respondents' Order on a Rule to Show Cause, and denying Appellant's Motion to Alter or Amend the earlier order pursuant to Rule 59(e), SCRCP. Copies of both orders are enclosed with this Notice. The parties received notice of entry of these orders on October 3, 2013, and November 12, 2013.

December 9, 2013

Bradford N. Martin, Esq. (SC Bar No. 3658)
Laura W. H. Teer, Esq. (SC Bar No. 16698)
Brook Bristow, Esq. (SC Bar No. 76038)
BRADFORD NEAL MARTIN & ASSOCIATES, P.A.
Post Office Box 10410
Greenville, South Carolina 29603
864.552.9990
864.552.9992 (facsimile)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMER

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)	
William F. Tomz and Frances W. Tomz, Individually and as Class Representatives, Plaintiffs,)	MOTION TO RECUSE
)	Case No. 2008-CP-23-3665
versus)	
Capital Investment Funding, LLC and Arthur M. Field, Defendants.)	MOTION AND ARGUMENT

The undersigned hereby moves this Court to recuse the Hon. Edward Miller from any and all further action in the above-captioned matters and any other matters, which may now come before the courts of South Carolina involving any of the above named or persons related thereto, whether civil, criminal, administrative or otherwise.

Judge Miller appears to have become highly prejudiced as a result of one or more *ex parte* communications and/or exposure to various extra-judicial sources, and has been irrevocably tainted as a direct result. No hearing on the merits has ever taken place in this matter, no evidence has ever been tendered, no testimony has ever been heard. Field was dismissed from this action in August, 2009. On December 14, 2011, in an informal presentation to the Note Holders, Judge Miller exhibited extreme bias, made highly prejudicial statements on the bench in front of the Note Holders, the public and the Attorney General, and acted in a manner unbecoming of a judge as evidenced by the Transcript of such hearing.

Judge Miller apparently has been exposed to massive amounts of *ex parte* highly prejudicial material, news articles, emails, phone calls, letters, correspondence, and/or conversations from outside sources, CIF Noteholders, the Receiver, the Receiver's attorney, and the Attorney General and/or from numerous counsel herein and has solicited or knowingly accepted or viewed such material in the absence of the adverse parties and failed to give notice thereof.[1] His bias is manifestly apparent.

[1] All factual allegations in this Motion are to be taken as true. State v. Shaw, 276 S.C.190, 277 S.E.2d 140 (S.C. 1981). Field enters this Motion without consenting to jurisdiction over the person.

FACTS AND TRANSCRIPT EXCERPTS

Judge Miller's prejudice is easily observed from the Official Transcript December 14, 2011, (Caroline Hiskell Circuit Court Reporter) of the informal meeting of the Receiver and Noteholders. Such informal meeting was not scheduled by the Court and notice was not provided to Field or any of the other former parties herein. No hearing is listed on the "Actions" section of the Case Records, Public Index, of the Clerk's Office.[2] Hence, the informal meeting must be deemed an *ex parte* communication, as would any other in or out of court communications between the Receiver and Judge Miller.[3] No Report of the Receiver was ever submitted to any of the former parties herein.

First and foremost: No hearing on the merits has EVER been held in this matter. No evidence or sworn testimony of any sort concerning the underlying merits of any claim or defense has EVER been heard by Judge Miller. The parties entered into a Global Mediated Settlement Agreement at the initial pleading stage after Plaintiffs' counsel had a full and complete opportunity to review the assets and liabilities of Capital Investment Funding, LLC and were fully satisfied therewith.

Consequently, it must follow that ANY opinion Judge Miller has concerning the parties' liability or the merits of the case MUST be drawn from extra-judicial sources or improper communications.

Judge Miller formed numerous highly prejudicial opinions of Field (a former party) and improperly, repeatedly and emphatically voiced such opinions on the bench to Class members and the public in the presence of Creighton Waters, a Deputy Attorney General from the State Grand Jury Division, whom he permitted to speak at the hearing. Waters had no standing and his presence was highly prejudicial.[4] (How did Waters know to attend?) Judge Miller lauded Waters and implied there was a State Grand Jury investigation and the Note Holders should act accordingly.

[2] The last item listed in the Official Records of the Clerk is dated October 12, 2011.
[3] Field was notified of the Informal Meeting only by the Receiver on November 28, 2011, but the Receiver requested Field NOT attend such meeting. Receiver told Field his presence might be inflammatory and no action would be taken at the informal meeting and Field had fulfilled all obligations to the Receiver and had nothing to add to the proceeding, which would simply be a report to Noteholders of Receiver's progress. Field confirmed this in a letter to Receiver and asked him to submit it to Court, *infra*.
[4] Judge Miller was fully aware the GMSA sealed all documents, correspondence and records delivered by Field to the Receiver and Judge Miller previously denied the State's attempt to obtain those records. D.A.G. Waters had no standing in the court, was not a party, and his interests were adverse to Field's, and this was well known to Judge Miller, who treated him as a friend of the court, see infra.

To wit, Judge Miller stated the following (all excerpts are Judge Miller's statements, i.e. "The Court", except where noted); Miller speaks to public first 7 pages:

a) Transcript, p.3: THE COURT: "And I also want to tell you that I am also aware of your frustration. If I haven't heard about it, I could have guessed it. You made investments with the intent to rely on those investments and they're not there. They've been inappropriately removed from your possession. I just want you to know everyone involved in this case is aware of that."

b) Transcript, pp.3-4: THE COURT: "Another judge was given this case to begin with, he was removed, and I was substituted. I was substituted shortly before the settlement of the case, the global settlement. When I came into this and didn't exactly know what kind of fish tank I was getting thrown into. It was a very complicated matter and I tried to get up to speed. Fortunately, there are a lot of very competent qualified people that are representing you and doing everything they can to cover the proceeds.[5] But in any event, the global settlement, which was reached after a couple of hard days of mediation, mediated by retired appellate court judge, Samuel Stilwell... Now, there are a number of other folks. The two class co-counsel are up here, Mr. Case, Mr. Connell, and I would recognize some other folks up here you all may recognize. **I would recognize Mr. Creighton Waters with the Attorney General's Office and I know you all have questions you'd like to ask him.**"

c) Transcript, pp.4-5: "I am not and can not be personally involved in a lot of the work that's gone on in this case. Mr. Saad has done an extraordinary job. Mr. Saad and the person that are working with them....have done an extraordinary job. And it is – **I will just tell you some of the most complex dodging and weaving shell game type stuff that I've seen and I've been involved in. when I was a lawyer for 25 years I was a**

[5] According to the Report of the Receiver, he collected roughly $1.2 Million over 2.5 years and spent 75% of those funds on himself, his staff and his lawyers. No funds whatsoever have been distributed to the Note Holders since the inception of the Tomz action. A total of $1,045,000 was spent. Transcript p.30.

defense lawyer and I've seen quite a few, but this [is] as sophisticated a shell game as I've seen."

d) Transcript, p.5: "Well, although each of you would like to know all the information but I think that you will understand and trust each of you to have [the] ability to invest. You are intelligent folks and you can understand..."

e) Transcript, p. 6: "So I guess I'm asking you to continue a level of trust in me as overseeing this case and the people who are doing the hard work in trying to recover your money. Having said that, we are going to tell you some things about what has already occurred, a little historical stuff, and you'll get a flavor for the complexity that these folks have been faced with and what they uncovered in certain things."

f) Transcript, pp.7-8: "The other thing, and I guess I might as well do it now, is—Creighton, would you just stand up and I'm going to let Creighton speak to you if you would." MR. WATERS: "Most of y'all haven't met me, my name is Creighton Waters. I'm an attorney in the criminal division of the Attorney General's Office. And one thing I know that everybody has a lot of concern about is, is there an investigation and what the status of that investigation is and questions along those lines. ...What I can tell you that is that in any case where there are allegations of criminal activity, the Attorney General's Office takes that very seriously. I understand that probably a very unsatisfying answer for many of you but because of the lack of detail, but again, there are statutory rules that exist to protect the integrity of the process and I'm not at liberty to violate those even if they are frustrating....I'll be here after the proceedings have concluded. If anybody wants to approach [me], I'd be glad to talk with you..."

g) Transcript p.8: "Let me just say this, ladies and gentlemen, he [Waters] can't talk with you about and he can't talk with me about it. That's how stringent these rules are and y'all ought to be very thankful in the big picture we have persons with kind of integrity who follow the rules

exactly as they are written.[6] So it ought to restore some faith in our system. And I will tell you that Mr. Saad is cooperating with any appropriate persons with whom he needs to cooperate with.[7] And the other thing I would point out to you is the fact that Mr. Waters is here and y'all just have to make a reasonable inference about that. I think that covers it."

h) Transcript, p.13: "Now, there are a number of qualified people that are also working with Mr. Saad in this investigation from our perspective aside from any other investigation that might be going on (implying a criminal investigation), and Curt Stodghill, that's sitting over there in the box with the yellow tie on. He is an attorney. He's been intimately involved in a lot of this. There's another gentleman that's been working with him. He is also an attorney, Mr. Robert Pohl and he's not here today. They have done very impressive work."[8]

i) Transcript pp.13-16: MR. SAAD[9]: "I think it would probably benefit all to kind of paint a broad picture of what was in the company when I took over on August 27, 2009...there was a confession of judgment that was part of the mediated settlement agreement which accounted for 38 Million and some odd thousand dollars of Note Holder debt that's unpaid. That was almost all the liabilities that the company had. ...On the books, here's where it was at that point in time. There's about $18 Million of loans to the or was the parent company in New Jersey, Lancaster Resources, Inc. There's about $11 Million loan to Cosimo, which is a South Carolina company. There was about a $2.5 Million dollars loaned to Lion Financial which was another New Jersey company. There was

[6] In light of the many egregious abuses of the State Grand Jury Act committed by S.C. Waters and those working with him and under his direction, this statement, based upon no information whatsoever known to Judge Miller, is highly inappropriate and inaccurate.
[7] Any such 'cooperation' would be a direct violation of the GMSA.
[8] Neither Stodghill nor Pohl have an appearance in this matter and any communication between the Court and such attorneys must, by definition, be extra-judicial and/or *ex parte*. Further, the U.S. Bankruptcy Trustee entered a pleading in the matter handled in federal court by Stodghill and Pohl, wherein it was alleged these were the WORST attorneys with whom the Trustee had ever dealt and moved they be dismissed as totally incompetent and Judge Miller had been made aware of this.
[9] Lion Financial, LLC is a South Carolina company. Saad makes it clear that the liabilities of the Company were $38 Million and the assets of the company were $38 Million and recounts various significant loans which were substantially repaid. He also makes it clear Field did not participate in any fraudulent activity and instituted law suits to collect money due CIF. This would certainly contradict the allegation of "shell game" made by Judge Miller, *supra*.

about a million dollars loaned to Trazom, which was a South Carolina company. There was about $444,000 loaned to a company that basically was involved in the tax credits, a South Carolina rehabilitation tax credit issue. And then there was about $400,000 to a half a dozen or a dozen loans to smaller companies that were outstanding. There were also several real estate properties that were entitled in the company's name and the amount that was reported on the books, not necessarily the value of those, the value that was reported on the books are as follows: there was about $200,000 for a condominium in New Jersey. There was about $1 Million on a residential lot in New Jersey. There's $140,000 in a residential lot in Easley, South Carolina. There was $930,000 on the drag strip in Greeleyville. There's $906,000 on a warehouse in Anderson and there was a million seven on a restaurant property on Congaree Road in Greenville. This was offset with about a million dollars in mortgage that was out there...That accounts for roughly the $38 Million dollars. What that means is money went into the company over the years from '99 to 2007 and over those years the moneys went out to these various loans. They went to New Jersey early on and the loans were over $30 Million. So those loans had paid down. Cosimo, the loans were, I think up to $15 Million and the loans were paid down, but when the music stopped in 2009 [i.e., 2008], that's where all these things were...For example, the litigation going on in New Jersey, there's a long history of relationship between CIF and LRI. LRI was its parent for several years....Through some process in 2002, 2003, they separated and became independent parties but they were still a loan relationship. Over the course of time there was money paid. lots of money. [by LRI] a lot of interest paid and it was a performing loan for a long time, but early in 2007 or late 2007, 2008, LRI was not paying and they defaulted on their loan and at that time Arthur Field was the manager of CIF and he instigated a lawsuit to collect money, and part of the claims on that lawsuit were fraud and, I believe, civil conspiracy. The focus of the lawsuit was the people in New Jersey did a lot of unscrupulous things that resulted in the collateral not being secured, not being collected. That lawsuit was filed [by Field] in federal court in New Jersey. It was active for a long period of time and then LRI filed for bankruptcy... There are other parties involved in that lawsuit, over 40 parties that were named as defendants by Capital Investment Funding [by Field, as attorney and manager]...the whole lawsuit is still active and we believe that we will be able to get...that lawsuit moving forward."

j) Transcript pp.18-20: MR. SAAD: "...The people in the Upstate are familiar with Lake Keowee. It's a profile, high value, property by the lake and the projects that were going on there had the appearance of being very high profile and very profitable enterprises. ...we were concerned about the lack of credible information dealing directly with the borrowers.[10] Within the first year we had foreclosure actions going on those properties and to stop the foreclosure actions, we filed bankruptcy." THE COURT: "Let's explain. The first lienholders were filing the foreclosure actions to take the properties where your money was invested, okay, so you get the flavor of what's going on. Someone had a superior lien and they're trying to get their money out of this real estate where your money was invested." MR. SAAD: "We ended up taking over the companies because they were in default. Our loan agreements [Cosimo's] allowed us to take over their ownership rights to membership pledge agreements so I became the manager of those companies. I obtained all the records...and what we discovered was a very severe lack of credible information, lack of attention to detail. There were no formal accounting records and only one income tax return filed over the course of 4 or 5 years on one entity, one on another, and two on two others. All this group of loans constituted about $7 Million of the $11 Million that was outstanding loan to Cosimo."

k) Transcript, p.21: THE COURT: "Correct me, if I'm wrong, the value of the property at the time all this was going on was less than the amount of

[10] The 'borrowers' were a variety of independent, third-party LLC's, none of whom had any relationship whatsoever with CIF, Cosimo, Field or any other CIF member at the time the loans were made by Cosimo, LLC. As a result of the security agreement between Cosimo, LLC and such 'borrowers', the membership interest in all such companies is eventually acquired by Cosimo when the borrowers default. Cosimo, and then the Receiver, take control of the properties, as noted by Saad. Judge Miller negligently or intentionally confuses the borrowers with Cosimo (the lender) or CIF or Field (the source of funds). Judge Miller, in comments directed to the Note Holders and D.A.G. Waters, mischaracterizes the 'foreclosure' as a first lienholder with a "superior lien", which is not possible given that Cosimo, LLC owned the properties. Saad's observations concerning "lack of attention to detail, accountings and tax returns" pertain to the Borrowers, not to CIF nor to Cosimo, LLC, both of which kept rigorous records. CIF voluntarily subjected itself to semi-annual audits in 2004, 2005, and annual audits every other year by independent CPA firms, changed randomly every 3 years.

money owed so that the bank (?), who's in primary position, they get paid first and there's not enough left to pay back the loans involving your money. That's what happened."[11]

l) Transcript, p. 21: MR. CONNELL: "And that is from real estate speculation, right? Is that why the property value went below mortgage?" THE COURT: "It probably was inflated value on the property and if I'm mistaken some of the development that was done out there, the infrastructure was slip shod to say the best."[12]

m) Transcript, p.25: THE COURT: "I think what you said the note was for $950,000, but the actual amount of cash received was $760,000. Does everybody – they took out a 10% origination fee on a loan and they took out prepaid interest so that while Cosimo gets $760,000, they signed to pay back Nine Hundred and something." [13]

n) **Transcript p. 29: THE COURT: "Having heard that and I've heard it three or four times and I still do not have a complete understanding of it. When I say shell game, a lot of these people are connected in other matters and it's moving around and it's hard to keep up with which has got the pea under it. ....All the $38 Million we're trying to find it, but ladies and gentlemen, we don't know where it all went. We know $18 Million is up in New Jersey. There are a lot of things we can not tell you because it might impair our ability to pursue some of this stuff, but I wanted Jerry to give you an idea the flavor of**

[11] That does not remotely recount what happened or even what Saad had stated. The Lake Keowee properties are worth vastly more than Cosimo's original loan, even considering the claimed encumbrances, which have little to no merit and are being challenged. All acts, however, were done by the Borrowers.

[12] The original value of the property at the time of the loans was never in question by anyone. The Court has simply invented this concept of 'inflated value', further evidence of its prejudice. How would Judge Miller have any notion of the 'infrastructure' of Keowee properties, or the property valuation, absent prior *ex parte* communication or extra-judicial activity or groundless prejudice?

[13] Judge Miller is totally confused or deliberately obfuscating matters to cast Field, CIF and/or Cosimo in a bad light. Saad states, the Keowee borrowers, obtained a loan from an independent third party, apparently for $900,000 and such party imposed legal origination fees and prepaid interest, as is customary in commercial loans. Apparently, Cosimo (which had been sold to another independent third party) received partial repayment as a result. All of this is routine in the commercial lending business. The Court has intentionally characterized this as nefarious. As noted by Saad on page 28, Transcript, "All that happened in 2009..." NONE of these loans or actions described by Saad on pages 24 to 29 of the Transcript involved Field, CIF, Cosimo, Pfeiffer or ANY related party.

what he's been dealing with. And I'm telling you if you could the work that the attorneys have done, they have gone through computers, deleted emails. They have gone through reams of convoluted documents to find out what they know. I know I'm off the track..."[14]

o) Transcript, p. 31: MR. SAAD: "Trazom, that's the one that's owned by Arthur Field's son and they took over a warehouse years ago before receivership. There's a million dollar loan on the books and they pay that like clock work. There's $103,000 paid to date. Lion Financial, they paid all that they had was $95,000. They liquidated the company and that was all they had...."

p) Transcript, p. 39: MR. SAAD: "The Trazom loan is the warehouse of Anderson and that's Trazom again is the company that is owned by a family member of Arthur Field. It's a viable warehouse, it's a good piece of property, it's a valuable piece of property. I question whether we should try to liquidate that loan and I had an appraisal on that property. The appraisal came back out and I think it was $2.8 Million. There's a first mortgage on about $1.4 Million and we hold a second mortgage on $1 Million. It is leased by a company called Inergy and they are automobile manufacture and they manufacture for a multitude of car companies....I think and I've talked with real estate people about this and have come to the same conclusion, my belief is if we want to liquidate that loan today, we could probably get or buy it for 50 cents on the dollar. ...I think ultimately we'll get full value. There's equity in that property. It's a solid piece of property...Unfortunately, the terms of that loan was very long...at some point what I'm going to make efforts to get them to refinance it and get Inergy to renew their lease...and pay us off."

[14] How could the Court know any of this without any prior hearings on this matter or any prior evidence or testimony? What "deleted emails"? What "convoluted documents"? What purpose existed to these statements except to prejudice the Note Holders, the Attorney General, and a potential jury pool since this informal hearing was apparently open to the public? Saad recounted where the money was when the CIF winding up was declared. Judge Miller simply ignored that accounting to inflame the Note Holders and the Attorney General even further. He was successful at both.

q) Transcript, p.46: THE COURT: "We have set aside some time for Mr. Arthur Field to make some comments if he wanted to. He had declined to be present. **He sent a letter and I'm not going to read it. It's self-serving and it's not worth going through. There is nothing of substance in it."**[15]

r) Transcript, p.49: MR. CONNELL: "Another question that has been asked is why don't you put this man [Field] in jail? I think you all know that Mr. Case and I are not with the Attorney General's Office...I do not put anybody in jail...That is for other authorities, as the judge has said."

s) Transcript, p.50: MR. CONNELL: **"...somebody has gotten the list of Capital Funding Investor's names somehow and has been contacting individuals...I don't know how the list could have gotten out..."**[16]

t) Transcript, p. 53: THE COURT: "How could you understand the complexities of how the monies have been moved and shuffled and I promise you, ladies and gentlemen, you have not heard a tenth of it. It's like peeling the layers off an onion."

u) Transcript p.54: THE COURT: **"I do want to tell you that Mr. Creighton Waters has been here in his capacity with the Attorney General's Office with an outstanding law enforcement member who I've known for over 30 years and I've got the utmost respect for him. They've heard everything we've said—I don't know what all they've heard but I want to tell you that they are here, okay, they don't go willy-nilly anywhere and they are paying attention. I don't know if you noticed, but they're taking notes."**

v) Transcript, p.57: THE COURT: "And if I'm not mistaken, wasn't it presented that these were collateral loans....**So it was floated out there**

[15] Field was instructed by Saad not to attend. Field learned of the hearing only from Saad, not the Court. The letter (Exhibit A) was sent to Saad, not the Court. There is no mention in the Transcript of the Court receiving the letter, so it must have been given to Judge Miller off the record in an *ex parte* communication.
[16] The list of Note Holders was delivered by Field to Connell to enable his firm to contact the potential class in 2008. It was given to Saad on Excel spread sheet in 2009 and again on December 14, 2011, at his request and possibly to Judge Miller in 2009. Nobody other than Saad, Judge Miller and Connell received this list and it was part of the GMSA seal and was not to be disclosed to any third person. The only way a third party could have obtained such list was improperly and in violation of the GMSA.

that these were collateral loans and in fact they were not." MR. GEORGE: "Some people might go to jail." THE COURT: "They might."[17]

w) Transcript, pp.59-60: THE COURT: "And let me say that early on in the receivership, Mr. Field was cooperating to an extent with Mr. Saad, providing information, and telling him about people and that sort of thing. There is nothing else he can offer. We wanted to get as much information as we possibly could."[18]

x) Transcript p.62: MR. SAAD: "The biggest issue with that question is the state of the economy and I think to a very large extent the loss that has been incurred has been to a large extent as a result of the economy. For example, if the property that we had a second mortgage on for the value of $2 Million, we had a first mortgage of a $1.2 Million and our second mortgage was $400,000, in normal times we could sell the property and get full recovery even if we got a discount. But as we've seen in today's market prices have plummeted particularly in commercial property."

y) Transcript p.66: MR. MAULMAN: "...As far as any lawsuit against Arthur Fields, has the statute of limitation been tolled? Don't you only get a 3 year statute?" THE COURT: "Things may be coming to light which may cause an ---initiate a cause of action. Things are being discovered through pursuit of these other matters."[19]

z) Transcript, p. 67: MR. MAULMAN: "...does the AG have access to that information if they wanted to have access if there was an investigation?"

[17] Judge Miller has no evidence concerning such loans and has no knowledge of the Prospectus where all such loans, and the collateral supporting same, were fully disclosed at all times. Judge Miller makes a highly prejudicial and uninformed remark, which offends common sensibility and reflects a true lack of impartiality. Saad tried to explain the collateral interest, and the bankruptcy issue, and the fraud claims against LRI, and the Court simply ignored Saad and implied Field was the criminal.

[18] Field cooperated fully with Saad for 3 years at Field's expense, including travel around South Carolina, travel to New Jersey, providing Saad with thousands of documents under seal, meeting with Saad on numerous occasions in Saad's office or with his staff, and responding to every request, including one made at 9 A.M. on December 14, 2011, just prior to the hearing.

[19] Field was dismissed in August, 2009, from this action. The action was initiated in March, 2008. Any actions of Field ended on January, 2008. This hearing took place in December, 2011. Any and all causes of action were dismissed, or are time barred not later than March, 2011. It was highly improper of the Judge to make this remark, and furthermore, how would the judge have access to any such information other than resulting from extra-judicial or *ex parte* activity?

> **THE COURT: "I don't know if you all remember but we sat in this courtroom when we settled this matter in 2009 and that was how we were able to get an agreement was that Mr. Field refused to give up his Fifth Amendment Rights. If he's innocent, I don't know why he would need those but that was written into the agreement and we got into—well, I was kind of in a pickle because of the law with respect to the State Grand Jury and there's a specific judge who – it's a long story, but the bottom line is there is no Fifth Amendment Right for a corporation and these were corporate documents and will that that the—I think I said before that Mr. Saad will continue to cooperate with any appropriate person in pursuit of all relevant issues surrounding the failure of CIF."**

This final statement may be the most egregious. Judge Miller admits the existence of a State Grand Jury investigation. He draws a wholly improper inference concerning the Fifth Amendment. Any judge should be fully aware a person has the absolute constitutional right to invoke the protection of the Fifth Amendment, the South Carolina Constitution and S.C.C.A.14-7-1760 and it is improper to draw an inference therefrom. Judge Miller indicates he has no problem at all with the Receiver violating the GMSA, after he had fully assured Field in 2009 that he would "never permit the Attorney General to make an end run around Field's rights". Stating an innocent person need not invoke the Fifth Amendment is tantamount to calling that person a criminal when he has done so.

ARGUMENT

Judge Miller's actions violate numerous Canons of Judicial Conduct, SCRCP Rule 501. Certainly his conduct does not avoid the appearance of impropriety and reflects bias and the lack of an impartial position. Such conduct violated several portions of Canons 1, 2, and 3, and S.C.C.A.14-7-1770, and was done to incite the public and the Note Holders. Field is hugely prejudiced and irreparably injured as a direct result.

Canon 1 states:

> An independent and honorable judiciary is indispensable to justice...A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

The Comment thereto states, "The integrity and independence of judges depends in turn upon their acting without fear of favor."

The numerous highly prejudicial, inflammatory, inaccurate, and unwarranted statements concerning Arthur Field made by Judge Miller on December 14, 2011, referenced above reflects a lack of integrity and independence. Field was not before Judge Miller. Field was no longer a party to the action. Field's activity was not germane to the proceeding and no comments were relevant or necessary. The Judge exhibited huge favor for the Receiver, the Class counsel and for the South Carolina Attorney General and disfavor of Field, even though no proceeding on the merits was pending.

Canon 2A states, "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Implying Field, who was not in court, was a "criminal" does not reflect impartiality. This was not a criminal proceeding. This was not even a civil proceeding on the merits. No such proceeding had ever taken place and no evidence had ever been received by the Court of any type, so Judge Miller had no evidence of any culpability on the part of Field or any other person. This matter had been mediated in March, 2009, and the parties had reached a Global Mediated Settlement Agreement before a retired Appellate Court Judge wherein all parties consented to the terms and no liability on the part of any party or entity was admitted. Field was fully entitled to the benefit of the bargain of the GMSA and had previously been denied that benefit by Judge Miller.

Consequently, any opinion expressed by Judge Miller reflects solely his bias, prejudice and a lack of impartiality and was wholly improper while presiding over an informal meeting. He had no business whatsoever referring Note Holders to confer with his good friend Creighton Waters, the Deputy Attorney General, nor introducing him or letting him speak to the Note Holders in open court. Judge Miller's violation of Canon 2 is apparent from the transcript and is egregious and has and will harm Field.

Clearly, having expressed a personal opinion while on the bench concerning Field, based upon non-evidentiary matters, Field's and the public's confidence have been eroded in Judge Miller's ability to carry out further judicial responsibilities in this matter "with integrity, impartiality and competence". *Comment*, Canon 2A, SCRCP Rule 501.

It would further appear from the Transcript that Judge Miller was "playing to the crowd" in uttering his improper comments. He appears to have been trying to impress the Note Holders and/or the Attorney General, possibly in response to numerous emails received from Note Holders and/or their appearance in the courtroom. This violates Canon 3B(2), "...A judge shall not be swayed by partisan interests, public clamor or fear of criticism."

It also is an overwhelming violation of Canon 3B(5), "A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice..."

Judge Miller's statements, which were highly inflammatory, made while on the Bench in a judicial capacity, certainly manifested bias or prejudice against Field and were clearly meant to incite the Note Holders. These horrible statements could not have resulted from anything other than extra-judicial bias, prejudice or *ex parte* communications; they certainly didn't result from any evidence, documents or testimony. Even the Receiver indicates Field had fully cooperated and no claims existed against Field and no evidence of any wrongdoing by Field was found.

Canon 3B(7)(a), states:

> A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding...

It must be concluded various persons had private conversation(s) or contact with Judge Miller and such were highly prejudicial and caused Judge Miller to have a bias against Field. Alternatively, Judge Miller dislikes Field as a result of out of court communications from third parties, the State or the press, and misused his judicial authority to besmirch Field in open court and essentially directed the Note Holders to file complaints with the Attorney General, in an already dismissed civil proceeding or the pending State Grand Jury investigation. This is unconscionable.

Judge Miller has exhibited considerable bias against Field in court prior hereto, and the acts and statements of December 14, 2011, (See Transcript) are in violation of the Canons of Judicial Conduct. Disqualification is prudent and mandated under Canon3(E)(1). "Under Canon 3(E)(1)(a), a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to, instances where he has a personal bias or prejudice against a party." Cf., Patel v. Patel, 359 S.C. 515, 599 S.E.2d 114(S.C. 2004).

Recusal is absolutely essential here. It is axiomatic that the expectation of a fair and impartial tribunal is a basic tenet of all cherished notions of due process embodied in the United States Constitution. In re Murchison, 349 U.S. 133, 75 S.Ct. 623 (1955). A reasonable person would believe Judge Miller could not act in an impartial manner after reviewing the above listed statements from the bench made on December 14, 2011. "The responsibility of a judge is to decide matters that have been submitted to the court by the parties. The judge may not, having decided a case, advocate for or, as in this case, materially assist one party at the expense of the other. Such advocacy creates the appearance, and perhaps the reality, of partiality on the part of the judge." *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 815 N.E.2d 286, (Ohio 09/07/2004)(2 year suspension and permanent exclusion from the bench); *Disciplinary Counsel v. Squire*, 116 Ohio St.3d 110 (Ohio 10/25/2007). "Judges must scrupulously avoid *ex parte* communications whether or not they consider them. Judges should avoid the appearance of impropriety when they carry out their duties." *Taylor v. Public Convalescent Service*, 245 Ga. 805, 806 (267 S.E.2d 242) (1980).

Similar conduct has often been the grounds for censure or permanent removal of a judge. See, e.g., *In re Davis*, 630 S.E.2d 281, 368 S.C. 662 (S.C. 05/08/2006); *In re Richland County Magistrate Stocker*, 608 S.E.2d 865, 362 S.C. 486 (S.C. 02/07/2005); *In re Bamberg County Magistrate Singleton*, 605 S.E.2d 518, 361 S.C. 364 (S.C. 11/08/2004)(permanent removal for *ex parte* contacts).[20]

[20] "...Canon 3 of the Code of Judicial Conduct "requires a judge to disqualify himself... in a proceeding in which the judge's impartiality might reasonably be questioned. ... Thus, the question is not only whether the particular judge is, in fact, impartial but whether a reasonable person would question the judge's impartiality on the basis of all the circumstances." *State v. Webb*, 238 Conn. 389, 460, 680 A.2d 147 (1996), aff'd after remand, 252 Conn. 128, 750 A.2d 448, cert. denied, 531 U.S. 835 (2000); accord *Ajadi v. Comm'r of Correction*, 280 Conn. 514, 527, 911 A.2d 712 (2006); *Papa v. New Haven Federation of*

This Motion must be decided prior to any other business before the Court in this case and of grave consequence and may be immediately appealable if denied, since it goes to the merits, may result in the unsealing of records previously sealed (assuming they even remain sealed, which appears not to be the case) and the Receiver seeks to hold Field in contempt of a non-existent court order, or one improvidently done by Judge Miller and irreparable harm will result. Brailsford v. Brailsford, 669 S.E.2d 342, 380 S.C. 443 (S.C.App. 2008); Ex parte Capital U-Drive-It, Inc., 630 S.E.2d 464, 369 S.C. 1(S.C. 2006). All appellate rights are preserved hereby.

> A charge of bias [or prejudice] must be deemed at or near the very top in seriousness, for bias kills the very soul of judging- fairness. . . . [A] charge of . . . bias [or prejudice] against a trial judge in the execution of his or her duties is a most grave accusation. It strikes at the very heart of the judiciary as a neutral and fair arbiter of disputes for our citizenry. Such an attack travels far beyond merely advocating that a trial judge ruled incorrectly as a matter of law or as to a finding of fact, as is the procedure in appellate practice. A judge's personal integrity and ability to serve are thrown into question, placing a strain on the court that cannot easily be erased. Attorneys should be free to challenge, in appropriate legal proceedings, a court's perceived partiality without the court misconstruing such a challenge as an assault on the integrity of the court. Such challenges should, however, be made only when substantiated by the trial record.

McKenna v. Delente, 123 Conn. App. 137, 144--45, 1 A.3d 260 (2010). See Abington Ltd. Partnership v. Heublein, , 246 Conn. 820; Tracey v. Tracey, 97 Conn. App. 285, 903 A.2d 679(2006). Field has been deprived of procedural and substantive due process.

Teachers, 186 Conn. 725, 744, 444 A.2d 196 (1982). Disqualification is required even when no actual bias has been demonstrated if a judge's impartiality might reasonably be questioned "because the appearance and the existence of impartiality are both essential elements of a fair exercise of judicial authority." *State v. Webb, supra*, 460--61; see also R. Flamm, Judicial Disqualification (1996) § 5.4.1, p. 150 ("Judicial decisions rendered under circumstances suggesting bias or favoritism tend to breed skepticism, undermine the integrity of the courts, and generally thwart the principles upon which our jurisprudential system is based. Since an appearance of bias may be just as damaging to public confidence in the administration of justice as the actual presence of bias, acts or conduct giving the appearance of bias should generally be avoided in the same way as acts or conduct that inexorably bespeak partiality."). Indeed, prevention of the appearance of impropriety is of vital importance to the judiciary and to the judicial process. *Bonelli v. Bonelli*, 214 Conn. 14, 19, 570 A.2d 189 (1990). "Members of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved..." *Abington Ltd. Partnership v. Heublein*, 246 Conn. 815, 823, 717 A.2d 1232 (1998), aff'd after remand, 257 Conn. 570, 778.A.2d 885 (2001)." *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, No. SC 17807 (Conn. 06/02/2009).

Judge Miller should certainly not have commented concerning any implication or inference relating to the Fifth Amendment. Such comments were highly improper and prejudicial and have irreparably damaged Field in the public's eye and tainted a jury pool in any future criminal case. "The framers of the Bill of Rights recognized the dangers inherent in self-incrimination, and as a result, placed in the Fifth Amendment a prohibition against compelling a witness to testify against himself. This prohibition against compelled self-incrimination is a basic constitutional mandate which is not a mere technical rule, but rather, a fundamental right of every citizen in our free society." State v. Thrift 312 S.C. 282, 296, 440 S.E.2d 341, 349 (1994). Therefore, it is legally proper for persons facing criminal prosecution...to invoke their Fifth Amendment privilege against self-incrimination...." Griffith v. Griffith, 332 S.C. 630, 506 S.E.2d 526 (App. 1998). "It is desirable the jury not know that a witness has invoked the privilege against self-incrimination since neither party is entitled to draw any inference from such invocation. 1 McCormick on Evidence, § 137 (1992). See also 3 Wharton's Criminal Procedure, § 354 (13th Ed. 1991) (no inference may be drawn from witnesses' assertion of privilege since exercise of right is personal...and should not be used to hurt...); 98 C.J.S. Witnesses § 455 (general rule that no adverse inference may be drawn from witness' assertion of the privilege)." State v. Hughes, 328 S.C.146, 493 S.E.2d 821 (S.C. 1997).

Nor should Judge Miller ever have signed a Rule to Show Cause when he knew Field was not a party and could not be subject to a Request for Production. Any impartial judge would not have done so.

Field respectfully requests Judge Miller recuse himself from these and all future proceedings, as required by Canon 3. Failure to do so will irrevocably harm Field and any other former party herein.

Arthur Field *Pro Se*
310 Thornblade Blvd., Greer, SC 29650

I hereby certify service in accord with the SCRCP.

Arthur M. Field, pro se June 11, 2012

EXHIBIT A

December 9, 2011

Jerry Saad
Receiver
1249 S. Pleasantburg Dr.
Greenville, SC 29605

Dear Receiver Saad:

Thank you for informing me of the Special Meeting on December 14, 2011 in the Tomz / CIF matter. As you know, as a result of the Global Mediated Settlement Agreement, I was dismissed from the case when all matters were settled. I am no longer a party to this action and do not receive court notices.

I understand the purpose of the meeting is for you to report your progress to the Court and to provide the Noteholder Class members with an opportunity to ask you and Judge Miller general questions. As we discussed, it was your opinion my presence would add nothing to your important task on that date. I have worked closely with you over the last 3 years and will continue to support your efforts to recover and liquidate all assets belonging to CIF, which were turned over by the limited liability company to your control when I resigned as its Manager in your favor. I pray you are successful in all efforts, can repay the Class members as much as possible, and eventually will return the company to its equity members. I am sure all class and CIF members are grateful for your efforts in this task in the face of a prolonged recession. When I projected this severe economic downturn in 2008, I never expected it would be so protracted. I know this has made your appointed job even more difficult than anyone ever expected and significantly reduced the ability to recover asset value far more than we all had originally thought probable.

Please read this letter into the record of the Court. I wish you, Judge Miller, the attorneys and all class members all the blessings of the holiday season.

Sincerely,

Arthur M. Field, Ph.D.

EXHIBIT I

MARKED

"DO NOT CLOCK
JUST PLACE IN
FILE"

By JUDGE MILLER

2/5/16

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMER

ENTERED COMPUTER

CLERK

GREENVILLE ~~FILED~~ COUNTY COURT HOUSE

2008-CP-23-3665

THE ATTACHED AFFIDAVIT WAS FILED BY ME ON 10/27/14. IT HAS EXHIBIT ATTACHED WHICH WAS A MOTION TO RECUSE I FILED ON OR ABOUT 6/11/12. IN ADDITION I FILED A MOTION TO RECUSE ON OR ABOUT April 15, 2013, WHICH CAN NOT BE LOCATED IN THE FILE BUT IS REFERENCED IN THE AFFIDAVIT. THE SECOND MOTION WILL BE SUBMITTED AS THE "MISSING" EXHIBIT ON 2/8/16. TO CORRECT THE RECORD TO REFLECT DOCUMENTS SUBMITTED.

Anthony Todd

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

2013 FEB 5 PM 2 44

William F. Tomz and Frances W. Tomz, Individually and as Class Representatives, Plaintiffs,	)	Case No. 2008-CP-23-3665
vs.	)	AFFIDAVIT
Capital Investment Funding, LLC and Arthur M. Field, Defendants.	)	

Do Not Clock
Just place
in file

Arthur Field (hereinafter "Field"), being duly sworn, states as follows to the best of his information, belief and recollection:

1. On June 11, 2012, I filed a grievance complaint with the South Carolina Commission on Judicial Conduct against Hon. Edward Miller for his conduct during an informal meeting of the Noteholders of CIF on December 14, 2011. Upon information, the grievance complaint was denied due to lack of proof of this and other ex parte meetings. The Commission did not address the other issues raised in the grievance complaint.
2. On or about April 15, 2013, I filed a Motion to Recuse the Hon. Edward Miller from all further proceedings herein. A copy of that Motion is annexed as Exhibit A. Even though I personally delivered the Motion to the Greenville Clerk of Court's office, with the proper Motion Cover Sheet attached and paid the $25 Motion Filing Fee, the Motion was never docketed by the Clerk and does not appear in the Index for this case.
3. Prior to the Rule to Show Cause hearing, I had appeared in this matter pro se. I retained Bradford N. Martin, Esq. to represent me at the Rule to Show Cause Hearing. Mr. Martin filed a Motion to Quash on September 12, 2013 and a Motion for Continuance on September 15, 2013.
4. On September 17, 2013, the hearing in the Rule to Show Cause was held before Judge Miller.
5. When Judge Miller entered the courtroom, he sat at the bench and immediately began making disparaging statements about me, out loud, which was audible to the public spectators. To the best of my recollection, Judge Miller called me "a criminal" and said I

"stole $38 Million." Judge Miller did not preside over any evidentiary hearings in the case.

6. During the course of the Rule to Show Cause hearing on September 17, 2013, Judge Miller referred to the fact I had filed a grievance complaint several times in open court. He personally questioned me on this from the bench and introduced this into the record.

7. Judge Miller's audible statements from the bench showed clear bias against me and were heard by me, my wife (Kate Taillon), my daughter (Allyson Field), three of my neighbors who attended the hearing (Henry Van Dyke, Richard Lackey, and Angie Orfanedes), and my attorney (Mr. Martin). These public statements from the bench were made by Judge Miller prior to the formal 'call' of the case.
8. Because of the obvious and extreme bias flagrantly expressed in open court by Judge Miller, I immediately turned to Mr. Martin and asked if he would immediately attempt to argue my Motion to Recuse, which I delivered to the Clerk of Court on June 13, 2012, since it was evident Judge Miller was biased.
9. Judge Miller then had some discussions with his Law Clerk and the Court Reporter, which I could observe but could not hear.
10. The case was then "called" and counsel identified themselves; then my attorney, Mr. Martin, began his argument on the Rule to Show Cause.
11. The Official Transcript prepared by the Court Reporter omits the public statements made by the Judge described above, the colloquy conducted with court personnel, and omits the 'call' of the case. It starts with Mr. Martin's argument to the Court.
12. When the Official Transcript was ordered, Court Reporter Hiskell confirmed to me that she was in physical possession of the official tape but refused to allow review of the tape or deliver the tape to correct obvious errors and/or omissions in the Transcript. I requested Ms. Hiskell do both on several occasions, to no avail. The Transcript clearly begins after several minutes of court proceedings.
13. During the course of the Hearing, Judge Miller clearly indicated he was angry at me about the filing of the grievance. Judge Miller denied Mr. Martin's request for recusal, without permitting or considering the formal motion pending in the matter properly filed by me and relevant to any contempt proceeding. Judge Miller threatened to hold Mr.

Martin in contempt of court when he objected to the manner in which the hearing was conducted.

Arthur M. Field

Sworn to before me this
27th day of October 2014.

Notary Public of South Carolina
My commission expires: 01/30/2016

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
William F. Tomz and Frances W. Tomz, Individually and as Class Representatives, Plaintiffs, versus Capital Investment Funding, LLC and Arthur M. Field, Defendants.	)	MOTION TO RECUSE Case No. 2008-CP-23-3665 MOTION AND ARGUMENT

The undersigned hereby moves this Court to recuse the Hon. Edward Miller from any and all further action in the above-captioned matters and any other matters, which may now come before the courts of South Carolina involving any of the above named or persons related thereto, whether civil, criminal, administrative or otherwise.

Judge Miller appears to have become highly prejudiced as a result of one or more *ex parte* communications and/or exposure to various extra-judicial sources, and has been irrevocably tainted as a direct result. No hearing on the merits has ever taken place in this matter, no evidence has ever been tendered, no testimony has ever been heard. Field was dismissed from this action in August, 2009. On December 14, 2011, in an informal presentation to the Note Holders, Judge Miller exhibited extreme bias, made highly prejudicial statements on the bench in front of the Note Holders, the public and the Attorney General, and acted in a manner unbecoming of a judge as evidenced by the Transcript of such hearing.

Judge Miller apparently has been exposed to massive amounts of *ex parte* highly prejudicial material, news articles, emails, phone calls, letters, correspondence, and/or conversations from outside sources, CIF Noteholders, the Receiver, the Receiver's attorney, and the Attorney General and/or from numerous counsel herein and has solicited or knowingly accepted or viewed such material in the absence of the adverse parties and failed to give notice thereof.[1] His bias is manifestly apparent.

[1] All factual allegations in this Motion are to be taken as true. State v. Shaw, 276 S.C.190, 277 S.E.2d 140 (S.C. 1981). Field enters this Motion without consenting to jurisdiction over the person.

Exhibit A

FACTS AND TRANSCRIPT EXCERPTS

Judge Miller's prejudice is easily observed from the Official Transcript December 14, 2011, (Caroline Hiskell Circuit Court Reporter) of the informal meeting of the Receiver and Noteholders. Such informal meeting was not scheduled by the Court and notice was not provided to Field or any of the other former parties herein. No hearing is listed on the "Actions" section of the Case Records, Public Index, of the Clerk's Office.[2] Hence, the informal meeting must be deemed an *ex parte* communication, as would any other in or out of court communications between the Receiver and Judge Miller.[3] No Report of the Receiver was ever submitted to any of the former parties herein.

First and foremost: No hearing on the merits has EVER been held in this matter. No evidence or sworn testimony of any sort concerning the underlying merits of any claim or defense has EVER been heard by Judge Miller. The parties entered into a Global Mediated Settlement Agreement at the initial pleading stage after Plaintiffs' counsel had a full and complete opportunity to review the assets and liabilities of Capital Investment Funding, LLC and were fully satisfied therewith.

Consequently, it must follow that ANY opinion Judge Miller has concerning the parties' liability or the merits of the case MUST be drawn from extra-judicial sources or improper communications.

Judge Miller formed numerous highly prejudicial opinions of Field (a former party) and improperly, repeatedly and emphatically voiced such opinions on the bench to Class members and the public in the presence of Creighton Waters, a Deputy Attorney General from the State Grand Jury Division, whom he permitted to speak at the hearing. Waters had no standing and his presence was highly prejudicial.[4] (How did Waters know to attend?) Judge Miller lauded Waters and implied there was a State Grand Jury investigation and the Note Holders should act accordingly.

---

[2] The last item listed in the Official Records of the Clerk is dated October 12, 2011.

[3] Field was notified of the Informal Meeting only by the Receiver on November 28, 2011, but the Receiver requested Field NOT attend such meeting. Receiver told Field his presence might be inflammatory and no action would be taken at the informal meeting and Field had fulfilled all obligations to the Receiver and had nothing to add to the proceeding, which would simply be a report to Noteholders of Receiver's progress. Field confirmed this in a letter to Receiver and asked him to submit it to Court, *infra*.

[4] Judge Miller was fully aware the GMSA sealed all documents, correspondence and records delivered by Field to the Receiver and Judge Miller previously denied the State's attempt to obtain those records. D.A.G. Waters had no standing in the court, was not a party, and his interests were adverse to Field's, and this was well known to Judge Miller, who treated him as a friend of the court, see infra.

To wit, Judge Miller stated the following (all excerpts are Judge Miller's statements, i.e. "The Court", except where noted); Miller speaks to public first 7 pages:

a) Transcript, p.3: THE COURT: "And I also want to tell you that I am also aware of your frustration. If I haven't heard about it, I could have guessed it. You made investments with the intent to rely on those investments and they're not there. They've been inappropriately removed from your possession. I just want you to know everyone involved in this case is aware of that."

b) Transcript, pp.3-4: THE COURT: "Another judge was given this case to begin with, he was removed, and I was substituted. I was substituted shortly before the settlement of the case, the global settlement. When I came into this and didn't exactly know what kind of fish tank I was getting thrown into. It was a very complicated matter and I tried to get up to speed. Fortunately, there are a lot of very competent qualified people that are representing you and doing everything they can to cover the proceeds.[5] But in any event, the global settlement, which was reached after a couple of hard days of mediation, mediated by retired appellate court judge, Samuel Stilwell... Now, there are a number of other folks. The two class co-counsel are up here, Mr. Case, Mr. Connell, and I would recognize some other folks up here you all may recognize. **I would recognize Mr. Creighton Waters with the Attorney General's Office and I know you all have questions you'd like to ask him."**

c) Transcript, pp.4-5: "I am not and can not be personally involved in a lot of the work that's gone on in this case. Mr. Saad has done an extraordinary job. Mr. Saad and the person that are working with them....have done an extraordinary job. And it is – **I will just tell you some of the most complex dodging and weaving shell game type stuff that I've seen and I've been involved in, when I was a lawyer for 25 years I was a**

[5] According to the Report of the Receiver, he collected roughly $1.2 Million over 2.5 years and spent 75% of those funds on himself, his staff and his lawyers. No funds whatsoever have been distributed to the Note Holders since the inception of the Tomz action. A total of $1,045,000 was spent. Transcript p.30.

defense lawyer and I've seen quite a few, but this [is] as sophisticated a shell game as I've seen."

d) Transcript, p.5: "Well, although each of you would like to know all the information but I think that you will understand and trust each of you to have [the] ability to invest. You are intelligent folks and you can understand..."

e) Transcript, p. 6: "So I guess I'm asking you to continue a level of trust in me as overseeing this case and the people who are doing the hard work in trying to recover your money. Having said that, we are going to tell you some things about what has already occurred, a little historical stuff, and you'll get a flavor for the complexity that these folks have been faced with and what they uncovered in certain things."

f) Transcript, pp.7-8: "The other thing, and I guess I might as well do it now, is—Creighton, would you just stand up and I'm going to let Creighton speak to you if you would." MR. WATERS: "Most of y'all haven't met me, my name is Creighton Waters. I'm an attorney in the criminal division of the Attorney General's Office. And one thing I know that everybody has a lot of concern about is, is there an investigation and what the status of that investigation is and questions along those lines. ...What I can tell you that is that in any case where there are allegations of criminal activity, the Attorney General's Office takes that very seriously. I understand that probably a very unsatisfying answer for many of you but because of the lack of detail, but again, there are statutory rules that exist to protect the integrity of the process and I'm not at liberty to violate those even if they are frustrating....I'll be here after the proceedings have concluded. If anybody wants to approach [me], I'd be glad to talk with you..."

g) Transcript p.8: "Let me just say this, ladies and gentlemen, he [Waters] can't talk with you about and he can't talk with me about it. That's how stringent these rules are and y'all ought to be very thankful in the big picture we have persons with kind of integrity who follow the rules

exactly as they are written.[6] So it ought to restore some faith in our system. And I will tell you that Mr. Saad is cooperating with any appropriate persons with whom he needs to cooperate with.[7] **And the other thing I would point out to you is the fact that Mr. Waters is here and y'all just have to make a reasonable inference about that. I think that covers it."**

h) Transcript, p.13: "Now, there are a number of qualified people that are also working with Mr. Saad in this investigation from our perspective aside from any other investigation that might be going on (implying a criminal investigation), and Curt Stodghill, that's sitting over there in the box with the yellow tie on. He is an attorney. He's been intimately involved in a lot of this. There's another gentleman that's been working with him. He is also an attorney, Mr. Robert Pohl and he's not here today. They have done very impressive work."[8]

i) Transcript pp.13-16: MR. SAAD[9]: "I think it would probably benefit all to kind of paint a broad picture of what was in the company when I took over on August 27, 2009...there was a confession of judgment that was part of the mediated settlement agreement which accounted for 38 Million and some odd thousand dollars of Note Holder debt that's unpaid. That was almost all the liabilities that the company had. ....On the books, here's where it was at that point in time. There's about $18 Million of loans to the or was the parent company in New Jersey, Lancaster Resources, Inc. There's about $11 Million loan to Cosimo, which is a South Carolina company. There was about a $2.5 Million dollars loaned to Lion Financial which was another New Jersey company. There was

[6] In light of the many egregious abuses of the State Grand Jury Act committed by S.C. Waters and those working with him and under his direction, this statement, based upon no information whatsoever known to Judge Miller, is highly inappropriate and inaccurate.

[7] Any such 'cooperation' would be a direct violation of the GMSA.

[8] Neither Stodghill nor Pohl have an appearance in this matter and any communication between the Court and such attorneys must, by definition, be extra-judicial and/*or ex parte*. Further, the U.S. Bankruptcy Trustee entered a pleading in the matter handled in federal court by Stodghill and Pohl, wherein it was alleged these were the WORST attorneys with whom the Trustee had ever dealt and moved they be dismissed as totally incompetent and Judge Miller had been made aware of this.

[9] Lion Financial, LLC is a South Carolina company. Saad makes it clear that the liabilities of the Company were $38 Million and the assets of the company were $38 Million and recounts various significant loans which were substantially repaid. He also makes it clear Field did not participate in any fraudulent activity and instituted law suits to collect money due CIF. This would certainly contradict the allegation of "shell game" made by Judge Miller, *supra*.

about a million dollars loaned to Trazom, which was a South Carolina company. There was about $444,000 loaned to a company that basically was involved in the tax credits, a South Carolina rehabilitation tax credit issue. And then there was about $400,000 to a half a dozen or a dozen loans to smaller companies that were outstanding. There were also several real estate properties that were entitled in the company's name and the amount that was reported on the books, not necessarily the value of those, the value that was reported on the books are as follows: there was about $200,000 for a condominium in New Jersey. There was about $1 Million on a residential lot in New Jersey. There's $140,000 in a residential lot in Easley, South Carolina. There was $930,000 on the drag strip in Greeleyville. There's $906,000 on a warehouse in Anderson and there was a million seven on a restaurant property on Congaree Road in Greenville. This was offset with about a million dollars in mortgage that was out there...That accounts for roughly the $38 Million dollars. What that means is money went into the company over the years from '99 to 2007 and over those years the moneys went out to these various loans. They went to New Jersey early on and the loans were over $30 Million. So those loans had paid down. Cosimo, the loans were, I think up to $15 Million and the loans were paid down, but when the music stopped in 2009 [i.e., 2008], that's where all these things were...For example, the litigation going on in New Jersey, there's a long history of relationship between CIF and LRI. LRI was its parent for several years....Through some process in 2002, 2003, they separated and became independent parties but they were still a loan relationship. Over the course of time there was money paid, lots of money, [by LRI] a lot of interest paid and it was a performing loan for a long time, but early in 2007 or late 2007, 2008, LRI was not paying and they defaulted on their loan and at that time Arthur Field was the manager of CIF and he instigated a lawsuit to collect money, and part of the claims on that lawsuit were fraud and, I believe, civil conspiracy. The focus of the lawsuit was **the people in New Jersey** did a lot of unscrupulous things that resulted in the collateral not being secured, not being collected. That lawsuit was filed [by Field] in federal court in New Jersey. It was active for a long period of time and then LRI filed for bankruptcy... There are other parties involved in that lawsuit, over 40 parties that were named as defendants by Capital Investment Funding [by Field, as attorney and manager]...the whole lawsuit is still active and we believe that we will be able to get...that lawsuit moving forward."

j) Transcript pp.18-20: MR. SAAD: "...The people in the Upstate are familiar with Lake Keowee. It's a profile, high value, property by the lake and the projects that were going on there had the appearance of being very high profile and very profitable enterprises. ...we were concerned about the lack of credible information dealing directly with the borrowers.[10] Within the first year we had foreclosure actions going on those properties and to stop the foreclosure actions, we filed bankruptcy." THE COURT: "Let's explain. The first lienholders were filing the foreclosure actions to take the properties where your money was invested, okay, so you get the flavor of what's going on. Someone had a superior lien and they're trying to get their money out of this real estate where your money was invested." MR. SAAD: "We ended up taking over the companies because they were in default. Our loan agreements [Cosimo's] allowed us to take over their ownership rights to membership pledge agreements so I became the manager of those companies. I obtained all the records...and what we discovered was a very severe lack of credible information, lack of attention to detail. There were no formal accounting records and only one income tax return filed over the course of 4 or 5 years on one entity, one on another, and two on two others. All this group of loans constituted about $7 Million of the $11 Million that was outstanding loan to Cosimo."

k) Transcript, p.21: THE COURT: "Correct me, if I'm wrong, the value of the property at the time all this was going on was less than the amount of

[10] The 'borrowers' were a variety of independent, third-party LLC's, none of whom had any relationship whatsoever with CIF, Cosimo, Field or any other CIF member at the time the loans were made by Cosimo, LLC. As a result of the security agreement between Cosimo, LLC and such 'borrowers', the membership interest in all such companies is eventually acquired by Cosimo when the borrowers default. Cosimo, and then the Receiver, take control of the properties, as noted by Saad. Judge Miller negligently or intentionally confuses the borrowers with Cosimo (the lender) or CIF or Field (the source of funds). Judge Miller, in comments directed to the Note Holders and D.A.G. Waters, mischaracterizes the 'foreclosure' as a first lienholder with a "superior lien", which is not possible given that Cosimo, LLC owned the properties. Saad's observations concerning "lack of attention to detail, accountings and tax returns" pertain to the Borrowers, not to CIF nor to Cosimo, LLC, both of which kept rigorous records. CIF voluntarily subjected itself to semi-annual audits in 2004, 2005, and annual audits every other year by independent CPA firms, changed randomly every 3 years.

money owed so that the bank (?), who's in primary position, they get paid first and there's not enough left to pay back the loans involving your money. That's what happened."[11]

l) Transcript, p. 21: MR. CONNELL: "And that is from real estate speculation, right? Is that why the property value went below mortgage?" THE COURT: "It probably was inflated value on the property and if I'm mistaken some of the development that was done out there, the infrastructure was slip shod to say the best."[12]

m) Transcript, p.25: THE COURT: "I think what you said the note was for $950,000, but the actual amount of cash received was $760,000. Does everybody – they took out a 10% origination fee on a loan and they took out prepaid interest so that while Cosimo gets $760,000, they signed to pay back Nine Hundred and something." [13]

n) **Transcript p. 29: THE COURT: "Having heard that and I've heard it three or four times and I still do not have a complete understanding of it. When I say shell game, a lot of these people are connected in other matters and it's moving around and it's hard to keep up with which has got the pea under it. ....All the $38 Million we're trying to find it, but ladies and gentlemen, we don't know where it all went. We know $18 Million is up in New Jersey. There are a lot of things we can not tell you because it might impair our ability to pursue some of this stuff, but I wanted Jerry to give you an idea the flavor of**

[11] That does not remotely recount what happened or even what Saad had stated. The Lake Keowee properties are worth vastly more than Cosimo's original loan, even considering the claimed encumbrances, which have little to no merit and are being challenged. All acts, however, were done by the Borrowers.

[12] The original value of the property at the time of the loans was never in question by anyone. The Court has simply invented this concept of 'inflated value', further evidence of its prejudice. How would Judge Miller have any notion of the 'infrastructure' of Keowee properties, or the property valuation, absent prior *ex parte* communication or extra-judicial activity or groundless prejudice?

[13] Judge Miller is totally confused or deliberately obfuscating matters to cast Field, CIF and/or Cosimo in a bad light. Saad states, the Keowee borrowers, obtained a loan from an independent third party, apparently for $900,000 and such party imposed legal origination fees and prepaid interest, as is customary in commercial loans. Apparently, Cosimo (which had been sold to another independent third party) received partial repayment as a result. All of this is routine in the commercial lending business. The Court has intentionally characterized this as nefarious. As noted by Saad on page 28, Transcript, "All that happened in 2009..." **NONE of these loans or actions described by Saad on pages 24 to 29 of the Transcript involved Field, CIF, Cosimo, Pfeiffer or ANY related party.**

what he's been dealing with. And I'm telling you if you could the work that the attorneys have done, they have gone through computers, deleted emails. They have gone through reams of convoluted documents to find out what they know. I know I'm off the track..."[14]

o) Transcript, p. 31: MR. SAAD: "Trazom, that's the one that's owned by Arthur Field's son and they took over a warehouse years ago before receivership. There's a million dollar loan on the books and they pay that like clock work. There's $103,000 paid to date. Lion Financial, they paid all that they had was $95,000. They liquidated the company and that was all they had...."

p) Transcript, p. 39: MR. SAAD: "The Trazom loan is the warehouse of Anderson and that's Trazom again is the company that is owned by a family member of Arthur Field. It's a viable warehouse, it's a good piece of property, it's a valuable piece of property. I question whether we should try to liquidate that loan and I had an appraisal on that property. The appraisal came back out and I think it was $2.8 Million. There's a first mortgage on about $1.4 Million and we hold a second mortgage on $1 Million. It is leased by a company called Inergy and they are automobile manufacture and they manufacture for a multitude of car companies....I think and I've talked with real estate people about this and have come to the same conclusion, my belief is if we want to liquidate that loan today, we could probably get or buy it for 50 cents on the dollar. ...I think ultimately we'll get full value. There's equity in that property. It's a solid piece of property...Unfortunately, the terms of that loan was very long...at some point what I'm going to make efforts to get them to refinance it and get Inergy to renew their lease...and pay us off."

[14] How could the Court know any of this without any prior hearings on this matter or any prior evidence or testimony? What "deleted emails"? What "convoluted documents"? What purpose existed to these statements except to prejudice the Note Holders, the Attorney General, and a potential jury pool since this informal hearing was apparently open to the public? Saad recounted where the money was when the CIF winding up was declared. Judge Miller simply ignored that accounting to inflame the Note Holders and the Attorney General even further. He was successful at both.

q) Transcript, p.46: THE COURT: "We have set aside some time for Mr. Arthur Field to make some comments if he wanted to. He had declined to be present. **He sent a letter and I'm not going to read it. It's self-serving and it's not worth going through. There is nothing of substance in it."**[15]

r) Transcript, p.49: MR. CONNELL: "Another question that has been asked is why don't you put this man [Field] in jail? I think you all know that Mr. Case and I are not with the Attorney General's Office...I do not put anybody in jail...That is for other authorities, as the judge has said."

s) Transcript, p.50: MR. CONNELL: "**...somebody has gotten the list of Capital Funding Investor's names somehow and has been contacting individuals...I don't know how the list could have gotten out..."**[16]

t) Transcript, p. 53: THE COURT: "How could you understand the complexities of how the monies have been moved and shuffled and I promise you, ladies and gentlemen, you have not heard a tenth of it. It's like peeling the layers off an onion."

u) Transcript p.54: THE COURT: **"I do want to tell you that Mr. Creighton Waters has been here in his capacity with the Attorney General's Office with an outstanding law enforcement member who I've known for over 30 years and I've got the utmost respect for him. They've heard everything we've said—I don't know what all they've heard but I want to tell you that they are here, okay, they don't go willy-nilly anywhere and they are paying attention. I don't know if you noticed, but they're taking notes."**

v) Transcript, p.57: THE COURT: "And if I'm not mistaken, wasn't it presented that these were collateral loans....**So it was floated out there**

[15] Field was instructed by Saad not to attend. Field learned of the hearing only from Saad, not the Court. The letter (Exhibit A) was sent to Saad, not the Court. There is no mention in the Transcript of the Court receiving the letter, so it must have been given to Judge Miller off the record in an *ex parte* communication.

[16] The list of Note Holders was delivered by Field to Connell to enable his firm to contact the potential class in 2008. It was given to Saad on Excel spread sheet in 2009 and again on December 14, 2011, at his request and possibly to Judge Miller in 2009. Nobody other than Saad, Judge Miller and Connell received this list and it was part of the GMSA seal and was not to be disclosed to any third person. The only way a third party could have obtained such list was improperly and in violation of the GMSA.

that these were collateral loans and in fact they were not." MR. GEORGE: "Some people might go to jail." THE COURT: **"They might."**[17]

w) Transcript, pp.59-60: THE COURT: "And let me say that early on in the receivership, Mr. Field was cooperating to an extent with Mr. Saad, providing information, and telling him about people and that sort of thing. There is nothing else he can offer. We wanted to get as much information as we possibly could."[18]

x) Transcript p.62: MR. SAAD: "The biggest issue with that question is the state of the economy and I think to a very large extent the loss that has been incurred has been to a large extent as a result of the economy. For example, if the property that we had a second mortgage on for the value of $2 Million, we had a first mortgage of a $1.2 Million and our second mortgage was $400,000, in normal times we could sell the property and get full recovery even if we got a discount. But as we've seen in today's market prices have plummeted particularly in commercial property."

y) Transcript p.66: MR. MAULMAN: "...As far as any lawsuit against Arthur Fields, has the statute of limitation been tolled? Don't you only get a 3 year statute?" THE COURT: "Things may be coming to light which may cause an ---initiate a cause of action. Things are being discovered through pursuit of these other matters."[19]

z) **Transcript, p. 67:** MR. MAULMAN: "...does the AG have access to that information if they wanted to have access if there was an investigation?"

---

[17] Judge Miller has no evidence concerning such loans and has no knowledge of the Prospectus where all such loans, and the collateral supporting same, were fully disclosed at all times. Judge Miller makes a highly prejudicial and uninformed remark, which offends common sensibility and reflects a true lack of impartiality. Saad tried to explain the collateral interest, and the bankruptcy issue, and the fraud claims against LRI, and the Court simply ignored Saad and implied Field was the criminal.

[18] Field cooperated fully with Saad for 3 years at Field's expense, including travel around South Carolina, travel to New Jersey, providing Saad with thousands of documents under seal, meeting with Saad on numerous occasions in Saad's office or with his staff, and responding to every request, including one made at 9 A.M. on December 14, 2011, just prior to the hearing.

[19] Field was dismissed in August, 2009, from this action. The action was initiated in March, 2008. Any actions of Field ended on January, 2008. This hearing took place in December, 2011. Any and all causes of action were dismissed, or are time barred not later than March, 2011. It was highly improper of the Judge to make this remark, and furthermore, how would the judge have access to any such information other than resulting from extra-judicial or *ex parte* activity?

THE COURT: "I don't know if you all remember but we sat in this courtroom when we settled this matter in 2009 and that was how we were able to get an agreement was that Mr. Field refused to give up his Fifth Amendment Rights. If he's innocent, I don't know why he would need those but that was written into the agreement and we got into—well, I was kind of in a pickle because of the law with respect to the State Grand Jury and there's a specific judge who - it's a long story, but the bottom line is there is no Fifth Amendment Right for a corporation and these were corporate documents and will that that the—I think I said before that Mr. Saad will continue to cooperate with any appropriate person in pursuit of all relevant issues surrounding the failure of CIF."

This final statement may be the most egregious. Judge Miller admits the existence of a State Grand Jury investigation. He draws a wholly improper inference concerning the Fifth Amendment. Any judge should be fully aware a person has the absolute constitutional right to invoke the protection of the Fifth Amendment, the South Carolina Constitution and S.C.C.A.14-7-1760 and it is improper to draw an inference therefrom. Judge Miller indicates he has no problem at all with the Receiver violating the GMSA, after he had fully assured Field in 2009 that he would "never permit the Attorney General to make an end run around Field's rights". Stating an innocent person need not invoke the Fifth Amendment is tantamount to calling that person a criminal when he has done so.

ARGUMENT

Judge Miller's actions violate numerous Canons of Judicial Conduct, SCRCP Rule 501. Certainly his conduct does not avoid the appearance of impropriety and reflects bias and the lack of an impartial position. Such conduct violated several portions of Canons 1, 2, and 3, and S.C.C.A.14-7-1770, and was done to incite the public and the Note Holders. Field is hugely prejudiced and irreparably injured as a direct result.

Canon 1 states:

> An independent and honorable judiciary is indispensable to justice...A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

The Comment thereto states, "The integrity and independence of judges depends in turn upon their acting without fear of favor."

The numerous highly prejudicial, inflammatory, inaccurate, and unwarranted statements concerning Arthur Field made by Judge Miller on December 14, 2011, referenced above reflects a lack of integrity and independence. Field was not before Judge Miller. Field was no longer a party to the action. Field's activity was not germane to the proceeding and no comments were relevant or necessary. The Judge exhibited huge favor for the Receiver, the Class counsel and for the South Carolina Attorney General and disfavor of Field, even though no proceeding on the merits was pending.

Canon 2A states, "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Implying Field, who was not in court, was a "criminal" does not reflect impartiality. This was not a criminal proceeding. This was not even a civil proceeding on the merits. No such proceeding had ever taken place and no evidence had ever been received by the Court of any type, so Judge Miller had no evidence of any culpability on the part of Field or any other person. This matter had been mediated in March, 2009, and the parties had reached a Global Mediated Settlement Agreement before a retired Appellate Court Judge wherein all parties consented to the terms and no liability on the part of any party or entity was admitted. Field was fully entitled to the benefit of the bargain of the GMSA and had previously been denied that benefit by Judge Miller.

Consequently, any opinion expressed by Judge Miller reflects solely his bias, prejudice and a lack of impartiality and was wholly improper while presiding over an informal meeting. He had no business whatsoever referring Note Holders to confer with his good friend Creighton Waters, the Deputy Attorney General, nor introducing him or letting him speak to the Note Holders in open court. Judge Miller's violation of Canon 2 is apparent from the transcript and is egregious and has and will harm Field.

Clearly, having expressed a personal opinion while on the bench concerning Field, based upon non-evidentiary matters, Field's and the public's confidence have been eroded in Judge Miller's ability to carry out further judicial responsibilities in this matter "with integrity, impartiality and competence". *Comment*, Canon 2A, SCRCP Rule 501.

It would further appear from the Transcript that Judge Miller was "playing to the crowd" in uttering his improper comments. He appears to have been trying to impress the Note Holders and/or the Attorney General, possibly in response to numerous emails received from Note Holders and/or their appearance in the courtroom. This violates Canon 3B(2), "...A judge shall not be swayed by partisan interests, public clamor or fear of criticism."

It also is an overwhelming violation of Canon 3B(5), "A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice..."

Judge Miller's statements, which were highly inflammatory, made while on the Bench in a judicial capacity, certainly manifested bias or prejudice against Field and were clearly meant to incite the Note Holders. These horrible statements could not have resulted from anything other than extra-judicial bias, prejudice or *ex parte* communications; they certainly didn't result from any evidence, documents or testimony. Even the Receiver indicates Field had fully cooperated and no claims existed against Field and no evidence of any wrongdoing by Field was found.

Canon 3B(7)(a), states:

> A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding...

It must be concluded various persons had private conversation(s) or contact with Judge Miller and such were highly prejudicial and caused Judge Miller to have a bias against Field. Alternatively, Judge Miller dislikes Field as a result of out of court communications from third parties, the State or the press, and misused his judicial authority to besmirch Field in open court and essentially directed the Note Holders to file complaints with the Attorney General, in an already dismissed civil proceeding or the pending State Grand Jury investigation. This is unconscionable.

Judge Miller has exhibited considerable bias against Field in court prior hereto, and the acts and statements of December 14, 2011, (See Transcript) are in violation of the Canons of Judicial Conduct. Disqualification is prudent and mandated under Canon3(E)(1). "Under Canon 3(E)(1)(a), a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to, instances where he has a personal bias or prejudice against a party." Cf., Patel v. Patel, 359 S.C. 515, 599 S.E.2d 114(S.C. 2004).

Recusal is absolutely essential here. It is axiomatic that the expectation of a fair and impartial tribunal is a basic tenet of all cherished notions of due process embodied in the United States Constitution. In re Murchison, 349 U.S. 133, 75 S.Ct. 623 (1955). A reasonable person would believe Judge Miller could not act in an impartial manner after reviewing the above listed statements from the bench made on December 14, 2011. "The responsibility of a judge is to decide matters that have been submitted to the court by the parties. The judge may not, having decided a case, advocate for or, as in this case, materially assist one party at the expense of the other. Such advocacy creates the appearance, and perhaps the reality, of partiality on the part of the judge." *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 815 N.E.2d 286, (Ohio 09/07/2004)(2 year suspension and permanent exclusion from the bench); *Disciplinary Counsel v. Squire*, 116 Ohio St.3d 110 (Ohio 10/25/2007). "Judges must scrupulously avoid *ex parte* communications whether or not they consider them. Judges should avoid the appearance of impropriety when they carry out their duties." *Taylor v. Public Convalescent Service*, 245 Ga. 805, 806 (267 S.E.2d 242) (1980).

Similar conduct has often been the grounds for censure or permanent removal of a judge. See, e.g., *In re Davis*, 630 S.E.2d 281, 368 S.C. 662 (S.C. 05/08/2006); *In re Richland County Magistrate Stocker*, 608 S.E.2d 865, 362 S.C. 486 (S.C. 02/07/2005); *In re Bamberg County Magistrate Singleton*, 605 S.E.2d 518, 361 S.C. 364 (S.C. 11/08/2004)(permanent removal for *ex parte* contacts).[20]

[20] "...Canon 3 of the Code of Judicial Conduct "requires a judge to disqualify himself... in a proceeding in which the judge's impartiality might reasonably be questioned. ... Thus, the question is not only whether the particular judge is, in fact, impartial but whether a reasonable person would question the judge's impartiality on the basis of all the circumstances." *State v. Webb*, 238 Conn. 389, 460, 680 A.2d 147 (1996), aff'd after remand, 252 Conn. 128, 750 A.2d 448, cert. denied, 531 U.S. 835 (2000); accord *Ajadi v. Comm'r of Correction*, 280 Conn. 514, 527, 911 A.2d 712 (2006); *Papa v. New Haven Federation of*

This Motion must be decided prior to any other business before the Court in this case and of grave consequence and may be immediately appealable if denied, since it goes to the merits, may result in the unsealing of records previously sealed (assuming they even remain sealed, which appears not to be the case) and the Receiver seeks to hold Field in contempt of a non-existent court order, or one improvidently done by Judge Miller and irreparable harm will result. Brailsford v. Brailsford, 669 S.E.2d 342, 380 S.C. 443 (S.C.App. 2008); Ex parte Capital U-Drive-It, Inc., 630 S.E.2d 464, 369 S.C. 1(S.C. 2006). All appellate rights are preserved hereby.

> A charge of bias [or prejudice] must be deemed at or near the very top in seriousness, for bias kills the very soul of judging- fairness. . . . [A] charge of . . . bias [or prejudice] against a trial judge in the execution of his or her duties is a most grave accusation. It strikes at the very heart of the judiciary as a neutral and fair arbiter of disputes for our citizenry. Such an attack travels far beyond merely advocating that a trial judge ruled incorrectly as a matter of law or as to a finding of fact, as is the procedure in appellate practice. A judge's personal integrity and ability to serve are thrown into question, placing a strain on the court that cannot easily be erased. Attorneys should be free to challenge, in appropriate legal proceedings, a court's perceived partiality without the court misconstruing such a challenge as an assault on the integrity of the court. Such challenges should, however, be made only when substantiated by the trial record.

McKenna v. Delente, 123 Conn. App. 137, 144--45, 1 A.3d 260 (2010). See Abington Ltd. Partnership v. Heublein, , 246 Conn. 820; Tracey v. Tracey, 97 Conn. App. 285, 903 A.2d 679(2006). Field has been deprived of procedural and substantive due process.

Teachers, 186 Conn. 725, 744, 444 A.2d 196 (1982). Disqualification is required even when no actual bias has been demonstrated if a judge's impartiality might reasonably be questioned "because the appearance and the existence of impartiality are both essential elements of a fair exercise of judicial authority." *State v. Webb, supra*, 460--61; see also R. Flamm, Judicial Disqualification (1996) § 5.4.1, p. 150 ("Judicial decisions rendered under circumstances suggesting bias or favoritism tend to breed skepticism, undermine the integrity of the courts, and generally thwart the principles upon which our jurisprudential system is based. Since an appearance of bias may be just as damaging to public confidence in the administration of justice as the actual presence of bias, acts or conduct giving the appearance of bias should generally be avoided in the same way as acts or conduct that inexorably bespeak partiality."). Indeed, prevention of the appearance of impropriety is of vital importance to the judiciary and to the judicial process. *Bonelli v. Bonelli*, 214 Conn. 14, 19, 570 A.2d 189 (1990). "Members of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved..." *Abington Ltd. Partnership v. Heublein*, 246 Conn. 815, 823, 717 A.2d 1232 (1998), aff'd after remand, 257 Conn. 570, 778 A.2d 885 (2001)." *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, No. SC 17807 (Conn. 06/02/2009).

Judge Miller should certainly not have commented concerning any implication or inference relating to the Fifth Amendment. Such comments were highly improper and prejudicial and have irreparably damaged Field in the public's eye and tainted a jury pool in any future criminal case. "The framers of the Bill of Rights recognized the dangers inherent in self-incrimination, and as a result, placed in the Fifth Amendment a prohibition against compelling a witness to testify against himself. This prohibition against compelled self-incrimination is a basic constitutional mandate which is not a mere technical rule, but rather, a fundamental right of every citizen in our free society." State v. Thrift 312 S.C. 282, 296, 440 S.E.2d 341, 349 (1994). Therefore, it is legally proper for persons facing criminal prosecution...to invoke their Fifth Amendment privilege against self-incrimination...." Griffith v. Griffith, 332 S.C. 630, 506 S.E.2d 526 (App. 1998). "It is desirable the jury not know that a witness has invoked the privilege against self-incrimination since neither party is entitled to draw any inference from such invocation. 1 McCormick on Evidence, § 137 (1992). See also 3 Wharton's Criminal Procedure, § 354 (13th Ed. 1991) (no inference may be drawn from witnesses' assertion of privilege since exercise of right is personal...and should not be used to hurt...); 98 C.J.S. Witnesses § 455 (general rule that no adverse inference may be drawn from witness' assertion of the privilege)." State v. Hughes, 328 S.C.146, 493 S.E.2d 821 (S.C. 1997).

Nor should Judge Miller ever have signed a Rule to Show Cause when he knew Field was not a party and could not be subject to a Request for Production. Any impartial judge would not have done so.

Field respectfully requests Judge Miller recuse himself from these and all future proceedings, as required by Canon 3. Failure to do so will irrevocably harm Field and any other former party herein.

Arthur Field *Pro Se*
310 Thornblade Blvd., Greer, SC 29650

I hereby certify service in accord with the SCRCP.

Arthur M. Field, pro se June 11, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AFFIDAVIT OF RICHARD A. LACKEY

PERSONALLY appeared before me, Richard A. Lackey, who being duly sworn, deposes and says as follows:

1. My name is Richard A. Lackey and my address is 1 Pristine Drive, Greer, South Carolina, in the Thornblade community.

2. I hold a Bachelor's of Science degree from Georgia Tech University, as well as a Master's degree. I was Vice President of Operations for Swiss-Tex Foam Packaging from 1974 to 1988. For the past 26 years, I have served as President/CEO of Del-Tec Packaging, Inc.

3. My company has financially supported the Greenville Pops, an orchestra run by Arthur Field.

4. I attended a hearing on September 17, 2013, at 2:00 p.m. at the Greenville County Courthouse in the case of *William F. Tomz v. Capital Funding, et al.*, C/A No. 2008-CP-23-3665.

5. I noticed that the courtroom had a large camera in it. Shortly after coming in to the courtroom, the Judge started making negative comments directed at Arthur Field. He stated Arthur was a criminal and that he had stolen $40 million from victims. These statements happened at the beginning of the hearing, before any of the lawyers had spoken or witnesses testified.

6. I had never seen a judge act in such a way. As a business owner, I had been involved in litigation, and it troubled me greatly that a judge would seem so biased against a person from the start of a case.

7. I was troubled by this behavior, by the judge, and felt he should probably recuse himself from this case based on these comments.

Richard A. Lackey

Sworn to before me this
18th day of September, 2014.
Parvathy Chandrasekar
Notary Public of State of SC
My commission expires: 9/8/2020.

PARVATHY CHANDRASEKAR NOTARY PUBLIC COM. EXP. 9-8-2020 SOUTH CAROLINA

COMPLAINT RE EDWARD MILLER

EXHIBIT K

MEMO/AGENDA OF SECRET EX PARTE MEETING

APPARENTLY

BETWEEN JUDGE MILLER

AND

JERRY SAAD AND

ASST. ATTORNEY GENERALS WATERS AND PETRANO

AND INVESTIGATORS CATHEY AND JORDAN

INSTRUCTING SAAD TO SUE FIELD

IN NJ (ITEMS #2 AND ACTION ITEM #3)

IN RICO (ACTION ITEM #9)

AND RULE TO SHOW CAUSE BEFORE MILLER

(ITEM #11 AND ACTION ITEM #7)

Capital Investment Funding, LLC
Meeting With SC AG Officials
April 26, 2012

Agenda

In Attendance:
Jerry T. Saad, Receiver for CIF
Sharon Wilson, Executive Assistant to Jerry Saad
SC Attorney General Representatives
- Creighton Waters
- Brian Petrano
- Bob Cathey
- Joe Jordan

General Overview
A. Background
B. Receiver's Report – 12-31-11
C. Loans and Properties
D. Discussion of Litigation

Discussion of Litigation
1. Pfeiffer Malpractice Litigation
2. New Jersey Matters
   - LRI (Lancaster Resources, Inc.) Bankruptcy
   - Civil Litigation – CIF vs Katz, Caserta, et al
   - 457 Carlton Road Civil Litigation – Complaint Ready To File
   - Union Square Condo-Sales Proceeds Held In Escrow

3. LOP Capital Matter
   - Federal Lawsuit – CIF Plaintiff
   - Federal Lawsuit – LOP Plaintiff
   - State Lawsuit – LOP Plaintiff – Appealed to SCCofA

4. EarthArtist - Seneca Cotton Mill
   - $175,000 offer
   - Conditional Assignment of Mortgage to John Richard ("Dick") Young
   - Foreclosure / Collection

5. Collection on Guarantees – Hopper / Pinion / Gantt et al

6. SD Trust — Western Carolina Reporters.
   - Chapter 7 Trustee – no action taken
   - Pfeiffer Deposition still open

7. WE #3 Company
   - Foreclosure Litigation

Capital Investment Funding, LLC
Meeting With Judge Miller
April 19, 2012
(continued)

8. Trazom Loan –
    - Lease Renewal
    - Loan renewal
    - Recent discovery of $138,954 delinquency / past due
    - Offer from Davyd Field to settle for $800,000
    - Interrelated to CIF $1,000,000 payment to LRI

9. Tcholok loans (Oregon) foreclosure started – problems with mortgages

10. Other Dead Loans Not Yet Investigated
    - Lion Financial
    - Lancaster Mortgage
    - Monmouth Financial
    - Bradford Financial
    - He Will Provide / Aladdin's Café & Grill

11. Arthur Field – CIF Records / Subpoena / Rule to Show Cause

12. Pfeiffer Law Firm – Records / Files (Cosimo / SD Trust / WE4 / Rolling Hills / etc...)
    - Need to review various files
        - Trazom immediately
        - Other Cosimo related closings

13. Global RICO – target filing by June 2012

Actions

- Pfeiffer Malpractice Case– proceed
- New Jersey – CIF vs Katz et al - proceed
- New Jersey – 457 Carlton Road / Salzman / Field – file lawsuit asap
- EarthArtist – sell note for $200,000 to Dick Young
- Collections-Guarantors–Proceed/Judgments/ Supplemental Proceedings
- SC Trust – Contact Fort to buy Claims
- Arthur Filed – File Rule To Show Cause asap
- Trazom Loan – accept off of $800,000 for full satisfaction of note & mortgage
- RICO / Civil Conspiracy – Move forward asap – file by June
- Attorney General Meeting

5489 Atlantic Vw
St. Augustine, FL 32080
October 15, 2020
Email: Djarthurf @gmail.com

Judicial Merit Selection Commission
1101 Pendleton St.
Columbia, SC

Re: Edward Miller, 13th Judicial Circuit
Supplement to Complaint in Opposition

To the Commission:

Please accept the following as a Supplement to the Opposition filed by me in June, 2020 concerning the candidacy of Edward Miller. Also, please add the attached Exhibit to those previously submitted in support of the Opposition. The right to timely add further supplements and/or Exhibits is preserved.

In paragraph (b) of the Opposition Section D (pg. #11) dealing with violations of Judicial Canon 3B(7), reference is made to secret *ex parte* meetings between Judge Miller, Jerry Saad and members of the Attorney General's staff, both prosecutors and investigators. Such meetings took place on April 19, 2012 and April 26, 2012, and numerous other dates.

The April, 2012, *ex parte* meetings are evidenced by a Memorandum/Agenda of such meetings kept by Saad. It was delivered to the Attorney General by Saad on April 26, 2012, as part of a delivery of voluminous documents. I discovered the document as part of the *Brady* production made by the Attorney General after its release to me in March, 2020 following the Supreme Court's affirmation of Judge Maddox (Shearhouse #10).

Examination of the document (EXH. K annexed) reveals the identity of the attendees, but Judge Miler's name was deleted therefrom. However, the document is clearly a 2-page Agenda. Although the heading on the first page was amended, the header on the second page was inadvertently left intact and clearly reflects the meeting was with Judge Miller and took place prior to my 2012 indictment.

The Agenda reflects Judge Miller instructed Saad to sue me and my family in RICO in U.S. District Court, and to sue me in New Jersey. A meeting with a receiver 'off-the-record' is an *ex*

parte contact. A receiver should obtain approval from a court for its actions, publicly and on the record to protect the integrity of the judicial system and the due process rights of all parties affected by the receivership. A receiver is supposed to be neutral, unbiased and impartial. He has a fiduciary duty to the property, the creditors, and to the entity and its members. As such, Saad had a fiduciary duty to me and the other members of the LLC.

Judge Miller admitted regular *ex parte* contacts with Saad, but claimed such were not forbidden. (EXH. C, 9/29/16, pg. 10, line 12). When Judge Miller instructed Saad to institute actions against me and my family including a Rule to Show Cause, and subsequently presided over several such matters despite numerous recusal motions, the judge knowingly stepped far over the ethical bounds of impartial jurist. The April, 2012 meetings were conducted in secret and no official Transcript was made and the meeting was not disclosed to the parties.

Judge Miller was incorrect when he claimed that his frequent private communication with Jerry Saad was not a forbidden *ex parte* communication. **"[C]ourts have extended the general prohibition on *ex parte* communications to receivers. See, e.g., *Cobell v. Norton*, 237 F.Supp. 2d 71,74, n.2(D.D.C. 2003)...Code of Conduct for U.S. Judges Canon 3(A)(4); Model Code of Judicial Conduct R.2.9(2010)...judges themselves generally do not communicate *ex parte* with receivers...This stands in contrast to other court officers, such as law clerks**...The court, in this case, only directs the Receiver through court Orders and has not entertained *ex parte* communication from the Receiver..." *S.E.C. v. Schooler*, 106 F.Supp.3d 1157(S.D.Cal. 2015). See, also, *Receivership News*, #31, pg.1, Superior Court Judge Yaffe: "I don't call receivers up and have *ex parte* communications with them. I make sure that all interaction between this court and its receivers takes place in the presence of the parties..." Also, *RZS Holdings, Avv v. Petroleo*, 506 F.3d 350,358(4th Cir. 2007).

It is also clear from the many allusions Judge Miller made to Creighton Waters and his investigation in the 2011 informal hearing (EXH. A) that numerous private communications took place between Edward Miller and the Attorney General's staff in 2011 and April, 2012. This led Judge Miller to tell the public gallery in 2011--in violation of the State Grand Jury Act--that there was a secret State Grand Jury proceeding involving Field which had not resulted in an indictment. Judge Miller's encouragement of the public to meet with the Attorney General to file complaints

against Arthur Field demonstrated bias from extrajudicial sources, especially when it is recalled that neither Judge Miller nor any other judge had heard a scintilla of evidence concerning the underlying case.

The South Carolina Code of Judicial Conduct 3B(7) and the ABA Model Code state:

> A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:
> (a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided;
> (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and
> (ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

This is also embodied in Rule 2.9 of the Model Code (2020), which includes the following Comment or Rule:

> 3) A judge may consult with court staff … provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record….

The Commentary to the S.C. Code 3B(7) states:

> Certain *ex parte* communication is approved by Section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(7) are clearly met. A judge must disclose to all parties all ex parte communications described in Sections 3B(7)(a) and 3B(7)(b) regarding a proceeding pending or impending before the judge…A judge must not independently investigate facts in a case and must consider only the evidence presented

Any information Judge Miller received which led him to instruct Saad to initiate RICO and fraud actions against Arthur Field and family in multiple courts involved independent information purporting to be 'factual', irrevocably biasing Judge Miller based on 'extra-judicial' sources. And, at no time since 2012, did Judge Miller disclose the April, 2012 meetings, or any which must have occurred prior to 2011 with Creighton Waters. And advising Saad to initiate a Rule to Show Cause against Field based on *ex parte* information, and then sitting in judgment on the hearing on such Rule (EXH. B) and subsequent Show Cause hearings, clearly deprived Field of due process. Judge Miller held Field in contempt on several occasions as a direct result.

Judge Miller's repeated failure to recuse himself despite numerous motions by Field, pro se, and his attorneys Martin and Caskey, and his repeated denigration of Field, his family and his attorneys, while assisting the attorneys for the Class, CIF and the Receiver, reflects a total disregard for the Canons of Judicial Conduct. See, *In re Campbell,* 379 S.C. 593, 666 S.E.2d 908(2008), where Justice Toal stated for a unanimous court:

> In addition to the preparation of an order of appointment that we find was strongly influenced by ex parte contact, the probate judge expressed his own favorable opinions on Mother's counsel and the appointed examiners in open court, while directing disparaging personal remarks at Daughter's counsel. These incidents, in our view, are manifestations of a clear bias on the part of the probate judge, and therefore, we hold that the circuit judge properly ordered the recusal of the probate judge...

Judge Miller allowed his desire for vengeance for the 2012 grievance filed by Field to cloud his entire judgment. It casts grave doubts on Edward Miller's fitness to continue as a jurist in South Carolina. When taken with all of the other instances of Canon violations set forth in the Opposition, there can be no conclusion other than to deny re-election to preserve the integrity of the South Carolina judiciary.

It is my intention to appear before the Commission on November 17, 2020.

Respectfully submitted,

Arthur M. Field, Ph.D., J.D.

8644196609

Received via mail
10/20/20

JUDICIAL MERIT SELECTION COMMISSION)
)

In the Matter of: Edward Miller)
Candidate for 13th Judicial Circuit)
)
SECOND
)
WITNESS AFFIDAVIT
FORM
)
)

I will appear to testify concerning the qualifications of the above-named candidate and will produce all documents in my possession, if any, which will further develop or corroborate my testimony.

I understand that this written statement and all supporting documentation, if any, must be completed and returned to the Judicial Merit Selection Commission by the deadline for complaints in order for the Commission to hear my testimony, and that the deadline for complaints is **12:00 Noon, Monday, November 2, 2020.** I understand I must be available to testify at the Public Hearing.

In regard to my intended testimony, I will offer information as to the following:

(1) Set forth your full name, age, address, and both home and work telephone numbers.
Arthur M. Field, Ph.D., J.D.; 5489 Atlantic Vw, St. Augustine, FL 32080
Cell: 864 419 6609

(2) Set forth the names, addresses, and telephone numbers (if known) of other persons who have knowledge of the facts concerning your testimony.
Kathryn Taillon, 5489 Atlantic Vw, St. Augustine, FL 864 419 2516
Hon. Bruce Bannister, 24 Cleveland St., Greenville, SC 864 523-7328
Luke Burke, Esq/ 24 Cleveland St., Greenville, SC 864 523 7328
Davyd Field, 7 Shadetree Court, Greer, SC 29651 562 505 4613
Hon. Micajah Caskey, 146 State St., W. Columbia, SC 803-724-3624
Allyson Field, 3100 S.E. 168th Ave, Vancouver, WA 843 259 7084
Bradford Martin, Esq., 201 W. McBee Ave #302, Greenville, SC 864-552-9990
Gwen Martin, Esq. 201 W. McBee Ave #302, Greenville, SC 864-552-9990
Evangelos Orfanedes, 697 Battery Ridge Dr., Summerville, SC 29486
Henry VanDyke, 506 Thornblade Blvd, Greer, SC 864 281 1550
Richard Lackey, 1 Pristine Dr., Greer, SC 864 848 2636
Kirsten White, 121 Emerywood Ln, Greenville, SC 29607 864 420 7775
Tom Stephenson, Esq., 207 Whitsett St., Greenville, SC 864 370 9400
Charles Grose, Esq., 404 Main St., Greenwood, SC 864 538 4466
Laura Teer, Esq., 201 W. McBee Ave #302, Greenville, SC 864 522 9990

(3) State the nature of your testimony regarding the qualifications of the above-named judicial candidate, including:

(a) specific facts relating to the candidate's character, competency, or ethics, including any and all allegations of wrongdoing or misconduct on the part of the candidate;

See Complaint dated on or about June 13, 2020 and Supplement dated 10/15/2020 together with all Exhibits in support thereof, all incorporated herein as if fully set forth
Right to supplement preserved.

(b) specific dates, places, and times at which or during which such allegations took place;

Answer to part (a) repeated, dates include 2011—2020; specific dates reflected on Exhibits and as set forth in Complaint and Supplement

(c) names of any persons present during such alleged actions or possessing evidence of such alleged actions; and

See Answer to #2 and Complaint and Supplement

(d) how this information relates to the qualifications of the judicial candidate.

See answer to #3. See Complaint and Supplement detailing 9+ years of violations of the Canons of Judicial Conduct. The unethical conduct of Edward Miller was so egregious as to demand his immediate removal from the bench to preserve the judicial integrity of South Carolina. Misconduct was flagrant and repeated, including violations of Canons 3B(1)—3B(7), *et al.*

(4) Set forth a list of and provide a copy of any and all documents to be produced at the hearing which relate to your testimony regarding the qualifications of the judicial candidate.

See Exhibits A-K

Exh A: Trans Excerpts 12/14/11 Exh. B: Trans. 9/7/13
Exh. C: Trans. 9/29/16 Exh. D: Trans. 3/17/17
Exh. E: Trans. 9/15/17 Exh. F: Trans. 11/27/17
Exh. G: Record on Appeal Excerpts Exh. H: Letters to Court Reporter Hudgins
Exh. I: Affidavit in Support of Recusal Showing Note by Miller to 'place in File but do not clock'
Exh. K: Memo/Agenda of Secret Ex Parte Meeting between Miller, Jerry Saad, and Attorney General personnel; Other Exhibits preserved

(5) State any other facts you feel are pertinent to the screening of this judicial candidate.

See Complaint and Supplement and any submission hereafter if timely made. Reserve right to produce additional if discovered after 11/2 and could not have been found prior thereto with reasonable investigation, if permitted by the Commission.

Upon information, in or about 2014, Edward Miller issued a contempt citation for a female complainant to prevent her testimony to this Commission. Public record reflects this was for alleged non-payment of attorneys fees in favor of Rodney Pillsbury. Said Pillsbury is the same attorney involved in this matter.

It is reaspmab;u believed Pillsbury, Saad, Brandt, and Case work in concert with Edward Miller to produce the violations complained of.

In 11 years of receivership, Judge Miller has permitted Saad to disregard all obligations of receivership and managerial status over CIF. No report has been publicly filed since 2011. No funds have been distributed to any creditor except for a single nominal distribution over 5 years ago.

I understand that the information I have provided herein is confidential and is not to be disclosed to anyone except the Judicial Merit Selection Commission, the candidate, and counsel.

WAIVER

I further understand that my testimony before the Judicial Merit Selection Commission may require the disclosure of information that would otherwise be protected by the attorney-client privilege. Therefore, in order that my complaint may be fully investigated by the Commission,

I hereby waive any right that I may have to raise the attorney-client privilege as that privilege may relate to the subject of my complaint. I further understand that by waiving the attorney-client privilege for this matter, I am authorizing the Commission to question other parties, including my attorney, concerning the facts and issues of my case.

Signature

Sworn to me this 15th day of October, 2020

_____ L.S.
Notary Public of Florida

Notary Public State of Florida
Pamela Lawson
My Commission GG 365958
Expires 10/04/2023

Received Via mail
10/20/20

5489 Atlantic Vw
St. Augustine, FL 32080
October 15, 2020
Email: Djarthurf @gmail.com

Judicial Merit Selection Commission
1101 Pendleton St.
Columbia, SC

Re: Edward Miller, 13th Judicial Circuit
Supplement to Complaint in Opposition

To the Commission:

Please accept the following as a Supplement to the Opposition filed by me in June, 2020 concerning the candidacy of Edward Miller. Also, please add the attached Exhibit to those previously submitted in support of the Opposition. The right to timely add further supplements and/or Exhibits is preserved.

In paragraph (b) of the Opposition Section D (pg. #11) dealing with violations of Judicial Canon 3B(7), reference is made to secret *ex parte* meetings between Judge Miller, Jerry Saad and members of the Attorney General's staff, both prosecutors and investigators. Such meetings took place on April 19, 2012 and April 26, 2012, and numerous other dates.

The April, 2012, *ex parte* meetings are evidenced by a Memorandum/Agenda of such meetings kept by Saad. It was delivered to the Attorney General by Saad on April 26, 2012, as part of a delivery of voluminous documents. I discovered the document as part of the *Brady* production made by the Attorney General after its release to me in March, 2020 following the Supreme Court's affirmation of Judge Maddox (Shearhouse #10).

Examination of the document (EXH. K annexed) reveals the identity of the attendees, but Judge Miler's name was deleted therefrom. However, the document is clearly a 2-page Agenda. Although the heading on the first page was amended, the header on the second page was inadvertently left intact and clearly reflects the meeting was with Judge Miller and took place prior to my 2012 indictment.

The Agenda reflects Judge Miller instructed Saad to sue me and my family in RICO in U.S. District Court, and to sue me in New Jersey. A meeting with a receiver 'off-the-record' is an *ex*

parte contact. A receiver should obtain approval from a court for its actions, publicly and on the record to protect the integrity of the judicial system and the due process rights of all parties affected by the receivership. A receiver is supposed to be neutral, unbiased and impartial. He has a fiduciary duty to the property, the creditors, and to the entity and its members. As such, Saad had a fiduciary duty to me and the other members of the LLC.

Judge Miller admitted regular *ex parte* contacts with Saad, but claimed such were not forbidden. (EXH. C, 9/29/16, pg. 10, line 12). When Judge Miller instructed Saad to institute actions against me and my family including a Rule to Show Cause, and subsequently presided over several such matters despite numerous recusal motions, the judge knowingly stepped far over the ethical bounds of impartial jurist. The April, 2012 meetings were conducted in secret and no official Transcript was made and the meeting was not disclosed to the parties.

Judge Miller was incorrect when he claimed that his frequent private communication with Jerry Saad was not a forbidden *ex parte* communication. **"[C]ourts have extended the general prohibition on *ex parte* communications to receivers. See, e.g., *Cobell v. Norton,* 237 F.Supp. 2d 71,74, n.2(D.D.C. 2003)...Code of Conduct for U.S. Judges Canon 3(A)(4); Model Code of Judicial Conduct R.2.9(2010)...judges themselves generally do not communicate *ex parte* with receivers...This stands in contrast to other court officers, such as law clerks...**The court, in this case, only directs the Receiver through court Orders and has not entertained *ex parte* communication from the Receiver..." *S.E.C. v. Schooler,* 106 F.Supp.3d 1157(S.D.Cal. 2015). See, also, *Receivership News,* #31, pg.1, Superior Court Judge Yaffe: "I don't call receivers up and have *ex parte* communications with them. I make sure that all interaction between this court and its receivers takes place in the presence of the parties..." Also, *RZS Holdings, Avv v. Petroleo,* 506 F.3d 350,358(4th Cir. 2007).

It is also clear from the many allusions Judge Miller made to Creighton Waters and his investigation in the 2011 informal hearing (EXH. A) that numerous private communications took place between Edward Miller and the Attorney General's staff in 2011 and April, 2012. This led Judge Miller to tell the public gallery in 2011--in violation of the State Grand Jury Act--that there was a secret State Grand Jury proceeding involving Field which had not resulted in an indictment. Judge Miller's encouragement of the public to meet with the Attorney General to file complaints

against Arthur Field demonstrated bias from extrajudicial sources, especially when it is recalled that neither Judge Miller nor any other judge had heard a scintilla of evidence concerning the underlying case.

The South Carolina Code of Judicial Conduct 3B(7) and the ABA Model Code state:

> A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:
> (a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided;
> (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and
> (ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

This is also embodied in Rule 2.9 of the Model Code (2020), which includes the following Comment or Rule:

> 3) A judge may consult with court staff … provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record….

The Commentary to the S.C. Code 3B(7) states:

> Certain *ex parte* communication is approved by Section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(7) are clearly met. A judge must disclose to all parties all ex parte communications described in Sections 3B(7)(a) and 3B(7)(b) regarding a proceeding pending or impending before the judge…A judge must not independently investigate facts in a case and must consider only the evidence presented

Any information Judge Miller received which led him to instruct Saad to initiate RICO and fraud actions against Arthur Field and family in multiple courts involved independent information purporting to be 'factual', irrevocably biasing Judge Miller based on 'extra-judicial' sources. And, at no time since 2012, did Judge Miller disclose the April, 2012 meetings, or any which must have occurred prior to 2011 with Creighton Waters. And advising Saad to initiate a Rule to Show Cause against Field based on *ex parte* information, and then sitting in judgment on the hearing on such Rule (EXH. B) and subsequent Show Cause hearings, clearly deprived Field of due process. Judge Miller held Field in contempt on several occasions as a direct result.

Judge Miller's repeated failure to recuse himself despite numerous motions by Field, pro se, and his attorneys Martin and Caskey, and his repeated denigration of Field, his family and his attorneys, while assisting the attorneys for the Class, CIF and the Receiver, reflects a total disregard for the Canons of Judicial Conduct. See, *In re Campbell*, 379 S.C. 593, 666 S.E.2d 908(2008), where Justice Toal stated for a unanimous court:

> In addition to the preparation of an order of appointment that we find was strongly influenced by ex parte contact, the probate judge expressed his own favorable opinions on Mother's counsel and the appointed examiners in open court, while directing disparaging personal remarks at Daughter's counsel. These incidents, in our view, are manifestations of a clear bias on the part of the probate judge, and therefore, we hold that the circuit judge properly ordered the recusal of the probate judge...

Judge Miller allowed his desire for vengeance for the 2012 grievance filed by Field to cloud his entire judgment. It casts grave doubts on Edward Miller's fitness to continue as a jurist in South Carolina. When taken with all of the other instances of Canon violations set forth in the Opposition, there can be no conclusion other than to deny re-election to preserve the integrity of the South Carolina judiciary.

It is my intention to appear before the Commission on November 17, 2020.

Respectfully submitted,

Arthur M. Field, Ph.D., J.D.

8644196609

Received via mail
10/20/20

COMPLAINT RE EDWARD MILLER

EXHIBIT K

MEMO/AGENDA OF SECRET EX PARTE MEETING

APPARENTLY

BETWEEN JUDGE MILLER

AND

JERRY SAAD AND

ASST. ATTORNEY GENERALS WATERS AND PETRANO

AND INVESTIGATORS CATHEY AND JORDAN

INSTRUCTING SAAD TO SUE FIELD

IN NJ (ITEMS #2 AND ACTION ITEM #3)

IN RICO (ACTION ITEM #9)

AND RULE TO SHOW CAUSE BEFORE MILLER

(ITEM #11 AND ACTION ITEM #7)

Capital Investment Funding, LLC
Meeting With SC AG Officials
April 26, 2012

Agenda

In Attendance:
Jerry T. Saad, Receiver for CIF
Sharon Wilson, Executive Assistant to Jerry Saad
SC Attorney General Representatives
- Creighton Waters
- Brian Petrano
- Bob Cathey
- Joe Jordan

General Overview
A. Background
B. Receiver's Report – 12-31-11
C. Loans and Properties
D. Discussion of Litigation

Discussion of Litigation
1. Pfeiffer Malpractice Litigation
2. New Jersey Matters
   - LRI (Lancaster Resources, Inc.) Bankruptcy
   - Civil Litigation – CIF vs Katz, Caserta, et al
   - 457 Carlton Road Civil Litigation – Complaint Ready To File
   - Union Square Condo-Sales Proceeds Held In Escrow

3. LOP Capital Matter
   - Federal Lawsuit – CIF Plaintiff
   - Federal Lawsuit – LOP Plaintiff
   - State Lawsuit – LOP Plaintiff – Appealed to SCCofA

4. EarthArtist - Seneca Cotton Mill
   - $175,000 offer
   - Conditional Assignment of Mortgage to John Richard ("Dick") Young
   - Foreclosure / Collection

5. Collection on Guarantees – Hopper / Pinion / Gantt et al

6. SD Trust — Watson Wilson Peyton.
   - Chapter 7 Trustee – no action taken
   - Pfeiffer Deposition still open

7. WE #3 Company
   - Foreclosure Litigation

Capital Investment Funding, LLC
Meeting With Judge Miller
April 19, 2012
(continued)

8. Trazom Loan –
    - Lease Renewal
    - Loan renewal
    - Recent discovery of $138,954 delinquency / past due
    - Offer from Davyd Field to settle for $800,000
    - Interrelated to CIF $1,000,000 payment to LRI

9. Tcholok loans (Oregon) foreclosure started – problems with mortgages

10. Other Dead Loans Not Yet Investigated
    - Lion Financial
    - Lancaster Mortgage
    - Monmouth Financial
    - Bradford Financial
    - He Will Provide / Aladdin's Café & Grill

11. Arthur Field – CIF Records / Subpoena / Rule to Show Cause

12. Pfeiffer Law Firm – Records / Files (Cosimo / SD Trust / WE4 / Rolling Hills / etc...)
    - Need to review various files
        - Trazom immediately
        - Other Cosimo related closings

13. Global RICO – target filing by June 2012

Actions

- Pfeiffer Malpractice Case– proceed
- New Jersey – CIF vs Katz et al - proceed
- New Jersey – 457 Carlton Road / Salzman / Field – file lawsuit asap
- EarthArtist – sell note for $200,000 to Dick Young
- Collections-Guarantors–Proceed/Judgments/ Supplemental Proceedings
- SC Trust – Contact Fort to buy Claims
- Arthur Filed – File Rule To Show Cause asap
- Trazom Loan – accept off of $800,000 for full satisfaction of note & mortgage
- RICO / Civil Conspiracy – Move forward asap – file by June
- Attorney General Meeting

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
William Tomz and Francis W. Tomz Individually and as Class Representatives	)	CASE # 2008-CP-23-3665
	)	
Plaintiffs,	)	
vs.	)	**NOTICE OF MOTION AND MOTION TO RECUSE**
	)	
Capital Investment Funding, LLC And Arthur M. Field	)	
	)	
Defendants.	)	

EXHIBIT A

OFFICIAL TRANSCRIPT EXCERPTS

12/14/11

STATE OF SOUTH CAROLINA	)
	) SPECIAL MEETING
	) 2008-CP-23-35514
COUNTY OF GREENVILLE	)
	)
	)
	)
Capital Investment Funding	)

December 14, 2011
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, Judge.

A P P E A R A N C E S

Jerald Saad, Esquire
Appointed Receiver

Creighton Waters, Esquire
Assistant Attorney General

Stanley Case, Esquire
Class Action Counsel

Gene Covington, Esquire
Class Action Counsel

CAROLINE HISKELL
Circuit Court Reporter

P R O C E E D I N G S

THE COURT: Welcome, ladies and gentlemen, I hope you are all doing well. As you all are aware and I'm aware you would like to hear the status of your case. It's perfectly understandable. And I also want to tell you that I am also aware of your frustration. If I haven't heard about it, I could have guessed it.

You made investments with the intent to rely on those investments and they're not there. They've been inappropriately removed from your possession. I can understand your frustration. I just want you to know everyone involved in this case is aware of that.

It probably doesn't ease your pain any, but at least you know we are aware of it.

I kind of just want to go over a little bit of background in the case from my prospective. These cases were filed, the first lawsuit, I believe, was filed on the coast and then more suits were filed and because of the location of the defendant, under the law, the cases were moved up here and consolidated into a class action. And then the rules of the class followed and the cases preceded.

Another judge was given this case to begin with, he was removed, and I was substituted. I was substituted shortly before the settlement of the case, the

global settlement. When I came into this and didn't exactly know what kind of fish tank I was getting thrown into. It was a very complicated matter and I tried to get up to speed. Fortunately, there are a lot of very competent qualified people that are representing you and doing everything they can to cover the proceeds.

But in any event, the global settlement, which was reached after a couple of hard days of mediation, mediated by retired appellate court judge, Samuel Stilwell, which I have the utmost respect for, and the Order was signed on August 27, 2009. In that order, Mr. Jerry Saad was appointed receiver.

Now, there are a number of other folks. The two class co-counsel are up here, Mr. Case, Mr. Covington, and I would recognize some other folks up here you all may recognize. I would recognize Mr. Creighton Waters with the Attorney General's Office and I know you all have questions you'd like to ask him. At the appropriate time I will return to them.

What I would like to do and what I will tell you I've seen and this is -- as you can understand -- while this case is under my jurisdiction, we do handle a lot of other cases. I am not and can not be personally involved in a lot of the work that's gone on in this case. Mr. Saad has done an extraordinary job. Mr. Saad and the

person that are working with them, and you may be introduced to some of them or may know some of them as well, have done an extraordinary job. And it is -- I will just tell you some of the most complex dodging and weaving shell game type stuff that I've seen and I've been involved in, when I was a lawyer for 25 years I was a defense lawyer and I've seen quite a few, but this as sophisticated a shell game as I've seen.

In any event, what we will do today is I'm going to ask Mr. Saad to come up so that I guess -- Jerry, if you want to come up here? Would you be comfortable up here? He's going to give you some idea about some of the things that have gone on.

Now, I want to tell you and I know that y'all are interested in the bottom line. I want to tell you that there is no disbursement that's going to be made today. Mr. Saad is going to post on the Internet, January 15th it will be up and available, a balance sheet so to speak. And I want to tell you that there are a number of things that we can not tell you. You might say, why? We're members of the class. Well, although each of you would like to know all the information but I think that you will understand and trust each of you to have to ability to invest. You are intelligent folks and you can understand, even though you might not like it, you can

understand why everything can not be disclosed to you from even the receiver's point of view because it might impact the ability to recover in the future.

So I guess I'm asking you to continue a level of trust in me as overseeing this case and the people who are doing the hard work in trying to recover your money. Having said that, we are going to tell you some things about what has already occurred, a little historical stuff, and you'll get a flavor for the complexity that these folks have been faced with and what they uncovered in certain things. You'll just have to make reasonable inferences about what will happen in other things that I'm not going to allow them to tell you about because it might impair our ability in going forward.

And you just have to trust that we are working for the benefit of this class.

So, Jerry, let me get you to come on up and we do have a little bit of an agenda. I hope I'm following it. There are couple of things, I guess, before Jerry starts talking that we really ought to talk about. There some matters that are outside the scope of the actual receivership. I know that there's an issue that a lot of you face with respect to the IRAs. Now, I am not an expert in that matter.

The other thing that I will tell you in that

matter is that we are not allowed to give advice. Ethically a judge is not allowed to give advice to anybody in any matter. I hope you can understand why. Mr. Saad is a receiver for the court and I'm not allowing him to give advice, specific advice, but that IRA issue is outside, while we're sympathetic to all these problems that y'all have, that is outside of really what the scope of the receivership is all about. It may be a result of what's happening, but it's outside the scope of receivership and I'm going to ask Jerry to give you a little bit of information about that in just a second.

The other thing, and I guess I might as well do it now, is -- Creighton, would you just stand up and I'm going to let Creighton speak to you if you would.

MR. WATERS: Most of y'all haven't met me, my name is Creighton Waters. I'm an attorney in the criminal division of the Attorney General's Office. And one thing I know that everybody has a lot of concern about is, is there an investigation and what the status of that investigation is and questions along those lines. Unfortunately statutory rules prohibit me from confirming the existence of an investigation or giving any update or status to the investigation. That's not a rule that I made, it's a rule that's in the statute.

So, unfortunately, I can not comment on the

status or the existence of any investigation. What I can tell you that is that in any case where there are allegations of criminal activity, the Attorney General's Office takes that very seriously. I understand that's probably a very unsatisfying answer for many of you but because of the lack of detail, but again, these are statutory rules that exist to protect the integrity of the process and I'm not at liberty to violate those even if they are frustrating. I ask you to understand that that's the best I can offer you.

I'll be here after the proceedings have concluded. If anybody wants to approach you, I'd be glad to talk with you, but, again, I'm not going to be able to offer any specifics because of those rules.

THE COURT: Thank you very much.

Let me just say this, ladies and gentlemen, he can't talk with you about and he can't talk with me about it. That's how stringent these rules are and y'all ought to be very thankful in the big picture we have persons with kind of integrity who follow the rules exactly as they are written. So it ought to restore some faith that you have in our system. And I will tell you that Mr. Saad is cooperating with any appropriate persons with whom he needs to cooperate with.

And the other thing I would point out to you

is the fact that Mr. Waters is here and you all just have to make a reasonable inference about that. I think that about covers that.

Jerry, would you tell us a little bit about the IRA issue without giving any advice.

MR. SAAID: I understand through the process having received email and calls from several note holders that several note holders --

THE COURT: Is that on?

MR. SAAID: Is this better? I'm not used to this. I'll give you some of the background information. The records that I have shows that there was about 141 note holders that had their investments in IRAs and the IRAs have their own set of patch rules and part of the problem that I know was coming up is people were getting letters and notices about 1099s issued to the Internal Revenue Service reporting taxable income from these distribution of the notes coming out of the IRAs to the individuals named directed. So I contacted a company that was holding predominantly all of this IRA accounts which was called Physeve(ph) which later changed their name of Lincoln Trust Company and became familiar with what was going on so I'll give you a broad stroke background.

In 2008 there was approximately 30 note holders who notified the custodian that they wanted to

MR. SAAD: I'll add this to. I'll be happy to talk with your personal tax advisor to explain matters. I'm not charging my time to do that to the class because the class doesn't all benefit from that, only individuals do. But the time should be minimal and accounts have a way of talking to each other. I can explain it easier directly to them so if you do plan on talking to them and they have questions, I'm happy to give them the benefit of my knowledge of the situation.

THE COURT: Now, there are a number of qualified people that are also working with Mr. Saad in this investigation from our perspective aside from any other investigation that might be going on, and Kurt Staghal(ph) that's sitting over there in the box with the yellow tie on. He is an attorney. He's been intimately involved in a lot of this.

There's another gentleman that's been working with him. He is also an attorney, Mr. Robert Pole and he's not here today. They have done very impressive work.

Okay, Jerry, go ahead.

MR. SAAD: I think it would probably benefit all to kind of paint a broad picture of what was in the company when I took over August 27, 2009. As everybody is probably aware there was a confession of judgment that was part of the mediated settlement agreement which accounted

could just pick up and look and see. It took extensive amount of digging, looking through records, traveling to Georgia looking at opposing counsel records down there to understand how all this could have occurred. And this is not the only time -- I believe this is not the only time this type of thing has occurred in this case and that's why we are spending time to go search, seek, and recover whatever we can.

THE COURT: Having heard that and I've heard it three or four times and I still do not have a complete understanding of it. When I say shell game, a lot of these people are connected in other matters and it's moving around and it's hard to keep up with which cup has got the pea under it. And what they have done in the last two years -- this is what your receiver has done. He has uncovered information, try and trace the funds and where they went, what happened to them and I just want to -- there is no way to sugar coat the thing. There is no pot of gold out there.

All the 38 million dollars we're trying to find it, but ladies and gentlemen, we don't know where it all went. We know eighteen million is up in New Jersey. There are a lot of things we can not tell you because it might impair our ability to pursue some of this stuff, but I wanted Jerry to give you an idea the flavor of what he's

and it was suggested we drop the price to three hundred thousand and we think it'll although there's not a lot moving up there. So we think we'll get somewhere around three hundred for those properties. If we fire sold, we'd probably get a hundred. All those numbers added together immediate liquidation about seven hundred thousand and orderly liquidation about a million four. So combined we're looking at about a million four if we stopped, liquidated and got what we could and moved on. If we could got through and orderly liquidation, we think we could get three million dollars and that's without considering recovery of any lawsuits.

THE COURT: All right. I wasn't sure before but now I know why they call them bean counters. A little attempt at humor.

MR. SAAD: I resemble that remark.

THE COURT: Thank you very much, Jerry.

I hope what he has recited to you gives you some notion of the effort that has been put in on your behalf in trying to marshal the assets and evaluate them and determine how best to dispose of them. We have set aside some time for Mr. Author Field to make some comments if he wanted to. He had declined to be present. He sent a letter and I'm not going to read it. It's self-serving and it's not worth going through. There is nothing of

substance in it.

Having said that, are there any comments or questions from Mr. Cannel or Mr. Case. If he's addressed what your question was but anything y'all want to tell the class or ask the receiver.

MR. COVINGTON: I want to ask him a couple of questions and read him a couple of questions that have been sent to me.

THE COURT: Sure.

MR. COVINGTON: Can you tell these folks, thirty eight million dollars that has been put in by everybody, what would you expect in an orderly liquidation what somebody would get? Pennies on the dollar, fifty cent, can you speak to that.

MR. SAAD: It would be pennies on the dollar. The numbers that I just summarize, three million dollars, and from that three million dollars recovered, it's going to be costs involved.

MR. COVINGTON: That's if we liquidate it now?

THE COURT: Orderly.

MR. SAAD: I say that but obviously we can't do it in one felt swoop, but if we said take no more action accept to go make deals and get whatever you can and make the money where ever you can, you'd probably get

complex.

As far as opting out, I don't know if anyone here wants to opted out but I will tell you this think about it and what has been done. I know you haven't heard all this until now and maybe you can understand why. How can you express this over the Internet? How could you understand the complexities of how he monies have been moved and shuffled and I promise you, ladies and gentlemen, you have not heard a tenth of it. It's like peeling the layers off an onion. So if you want to opt out consider whoever you go to get them to represent you is going to get the whole onion and they're going to have to peel it away themselves because the rest of the class members are not giving away their work product. You all own this information.

We're guarding it for you and we're using it for your benefit and I hope you agree we've got the right people doing it. I am confident that that's what's going on.

Now, Mr. Case anything you want to say.

MR. CASE: No, sir, I would just like to have my original client stand up Mr. Troy Bridges. He is one of five families that came to me. Mr. Bridges and his group are one of the original investors and he has been to one of the hearings when we got a claim dismissed in

Georgia and we are continuing our efforts.

MR. COVINGTON: I think Your Honor authorized us to put the list on the Internet. I was going to put that on when I got back today.

THE COURT: Let me just tell you that his is an interim draft copy. The real one, bottom line numbers, is going to come out January 15 and we did agree to do that. We will put draft on it but the numbers are going to be there and Jerry has read it of what we have and what has been spent.

MR. COVINGTON: And the court reporter is going to give us a copy of this hearing and put that on the Internet as an attachment for anybody who couldn't come or people who are disabled and wanted to read something about what went on.

THE COURT: Fair enough. Now, ladies and gentlemen, we're going to let y'all ask questions. We'll answer them as best we can. I do want to tell you that Mr. Creighton Waters has been here in his capacity with the Attorney General's Office with an outstanding law enforcement member who I've known for over 30 years and I've got the upmost respect for him. They've heard everything we've said -- I don't now what all they've heard but I want to tell you that they are here, okay, and they don't go willy nilly anywhere and they are paying

has been stayed but still active. We just can't do anything right now until we file a motion to have it -- I'm sorry -- the stay lifted and we're in the process of doing that now and working that goal.

In essence what's happened is money that went up there from the terms of this lawsuit, it appears that there was not any way to get a secured position ahead of the banks that had perfected collateral, so when the bankruptcy was filed, the banks were in prior position. As the foreclosure occurred, the banks got the money and equity about the bank loans so there's nothing left for CIF out of the bankruptcy.

MR. GEORGE: Then why are you pursuing it further? Why are you spending any time at all when there is not chance of recovery?

MR. SAAD: Because there are individuals involved and the claim that was filed was that these individuals conspired and did acts that were fraudulent to prevent CIF from having perfected collateral.

THE COURT: And if I'm not mistaken, wasn't it presented that these were collateral loans.

MR. SAAD: I believe in the perspective I believe that they were.

THE COURT: So it was floated out there that these were collateral loans and in fact they were not.

MR. GEORGE: Some people might go to jail inaudible).

THE COURT: They might.

MR. GEORGE: That's eight million but then here's seventeen million. Where are you collecting the ther seventeen million, Mr. Saad?

MR. SAAD: Well, the eleven million of it is osmos. Seven million was for these related companies hat was developing property on Lake Kiwi and such which ncludes this convoluted story when I was talking about LP. So all that activity that went on, not just the one described, is still under investigation and it may esult in lawsuits, but again, that's part of the process. And that's where I'm saying there's no guarantee of recovery of any of that.

MR. GEORGE: But there is still a possibility of recovery somewhere.

MR. SAAD: And that's what we weigh, the likelihood versus the cost, and it's almost daily chores I talk with my counsel and we look at these things and that's why I'm saying today the evaluation is those actions are worth pursing. We are developing those actions. There may come a time we get enough facts to say that's enough there and we can't recover or pull the trigger, file the suit and let's go at it.

Unfortunately, litigation is very labor intensive. It's drawn it, but there is only one benefit of being in federal court, though, that long period is typically compressed to have the time period in state court, which is why we'd rather be in federal and not state.

THE COURT: Yes, ma'am, your name.

MS. RICE: Jacqueline Rice. Do I understand it would be left up to Mr. Saad to decide whether to pursue suing Author Field.

MR. COVINGTON: Yes, we would all talk about that.

MS. RICE: And if you decided, yes, what would it benefit the class monetarily.

MR. COVINGTON: That's they key question, is it worth suing him and does he have anything to collect.

MR. SAAD: That's part of the evaluation when we look at suing anybody and that's what's the end game. There a lot of people and companies we see that we could pursue and we decide not to because the likelihood of recovering any cash is small. You might get a judgment and its nice to have but it doesn't buy a cup of coffee.

THE COURT: And let me say that early on in the receivership, Mr. Field was cooperating to an extent with Mr. Saad, providing information, and telling him

about people and that sort of thing. There is nothing else he can offer. We wanted to get as much information as we possibly could. That's a decision has not been made and certainly if a decision has been made, you will know about it.

SPEAKER (Inaudible): Mr. Saad, you addressed the collateral problems with the loan, but could you also tell us if those loans were insured, liability insurance.

MR. SAAD: I never asked the question, quite frankly, and I don't have documents to indicate that they would have been looking at the nature of how those loans were packaged. All that we have been dealt with have been a formal loan package all handed by the Pfeiffer Loan Law Firm. There would have been lender's title insurance on this property so that the title we'd have an opportunity to question the title insurance company which is actually one of the things we are looking at with the Spartanburg property. But beyond that I don't know if any -- I've seen any kind of insurance on the loan itself.

MR. DIVAS: My name is Joe Divas. I got a question for Mr. Saad going back to the IRS situation. You said that there was going to be some corrected 1099s going on. Would those be mailed or would we have to demand those?

MR. SAAD: No, they will be filing those with

the IRS and sending those directly to you. Those should be coming out this week. I've talked to the gentleman yesterday and they've been processed and they are mailing them and you should be getting yours by early next week at the latest.

THE COURT: Again, let me remind you, don't waste any time speaking with your tax advisor.

MR. CRAWFORD: I'm Charles Crawford. Let me ask you a couple of questions here. My wife was told by Mr. Fields and the company a few weeks before they went bankrupt that there is no way you could lose your money, no way. We got 10 times out there than what we got on the books. Well, evidently, Mr. Fields would have had to have known about the Lancaster Corporation and I understand this is hearsay and you can't believe hearsay on everything but several of these companies was owned by him or partially owned by him so he was kind of financing his own bankruptcy situation with the money of other people.

I have sympathy for these lawyers, I do. I have never heard of such a mess. If the went to the mental institution, I would understand why. Like one of the emails and I did not send the emails but it's hard to understand why Mr. Fields is not resting in a jail cell.

THE COURT: Again, there are a lot of people who feel that way and I again -- I understand the

sentiment. I do.

MR. GEORGE: I wonder if Mr. Saad could put a time line on what he calls orderly liquidation.

THE COURT: Let me also just say that what he's talked about are assets. They are not potential claims that might be out there.

MR. SAAD: The biggest issue with that question is the state of the economy and I think to a very large extent the loss that has been incurred has been to a large extent as a result of the economy. For example, if the property that we had a second mortgage on for the value of two million dollars, we had a first mortgage of a million two and our second mortgage was four hundred thousand, in normal times we could sell the property and get full discovery even if we got a discount. But as we've seen in today's market prices has plummeted particularly in commercial property.

So the answer to your question, it's longer now than it would ordinarily be and I would estimate a two year period because we've had virtually no inquires about a lot of the properties. Nobody is buying.

And with that in mind, we've ratcheted down our price a couple of times but you don't want to keep doing that because people will just keep waiting. So if we waited another year to look at a pricing and address

the market in two years we'll be able to sell the rest of it. What we can't get in a year to 18 months or so, we would go ahead and drop the price after that.

MR. GEORGE: Was that afforded by the real estate brokers and realtors when you appraised the property?

MR. SAAD: I will confer with them on the two years. That's kind of my gut feeling but I did have conversations a couple of weeks about moving a property to a very reputable realtor who we've got the properties listed. He's a very successful client of ours, realtor and good developer. Resident is moving some but the commercial activities is probably down by 90 percent. What they were selling at the pace they were selling before at the commercial property they are doing about 10 percent of that volume now. The price is not 10 percent, the price is maybe down 30 to 50 percent, but the number of transactions is 90 percent lower.

Banks are hard to lend now. They require much more equity then they used to, the terms are a lot harder and everybody is scared to buy.

MR. GEORGE: It sounds like you would have trouble selling the property even at a fire sale basis.

MR. SAAD: No, because in talking with him, he and some of the people he deals with, he goes and buys

the stuff. They're still buying. If you get it cheap enough, we'll buy it. I think that bottom market is there because of the bottom fisher and they got ready cash and I seen his activities and he's bought a ton of real estate. He goes to the banks and makes really good deals. They'll buy them fifty cents, forty cents on the dollar.

MR. GEORGE: While you're only saying we could get pennies on the dollar, that sounds like a lot of money to me.

MR. SAAD: But don't get the percentages confused, though, because when you're only getting two or three percent the reality is most of the loans that were out there were not in first position. So when you're right here at a market value of a million dollars and somebody's in at six hundred and we're in here at two above that, there's a eight hundred thousand total, then you're covered. But if the market drops down and that person goes from six hundred to five hundred, so he's got a 15 percent drop but you got a hundred percent drop. You got nothing.

MR. GEORGE: Does that mean you don't bother to pursue any property that you don't hold the first lien on.

MR. SAAD: No. What has happened is the

risking anything and they're getting forty-five percent instead of a third?

MR. COVINGTON: They are risking their time.

MR. MAULMAN: But forty-five percent and thirty percent is standard.

MR. COVINGTON: Let me assure you that that rate was negotiated hard with them and other people who take those kind of cases. That was the best case scenario.

MR. MAULMAN: That was Bland ---

MR. COVINGTON: Bland and Richter.

MR. SAAD: They are well experienced in what they do. They sue other lawyers and that in itself is a specialty and that in itself brings a higher premium.

MR. MAULMAN: I understand. As far as any lawsuit against Author Fields, has the statute of limitation been tolled? Don't you only get a three year statute?

THE COURT: Things may be coming to light which may cause an -- initiate a cause of action. Things are being discovered through pursuit of these other matters.

MR. MAULMAN: I realize that the AG's office can not confirm or deny the existence of an investigation and I realize that you guys said it before that we don't

even have access to some of this information and some of the confidential documents, but does the AG have access to that information if they wanted to have access, if there was an investigation?

THE COURT: I don't know if you all remember but we sat in this courtroom when we settled this matter in '09 and that was how we were able to get an agreement was that Mr. Field refused to give up his Fifth Amendment Rights. If he's innocent, I don't know why he would need those but that was written into the agreement and we got into -- well, I was kind of in a pickle because of the law with respect to the State Grand Jury and there's a specific judge who -- it's a long story, but the bottom line is there is no Fifth Amendment Right for a corporation and these were corporate documents and I will say that the -- I think I said before that Mr. Saad will continue to cooperate with any appropriate person in pursuit of all relevant issues surrounding the failure of CIF.

MR. MAULMAN: Part of the settlement was there was no agreement not to sue Author Field.

THE COURT: Hang on a second. I will read from Page 9 of the settlement order. "In consideration of Dr. Field being dismissed without prejudice in the above actions, he agrees to forego the severance pay allegedly

due to him under his settlement agreement. The parties also agree that in the event that class counsel initiates a claim against Dr. Field, he should be entitled to all cross-claims, counterclaims that would have been available to him. But it will also allow him to revive any claims to severance pay, indemnification, cross-claims to CIF in addition to any other defenses cross-claims or counterclaims."

It was anticipated but not prohibited. It was part of the negotiated resolution.

MR. MAULMAN: Thank you for all your hard work.

SPEAKER (inaudible): Do I understand you to say that the income (inaudible).

THE COURT: Let me say if all of you class members say that I've had a enough and I want to go to sleep at night and not worry about this and we want it over. If you say that, we can pull the plug at any time. What Mr. Saad has told you is he thinks its worth continuing and this has been -- it's hard to describe how much effort that has been put into this and he thinks it's worth pursuing. There is not a pot of gold out there and that's why -- I shouldn't say that but when this amount of money is gone authorities look into it.

SPEAKER (inaudible): For those of us about

e distribution and should we file (inaudible).

THE COURT: Let me just say I'm not going to let Jerry answer that. He is an arm of the court and he can not give advice we are prohibited from doing that. All we can tell you is to please talk to your tax advisors and they can talk to Jerry and he can explain to them where we are. We can not be in a position to give advise and I apologize for that.

I want to thank you all for coming up here. I've talked about how we understand your frustration. We are not in your shoes and can't live the pain that you all feel but we all are diligently pursuing this and you do have professionals with a lot of integrity who are out trying to remedy a wrong. You have to please trust us and I'll tell you if anybody in here could wave a magic wounds and get the money back, we would do that. I would just say that this shell game would have continued on without anybody knowing had the economy not gone south. That's my judgment in the matter.

It's like when the lake levels get down low ou kind of see what's under the surface and that's kind f where we are. So we are trying to pursue it and we ill have another meeting at some point. We'll try to eep you as informed as we can. Again, Mr. Waters is here f you all want to speak to him and say hi to him. Thank

--- END OF TRANSCRIPT RECORD ---

the undersigned Caroline Hiskell, Official Court porter for the Thirteenth Judicial Circuit of the State South Carolina, do hereby certify that the foregoing is true, accurate, and complete transcript of record of all e proceedings had and evidence introduced in the trial the captioned case, relative to appeal, in the Circuit urt of Greenville County, South Carolina on the 14th day December, 2011.

I do further certify that I am neither of kin, unsel, nor interest to any party hereto.

April 17, 2012

Caroline Hiskell

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
William Tomz and Francis W. Tomz Individually and as Class Representatives	)	CASE # 2008-CP-23-3665
	)	
Plaintiffs,	)	
vs.	)	**NOTICE OF MOTION AND**
	)	**MOTION TO RECUSE**
Capital Investment Funding, LLC **And Arthur M. Field**	)	
	)	
Defendants.	)	

EXHIBIT B

OFFICIAL TRANSCRIPT

9/7/2013

STATE OF SOUTH CAROLINA	COURT OF COMMON PLEAS
	2008-CP-23-3665
COUNTY OF GREENVILLE	
Tomz	TRANSCRIPT OF RECORD
-vs-	
Capital Investment Funding	

September 17, 2013
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, Judge.

A P P E A R A N C E S

Stan Case, Esquire
Class Action Counsel

Bradford Martin, Esquire
Attorney for Arthur Field

CAROLINE HISKELL
Thirteenth Circuit Court Reporter

P R O C E E D I N G S

THE COURT: Okay.

MR. MARTIN: Good afternoon, Judge. I had filed a motion for continuance. I don't know if you want to hear that or not.

THE COURT: You can say what you'd like about it.

MR. MARTIN: First of all I'd like to say that I'm new to this case and this case is old. I would like to get a continuance to take depositions, to get documents reviewed. The allegations in this case for the rule to cause covers as tremendous amount of time, in a tremendous amount of cases from New Jersey to bankruptcy courts and involves thousand and thousands of pages of documents. And the only way to present my client's side of this is to have that discovery.

There is he said, she said, they gave me this, he didn't give me that and all kinds of factual issues that need to be resolved. It shouldn't be resolved on a rule to show cause and I just need that time to prepare in order for you to have a fair and impartial way of making a decision.

THE COURT: That motion is denied. We been living with this case for four years, five years. All your client has to do is turn over what he agreed to turn

over and that's all he's got to do.

MR. MARTIN: And, Judge, that's what he's been doing for several years. My second motion is a motion to dismiss based on jurisdiction and that motion is based, number one, on the fact that he was never served with the order and rule to show cause. Under the rules you've got to be served and we have an affidavit to show that an individual that doesn't live in his house was served and he was never served. Personal service is required and it has never been done under Rule 5 and therefore on that ground alone, the order should be dismissed for failure to properly serve Mr. Fields.

The second reason, Your Honor, is because there is a lack of subject matter jurisdiction. Thanks to your wisdom back in August of 2009 when you were faced with the problem of how in the world do you get documents reviewed and protect the constitutional rights of Mr. Fields, you came up with a order that said his constitutional rights will be preserved and I ordered that and then the documents will be given in 10 days.

He was also dismissed in your order in August of 2009. You clearly and unequivocally ordered that. You even put in your order that they had a right to re-institute a cause of action within the time allowed by law which is three years which would have been August of

2012. He has never been served with a summons and complaint. He has never been added as a party and therefore he has been out of his case as a party since August of 2009 under your order. And because of you protecting his constitutional rights, the only jurisdiction that you reserved is if someone messed with this constitutional rights that you would have the ability to protect them.

So the next thing that happened is he was never served with a Rule 45 subpoena. We have testimony or documentation that there was a request to produce documents under Rule 34 that was handed to him in November of 2011 but he was not a party in 2011 and under Rule 34(c) a non-party can be served with a request to produce but you must do it in accordance with Rule 45. In Rule 45, it says that a non-party must be served with a subpoena and there are built in protections under Rule 45 to protect a non-party from undue abuse and there has never been any evidence of any subpoena under Rule 45 served upon Mr. Fields and therefore a motion and an order for a rule to show cause for violating an improperly served Rule 34 request to produce is entirely inappropriate and there is no jurisdiction of this court based on the rules of civil procedure in South Carolina.

Now, the final thing, Your Honor, is that

they mention an order of June 29, 2010 and an order of October 10, 2010 and none of those orders have anything to do with Mr. Fields. They have to do with a group of individuals, Gene Harper, Chuck Penian(ph), David Gants, Scott Pfeiffer, Joshua Ward, and Anthony (inaudible). Those are the people that were ordered to produce documents in the order of June 29, 2010 and singularly missing from the group of "individuals" is Arthur Field.

Also it requires business associates to produce documents and those business associates are WE3 Company, SV Trust, Land Company, LLC or Rolling Hills and Mr. Field has never had anything to do with those companies whatsoever and therefore he was never subject to any of the requirements under the June 29, 2010 order.

The truth of the matter is the status conference order of 2010 the finding was made by this Court and signed by you that the receiver had received "complete cooperation from Arthur Field pursuant to the global mediated settlement agreement." So every single duty that he had under your order of August 2009 you confirmed in your order of October of 2010 that he had, "received compete cooperation from Author Field pursuant to the global mediated settlement agreement which was then qualified in your order.

For all these reasons, Your Honor, we should

not even be here today. This is an action that is designed to harass my client and you, as the judge, have the power under Rule 45 to protect a non-party and we're asking that you do that and put into the record the appropriate sanctions for this effort. It's totally inappropriate under the rules in South Carolina for due process.

THE COURT: So let me get this straight, your client stole forty million dollars and now he's the victim?

MR. MARTIN: I'm sorry, sir. What did you just say?

THE COURT: I said your client stole forty million dollars and now he claims to be the victim.

MR. MARTIN: Your Honor, are you claiming that you have knowledge that my client stole forty million dollars?

THE COURT: Mr. Martin, you're not going to ask me questions in this proceeding. Thank you very much.

MR. MARTIN: I would then have to remind you that we are entitled to an impartial judge to decide these issues. If this Court is indicating to me that you have a bias in this case, then I am duty bound under my rules for representing my client to ask you to consider whether or not you can be fair. This has nothing to do with him

stealing or not stealing. He is here in a civil matter in which you have signed an order and we have clearly and unequivocally shown you that under the law of South Carolina he is here inappropriately and jurisdiction does not fit here. This is not a criminal proceeding. He is not under any criminal indictment before you today. I am not prepared to deal with any criminal matters and therefore I would request the Court to simply put away any bias that may exist, decide the issues based on the law because we are a country of laws.

THE COURT: We know that. You don't have to posture for the news media.

MR. MARTIN: I'm not posturing for anybody, I am representing my client ---

THE COURT: Thank you.

MR. MARTIN: And I am asking for a ruling on my jurisdiction.

THE COURT: Alright.

MR. BRANDT: I will speak to the issue of the service of the rule to show cause. We have with us today the process server who actually served Mr. Field and she is prepared to testify and we're prepared to examine her for the Court to make a determination if there has been service.

THE COURT: Alright.

THE CLERK: Place your left hand on the Bible and raise your right hand.

MICHELE MURPHY, having been duly sworn, testified as follows:

THE WITNESS: Michele Murphy.

MR. BRANDT: You need you to speak up so everyone can hear you.

DIRECT EXAMINATION

BY MR. BRANDT:

Q. Ms. Murphy, where do you reside?

A. Spartanburg, South Carolina.

Q. And what is your occupation?

A. I'm a licensed private investigator and process server?

Q. And in your job as a private investigator, have you served process on numerous people in the past?

A. Yes, sir.

Q. How many years have you been doing this?

A. Close to 30 years.

Q. In that period of time have many people have you served approximately?

A. I couldn't tell you.

Q. Thousands?

MR. MARTIN: Objection, leading.

THE COURT: Go ahead.

BY MR. BRANDT:

Q. Ms. Murphy, at my request, did you receive a rule to show cause and order and ask that you serve it on Mr. Arthur Field?

A. Yes, sir.

Q. Do you recognize Mr. Arthur Field in the courtroom today?

A. Yes, sir, I do.

Q. Would you point him out to the Court, please.

A. (Witness complies.)

Q. Have you served Mr. Arthur Field in the past?

A. Yes, sir.

Q. Approximately how long ago did you serve him.

A. It was years ago.

Q. Where did you serve him?

A. At this address, 310 Thornblade Boulevard, Greer, South Carolina.

Q. On August 22nd of this year, did you serve Mr. Field again?

A. I understood that he had many people trying to serve him plus I've had my dealings with Mr. Field before and he's been very inappropriate with me the time I served him before so I know this was going to be a situation and I did it how I do most papers that are in this situation.

Q. How did you do that.

A. I arrived in the area of his residence around 7:30 to observe to see if I can see him in the house or in the yard. The bottom level is where the kitchen is and there's a side door and the kitchen area is here and I believe that's where they were he and a lady the last time. And this way was the television on and the garage is over this way and the front door is on this part of the house.

So I was there for a half an hour and I did see him pass by from the television and recognize him to be here through binoculars, of course, but he -- I went to the door immediately after that. He would not come to the door. So I changed my position up and moved to a different area so he would think that I had left the area.

Around 8:37 which I had already been told about this guy he goes into the garage area and the garage door opens. I came from the dark part where they couldn't see me. I don't believe Mr. Field saw me either and that's how I caught him off guard.

Inside the garage as it opened was a bunch of workout equipment on this side. Inside the garage is a wood porch here with a door that goes into the house. The young man got out of the small vehicle and I'm trying to ask for Mr. Field. Well, as the door started to come down, this is where Mr. Field I got Mr. Field.

Q. Which door are you talking about, the garage door?

A. The garage door started to come down.

Q. Right.

A. But as it started to come down, Mr. Field felt safe to come and I guess to come out of that exit door into the garage.

Q. Yes.

A. And so as the garage door started to come down I just touched it with my hand. I made sure I never stepped inside his premises but I saw Mr. Field and I said Mr. Field you've been duly served and the door slammed. So I threw the papers inside the garage. The young man said, no, no, no, no, like that and he threw the papers back out and then he started to put his hands on me like this because I was watching him like that and I said, no, sir, don't do that because I will have you arrested and continued to walk to my car. But I said you tell Mr. Field that he has been duly served.

Q. Okay. What did you do after that?

A. I went to my car and got some tape, picked the papers -- went back over to garage area where he had thrown them. The garage door was already down. I told him what I was going to do. I said I was going to attach them to the door and I then attached them to the door.

Q. Did you tape the papers that you were asked to serve to the residence door ---

A. Wooden door on the side.

Q. On the side of the building?

A. Yes.

Q. Did you immediately leave the area of stay longer?

A. I hung around a little bit to see if anybody could come out or he would come out to pick up the paperwork but there was a lot of peculiar things as always around Mr. Field and I drove by. At one point this big flash went off inside the house. You had no idea what that could have been. I had no idea what it was. I didn't hear a gun shot and I didn't hear any loud noise.

Q. Based on the service, did you complete the affidavit of service and submit it to Court?

A. Yes, sir, I believe I did because he's avoiding and he's on house arrest. He had been avoiding every other process server. In my experience as long as I know that that to be him and that is him because I recognize it was him whether I can actually approach him and give it to him or not is considered good service.

MR. BRANDT: I have no further questions.

CROSS-EXAMINATION

BY MR. MARTIN:

Q. Ms. Murphy, you signed an affidavit under oath?
A. Yes, sir.
Q. You're testifying today under oath?
A. Yes, sir.
Q. And you testified under oath that the first person you served was a white Caucasian?
A. I served Mr. Field.
Q. Would you answer my question, please. Did you understand my question?
A. Yes, sir.
Q. Did you say under oath that the person you served was a white Caucasian?
A. No, I haven't said that right now in this courtroom.
Q. Did you say it in your affidavit under oath, Ms. Murphy?
A. I don't know if it says white Caucasian.
MR. MURPHY: May I approach the witness, Your Honor?
THE COURT: Yes.
BY MR. MARTIN:
Q. This is the affidavit of service, is it not, that you had filed with the Court?
A. Yes. I thought you were talking about ---
Q. It says white Caucasian, does it not?

A. Yes.
Q. Now, it also says the person was a male, correct?
A. Yes.
Q. And it also says that they were 5'6 to 6', correct? And you know Mr. Field, right?
A. Yes.
Q. And you know he's 5'2, right?
A. That is always approximately.
Q. You didn't say approximately, you said approximately 5'6 to 6' because that's the person you served the man that came in and said Mr. Field is not here, isn't that true?
A. My secretary put that in, yes.
Q. Well, you signed it under oath, did you not?
A. Yes.
Q. Are you here to tell the truth?
A. Yes, I am.
Q. Well, isn't it true that the person who was 5' to 6' and weighed 150 to 200 pounds was the young man who you actually served, isn't that true, and that's what you swore under oath.
A. No, I served Mr. Field but it is sometimes hard to distinguish if a person is 5'6", 5'7" or 5'8" or 6'.
Q. From someone 5'2'? You are a private investigator, are you not?

A. I would say he is more about 5'5", 5'6".

Q. And isn't it true that you said that person was 150 to 200 pounds under oath, didn't you?

A. I didn't actually see him. He just stuck his head out and that's when ---

Q. But you swore under oath that the person you served on that night was between 150 and 200 pounds between 5'6" and 6'; is that right?

A. He could have gained weight, too.

Q. And Mr. Field is 5'2" and 120 pounds so he couldn't possible by the person that you sworn under oath to this Court that you served, isn't that true?

A. He could have lost 30 pounds in the last few weeks, I don't know.

MR. MARTIN: No further questions.

REDIRECT EXAMINATION

BY MR. BRANDT:

Q. Is it my understand of your testimony prior to Mr. Martin's cross-examination that you had served Mr. Field before?

A. Yes.

MR. MARTIN: Your Honor, again, I would object to leading. This is his witness. The rules require him not to lead.

THE COURT: I'm going to allow it. Go ahead.

BY MR. BRANDT:

Q. Had you served Mr. Field before?

A. Yes, I did, sir.

Q. Was the person who stuck his head out the door Mr. Field?

A. Yes.

MR. BRANDT: Objection, again, Your Honor.

THE WITNESS: Yes, sir, Your Honor. Yes, sir.

BY MR. BRANDT:

Q. When that occurred, did you say you've been served?

A. Yes.

MR. MARTIN: Same objection.

MR. BRANDT: That's all.

THE COURT: Okay. Anybody else want to ask her any questions?

You can step down.

MR. BRANDT: I would like to hand up to the Court the case of BB&T versus Carolyn M. Taylor 633 SE 2nd 501 which relates to service.

THE COURT: Anything else y'all want to tell me?

MR. BRANDT: No, sir.

MR. MARTIN: No, Your Honor.

THE COURT: I'm going to find that he's been duly served.

MR. CASE: If I may address the issues of jurisdiction just briefly, Your Honor.

THE COURT: Yes.

MR. CASE: I'm Stan Case. I'm the attorney for the class in the class actions, Your Honor. I was appointed by Your Honor. The mediated global settlement agreement and the order approving the settlement in itself gives Your Honor jurisdiction and also the law in the State of South Carolina gives Your Honor jurisdiction and you retained jurisdiction in that order.

I would to save time point out a few salient points about that order, Your Honor. I've got it in my hand. On Page 4 of that order Arthur Field was "Required to offer truthful testimony and shall agree to cooperate in any proceeding in state or federal court to include bankruptcy court and in such cooperation shall include testimony and/or deposition which shall be without cost to the receiver or to the note holder, however out of pocket expenses will be reimbursed for travel more than 50 miles. He shall provide copies of all records, emails and reports, letters, documents, mortgages, notes and any other materials which shall support the receivers right to collect from any individual or corporation which has been

known any monies by Capital Investment Funding, LLC or it's related company.

The Court by approving this settlement on Page 5 does order Dr. Field and Capital Investment Funding to turn over all records including all documents, emails, computer records, mortgages and the like to the receiver within 10 days of the approval of this agreement. The Honorable Edward W. Miller retains jurisdiction over this matter to ensure compliance with this order.

I find that the order regarding the documents contained herein are in the best interest of the class because the receiver must have the documents as soon as possible so that he may begin marshalling the assets of Capital Funding LLC." And it says, "Jerry Saad will be appointed receiver of Capital Investment Funding." This is on Page 7, "to continue winding up the affairs of Capital Investment Funding and will exercise all the rights, duties, and responsibilities invested in the receiver pursuant to the law of South Carolina without limiting any other foregoing the receiver shall take all actions necessary and prudent to collect the assets of Capital Investment Funding, LLC, prosecute and defend lawsuits on behalf of Capital Investment Funding, LLC."

Your Honor, turning to Page 10 of your order, "Arthur Field and all employees of Capital Investment

Funding agree to immediately turn over any and all funds due to Capital Investment Funding which are sent to them after the approval of the receivership. Such funds shall be forwarded to the receiver within 48 hours of receipt by Field. Further a complete listing of all real property shall be provided to the receiver to include any and all notes mortgages and other assets of any value to include records as to whether or not taxes have been paid on the aforementioned property to include receipts for those tax payments and the company will deliver its file for all properties, notes, mortgages, at such time and to such reasonable place as the receiver shall direct at Capital Investment Funding expense."

Your order itself, of course, retains jurisdiction and refer to the law of South Carolina and I'm going to hand up two cases after I briefly review them but Hoyle versus the National Surety Corporation, 204 SE 110 28 SE 2nd 638, a 1944 case. Your Honor, in that case, our Supreme Court of South Carolina stated, "That it is a rudimentary principle of equitable jurisprudence that once a court of equity assumes jurisdiction over a matter, it will retain it to give all necessary relief even though it is thereby required to pass upon strictly legal questions which would otherwise be trial in a court of law and general docket in the court of equity by taking

jurisdiction over a matter and appointed receiver draws to it the right to hear and determine all claims against the receiver and to completely adjudicate receivership.

Your Honor, we will hand up that case and then there was a similar case that was decided at a later date in 1950. This was the National Cash Register Company versus Burns 317 SC 310 60 SE 2nd 615 and in that case our Supreme Court said, "Our cases which have been cited barely illustrate the rule that a court which receives a receivership usually draws to itself jurisdiction over all controversy concerning the assets and liabilities of the debtor and receivership ordinary exclusive form for adjudication."

We would hand that up, Your Honor. Under the order itself were Mr. Field was a party to and signed and under the law in the State of South Carolina the Court clearly has jurisdiction to hear these matters and is able to issue such orders that will and able the receiver to continue his duties under that order and Marshall the assets of CI Funding.

MR. MARTIN: If I could quickly respond, Your Honor. The question is not whether you have jurisdiction with the receiver and marshal assets. That's not the question. The question is did the receiver and his pile of lawyers all lined up here follow the civil rules of

procedure in getting a non-party to cooperate and produce documents. The global settlement agreement unequivocally says, signed by you August of 2009, that Mr. Field is dismissed without prejudice as a party. It unequivocally says that they have three years as provided by law to reinstituted which they do not do. He has never been a party.

If you will look at your docket, Your Honor, there has not been one docket and there are three lawyers here that know these things. So what do you do when you have a non-party? You go under Rule 34(c). And what doe it say? It says you must follow Rule 45 which is a subpoena. Rule 45 requires Mr. Field to be subpoenaed as a non-party and if he violates this subpoena when he is served with request to produce, what is the next thing that Rule 37 requires? It requires a motion to compel discovery. Do we have a motion to compel discovery? No. Do we have a Rule 45 subpoena? No. Has he been added as a party with a new cause of action and complaint? No. There's three unequivocal reasons why he is not properly before the Court. And he can be, Your Honor.

There's no question if they follow the rules but they haven't followed the rules and the clear and unequivocal reason for Rule 45 and the protections that the Court is supposed to recognize is so they can not

abuse him and this is what's happened here. This has been a railroad. It is starting -- and you're laughing, Your Honor. Let the record reflect ---

THE COURT: Yes, I am. I find it amusing.

MR. MARTIN: Well, I must then ask if we can postpone this matter and take the issue of recusal because if you're listening to solid reasonable arguments and laughing at them, I don't think my client can get a fair trial today. And we need to have a motion to recuse decided before we go forward. I hate to do that. I consider you my friend but I have a job to do and I have an unpopular client here. And I have the duty to uphold the integrity of the law and get a fair hearing in front of the law.

THE COURT: Let me ask you, did Mr. Case misread anything out of the global mediated settlement order?

MR. MARTIN: He didn't misread anything. He just left out the part that said Mr. Field is dismissed. He left that out.

THE COURT: Didn't Mr. Field sign this consent order?

MR. MARTIN: He certainly did because he is no longer a party and he was relying upon your order to enforce the language that you signed, Your Honor. He was

counting on this Court to be the impartial arbiter of justice and apply it equally whether he's popular or not and all he can do what the order tells him to do. The order says within 10 days give them everything. And then in October of 2011 you sign an order yourself saying the receiver confers that he has been working diligently to recover assets and was in the process of liquidating assets and had received complete cooperation from Author Field pursuant to the global settlement agreement and that's over two years later, Your Honor.

He was supposed to do everything in 10 days and then he's finished. He's finished. And you confirmed the words of the actual receiver in an order in writing that's a part of this record in October 2011. He's not a party. He was not properly served with Rule 34. He was not properly served with a subpoena under Rule 45. He was not served with a motion to compel discovery. He's not had an opportunity to respond. If you follow the rules, we'll be glad to follow the rules because he has given them everything they have ever asked, everything. Every single thing they've ever asked he's given them.

But it's going to take four days to show that to you and I need discovery.

THE COURT: No, it's not going to take four days. He has not given the receiver everything that he

has asked for.

MR. MARTIN: How can you say that, Your Honor. You do not have the evidence before you.

THE COURT: I've got Mr. Saad's affidavit.

MR. MARTIN: Is that from the holy script. Don't I have the right to depose Mr. Saad. It is filled with inaccuracies and misrepresentations to this Court. They are taking advantage of you, Your Honor.

THE COURT: Let me explain to you the underlying case, Mr. Martin.

How many people had their money taken?

MR. CASE: 688.

THE COURT: 688 people entrusted their money to your client. That money is gone. The receiver has been trying pursuant to this global mediated settlement to recover the funds. Your client signed a court order and specifically agreed in that court order to cooperate and to turn over all the documents. He has not done that.

MR. MARTIN: How do you know that, Your Honor. I want to have the opportunity to prove that he's turned over everything and way more than what you ordered.

THE COURT: I'll tell you what. We'll put Mr. Saad on the stand.

MR. MARTIN: That is not due process, Your Honor.

THE COURT: Mr. Martin, I'll tell you what's not due process is all these people who have lost all their money. Thank you, Mr. Martin.

MR. MARTIN: Are you going to rule on my motion to recuse, Your Honor?

THE COURT: Yes. No, I'm not going to recuse myself.

MR. MARTIN: I wanted to make that for the record.

THE COURT: For the record or for the news media. You looked at them and nodded. You want to comment on my

MR. MARTIN: Your Honor ---

THE COURT: Don't interrupt me, Mr. Martin. I've given you wide latitude so far.

MR. MARTIN: May I ask a question, Your Honor? Is this before a court reporter? Is this a proper hearing? Do we have a court reporter here? I'm just to figure out if it's just the media here?

THE COURT: Mr. Martin, are you being sarcastic?

MR. MARTIN: No, I'm just asking.

THE COURT: Really? Really?

MR. MARTIN: You indicated that it was before the media and I thought this was a court procedure.

THE COURT: Mr. Martin, I'll tell you what those kind of sarcastic comments are so close to contempt of court. You know perfectly well that there is a court reporter seated in this courtroom. I would not do anything with Mr. Field that was not recorded. I'll tell you that.

Mr. Saad.

MR. SAAD: Yes, Your Honor.

THE COURT: Would you come around and be sworn?

THE CLERK: Place your left hand on the Bible and raise your right hand.

JERRY SAAD, having been duly sworn, testified as follows:

State your full name for the record.

THE WITNESS: Jerry Saad.

DIRECT EXAMINATION

BY MR. CASE:

Q. Mr. Saad, I am Stan Case. I am counsel for the class in this matter. I will first hand to you this booklet here and ask if you could ---

MR. MARTIN: Your Honor, I would object. I would like a continuance until I can look at this book of hundreds of pages that I have not seen and hasn't been produced. I've had no opportunity to review it and not

chance of possible cross-examining this witness and I'd like a continuance just to look at the hundreds of pages that they're putting in the record.

THE COURT: No, sir, I'm not going to continue the case.

MR. MARTIN: Well, I'd like that noted for the record.

THE COURT: Your exception is noted for the record. Your every exception has been noted from the court reporter whose been here the whole time clearly seated right in front of me.

MR. MARTIN: I did not mean to be sarcastic. I did not mean to be disrespectful. My only point was I was confused when you made the comment about the news media. That's what was confusing to me and that's the only thing I'm not used to and I apologize. It was nothing intentional and I would like for the record is my objection is I've been handed a book with 18 sub files that is several hundred pages long at 2:45 p.m. for the first time.

THE COURT: Alright. Mr. Case.

BY MR. CASE:

Q. I would also like to hand you the affidavit of Jerry T. Saad that was filed August 19, 2013 in support of the rule to show case and I would ask you if these are

documents that you prepared?

A. I did prepare and sign the affidavit. The notebook that we were just discussion to the best of my knowledge and recollection reflects documents that are public record of numerous cases including this one, copies of the original order of Judge Miller, mediated settlement agreement, supplemental orders and orders of filings and the various New Jersey case and federal case. All this, I believe, is public record. All of which, I believe, already has all of this information to the ---

MR. MARTIN: Objection.

THE COURT: What's the basis of your objection?

MR. MARTIN: Thanks to your order of ---

THE COURT: Just state your objection.

MR. MARTIN: I'm trying to, Your Honor. I'm trying to state my objection. My objection is that you signed an order in 2009 protecting the constitutional rights in making the documents privileged and nothing can be released without you signing the order and I have not had an opportunity to read the hundreds of pages to see if any of these documents are protected by the order. I would object to them being allowed into court.

THE COURT: Mr. Saad, did you just say that all these were public documents that Mr. Field had

possession of previously?

THE WITNESS: To the best of my knowledge, yes, sir.

THE COURT: Okay. Objection is overruled. Go ahead, Mr. Case.

BY MR. CASE:

Q. Mr. Saad, when were you appointed receiver of the Capital Investment Funding Group?

A. August 24, 2009.

Q. And that was pursuant to the order that we've been referring to?

A. Yes.

Q. And you've heard me read the parts of the order to the Court earlier but I would just ask you, if you could, and you could feel free to refer to your affidavit, you do recall that Mr. Field was ordered to turn over to the receiver all company records within 10 days of the date of the order.

A. Yes.

Q. Did that happen, sir?

A. To the best of my knowledge and belief, no.

Q. And I do note in your affidavit you had summarized sort of the course of the way the receivership went with regard to the documents.

A. Yes.

Q. I would just ask you, if you would, provide testimony to the Court, feel free to use your affidavit, as to the compliance with Mr. Field with the court order to turn over the documents?

A. I'm going to make this statement in the hopes that maybe we can simplify the whole issue of whether I received the records or not. Mr. Field gave me a flash drive, a magnetic medium, that had tens of thousands of documents in the flash drive and he also gave me many boxes of information. What I don't have today are many of the documents that are on that flash drive, predominately the note holders file. So when you look at what I have in my possession, I do not have to the best of my knowledge and believe any note holders files, yet the flash drive has, I think, over thousand note holders files. 688 current note holders and there must have been a lot of them came and went and they weren't note holders when everything came to an end.

So that, to me, is a simple -- the simplest of all simple ways to be able to show and demonstrate I don't have the files and I never had the files and Arthur is making comments right now, facially, like he gave them to me. He and I had conversations along the way that he was getting all the documents scanned and he gave me many boxes but he never gave me those boxes and he had made

comments on several occasions that he had over 90 boxes of information somewhere.

In November of 2011 other matters came up and at that point I felt there are other documents that we didn't have and that's when we provided him with a subpoena to produce all of the documents.

MR. MARTIN: Objection.

THE WITNESS: Let me say this. I'm not finished.

THE COURT: Hold on. What's your objection?

MR. MARTIN: He said he provided a subpoena, we don't know of any subpoena.

MR. CASE: It's a request for production.

THE WITNESS: I'm sorry. I misstated the nature of the document.

BY MR. CASE:

Q. If you would refer to the booklet in front of you but what was the date for the request for production?

A. It is No. 5 in the book and it's dated November 28, 2011 so it's a request for production.

Q. What generally was taking place in November of 2011 with regard to your need for documentation from Mr. Field?

A. We had some legal matters coming up and then there was an issue about Trazon which was a company that

had acquired a piece of property through Capital Investment Funding and it was going through refinancing and I was searching and could not find the files and that was part of what I'm saying. When I looked at the flash driver, there's not even a file, an electronic version, of the Trazon file on the flash drive. So I'm getting back to the original point of what I have I can't tell you what I don't have because I don't have it. I can tell you a few things I don't have and that's the note holder files and Trazon file.

Mr. Field has told me several times talked about he had a video tape of a board meeting with the parent company Lancaster Resources, Inc. I never got that video tape file.

During this process at some point he started delivering to me a bunch of emails and then that afternoon he called and said his computer burned up and he couldn't deliver me any more emails but yet subsequently he sent me other emails so obviously he still has a lot of records. He has computer records that I don't have. He has a computer that the company bought and paid for that I don't have. So that's where we are. I don't have everything.

Q. Chronologically for the help of the Court and to address some of the issues raised, was there, I'm looking at your affidavit on Paragraph 7, was there on November

28, 2011 a meeting in your office where your counsel, Curtis Stodghill, served a request for production of documents, request for production of records on Field to obtain all records related to CIF in Fields's possession and control?

A. Yes.

Q. At that time, were there a number of records that you did not have?

A. Yes.

Q. And so basically what were the general types of records you were looking for and did you receive those records?

A. Well, there were some loan files and some other document files, documentation. I don't recall exactly right now which other files we were looking for.

Q. So what transpired after the service of that request for production?

A. With regard to the request for production I believe Mr. Field that's when he started sending me some emails.

Q. I believe you referred to that in Paragraph 8 of your affidavit?

A. Yes. That's when he sent me approximately 74 emails which to me proved he still had the computer and the records that I didn't have and then he told me that

afternoon, he called and said his computer was not working any more and subsequently to that days and weeks later I did receive email from him.

Q. He said his computer had caught fire and became inoperative?

A. Yes.

Q. So he said subsequently he did produce selective computerized documents?

A. Yes.

Q. Did he ever produce to you the paper records that he informed you he was in possession of?

A. No.

Q. As to this date has he produced all the records in his possession or control?

A. No.

Q. Have you asked him to do so?

A. Not since the request for production.

Q. Have you as the receive had to file actions on behalf of CIF in connection with your work to marshal the assets?

A. I have.

Q. And in the global settlement as I read to the Court he was to cooperate for ---

THE COURT: Wait a minute, is there an objection?

MR. MARTIN: Yes, counsel is reading and testifying. He is allowed to ask nonleading questions and I would ask you to ask him to simply ask nonleading questions of this witness.

BY MR. CASE:

Q. Sir, you have provided an affidavit to the Court about various actions that you have brought as receiver.

A. Yes.

Q. In your affidavit, you referred to a malpractice lawsuit CIF filed.

A. Yes.

Q. Would you please tell the Court about the records you need in connection in that and whether you received them from Field? I'm referring to Paragraph 11 of your affidavit.

MR. MARTIN: If it please the Court, I have another objection that put on the record. He's asking about a lawsuit that is mentioned in the affidavit and under the global mediated settlement agreement Mr. Field was only required to provide copies of all records and reports that supports the receivers right to collect from individuals or corporation that have been loaned any money from CIF. I don't know what this lawsuit is or where it is but that's the requirement but I would object to relevance of any other actions that do not relate to the

only things that Mr. Field was required.

THE COURT: Objection noted. Put a foundation under it, Mr. Case, so he knows what you're talking about.

MR. CASE: It's my understanding that the malpractice against Pfizer had to do with loans that were made by CIF and the work that was done by Pfizer's law firm and these regards the efforts of the receiver to marshal the assets and collect monies that were lost in connection with those transactions.

THE COURT: Okay.

MR. MARTIN: Your Honor, it says and I quote again, "copies of all records, notes and any other materials which shall support the receivers right to collect from any individual or corporation who has been loaned any monies by CIF." A malpractice lawsuit by a lawyer is not dealing with loaning monies to that lawyer and therefore I would object to its relevance.

THE COURT: Okay. Noted for the record. Go ahead.

BY MR. CASE:

Q. Go ahead.

A. In that malpractice litigation we had subpoenaed records and one of the responses that the defendants gave is that those records had been tendered to Mr. Field and

so we ---

MR. MARTIN: Objection, Your Honor, to hearsay. He can only testify to what he knows.

THE WITNESS: I know it was in an answer from the ---

MR. MARTIN: Again ---

THE COURT: This is a bit of a hybrid proceeding, Mr. Martin, and I'm going to allow him to go forward. He is the arm of the Court ordered to marshal the assets of the business. Your objection is noted and allow him to go forward. Go ahead.

MR. MARTIN: Just to save time, Your Honor, any time he has a hearsay I don't want to interrupt ---

THE COURT: I don't know. You'll have to see.

MR. MARTIN: I'll get up every time, then.

THE COURT: You do what you have to do.

MR. MARTIN: Yes, sir.

THE COURT: I recollect that it was written responses to our request and they were written statements that said those records had been turned over to Mr. Field.

MR. MARTIN: Objection, Your Honor, as hearsay.

BY MR. CASE:

Q. Did you receive those records in connection with

those transactions?

A. No.

Q. You have referred to a loan outstanding from Trazon LLC?

A. Yes.

Q. And it is in your affidavit. Would you advise the Court about your documentation that you had requested in respect to the Trazon matter.

A. The information that Mr. Field had given to me initially included just two or three pages in a file. It did not include the original copies of documents signed, promissory notes, mortgages and such. Over the course of time we became involved in some litigation and our request to original files and I have yet to receive the original files.

Q. You mentioned in your affidavit documentation relating to the 457 Carlton Road property in Paragraph 12(b) of your affidavit. Can you advise the Court about that documentation and if you were able to receive that.

MR. MARTIN: Again, Your Honor, I have an objection that that's not relevant. The only thing that's required for Mr. Field to produce anything where they have loaned monies to these people and I don't see any foundation where CIF loaned money.

THE WITNESS: That whole issue is

questionable to begin with because that all relates back to Trazon an initial million dollar loan to -- $250,000 loan which CIF paid to Trazon which later within days or same day sent money to LRI which is part of what I understand the state indictments caught onto.

MR. MARTIN: Objection, Your Honor, as to any reference to criminal matters. This is a civil matter and it is highly prejudicial Rule 403.

THE COURT: He's already pled guilty.

MR. MARTIN: And, Your Honor, I object to your comment and again ask for this hearing to be ---

THE COURT: Excuse me. Object to what comment?

MR. MARTIN: That he's already pled guilty. This is not a criminal matter, this is a civil matter.

THE COURT: We are all aware of what this matter is, Mr. Martin. We've been living with it for four years so your objection is noted for the record. He has pled guilty and when he pled guilty he gave us his Fifth Amendment rights by the way. So your objection is noted and it's overruled.

THE WITNESS: I'd like to explain the $305,000 check in the context of the overall transaction.

BY MR. CASE:

Q. Thank you.

A. Counsel was eluding to the fact that it's not a loan. I don't know what you call the transaction but we had a million dollars moving from CIF to Trazon and from Trazon to LRI and then LRI sprinkling about with interest payments coming back and then LRI being part of a foreclosure action on this 457 Carlton Road and then that foreclosure was about to happen through LRI and Arthur Field through counsel intervened and was able to get that property from foreclosure.

MR. MARTIN: Objection, hearsay, Your Honor.

THE WITNESS: Based on documents that I read and part of the lawsuit that we filed in New Jersey and when Capital Investment Funding took the property through foreclosure at the sheriff's sale they turned around and sold it to Calvary Asset Management for three hundred and some odd dollars and that check was $305,000. So there is a $305,000 that came in.

I was totally unaware of the $305,000 check that came in ---

MR. MARTIN: Your Honor, I would object to all the testimony as hearsay.

THE COURT: Okay.

BY MR. CASE:

Q. Go ahead.

A. In a conversation with Arthur I brought it up in

this time frame and Arthur brought it up well I've got this check that's been sitting on my bulletin board for several years now, do you want it, and I said, yes, why didn't you cash it. His comment was, well, it wasn't any good any way. So that is yet another example that I didn't get documents all at one time.

Q. You had referred to Lancaster Resources, Inc., and in your affidavit Paragraph 12, Item C, you referred directly related to over twenty million dollars in delinquent and defaulted loans from Lancaster Resources, Inc., Bradford Financial Group, Llc and others. Have you received these records related to these loans from Arthur Field?

MR. MARTIN: I would object to counsel's reading from an affidavit. Again, it is hearsay. We can have live testimony from a witness but we can't have a written document offered to prove the truth of the matter, sir.

THE COURT: To speed this along because of a complex nature of it I'm going to allow the question.

THE WITNESS: The document says what it says and I wrote it and I agree with it. I did receive some records but I don't have all the records.

BY MR. CASE:

Q. And what kinds of records are there in the New

Jersey transaction that you didn't receive?

A. Correspondence, loan files, mortgages, transfers, due diligence, what normally that would go along with a loan file and all the activities. I don't have all the corporate records of CIF.

Q. Now, you have been involved and had to file actions both in South Carolina and New Jersey on behalf of CIF and I would ask you, if you will, has Mr. Field taken action which have delayed and obstructed your ability to perform your directives as receiver with regard to those actions. I would first ask you specifically about the actions in South Carolina and whether he has assisted you in those actions.

A. We have several actions pending and including actions we have filed against Mr. Field seeking claim recovery for things we believe were improperly done. He has opposed those which is certainly his right to defend himself.

MR. MARTIN: For the record I will object to any action in some other court with regard to some other issue. It has nothing to do with the issue of whether or not documents have been produced and this particular rule to show cause. If he's got an action in New Jersey and documents in New Jersey, then New Jersey is the place that should be decided. If he's got an action in Anderson, a

judge in Anderson had jurisdiction over that. That's also Rule 12(b). If there's a federal court action and there's documents regarding that action, then he has a way of getting those documents and I would say that this is inappropriate for Mr. Field to answer a rule to show cause about other actions.

THE COURT: If I'm not mistaken, in the global mediated settlement that your client signed incorporated the concept -- the specific language actually but I don't have that right in front of me -- that your client cooperate fully.

This is an action at this time, as I understand it, of Mr. Field obstructionist activity prohibiting the receiver from pursuing the collection of the assets of the receivership. So your objection is noted for the record and it is overruled.

MR. MARTIN: If I can, for the record, put that the global mediated settlement agreement says Mr. Field agrees to testify as a witness only. He agrees only to provide documents within 10 days. You have signed an order in 2010 where this same receiver said everything that was required has been done by Mr. Field and he is not a party. For the record, Your Honor, that stopped and anything that happens in other cases that's for those judges to decide.

MR. CASE: May I, Your Honor?

THE COURT: Yes.

MR. CASE: He was required to cooperate in any court proceedings in state or federal court and I'd like to ask the witness about his cooperation.

THE COURT: Yes, sir.

BY MR. CASE:

Q. Mr. Saad, what types of cooperation did Mr. Field give you with regards to the actions that you brought in South Carolina specifically thinking of the Trazon matter and were there any actions taken by Mr. Field that was summarily dismissed by the Court in various disciplinary agencies?

MR. MARTIN: Objection to leading, Your Honor.

THE COURT: I've already ruled on that. This a complex matter and to speed along the proceeding I'm going to allow him to lead.

MR. MARTIN: Are you saying that I don't need to rise and make that objection to protect the record, Your Honor?

THE COURT: I've already ruled on that issue, okay.

MR. MARTIN: It's a new question and you told me I had to do it every time. I'm just trying to get

clarification.

THE COURT: I didn't tell you you had to do it every time. I told you to do whatever you think you have to do for your client. I'm telling you I have ruled on this issue of leading questions.

MR. MARTIN: Alright. Thank you. I would like, for the record, that any leading question that I would have raised the issue and waive it on appeal.

THE COURT: You may proceed.

BY MR. CASE:

Q. Would you answer those questions about Mr. Fields's cooperation.

A. Yes. In the federal lawsuit we filed, Arthur has subsequently filed a request for a third-party complaint against multiple parties including myself and lawyers as well. Some of the statements in that, I believe, to be false. There have been statements ---

MR. MARTIN: Your Honor, I would object to any testimony regarding a federal lawsuit which has not been identified. I think the witness has said that Mr. Field was a defendant that he sued in that lawsuit and therefore anything that happens in that lawsuit is not relevant to any issues before the Court today and I would object to it as being ---

THE COURT: Well, let me clear this up.

Mr. Saad, this lawsuit was initiated in an attempt by you the receiver to collect and marshal the assets; is that right?

THE WITNESS: Yes, sir.

THE COURT: So what you're accounting now is what you assert are Mr. Fields's obstructionists technique; is that correct?

THE WITNESS: Providing false statements to the different jurisdictions, yes. I am glad to read the affidavit in the record if that makes more sense.

THE COURT: No, it's already in the record. Overruled. Go ahead.

BY MR. CASE:

Q. In the proceeding did he file grievance proceedings against your attorney, Mr. Saad?

A. I understand there were grievances filed against pretty much all the attorneys or most of the attorneys that were involved in ---

MR. MARTIN: Your Honor, I object.

THE COURT: We don't need to go into ---

MR. MARTIN: Objection, again, total hearsay, no basis. He just can't say ---

THE COURT: Thank you. Your objection is noted and proceed. Let's move pass that subject.

BY MR. CASE:

Q. Were those grievances proceedings dismissed summarily?

MR. MARTIN: Objection, Your Honor, same objection.

BY MR. CASE:

Q. With regard to the same proceedings in New Jersey, were those proceedings filed in order to collect assets in accordance with your receivership?

A. They were.

Q. And if you would for the Court and feel free to use your affidavit, could you advise the Court as to whether Mr. Field had cooperated in those proceedings and whether he assisted in those proceedings?

A. I guess I need to make sure I understand the word cooperation. I hadn't sought any help or assistance in any of these matters with Mr. Field because I find him to be not cooperative at this point. His actions and statements that he has made that I believe ---

THE COURT: Excuse me for one moment.

You're standing, Mr. Martin.

MR. MARTIN: Yes. I'd like to make another objection for the record, Your Honor, if it please the Court. He is testifying about an action he brought in New Jersey. I would object that it has no relevance of what we are doing today because Mr. Field is not required to

allow himself to be sued without a defense. He doesn't have to do any requirement except provide truthful testimony. There has not been one time that Mr. Saad has said we have asked Mr. Field to testify and the only thing that is in the mediated global settlement that he has required to do and there's been no testimony to that and I would object for that reason, Your Honor.

THE WITNESS: I would disagree there's been no testimony. We have transcripts in here where he is talking under oath to the judge in New Jersey and some of the statements that he said were interpretations of the global settlement agreement that I believe are false and Mr. Westrick(ph) is here ---

THE COURT: Hand on one second. We'll get to that.

MR. MARTIN: The point I'm making is the global mediated settlement agreement says ---

THE COURT: You made your point, I've overruled your objection, you don't need to make it again.

MR. MARTIN: He's continuing to testify and I'm just trying to protect the record, that's all. Because Mr. Field is only required to testify, he was never called as a witness by Mr. Saad and asked to testify and give untruthful testimony and therefore it's irrelevant and I object.

THE COURT: Go ahead, Mr. Saad.

BY MR. CASE:

Q. If you could just continue with examples of whether or not Mr. Field cooperated with regard to the actions filed in New Jersey.

A. For example, he made affirmative statements to the court in New Jersey that any claims CIF might have had against him was disposed by the global settlement agreement. He said that the global settlement agreement disposed of all claims and that he was dismissed from all actions. I believe my understanding of the global settlement agreements we're all still on to some relevance with regards to this receivership.

Q. So basically you are continuing in your actions as receiver and you are asking for the Court to issue an order in aid of your receivership in order for you to obtain compliance with the court's order. Is that correct, Mr. Saad?

A. Yes.

Q. You can answer any questions counsel has.

A. Thank you.

MR. CASE: Your Honor, we would at this time hand up the booklet so that it would be introduced into evidence.

THE COURT: Subject to Mr. Martin's

objection.

MR. CASE: And, of course, the affidavit of Mr. Saad would ---

THE COURT: It's already a part of it.

(Book marked as Plaintiff's Exhibit No. 1 for identification.)

MR. MARTIN: May I have a few minutes.

THE COURT: Three minutes.

MR. MARTIN: Thank you very much.

(Whereupon, there was a brief recess.)

DEFENDANT FIELD: If I may, Your Honor, we may be able to resolve this if Mr. Martin, Mr. Case with Mr. Saad for one minute.

THE COURT: Go ahead.

DEFENDANT FIELD: Go ahead.

(Whereupon, there was a brief recess.)

THE COURT: Alright, cross-examination

CROSS-EXAMINATION

BY MR. MARTIN:

Q. Mr. Saad, when were you made receiver?

A. August 24, 2009?

Q. And as the receiver were you then in charge of the documents for this corporation?

A. Yes, the documents that I had in my possession.

Q. And isn't it true that you entered into a

contract with a company to actually scan the 96 boxes that you're talking about?

A. No.

Q. Well, tell me what you know about that. Isn't it true that you hired a company called Empire Document Service?

A. I'm not familiar with that.

Q. You never heard of that?

A. I don't know that I've ever heard of it but I'm not familiar with it.

Q. Were you familiar with the fact that you wanted to have all the documents scanned?

A. No.

Q. You never wanted the documents scanned?

A. I didn't say I never wanted them, I'm just not familiar with what you're asking.

Q. Let me show you this service agreement of May 22, 2009 between CIF and Empire Document Service. Take a look at that and see if you know what that is.

A. I'm not familiar with it.

Q. You never heard of it before.

A. Not to my recollection.

Q. Well, did you approve the payment of $17,500 to Empire for scanning documents?

A. I'm not familiar with it. I don't recall.

Q. Did you file a report with this Court saying that $17,500 was going to go to Empire for scanning 96 boxes of documents from CIF?

A. I don't recall that.

Q. Wasn't there a question raised in front of Judge Few about that $17,500 what it was for? Do you remember that?

A. No, I don't.

THE COURT: Did you say the date on that document was May 22, 2009?

MR. MARTIN: That's correct, Your Honor.

THE WITNESS: I do recall before my appointment as receiver that there was a time when Judge Few appointed me to be a co-signer on checks.

BY MR. MARTIN:

Q. Well, wasn't there a hearing in front of Judge Few in July of 2009?

A. I believe there was.

Q. And at that hearing you attended?

A. I attended a hearing with him there. My recollection was that's when he -- I'm not sure if that was the hearing or not but at some point he asked me to co-sign any checks going out and I think my recollection was there was a handful of checks. So that may have very well been one of the checks and I may very well have

looked at. That was four years ago and I don't recall it.

Q. But you do recall that there were 96 boxes of documents when you went to the CIF offices, right?

A. No.

Q. Did you go to the CIF offices?

A. After my appointment.

Q. In August of 2009.

A. It was some time -- it was probably September when I went through the old office in Easley.

Q. And isn't it true that you knew that there were 96 boxes that were going to be scanned?

A. No. I understood Arthur told me at some point in time that he was scanning boxes and through conversations I recall 96 in my mind and I recall that over the years. So I understood there were 96 boxes of records that were floating around somewhere that I have never seen and never touched and never had possession of .

Q. But you are aware that you have all the scanning of all those 96 boxes of documents, correct?

A. I assume that the scan file that I had would have included all those but then when the Trazon matter came it, it dawned on me that perhaps I don't have all the documents on the flash drive because there were no Trazon documents on the flash drive, therefore, it raised my question as to what else do I not have.

Q. Well, let's stick to the 96 boxes first and then we can talk about Trazon. Is that okay?

A. That's fine with me.

Q. Now with the 96 boxes you were under the impression that you had flash drives of every one of those documents, that was your impression, correct?

A. Initially.

Q. And you were under the impression that you paid $17,500 as to co-receiver that signed that check?

A. I don't recall the details of the few transactions that I was asked to sign before I was appointed receiver.

Q. Does that jive with your memory?

A. Not really because it -- the few checks that I signed I don't recall the process but I believe Arthur would tell me that they were legitimate payments and I believe I would talk to Stan Case and (inaudible) and they simply said it sounded legitimate. There was no duty on my part to investigate unless it appeared to be inappropriate. And at that time by everything I looked at it appeared to be normal. I don't recall the details of that.

Q. Isn't it true that originally Scott Pfeiffer said his office would do it for about $55,000, isn't that right?

A. I have no recollection of that.
Q. And Arthur found someone that would do it for $17,000, does that jive with your memory?
A. I remember Arthur saying he could get it a lot cheaper but I just don't remember all the details.
Q. And that would help you if it would get a lot cheaper, wouldn't it?
A. It would help the estate.
Q. So you would be for that, wouldn't you?
A. Yes.
Q. And as of August you became the receiver for CIF, right?
A. Yes.
Q. And under this agreement it said it would take up to December of 2009 to complete the task and my question to you is it took about until November or December to get those documents all scanned before you got them?
A. It seems contradictory because I had the flash drive earlier than that.
Q. When did you get the flash drive?
A. I don't recall.
Q. Well, could it have been November of 2009?
A. It could have been September. It could have been January.
Q. And isn't it true that under the terms of the

agreement with this company, Empire ---

A. I will say -- I haven't finished my answer.

Q. Okay.

A. I will say -- I talk slow so you're going to have to give me some time. It could have been 10 days after my appointment of receivership.

Q. Now, under this contract it clearly says, doesn't it not, in Paragraph 18 that, "Upon completion of the work all files will be transferred back to CIF or stored in a designated location and CIF shall assume the costs of such towards thereafter and CIF shall be fully responsible for all costs involved in transporting such boxes to a new facility." Did I read that correct?

A. Yes.

Q. So isn't it true that since August of 2009 you were CIF and it was your responsibility to transfer those documents away from Empire if you wanted to save the actual originals, isn't it?

A. Under the terms of this document that I don't recall seeing.

Q. But isn't it true?

A. That's what the document says.

Q. And you decided that since you had the flash drive and you didn't need the 96 boxes it wasn't worth all that time and effort in finding another place to store and

spend the money to keep them, isn't that what happened, Mr. Saad?

A. No.

Q. Alright, you earlier testified about the global settlement agreement, correct?

A. Yes.

Q. Were you a signing to that global settlement agreement?

A. I don't believe I was.

Q. But you're familiar with it?

A. I was.

Q. Do you understand that under this global settlement agreement that Arthur Field was dismissed from your case?

A. I believe that's a legal question. I guess my understanding was he was dismissed from those specific cases. He was not dismissed from the order itself in the settlement agreement. I think my understanding was that everybody that signed the agreement is party to the agreement which is ongoing.

Q. So that is not your understanding of the agreement?

A. I believe what I said was he was dismissed from the cases, the actions of the cases that were precipitated in the settlement agreement but my understanding is that

everybody that signed that agreement is subject to that agreement which is ongoing until its conclusion.

Q. And did you understand that you could reinstate any claim that you had against him in this case, William Tomz versus CIF, about half of the class, within the time limits imposed by law?

A. I understood that provision in there and I also understood I could proceed to undertake any other claims that see appropriate.

Q. You never did institute another claim or cause of action against Mr. Field, did you?

A. That's not true. We did institute causes of action and claims against Mr. Field.

Q. When did you serve Mr. Field with a summons and complaint on behalf of the class within three years after August of 2009?

A. I didn't serve any complaint on behalf of the class.

Q. Do you understand that the global settlement agreement gave you that right to do that up to August of 2012?

A. I did.

Q. But you didn't do that, did you?

A. I believe if you read the language it says the class may institute claim but does not preclude receiver

from operating under that receivership and filing whatever other claims and actions that the receiver sees is appropriate. We did file actions under other claims of right.

Q. The only thing that you filed against Mr. Field in this case was an order and rule to show cause on August 19, 2013?

A. Could you repeat that, please?

Q. The only thing you served in this action that we're here today on which is Tomz versus CIF, 3665, is an order and rule to show cause which was supported by your affidavit in August of 2013, correct?

A. I'm not sure how to accurately answer that because we did file an action against Mr. Field in New Jersey and we filed an action in the federal court here in South Carolina against Mr. Field.

Q. Did I ask you about those actions?

A. Well, you asked me if that was the only one I filed on this one and I was not sure how to answer it correctly is what I'm saying.

Q. Mr. Saad, do you understand that we are here today on an order to show cause that was filed on your behalf?

A. Yes.

Q. In the case of Tomz versus CIF, do you understand

that?

A. Yes.

Q. And the Case No. is 3665; is that right?

A. Yes.

Q. At the time that you filed this in August of 2013, Mr. Field was not a party to this lawsuit, was he?

A. As I stated before I understand Mr. Field has been dismissed from claims of that lawsuit, but i also believe that he is still subject to the global settlement agreement which is under this Court's jurisdiction. Beyond that I am not a lawyer.

Q. You agree with me that Mr. Field was never made a party by anyone before August of 2013, was he, in this lawsuit?

A. I don't agree.

Q. Alright, show me where you anyone class counsel or you filed an action adding Mr. Field as a party to Case No. 3665? When was that done and who did it?

THE COURT: He's not here as a party, Mr. Martin. He is here because he consented to cooperate with the Court and he failed to do that.

MR. MARTIN: He is here as the receiver, Your Honor.

THE COURT: Mr. Field is not here as a party.

MR. MARTIN: That's right, he's not here as a

party and the point I'm trying to make is since Mr. Saad is responsible for this rule to show cause, I want to see if he's not a party if Mr. Saad filed appropriate procedure to bring Mr. Field in here by serving him with a subpoena under Rule 45, filing a motion to compel, any of those things and I think I have a right to ask if he's done those things. That's all I'm trying to do is establish the record, Your Honor.

THE COURT: Go ahead.

THE WITNESS: Well, we have not filed those proceedings otherwise you would not have to object.

BY MR. MARTIN:

Q. Well, don't you agree that Mr. Field should have the benefits of the rules of civil procedure?

MR. CASE: Objection, Your Honor. He's asking a layman for a legal conclusion.

BY MR. MARTIN:

Q. Did you ever ask your lawyer to make Mr. Field a party back in this lawsuit?

A. No.

Q. Did you ever ask your lawyers to serve him with a subpoena since he was a non-party so you could get these records?

A. Yes.

Q. You did. And did they ---

A. Now, we're mincing words now.

Q. No, we're not mincing words.

A. You're asking specifics and I my answers are as a layman and not a lawyer. We gave Mr. Field on November 28, 2011 a request for production of records. Almost two years to today he has been non responsive. We filed a subpoena -- class counsel filed subpoena today and that is the action that occurred. If there is some other thing that I missed, then I missed it. That's all that's been done.

Q. Who was representing you and who were you seeking counsel for about how to get documents from Mr. Field.

A. Curt Stodghill, he represents me as a receiver. Stan Case who represents the class, Mr. BRANDT who also represents CIF.

Q. And isn't it true that Mr. Field has never been served with a Rule 45 subpoena requesting him to bring documents to you?

A. I believe that's true.

Q. And isn't it true that you never filed a motion to compel asking the court to require him to bring documents because he didn't adhere to Rule 45?

A. Yes, that's true.

Q. What's true? You're saying you did file a motion to compel discovery.

A. You asked a question and I said, yes, that's true, we did not.

Q. Okay. I want you to look at Paragraph 2 of the global mediated settlement agreement that you put in the record over my objection and reserving my objection and I want to ask you if you would agree with me that what Mr. Field was required to do was to provide, "copies of all records, email, reports, letters, documents, mortgages, notes and any other materials which shall support the receiver's right to collect from any individual or corporation which has been loaned any monies from Capital Investment." Did I read that correctly?

A. I don't know. I don't have a copy of it.

Q. Do you have a copy of it?

A. Out there somewhere.

Q. Paragraph 2.

A. Paragraph 2 is three pages long. Can you give me some help.

Q. Well, I've got the quote, can you find it? Page 4. It really starts on Page 3.

THE COURT: Why don't you just go show him what you're talking about to save time.

MR. MARTIN: I'll be happy to, Your Honor.

BY MR. MARTIN:

Q. The complaint in the case as to Capital

Investment Funding, Mr. Arthur Field will without prejudice -- "Provide any and all information, records, emails, reports in their possession, if any, to the receiver which may be necessary based on their involvement with the company." Did I read that correct?

A. It reads Brad Kelley, Bart Kelley, Kevin Williams do hereby agree.

Q. No, let's start on Page 3. The complaint in this case is Capital Investment Funding Arthur Field, Lancaster Mortgage will be missed however subject to the same conditions outlined in Paragraph 9. So that would include Arthur Field along with Brad Kelley, Bart Kelley, and Kevin Williams.

A. Yes, sir.

Q. Okay. Have you ever specifically asked Mr. Field for a document that was not included in your 96 boxes that you got in the flash drive?

A. Yes.

Q. When did you do that?

A. November 28, 2011.

Q. And that's when he was served with a request to produce?

A. Yes.

Q. And if the request to produce was inappropriate, do you think he has a right to say you need to serve a

subpoena?

A. I'm not a lawyer. I just felt like if he was going to cooperate, he would cooperate. H e knew he was supposed to turn over all the records. I don't have all the records and that's what I'm trying to get and that's the records, and he wants -- he has stated in the past and he's stated in the present he doesn't have the records but he's parsing with words. He physically may not have them but at some point he was in control and has knowledge of where they were or where they are. All I'm trying to do is get them.

Q. You were supposed to get them as of August of 2009, right?

A. Yes.

Q. Within 10 days.

A. Yes.

Q. Why did it take you four years and three months to come to this court to ask for them?

A. I didn't. In November of 2011, he received it.

Q. November of 2011, that was over a year and a half ago, wasn't it?

A. What difference does it make?

Q. If you're trying to get money for the note holders, don't you agree that you need to move fast?

A. Yes.

Q. And we're talking four years later is the first time you showed up in Court?

A. So we're behind so let's start moving fast now.

Q. Four and a half years later. Why did you wait so long?

A. There were a lot of other issues going on. What we're dealing with today is one of a thousand things we were dealing with.

Q. How much money have you got in on behalf of CIF?

THE COURT: That's outside the scope of what this rule to show cause is about. Let's move along.

MR. MARTIN: Well, we have been outside the scope of this rule to show cause all day long by talking about a New Jersey case.

THE COURT: Mr. Martin, I just made a ruling. Move on.

BY MR. MARTIN:

Q. Isn't it true that you were provided access to all the offices at CIF in July of 2009?

A. I don't know. The only office I visited and knew about was in Easley.

Q. And isn't it true that you were given the keys and had access to all of the things in that office?

A. Yes.

Q. And if there were any records, you could have

gotten them then, couldn't you?

A. I did get them.

Q. If there was anything missing, that wasn't Mr. Field's fault because since July of 2009 you've been in charge, right?

A. I'm sorry, say that again.

Q. If there's anything missing, that would not be Mr. Field's fault because you've been in charge of those records since July of 2009 in the offices?

A. If there is anything missing from the records that I have in my possession, that would be my fault, but to the extent I don't have records in my possession it's not my fault.

Q. Do you have any evidence what so ever that Mr. Field did something with the records other than give you the keys to the kingdom?

A. I have a helper go with me to the office in Easley and at that time we loaded up the truck and bought everything back. There were not 96 boxes there.

Q. An d the reason was and we just talked about it Empire got the 96 boxes they were scanned and you got the flash drive for those thousands and thousands of pages, right?

A. Yes, and it seems like Arthur could have told me in November of 2011, I don't have those records call

Empire.

Q. He told you in September of 2009 he told you that these people have it and they're only going to store them up to December of '09 so get them Jerry and you're going to have to bring someone big with a big truck, that's exactly what he told you and you never bothered to get them, did you?

A. I don't recall that conversation at all.

Q. Well, that's the true, isn't it?

A. Yes, it is the truth that I don't recall that conversation at all.

Q. But you were CIF in December and November of 2009, were you not?

A. Yes, I was the receiver.

Q. So if Empire had finished doing all their work and they all those 96 boxes, they would come to you and say Mr. Saad what do you want to do with these document, right?

A. They should have.

Q. An d they did, didn't they?

A. No, they didn't.

Q. And they called you on the phone and said come and get them and you just said, well, I've got the flash drive I don't need the 96 boxes, isn't that true?

A. No, it is absolutely not true and I don't know if

that's a design of cross-examination and just fabricate things, but ---

Q. We're going to have a witness to testify to that, Mr. Saad. We're not fabricating anything ---

THE COURT: Let him finish his answer.

THE WITNESS: I don't recall receiving any telephone calls saying come pick up records.

BY MR. MARTIN:

Q. I understand your testimony. I want to make it clear. And you are under oath today, you remember that?

THE COURT: Mr. Martin, enough of that. Ask substance questions, don't bait the witness. Let's move along.

MR. MARTIN: Your Honor, may I have a continuance?

THE COURT: No, sir. We're going through with this rule to show cause. Your client has had four years to produce these documents.

MR. MARTIN: Your Honor ---

THE COURT: I'm not going to discuss the continuance again. It's been ruled on.

MR. MARTIN: We also have a motion to recuse based on your previous testimony ---

THE COURT: I just ruled on that.

MR. MARTIN: I have a right to a fair trial,

Your Honor. I have a right to cross-examine this witness and I feel like the Court is shutting me down. You didn't shut them down. They were asking leading questions and you let them do it. I'm trying to do my job and I feel like you're not ---

THE COURT: Fine, do your job but do it in the proper manner.

BY MR. MARTIN:

Q. Mr. Saad, isn't it true that in May of 2008 a spreadsheet of all the notes was given Gene Connell, the class counsel?

A. I don't know.

Q. Did you ever ask him?

A. Did I ever ask him if he got a spreadsheet in 2008?

Q. Yes.

A. No, not that I recall.

Q. Well, aren't you after the notes? Don't you want the notes?

A. Yes.

Q. And don't you think it would be smart to ask class counsel Gene Connell if in 2008 he got a whole spreadsheet of every single note that was ever issued?

A. Well, I was provided some information. I didn't know Mr. Connell had that type of information. I was

given a file that had a lot of that information in it before I was appointed receiver so I had some familiarity. And i also felt that when I was given information I had a lot of information to absorb and i assume at that time I was given all the information. So the answer to your question is, no, I didn't ask and I didn't think to ask in 2008 if he had a spreadsheet.

Q. Well, would it help you if you had that spreadsheet?

A. I don't know. Depends on what's on the spreadsheet.

Q. What if it's all the notes that CIF ever had?

A. You're talking about the notes to the note holders?

Q. Notes to the note holders.

A. I have a file that Mr. Field gave me that has all the note holder information on it. In fact I have several of those files that have all the notes in it.

Q. Isn't it also true that between January 2009 and March Mr. Field provided both class counsel and you with all the financial information that you asked for?

A. I don't recall.

Q. And isn't it true that between March of 2009 and August of 2009 he provided class counsel and you with all items. I want to show you whether or not you got all

these documents and it is -- well, Table 1 is two pages with 39 items. Take a minute to look at that, Mr. Saad, and tell me whether you got those.

A. I'd say I'd got a lot of it and it could be I got all of it but I can't tell you if I did get all of it but a lot of this is what I do have.

Q. I didn't understand. Are you agreeing that you did get these documents, Mr. Saad?

A. Let me make it more clear, I got a lot of documents. A lot of documents I recognize that are all on here I can't tell you if everything on here is what I got.

Q. If the Judge gave you an opportunity, could you go back to your office and check to see what you got and tell us what you didn't get?

A. Sure, I can do that.

MR. MARTIN: Your Honor, I would ask in fairness of this hearing since the witness is not able to answer the question as to if he got it or not here are 39 different documents that he would have to right to go back and check his documents to see what he's saying he didn't have.

THE COURT: If it becomes necessary, I'll leave the record open. Go ahead, proceed.

BY MR. MARTIN:

Q. Now, isn't it true also that on March 6, 2009

Mr. Field provided all counsel and you with an Excel spreadsheet containing information as to each note holder of CIF?

A. I don't remember. I was not appointed receiver until August of 2009 and prior to that my involvement was very limited. I know there was a lot of actions and meetings going on but I had very limited involvement in any of those.

Q. Well, did you ever ask your class counsel, Mr. Connell or Mr. Case, whether or not they had an Excel spreadsheet which consisted of 689 lines of everything that you needed to know about every note?

MR. CASE: We would object on the grounds of relevance. These matters were before the appointment of receiver and don't have anything do with what we're here for today.

THE COURT: I'll sustain that.

MR. MARTIN: For the record, Your Honor -- I would just like to put in the record that the receiver was appointed in August of 2009 and one of his jobs was to make sure he had records and if records were actually in the hands of his own lawyers, he had a duty to find those records ---

THE COURT: Who were his own lawyers?

MR. MARTIN: The class counsel.

THE COURT: They are not his lawyers.

MR. MARTIN: Or to ask the class counsel about those because they're the ones who are bringing this lawsuit. That's why we're here. They're the actual lawyers in his case that we find ourselves before you and therefore it would be totally appropriate for me to ask him whether he asked class counsel for the Excel spreadsheet that would show him everything he needed to know.

THE COURT: I think we plowed this ground. You've asked him if he has it.

MR. MARTIN: He said, no, he doesn't know.

THE COURT: There you go.

MR. MARTIN: And I'm asking him if he asked class counsel for it which would be one of his duties as receiver for find out that information.

THE WITNESS: I don't think it would have been one of my duties to ask class counsel. If class counsel had original records of the company, I believe it's a reasonable presumption for me to have made as receiver that they original records would rest with the company and its managers. So the answer to your question is I did not ask Mr. Connell if he had a spreadsheet. I did have that spreadsheet that you're talking about, I believe.

BY MR. MARTIN:

Q. Oh, you did have it.

A. I said that a while ago. I do have that. Arthur provided that to me. I do have that information. That's not the records that I'm looking for. I'm looking for the records that I don't have.

Q. And what are those records that you don't have?

A. If I had them, I could tell you what they were.

Q. So you're looking for records that you don't have but you can't tell me what they are?

A. I can describe some of the records I don't have, but I can't tell you that's all the records that I have. Some of the records I don't have are the computers that were used by CIF and their hard drives which would include all of their computer information. I don't have a video tape of a board meeting that CIF and LRI had at some point in time that Arthur described. I don't have the actual hard copies of the notes for the note holders which are part of those flash drives and that's what constitutes I believe most of those 96 boxes. I don't have the original file for Trazon, the loan file. I don't believe I have any records to speak of for Bradford Financial Corporation. I don't believe I have any records for York Mortgage. I can tell you what I know I don't have but I might be more out there. All I'm saying is whatever is

out there, I'm supposed to get and I don't think I should have to know everything to tell you. I think it should be the other way around and if it's there, I should have it. And that's why we're here today and that's what Arthur and i have talked about. He says he thinks he's given to me but I don't have them.

Q. As far as the 96 boxes we now know that Empire had them and CIF was supposed to get them or they would be destroyed, correct? We know that's the contract, right?

A. I don't know that. You just gave it to me.

Q. You want to take a minute and read it?

A. It's after the fact. I didn't know it then, if I know it now that doesn't do me any good. The bottom line is the records were supposed to be delivered to me.

Q. Why do you need the originals when you've got every single document on a flash drive?

A. Because I don't know that I have ever single document on a flash drive i.e. Trazon was not on the flash drive. What else do I not have the flash drive?

Q. Well Trazon was a specific separate entity dealing with a warehouse, is it not?

A. Yes.

Q. It's not about a note or a loan specifically, is it?

A. It is about a note and a loan.

Q. It's about a note or a loan about a specific thing that's happened after the fact after you became a receiver, correct?

A. No, this happened before I became receiver.

Q. Are you saying that the 96 boxes were the loans?

A. Say that again?

Q. Are you saying that the flash drive of the 96 boxes were actually the loans or are you saying those are the note holders? Those are two different things, are they not?

A. There are some loans that are on that flash drive, some corporate documents on that flash drive and I don't believe the note holders files are on the flash drives.

Q. The note holder files are the 96 boxes, correct?

A. I don't know. I've never seen the 96 boxes.

Q. You were give, at least, the flash drive that has all of the information about the note holders, correct?

A. I was given a flash drive that has a lot of records on it.

Q. You think 96 boxes?

A At least.

Q. And you had to hire a company to get that all on a scanning machine, right?

A. I didn't hire them.

Q. But you knew about it?

A. I don't recall knowing about it. If I did it was in the context of signing a check that was already arranged for. I don't recall anything beyond that.

Q. But the note holders are totally different than the loans, correct?

A. Yes.

Q. And the Trazon matter is the loan matter, is it not, not dealing with the note holder?

A. That's correct.

Q. Now, the Trazon matter is a matter in which you accepted payments for over three years, correct?

A. Yes.

Q. And you have sworn to this court in documents making an accounting in 2011 for the year 2011 and 2010 that that note was totally up to date, correct?

A. No.

Q. No.

A. No.

Q. Okay.

MR. BRANDT: Your Honor, are we trying to Trazon case. We are asking for the Trazon documents, but this is not the Trazon case.

MR. MARTIN: This is not the lawyer who represented this particular witness. This lawyer did not

do the direct examination and they are double-teaming me. I would say that Mr. Case has to make the objection under the rules.

MR. CASE: I object to the relevance of this line of questioning.

MR. MARTIN: Your Honor, it's relevant is they brought it in. He's talking about Trazon.

THE COURT: Are you talking about the history of the transaction. He wants the records, that's what we're here for. If your client would turn it over or had turned it over as he agreed to do in a court order that he consented to, we wouldn't be here.

MR. MARTIN: Your Honor, again, I would object to that comment again showing bias ---

THE COURT: Mr. Field, I suggest you watch your behavior.

MR. FIELD: I'm sorry, Your Honor, I get frustrated. You know that. I have tried for four years to cooperate with this Court.

MR. MARTIN: I am trying to do in cross-examination since he's claiming ---

THE COURT: You don't need to tell me what you're theory is, just ask him appropriate questions with respect to this rule to show cause.

MR. MARTIN: Have you made a ruling on this

objection? Can I talk about Trazon and whether he has the records or not?

THE COURT: You can ask him if he's got the records, what he wants, what has not been turned over to him, that's what we're here for, Mr. Martin.

MR. MARTIN: Your Honor, in order to ask him the questions I have to cross-examine him on documents that he has filed with the Court because he could not tell the Court that the loan was totally and completely paid for unless he had the note so I think he has the right to cross-examine him about what he's told you on two different occasions about the Trazon note. How in the world can he tell you that it's paid up and it's current if he didn't have the note?

THE COURT: Did you say it was paid up?

THE WITNESS: I didn't say it was paid up. I didn't say it was current and I erred in my last report. In my last report I made an error and I also explained the circumstances of how that error was made. The information I was provided was an amortization schedule and the payments were applied to that amortization schedule and then subsequently is when Mr. Field provided the amended note. And when I got the amended note is when I went back and recalculated that amortization and determine that that original schedule was not consistent with the note and

that's when I made the determination that I had made an error and the report that I gave was for the purpose of providing information to the Court and the note holders. It was an error that I made and it's probably another error or two in there I made.

It was done in good faith effort and it was a mistake I made.

BY MR. MARTIN:

Q. So your testimony under oath is you did tell this Court under oath in a receiver status report that the Trazon note was paid up to date?

A. I don't know that I said it under oath but I don't know the rules of the Court. It was a letter that I wrote to the Court and it was a report.

Q. The receiver's status report, correct?

A. Yes. I don't know -- I'm not familiar with the rules of whether that's under oath or not but if it is it was a mistake made whether it was under oath or not.

Q. Did you accept the payments from Trazon for that note?

A. Certainly.

Q. Did you thank them for the payments in emails time and time again?

A. I don't recall.

Q. Did you ever say to the Trazon owner, I'm sorry,

I'm not going to accept your payment, you're in default?

A. Yes.

Q. You did.

A. There was some issue that came up and there was some payment tendered and I didn't accept it because it was part of a settlement agreement that we had and I ultimately accepted it after the counsel for Trazon assurances to me that it was okay that accept the payment.

Q. On January 26, 2011, you filed a receiver's status report to the note holder's of Capital Investment with this Court, correct?

A. Yes.

Q. And you said at that time, "Two mortgage loans are in good standing as records reflect all required payments are current." Did you not?

A. Yes.

Q. Trazon, Llc is owned by the son of Arthur Field, correct?

A. Yes.

Q. So now you're telling us for the first time that's not true?

A. No, it's not the first time. I mentioned it some time ago.

Q. Well, have you filed anything with this Court correcting this?

A. Yes.

Q. When?

A. About three weeks ago.

Q. What did you file with this Court?

A. A current report.

MR. MARTIN: Your Honor, I haven't seen it. I'd like to have the opportunity to ---

THE COURT: You can look at it another time. It has nothing to do with what we're here about.

MR. MARTIN: It has everything to do with what we're here about.

THE COURT: No, sir. We are here because your client has not turned over all the records.

MR. MARTIN: Your Honor, he has turned over all the records. The man can not possibly tell you that the loan was current if he didn't have the records. How in the world can he tell you two years running that it was current if he didn't have the note? That's what cross-examination is about and now he says ---

THE COURT: Mr. Martin, I have about had it with your editorializing in the courtroom and that's going to be the end of it.

MR. MARTIN: Your Honor, I am simply making a record ---

THE COURT: No, you're not. You are

editorializing. Your conduct is unacceptable in the court with respect to that and I'm through with it. I hope I'm clear about that.

MR. MARTIN: Can we have a break?

THE COURT: For what?

MR. MARTIN: I need to figure out what you're upset about. I am simply asking cross-examination questions.

THE COURT: No, sir, you're not simply asking cross-examination questions. We are here because there is a rule to show cause which asserts that Mr. Field has not produced what he is supposed to produce. This is not a wide open investigation into what the receiver has done. It took four years to get to this point and I don't think you really understand the complexity that went in to unraveling what's been unraveled in this case. So you limit your examination to the issues presented in the pleadings.

Mr. Case, you are standing.

MR. CASE: The issue of what the receiver reported in his report back in 2011 is not really related to the issue of documents that we need right now. Thank you.

MR. MARTIN: I would request, Your Honor, respectfully, I need to see the document that he has

claimed to have filed with you three weeks ago correcting the documents we do have because I can't fairly cross-examine this witness to know why he's changed from saying everything is current in 2011 to everything is current in 2012 and now out of the blue during cross-examination I find that he made a mistake when the whole issue is does he have the document in order to say to the Court what was owed on the Trazon note.

THE COURT: Mr. Saad, just explain what the mistake was. You just did, but do it again.

THE WITNESS: In the first couple of years, two to three years we were receiving payments. Mr. Field's son, David Field, who is the alleged owner of Trazon was bringing payments by. He would make a point to say I'm paying double payments because I want to keep ahead and I said that's fine. Trazon was one of the few loans that we were receiving any money on and there was a schedule when the payments would come in we would circle. It was a big charts, years and months going across, and years going down and we would circle. And he did, in fact, keep up for the most part. There was a few times that it wasn't quite up to speed but it was the most significant asset that we had that was performing. So in my process of preparing the reports, I did not go back and scrutinize every transaction. I went to the books to see

the account number and payments we received and what I did there was make a generalization and yes, it was specific, and it gave me the appearance that the Trazon loan was totally current. I did not have the actual note to compare it with. I still do not have the actual original note. What I do have which was provided later was an amended note and then a second amended note and based on those two items when I went back and said the numbers have changed from what I looked at and then I went, based on that second amended note, and took the time to recalculate.

Again, we are talking about one thing where we're getting a lot of money in and I've got a thousand other issues that are out there we're dealing with, multiple issues on different venues, so this was a small item for me to take the time to make absolutely sure. If I know then what I know now, I would have done that, but I didn't. So my statement to them that was current was not that I went through all of it to verify, it was what I believed at the time based on the information I had without really digging deep in to it to make absolutely certain it was there.

At some point in time there's a cost benefit of what you do and that's why I made that statement. I apologized for it. It was in error. The facts are the

facts. I made a mistake and I admit to it. The mistake I don't think has anything to do to any detriment to the company. What I do think I shows is that Trazon clearly was not current and that's why subsequent to that, we demanded the full payment because it showed it was back delinquent and when it showed they were back delinquent, they, Mr. Field, one or the other, presented a modification agreement which alleged to explain why all the payments were not made but even in that explanation it was still delinquent. That's why we are now in the throes of a foreclosure action down there.

So all this came about in, I believe, it was February of 2012 after that report was issued. I told Judge Miller shortly after that that I did make a mistake. He was aware of it, counsel knew it, and that's when we started the process of trying to go through foreclosure.

BY MR. MARTIN:

Q. When did you tell Judge Miller that?

A. I don't recall.

Q. Who was present when you told him that?

A. Curt Stodghill.

Q. Just the three of you?

A. It's a status meeting where I tell them where we are with the matters so he can have an understanding of the particulars.

Q. Was it on the record?

A. There was no -- no.

Q. Did you ever tell ---

THE COURT: Just a minute, I'm going to ask a question. You just said that you weren't aware -- after you declared that the Trazon loan was actually in default, that's when Mr. Field gave over to you a modification agreement?

THE WITNESS: I believe his son, David Field, did. I believe it was in April of 2012 after the demand had already been made.

THE COURT: And is that in any of the records that you had prior to that time?

THE WITNESS: It's not on the flash drive and it's not in any record I have.

THE COURT: Thank you, you can continue.

BY MR. MARTIN:

Q. Now, isn't it true that you're involved in litigation about that so everything you say would affect that litigation, isn't it?

A. It is true that I'm involved in that litigation.

Q. And isn't it true that you had agreed to buy that Trazon property on behalf of CIF, did you not?

A. We had entered into settlement agreement before and after we went through the foreclosure.

Q. And isn't it true that you hired a lawyer to do the closing on that sale?

A. The foreclosure?

Q. No, the closing on the sale. You agreed to sell the loan to Trazon, did you not?

A. No. You're misunderstanding the transaction.

MR. CASE: Your Honor, we would object to the line of questioning getting into litigation in this proceeding about this particular note.

MR. MARTIN: And they have brought up every single litigation in this proceeding.

THE COURT: And it goes to show that your client was not cooperating, that was the purpose. We're not going to litigate these other matters in this hearing.

MR. MARTIN: I simply have the right to show the witness's bias for what he's trying to do and what he's done to show whether you can validly decide whether his testimony is credible. You're the impartial decider of the facts.

THE COURT: Mr. Martin, I have talked to you about your editorializing and I am through with it. Don't do it again.

MR. MARTIN: Again, may I have a break, Your Honor.

THE COURT: We'll take a five minute recess.

(Whereupon, there was a brief break.)

MR. MARTIN: If anything I've said has been in any ---

THE COURT: You don't need to say it, just continue with the examination.

MR. MARTIN: I just apologize to the Court. No intent to be disrespectful.

THE COURT: Fine.

BY MR. MARTIN:

Q. Mr. Saad, do you agree that if Arthur doesn't have a document, he can't give it to you?

A. No.

Q. You don't agree with that?

A. No.

Q. How can he give you a document he doesn't have?

A. He might know where it is and has control of it.

Q. What if he doesn't have control of it an doesn't know where it is, you agree that he couldn't give it to you?

A. Yes.

Q. Isn't it true that you have the Trazon modified note now?

A. Yes.

Q. So you don't need the original, do you?

A. Yes, I do.

Q. Why?

A. Because it refers to the modified amended note and it refers back to the original note and in the provisions it could be relevant.

Q. Now, but you do have the modified note and you've been paid under that modified note for at least three years, correct?

A. Yes.

MR. CASE: Your Honor, if it please the Court, these questions for the last 15 minutes or so have been argumentative, they've been beyond the scope of the order in the rule to show cause, they've assumed facts that are not in evidence, they have been harassing, and Your Honor, we would ask that this witness be excused because the questions are not being directed towards the issues that are under the Court's order for rule to show cause. And I think we've been here long enough and the burden of proof and the affidavit of Mr. Saad has been submitted and basically we are not addressing the issues of the rule to show cause.

THE COURT: I'm going to let him continue to address the issues in the rule to show cause.

MR. MARTIN: Thank you, Your Honor.

BY MR. MARTIN:

Q. Isn't it true you do have a copy of the original

note?

A. Not to my knowledge.

Q. Well, do you or don't you, do you know?

A. I believe I do not have a copy of the original note.

Q. Isn't it true that in July of 2009 Mr. Field went with you to the BB&T Bank and the Greenville First Bank and executed all the documents you need to transfer the CIF and the Malmouth(ph) Financial accounts to you and your control?

A. I believe so.

Q. So isn't it true that as of July 2009 you've had all control of all of those documents from CIF dealing with those bank accounts at BB&T and Greenville First?

A. You confused me with the question. The first question is did I go with Mr. Field to change the banking information, assigning bank records assigning me to the signature on the account.

Q. Right.

A. I'm not familiar with doing that from Malmouth(ph) but it may be and I just don't remember. I don't remember having anything to do with Malmouth but I did do the same thing with CIF.

Q. Since July of 2009 you have had total control of the bank records at BB&T and Greenville First for CIF?

A. I assume I have.

Q. So if you needed to go back in history with the bank record, you could do that? You didn't need to get them from Arthur, did you?

A. Yeah, I could do that although it might be at a cost.

Q. The same thing for Greenville First, right?

A. Yes.

Q. And don't you agree that Arthur was only required to give you copies and not originals?

A. I don't know.

Q. Well, turn to your ---

MR. CASE: I would object again. He is calling for interpretation of the law by a lay witness and just as a point of law we read into the record the portions of the order that talk about delivery of original documents. So I would object to this line of questioning as well.

THE COURT: It's been read into the record more than once so there's no reason to go over it again. It's cumulative.

MR. MARTIN: Your Honor, just for the record, I understand your ruling, I would like to put in the record on Page 4 of the global mediated settlement agreement it says, "Further Dr. Field agrees that he shall

give up any and all claim for any future payments on account of his employment contract and shall immediately resign his offices at Capital Investment Funding but shall provide copies of all records, emails, reports, letters, documents, mortgages, notes and any other materials which shall support the receiver's right to collect from any individual or corporation," ---

THE COURT: Mr. Martin, not only is that a court document, a public record, it has been read -- you're reading is at least the third time and I think the fourth time.

MR. MARTIN: But my point, Your Honor, the objection was granted that this document says he's supposed to produce originals and I was asking if that's what he's asking for and I want to make the point that he understood that he was only supposed to produce copies. That was the point of my cross-examination question for this witness was.

MR. CASE: Your Honor, it's again a point of law that he had to deliver files for all property notes and mortgages in the files. That's on Page 10 of the order.

THE COURT: Move on.

BY MR. MARTIN:

Q. Isn't it true that in July of 2009 that Arthur

Field delivered to you all the bank and county records for CIF and related companies from 1999 through 2008 and all Quickbook records?

A. I received a substantial amount of records which include banking records and Quickbook files. I'm pretty sure that the only Quickbook files I received was after this was done.

Q. And isn't it true that between July and October of 2009 Mr. Field provided you with flash drives containing Quickbook records for CIF, the electronic scan of all note holder files and the Quickbook files for Lyon Financial, Malmouth(ph) Financial and Bradford Financial?

A. I don't recall ever receiving Quickbooks file for Malmouth, Bradford or Lyons.

Q. You don't recall? Are you testifying that you did not get them or you don't recall?

A. It's the same thing.

Q. No, sir, it's not.

A. I don't recall receiving them. I don't believe I received them. I'm pretty sure I didn't receive them. I could be wrong but I don't have any recollection having anything in my files and I've looked for them before. So if I have them, they've obscure.

Q. Isn't it true that you have lost documents from time to time in this case?

A. I don't know.
Q. You don't know?
A. I don't know.
Q. In your practice, you've never lost a document?
MR. CASE: Again, I would note an objection and ---
THE COURT: This is beyond the scope.
MR. CASE: Beyond the scope, argumentative, asked and answered.
MR. MARTIN: Your Honor, it is not argumentative, it is not beyond the scope because if his record keeping is not good and he loses documents that could be an explanation as to why he doesn't have something and it's not that my client didn't give it to him.
THE COURT: Your objection is noted for the record.
BY MR. MARTIN:
Q. And isn't it also true that in September 2009 you were provided with Excel spreadsheets of all Lancaster Resources loans?
A. Lancaster Resources loans. The loans that Lancaster Resources made to other people or loans that CIF made to Lancaster Resources?
Q. Loans that CIF made to Lancaster Resources,

obviously. That's all that he would have, right? He wouldn't have the loans of Lancaster Resources made to other people, would he?

A. I don't know.

Q. He's not Lancaster Resources, is he? He's CIF, right?

A. They were married at one time. Lancaster Resources was originally the parent and Arthur had some ownership interest in that. I remember getting some information but I can't remember specifically when I got when you're asking for but I do remember getting some information, yes.

Q. In September of 2009, you were provided with an Excel spreadsheet detailing every note and a Microsoft asses database of all note holder transactions, were you not?

A. Note holder transactions?

Q. Yes.

A. I think I've already answered that question but, yes, Arthur gave me that spreadsheet. I could have been an access database but I don't remember. I don't think so but I do remember having a spreadsheet with all the note holder information.

Q. Isn't it true that in August and September of 2009 Arthur delivered to you all files that he could

locate in his house and or on computer records?

A. I don't know but I never received the computers or the hard drives.

Q. But he gave you the records from the computer, did he not

A. I don't know. He gave me a substantial amount of records which I already said several times. He did give me a lot of records.

Q. Isn't it true that on November 23, 2009 he provided previously produced spreadsheets of notes to Saad once again when you had misplaced them, isn't that true?

A. I don't recall.

Q. Isn't it true that again on December 14th he again had to provide the spreadsheet because you misplaced it a next time, isn't that true?

A. I don't recall.

Q. And isn't it true that in the years 2010 and 2011 he provided extensive assistance to you for the matters in New Jersey?

A. 2010 and 2011?

Q. Yes, sir.

A. Extensive is a descriptive word. I'm not sure how you ---

Q. Well, he actually flew up to New Jersey to help you, didn't he?

A. I wouldn't call that extensive. We did go up there and address some matters. We went up there twice.

Q. And you constantly thanked him for his help, didn't you?

A. September, I believe the first time and we viewed two of the properties and then we subsequently went back up a year later and we had a lot of bankruptcy issues going on. I would not call that extensive.

Q. For someone from South Carolina to fly to New Jersey to help you with that is not extensive?

A. I don't think so.

Q. He wasn't required to do any of that in the global mediated settlement agreement, was he?

A. I believe he was.

Q. Show me where in the global settlement mediated agreement where he was required to do that?

MR. CASE: Your Honor.

THE COURT: It's beyond the scope.

MR. CASE: Again, Your Honor, it's legal conclusions and all of these things before November of 2011 is entirely irrelevant. We would ask that Mr. Saad be excused. Thank you, Your Honor.

THE COURT: Finish up. I'm close to letting him go.

MR. MARTIN: Just for the record, Your Honor,

the reason I need to ask about what happened in 2009 and 2010 and 2011 is because if he got all the documents then, there would be no reason to give it to him again four and a half years later. That's why it's relevant and that's why it's subject to cross-examination.

BY MR. MARTIN:

Q. Now, you had mentioned the fact that Mr. Field's computer caught fire, did you not?

A. I stated that that's what Arthur told me.

Q. And that he rushed it to a computer company and they were able to recover some of those records and he gave them to you after the fact, did he not?

A. I don't recall him telling me that he was able to recover them. I do recall him telling me that he was going to try to recover them.

Q. You did testify under oath in your direct examination that you got computer records from him after the fire, correct?

A. I did say that, yes, sir.

Q. Doesn't it make sense that if he got it fixed and got the computer company and do it, then he could give you those records?

THE COURT: You're asking him to speculate. Let's move on.

THE WITNESS: I would expect ---

THE COURT: No, don't answer that.

BY MR. MARTIN:

Q. Do you have any kind of information that this was a selected production at all, any information to show to this Court that he selected some and didn't give you others?

A. Yes.

Q. What evidence do you have of that?

A. I received a lot of emails over the course of time since that time that addressed issues that came up.

Q. What emails?

A. I'm not prepared to tell you today because there's a lot of them but I'd be glad to produce them but there's a lot of emails that come up where Arthur finds something so that tells me he still has access to all of emails in the past which I do not have.

Q. And when you got those emails from him after the computer caught fire in November, you simply thanked him in an email. You didn't complain that you're hiding documents from me, did you?

A. Not until that time.

Q. You waited until August of 2013, is that right?

MR. CASE: Again, he's going beyond the scope of this as being argumentative. We have a matter to bring up with regard to time issues. Basically we believe what

is happening here is an effort to drag out this proceeding. We have a witness here from New Jersey that's prepared to testify further and we would like for this hearing today.

THE COURT: It's going to be concluded.

MR. CASE: Unless Your Honor would like to hear from Mr. Field directly and we put up our witness in New Jersey in rebuttal, I just wanted you to know that we got a lawyer from New Jersey.

THE COURT: Okay. We'll get to him soon. This is about over, Mr. Case.

MR. CASE: Thank you, Your Honor.

MR. MARTIN: Your Honor, this is a very serious matter and I'm trying to do my job, Your Honor, and I thank you for letting me do it.

THE COURT: Yes, sir, it is.

BY MR. MARTIN:

Q. Isn't it true that you were aware of the sale of the Carlton Road property up in New Jersey?

A. I was.

Q. Isn't it true that the lawyer involved in that Christopher Westrick delivered you a HUD statement so you knew what the purchase price was?

A. There were multiple sales so I guess we need to go back to question one to find which sale and at what

time. It probably more efficient if I describe to you what I know.

Q. This would be the sale in 2008, correct?

A. The sale in 2008 -- there were two sales in 2008, one was a sheriff's sale and the other was a sale to Calvary Asset Management.

Q. That's right and your lawyer Mr. Westrick was supposed to file that sheriff's deed with the Clerk of Court, was he not?

A. That was before my time and I'm not familiar with what was supposed to have been done.

Q. Well, you were aware that that $305,000 check that you got the reason why you couldn't cash it and it wasn't good is because your lawyer, Mr. Westrick didn't get the deed file ---

THE COURT: Stop characterizing it as his lawyer. He wasn't the receiver at that time, Mr. Martin.

BY MR. MARTIN:

Q. Well, the lawyer for CIF. You are aware of that, are you not, that he was the reason that the check was not good when the company said you got to have the deed on record before we can made that transaction, isn't that true?

MR. CASE: Again, Your Honor, we would object to this line of questioning. We are not trying the

lawsuits in New Jersey. We're talking about trying to recover documents from Mr. Field.

THE COURT: Sustained.

MR. CASE: And obstruction of efforts to the receiver.

MR. MARTIN: Well, Your Honor, there is no way my man can defend himself, since he's been allowed to testify as to what happened in New Jersey, if we can't go into the facts. If you're not going to let me go into the facts, I guess I need to propher those some how.

THE COURT: Not in this proceeding. We are not trying that case. This is about your client's failure to cooperate pursuant to the global mediated settlement. I sustained the objection. Move along.

BY MR. MARTIN:

Q. Which of the documents do you claim you do not have?

A. The ones that I do not have.

Q. The ones that you don't have. And which ones don't you have?

A. I believe I've answered this before.

Q. Specifically dealing with this New Jersey business.

A. Now, you're talking about New Jersey. I don't think I've claimed anything about not having documents

from New Jersey. I'm not aware of any that I don't have from New Jersey, although, I want all the records that Arthur has. If I don't have them, I'd like to have them.

Q. So you would agree with me that anything about New Jersey is not relevant to this proceeding?

A. No, I don't agree with you.

Q. You don't.

THE COURT: Do you have another question?

MR. MARTIN: Yes, Your Honor, I do.

THE COURT: Well, let's move along.

MR. MARTIN; Yes, Your Honor, I'm doing my best.

BY MR. MARTIN:

Q. Aren't you making a claim that the check made payable to CIF in the amount of $305,000 dated October 2008 was not delivered to you until November of December of 2011, isn't that one of the claims you're making in your affidavit against Mr. Field?

A. I made that statement in my affidavit but I'm not saying I don't have that as a document that we're trying to produce. I do have that document and I'm not say that that was a false misleading statement. That has nothing to do with what I say is Arthur's false and misleading statements. That's just a fact to give an example that all records were not delivered to me. They're piecemeal.

That came to me must later when the issue came up.

Q. Isn't the reason it came to you much later is because of this problem with filing the deed and that made the check not good until several ---

A. No, I do not agree. You don't understand.

THE COURT: We're not going into the underlying facts, okay.

MR. MARTIN: We would respectfully save that objection for appeal, Your Honor.

BY MR. MARTIN:

Q. What delinquent and defaulted loan information do you not have?

A. Can you be more specific?

Q. What delinquent and defaulted loan information do you not have from Lancaster Resources?

A. I have very few files on Lancaster Resources and I have almost no files on the flash drives. I suspect there are a lot of files on Lancaster Resource particularly having to do with the parent subsidiary.

Q. What time period would that?

A. '99, 2000, 2001, 2002. There was a settlement and I don't believe I have the files on the settlement or all the correspondence that went along with that, 2002, 2003.

Q. And what does that have to do with CIF and

possible what my client would have?

A. Because there were allegations of fraud and the settlement had to do with CIF and LRI exchanging money along the way. I don't know, if I don't have the documents.

Q. Wasn't that subject to the New Jersey lawsuit that you brought?

A. Which one?

Q. All of them?

A. No.

Q. Any of them?

A. Yes.

Q. Which one?

A. The federal lawsuit that was filed prior to my appointment.

Q. Didn't you file a motion in that case to get the documents in that case?

A. My understanding is as representing CIF I shouldn't have to file a subpoena for CIF to get my records. My whole point in being here today is I need to have all my records that CIF that is rightfully CIF records.

Q. When did you ask Arthur Field for the delinquent and defaulted loan information that you do not have from Lancaster Resources?

A. November 28, 2011.

Q. And how did you do that?

A. The request for production.

Q. So the request to produce covered delinquent and defaulted loan information from Lancaster Resources?

A. It covered all the records that are likely owned by Capital Investment Funding.

Q. Do you know if my client every rightfully owned those documents?

A. Your client, I don't think, ever likely owned it.

Q. Okay so how can he give you something he never had?

A. I didn't say he didn't have them. I think he has possession or knows where they are and or controls them. That's why we're here.

Q. Did you ever take his deposition and ask him a question about that?

A. That's why we filed the request for production and the process is this rule to show cause.

Q. Well, isn't the process to file a motion ---

MR. CASE: Your Honor, again, those are legal questions not dealing with ---

THE COURT: Sustained.

MR. MARTIN: He brought it up, Your Honor.

THE COURT: Move along.

BY MR. MARTIN:

Q. What delinquent and defaulted loan information do you not have with respect to the Lancaster Mortgage Bankers?

A. I believe I am missing correspondence files and the original documents.

Q. And what information you have that that is in possession of my client?

A. That's a paradox.

Q. No, that's a question.

A. What information do I have?

Q. Yes, sir.

A. I can't answer the question.

Q. You've ruled him into court for failing to give you these things, how do you know he has them?

A. No, the rule into court to produce all of the documents. I can't tell you specifically everything that he needs to provide. I can only give you examples of what he hasn't provided. It's like asking, okay, whoever is not here, please stand up. I can't tell you what documents he has. I can tell you the documents that I think I should have that I don't have that he by reason would have had control of.

MR. CASE: Your Honor, these questions have been asked and answered.

THE COURT: They have and they're argumentative. Sustained.

BY MR. MARTIN:

Q. Isn't it true that on March 27, 2011 you reiterated to bankruptcy counsel that Field was happy to provide any CIF record needed?

A. I don't have it, it's very possible. I can't remember off the top of my head all these dates and things you're pulling up. If you give me some reference, I might be able to agree with you.

MR. CASE: Your Honor, I can remind the Court again ---

THE COURT: I know, Mr. Case.

Move along and finish up. I'm going to put a time limit on it.

BY MR. MARTIN:

Q. I want to show you, Mr. Saad, a set of emails the first one being Sunday, March 27, 2011 to Robert Poole from you and would you please read that into the record.

A. "Robert, I spoke to Arthur on Friday regarding the request to review all CIF paper records in preparation for a civil suit filed in New Jersey. Arthur said he was glad to cooperate and provide us with the remaining CIF records."

MR. MARTIN: I'd like to mark this Defense

Exhibit 1. Actually, Your Honor, we have several exhibits we'd like to mark as one in propher for the Court.

THE COURT: I don't know if they're relevant or not.

MR. CASE: We object. He hasn't laid a proper foundation for these documents.

MR. MARTIN: Well, he just told me it was his email so what's more proffered than that.

THE COURT: No, you told him it was his email.

BY MR. MARTIN:

Q. Is that your email, Mr. Saad?

A. It appears to be. I wouldn't argue that it's not. It's copied several lawyers and again it says Arthur said he would cooperate so I'm telling my attorney he said he cooperate.

MR. MARTIN: Then I would ask that this be admitted.

THE COURT: Put it in. But move along because I'm going to give you about five more minutes.

MR. MARTIN: Your Honor, but Your Honor I would respectfully ---

THE COURT: I know you're going to object to it. You have delayed and fiddled around throughout this entire examination. You have not limited your questions

to the issues contained in the pleadings.

(Documents marked as Defendant's Exhibit No. 1 for identification and admitted into evidence.)

BY MR. MARTIN:

Q. Isn't it true that on June 14, 2011, you asked Mr. Field for his thoughts about a piece of property being sold by the LRI bankruptcy trustee and he responded on June 15th and directed you to Elliot Salsman(ph) as having more information on the matter?

A. I don't recall the specifics.

Q. Please identify what those are for the Court, please.

A. It's an email from me and another email from me. There are three emails.

Q. And the one on June 14th, you asked Mr. Field his thoughts for a piece of property being sold by LRI, did you not?

A. This was sent to Arthur and Elliot and it talks about this property being sold to the LRI bankruptcy trustee noted by me that they were selling some property.

Q. And he cooperated with you, did he not?

A. By way of responding, he provided the information, yes, in a subsequent email. And then I thanked him and then I passed that information on to the attorneys. That's an example of cooperation.

MR. MARTIN: Your Honor, I'd like to enter this into evidence if there's no objection.

MR. CASE: Your Honor, on this first exhibit I'd like to know that it is redacted and not a complete exhibit and we would object on that basis. The second document we do think that it is not relevant. It is redacted as well and just some evidence of cooperation is not relevant to this issue of the rule to show cause. We would object.

THE COURT: Over your objection, I'll let them in.

(Emails marked as Defendant's Exhibit No. 2 for identification and admitted into evidence.)

MR. MARTIN: For the record, the only redactions is when it was sent to my office and I just took that header off.

THE COURT: You're not a witness so the documents are what they are.

MR. MARTIN: Yes, Your Honor, they are. I'm just making a representation as an officer of the court since I prepared the document.

THE COURT: Fine. You're down to about two minutes, Mr. Martin.

BY MR. MARTIN:

Q. Isn't it true that on March 27, 2011 you also

informed Robert Poole with the Cooper Law Firm that Arthur was glad to provide any records needed for the civil litigation in New Jersey?

A. I don't recall.

Q. Please identify this if you can, please, sir.

A. An email from Arthur to me dated March 28, 2011, copied to Curt Stodghill, Robert Poole, Chris Westrick, (inaudible,) Arthur says, "It's my believe I've already delivered all the records to Jerry and if Robert could specify what he's looking for and some help expediting things. Remember I have no records concerning Lancaster Lending. Prior to 2003 all funds were taken to CIF direct to LRI under a revolving note which I believe you already had. A (inaudible) substitute. You have details on every property in existence regarding LRE as of 2007. The only direct involvement were two condos if memory serves. Everything else Chris (inaudible) already knows. You should subpoena Michael O'Shae who lives in Simpsonville (inaudible). Still I am more than happy to cooperate."

Q. And he was cooperating. That was useful information, was it not?

A. Yes.

MR. MARTIN: Any objection?

MR. CASE: No objection.

MR. MARTIN: Exhibit 3.

(Email marked as Exhibit No. 3 for identification and admitted into evidence.)

THE COURT: Okay. Time is up. You can step down, Mr. Saad.

MR. MARTIN: Just for the record, I would like the record to reflect that I have not had an opportunity to complete my cross-examination, that the issues raised by this witness are voluminous over many many years and many many documents and many many court cases. I haven't had an opportunity to properly cross-examine him. For the record, I would respectfully ---

THE COURT: Well, you failed to focus your examination on the issues presented in the pleadings and we're not going to sit here all night if you're not going to do that.

Anything else? What about the guy from New Jersey.

MR. BRANDT: If it please the Court, Your Honor, we have a witness, Mr. Chris Westrick, an attorney from New Jersey and the purpose of his testimony would to confirm the lack of cooperation of Mr. Field in New Jersey and, in fact, his obstructive tactics in the litigation in New Jersey with regards to Mr. Saad attempting to collect a debt that is due and owning to CIF. I am happy to put him on the stand and he is happy to testify.

We brought him down here for that. We have submitted and introduced into evidence Plaintiff's Exhibit No. 1 the documents beginning on No. 6 down to No. 18 which include a letter to the judge in New Jersey asking for emergency relief to prevent this hearing from going forward. It is clear based on these documents that Mr. Field has obstructed in violation of the global settlement order in every way possible with accusations including Mr. Saad has paid his paramour $40,000 out of CIF funds.

I am happy for Mr. Westrick to testify to confirm this and I will defer to the Court in the interest of time of not having him testify but represent to the Court that he is going to identify these documents and represent to the Court the behavior of Mr. Field that is shown in voluminous detail in the documents in Plaintiff's Exhibit No. 1, 6 through 18.

THE COURT: Where is this alleged $40,000 payment? Can you tell me where it's contained?

MR. CASE: In the affidavit of Jerry T. Saad, Your Honor, and a statement to the effect that that was a false statement that was made.

THE COURT: If you find that, tell me.

MR. BRANDT: Paragraph 24 of the third-party complaint.

THE COURT: What tab is that? Tab 8.

MR. BRANDT: Yes, Paragraph 24.

MR. MARTIN: I would object to any testimony regarding an action in New Jersey is a New Jersey action. This is an action in where Mr. Field is sued and he has a right to defend himself. The action has been dismissed in his favor and has been dismissed by the appellant court system and has absolutely nothing to do with the issues that are before the Court ---

THE COURT: It has a lot of do with it if he's making allegations about the receiver that are not true.

MR. MARTIN: These allegations were not admitted. The third-party complaint was not allowed in court.

THE COURT: He signed it and he wrote it.

MR. MARTIN: And it has to do with the case in New Jersey, not anything to do with this case.

THE COURT: And it's the receiver trying to marshal the assets and it's your client not complying with the global mediated settlement agreement and cooperating with the receiver to collect the assets for the 688 or 689 people who lost a lot of money and for the record note that Mr. Field has pled guilty to criminal enterprise with respect to that.

MR. MARTIN: Well, Your Honor, this Capital Investment versus Calvary Asset Management in the Superior Court of New Jersey is not the case before us today. Mr. Field was personally sued and he has a right to defend himself. The action was found meritless and it was loss and they have the right to appeal, they did appeal, and they lost. This is not an action before this Court in this jurisdiction. It has nothing to do with the global mediated settlement agreement in 2009 where the documents were produced and whether he was called as a witness to testify a year and a half which is what it was required to do.

MR. CASE: He's making misrepresentations, Your Honor, and we have a witness here that will straighten this out.

THE COURT: Call him and put him on the stand.

THE CLERK: Put your left hand on the Bible and raise your right hand.

CHRISTOPHER WESTRICK(ph), having been duly sworn, testified as follows:

Thank you. State your name for the record.

THE WITNESS: Christopher Westrick.

DIRECT EXAMINATION

BY MR. BRANDT:

Q. What is your occupation?
A. I'm an attorney.
Q. And where do you work and reside?
A. My office is in Newark, New Jersey and I reside in Long Valley, New Jersey.
Q. What is the name of your firm?
A. Trestler LLP.
Q. And where are you admitted practice law?
A. I'm admitted before the courts in the State of New Jersey, New York, federal courts in New York and New Jersey and the US Courts of Appeal in the 2nd and 3rd Circuits.
MR. MARTIN: Objection for the record. This lawyer was my client's lawyer in New Jersey. He has an attorney client privilege with my client that he's about to break. He was recused from the case in New Jersey because of that conflict of interest and he's now trying to do an end around on his duties to his client by coming in here and getting back at my client and it's totally inappropriate and it's just as wrong as rain.
THE COURT: If he gets into attorney client privileges then you need to object to it.
MR. MARTIN: He brought this action in New Jersey and he was recused over his objection.
THE COURT: I don't know that, Mr. Martin.

MR. MARTIN: We'll be glad to take that up and show the documents, Your Honor.

THE COURT: If he gets into something that's going to violate attorney client privilege, you certainly need to object to it. Right now there's nothing to show that that's happen or is going to happen. Thank you. Your objection is noted and overruled.

BY MR. BRANDT:

Q. Mr. Westrick, were you retained by CIF to pursue a claim and tell the Court if you would what was the nature of the claim against Calvary Asset Management?

A. Yes, I been representing CIF and only CIF, not Mr. Field personally, since 2008. I was requested by CIF last year to file an action which was filed in the Superior Court in New Jersey, Burgen County, seeking to recover proceeds of the sale of 457 Carlton Road property.

Q. Is the $305,000 that was referred to earlier that Mr. Saad referred to in his affidavit and receivership?

A. Yes, seeking to recover not only the $305,000 check that was not made good on but also some other proceeds that we were supposed to follow and sell.

Q. And during the course of that litigation, did Mr. Field file certain memorandum, affidavit, proposed third-party complaints, letters to you, letters to the judge that are referenced in Plaintiff's Exhibit 1 and 6

through 18?

A. Yes.

MR. MARTIN: I would object to the relevancy and admission of those documents.

BY MR. BRANDT:

Q. During the course of this litigation, were you retained by Mr. Saad to pursue this claim for CIE?

A. Yes, I was.

Q. Did Mr. Field do anything to assist in the collectin of this debt?

A. Not only did he not do anything to assist, but he's done everything above and beyond simply defend himself legitimately in the lawsuit which would be his right. He has gone above and beyond the limits in misrepresenting things to the court in New Jersey, of course, with conduct that's clearly been designed to interfere with our ability to collect.

Q. When you said he's made misrepresentations, would you give the Court just an example -- I do not want to waste the Court's by going over everything we've submitted into evidence, would you tell the Court just some of the more salient misrepresentations made by Mr. Field to the Court in this matter.

A. Sure. Mr. Martin has highlighted one for the Court which is I represented Mr. Field. It was on the

basis of that deliberate misrepresentation that the New Jersey court did disqualify me in the case. That is pending on appeal at this time. So again the representation that has been affirmed by the appellant court, that is incorrect.

Q. Did he make representations regarding this Court retaining jurisdiction or not retaining jurisdiction?

A. Yes, he made misrepresentations in the context of a motion to dismiss the case and to disqualify counsel. I spoke about the disqualification part. On the dismissal part, Mr. Martin claimed it was dismissed because it was meritless, that's false. The Court's dismissal was based primarily upon res judicata and collateral astople. Mr. Field argued that those theories were based upon the global mediated settlement agreement and he misrepresented numerous times in his original motion which is Tab 6 in the binder and in his affidavit in support of the motion which is Tab 7 in the binder as well as an oral argument the transcript of which is Tab 17 in the binder.

He misrepresented the content and the scope of the global mediated settlement order. He perpetuated the notion in front of the New Jersey court that the global mediated settlement order disposed of any and all claims that CIF ever had or ever could have against Arthur Field.

He misrepresented to the New Jersey court and perpetuated the notion for that court that the global mediated settlement order by way of the global mediated settlement order that Your Honor retained jurisdiction, not only to ensure compliance with the order which is how it is written, but jurisdiction over any future claim that CIF might bring against him.

Q. Thereby denying CIF the opportunity to bring action in another jurisdiction?

MR. MARTIN: Objection, leading.

THE WITNESS: That's absolutely the position that he took and we've cited the affidavit of Mr. Saad that cite the specific instances that support that.

BY MR. BRANDT:

Q. As a result of this behavior by Mr. Field in this litigation and these filings, have you and your staff at your law firm had to expend tremendous numbers of hours to defend this matter?

MR. MARTIN: Objection, leading, Your Honor.

THE WITNESS: We have spent hundreds of hours everyone combined responding to the incredibly voluminous motions filed by Mr. Field. His motion to dismiss, he filed a motion seeking leave to file a third-party complaint that was mentioned a few minutes ago that contains all kinds of ridiculous allegations including the

paramour allegation, claims against myself, against Mr. Saad, against Mr. Stodghill. Those frivolous pleadings all had to be responded to. As I said, he has a right to defend himself because we sued him, but he doesn't have a right to invent fact and misrepresent things to the court.

BY MR. BRANDT:

Q. What is your estimation to a reasonable degree of certainty to the amount of funds that CIF has had to expend to defend these motions and allegations filed by Mr. Field in this case?

A. I've started the analysis but I haven't completed it so if the Court wishes me to submit something later, I can.

MR. MARTIN: We would object to all of this testimony.

THE COURT: Go ahead.

THE WITNESS: Thank you. My best estimation right now is that it probably cost CIF at least $75,000 and that's carving out some of the work that arguably would be legitimate.

BY MR. BRANDT:

Q. In compliance with the terms and conditions of the global settlement agreement, did Mr. Field ever cooperate at all in the litigation to help CIF recover the

$305,000 that CIF sued for in this litigation?

MR. MARTIN: Leading, Your Honor.

THE WITNESS: No, he's done everything possible to obstruct and try to fire me as well. He sent me a letter on January 17th of this year, Tab 9 in the binder, this is shortly after the motion to dismiss, we were in the process of preparing our opposition. Mr. Field sent me a letter that's quoted in Paragraph 13c of the affidavit where he purports to discharge me as counsel of CIF and the discharge Jerry Saad as he put it acting manager of CIF. Not only did he do that, he copied on his letter the presiding judge in New Jersey clearly in an effort to undermind what we were trying to do.

BY MR. BRANDT:

Q. Would you speak to Tab 18 and what you had to do in response to that?

A. On August 23, 2013 Mr. Field sent a letter with what purported to be an emergency application to the New Jersey Superior Court to the judge that's hearing the Calvary case. This was after I believe Your Honor issued the order for the rule to show case. In that Mr. Field asked the New Jersey judge, after having argued to that judge any claim against him must be brought back here before Your Honor, he then asked the New Jersey judge to overrule this proceeding, to stay this proceeding, and

various other relief that sets forth in there clearly going back to ask the New Jersey to assert jurisdiction.

Q. Have you read Mr. Saad's affidavit?

A. Very thoroughly.

Q. And do you confirm and do these documents confirm the misrepresentations made by Mr. Field in that affidavit?

MR. MARTIN: Object to leading, Your Honor.

THE COURT: Go ahead.

THE WITNESS: I'm sorry I didn't hear what that was.

THE COURT: He objected to the leading nature of the question and I've already overruled on that.

THE WITNESS: Yes, and this shows the highlights.

BY MR. BRANDT:

Q. And are there numerous others?

A. I realize it's voluminous but there are misrepresentations throughout all of this paper that's contained in this binder.

MR. BRANDT: That's all I have.

CROSS-EXAMINATION

BY MR. MARTIN:

Q. You're a lawyer, correct?

A. Yes, sir.

Q. And you lost the case in New Jersey, did you not?

A. No, sir.

Q. What happened on February 15, 2013 when Judge Fursella(ph) issued her order? She said, "Defendant Arthur Field's application to dismiss with prejudice, plaintiff's complaint is granted," did she not?

A. That is part of her order.

Q. And you still have the case going against the other defendants but you lost against Mr. Field, did you not?

A. It depends on how you define lost. I had a ruling which I believe to be erroneous which is currently up on appeal.

Q. And that appeal was denied on August 9th was it not?

A. One aspect of the appeal was denied.

Q. So you lost again on August 9th, correct?

A. No. As a matter of fact, we have a motion pending for clarification before the New Jersey appellant division.

Q. You filed a motion ---

A. Let me finish, sir. The reason is that the appellant division in denying the motion for leave to appeal seems to have treated the application as an interlocutory appeal which means that the decision below

was erroneous in finding that there was a final judgment against dismissing our claims against Mr. Field.

Q. Isn't it true that the judge in New Jersey had a copy of the global mediated settlement agreement to read, did she not?

A. I believe she did.

Q. And she ruled based on that that no action was brought within three years against Mr. Field, is that right?

A. No, that's not right.

Q. And you were not allowed to sue him in that case, isn't that correct?

A. If you are suggesting she ruled on statute of limitation, sir, you are absolutely incorrect.

Q. I am suggesting she ruled that you had no right to sue Mr. Field in this action, correct?

A. That's absolutely incorrect, sir.

Q. So when she said, "Defendant Arthur Field application to dismiss with prejudice was granted," that's incorrect?

MR. BRANDT: If it please the Court, Your Honor, the purpose of this witness's testimony is to show the obstructive conduct of Mr. Field to prevent CIF from pursuing a legitimate claim for $305,000. We do not need to try that case.

THE COURT: Objection is well taken. I'll let you go a little bit but not much, Mr. Martin.

BY MR. MARTIN:

Q. Mr. Westrick, isn't it true that she also found that you had a conflict of interest because you had represented Mr. Field himself?

A. She made that finding based upon Mr. Field's direct and blatant misrepresentation that I represented him as his attorney which never occurred.

Q. That was a question of fact and you lost, did you not?

A. She made that finding based upon his misrepresentation.

Q. And you lost, did you not?

A. You can saying it and I'll keep telling you that it's up on appeal, sir.

Q. And the appeal was denied on August 9th, was it not?

A. I've explained the procedural status of that. If you need me to explain it again, I will. Do you need me to explain it again?

Q. You don't get to ask questions.

THE COURT: Allow him to ask the question.

THE WITNESS: Thank you, Your Honor.

BY MR. MARTIN:

Q. Now, this action in the Superior Court of New Jersey, you were the lawyer that actually sued Arthur Field, did you not?

A. Yes.

Q. So you're in here asking this Court to hold him in contempt because he defended himself and not help you sue him; is that right?

THE COURT: He's not a moving party in this. He's a witness.

MR. MARTIN: Yes, Your Honor, he is a witness.

THE COURT: He's not asking me to hold anybody in contempt.

MR. MARTIN: He has clearly testified under oath that Mr. Field did everything to obstruct his lawsuit.

THE COURT: Mr. Martin, you're mischaracterizing his status in this matter, he's a witness in the case. He's not the moving party before the Court.

MR. MARTIN: That's true.

THE COURT: Thank you. Move on.

MR. MARTIN: But he is a witness ---

BY MR. MARTIN:

Q. You sued Mr. Field, did you not?

A. In that case in New Jersey, yes, I did.d

Q. Would you normally expect a defendant, and you're a lawyer for how many years ---

MR. BRANDT: Your Honor, that's asking for a legal conclusion the Court can make but it has no relevance to this case.

THE COURT: Move along, Mr. Martin. Clearly you've asked the questions to show his bias or prejudice. I am aware of what you're doing now move along.

MR. MARTIN: Thank you, Your Honor.

BY MR. MARTIN:

Q. Isn't it true the case continues but just doesn't continue against Mr. Field?

A. Presently, yes.

Q. So you could get that money back for CIF, could you not, if you win?

A. Possibly, yes.

Q. You never call Mr. Field as a witness for you in that case to testify on behalf of CIF in that case, did you?

A. I never had an opportunity to call him as a witness. He has refused thus far to physically appear in New Jersey to argue motions in the case. So our right to call him as a witness, I would have some logistical difficulties.

Q. Just answer the question, please, sir.

THE COURT: He is answering the question.

THE WITNESS: He's provided testimony in the case thus far in the form of sworn affidavits, at least two of them, and he provided sworn testimony during oral argument proceeding on May 28, 2013 where he participated by telephone.

BY MR. MARTIN:

Q. Again, my question is, you have never called him to testify on behalf of CIF as a witness in that case, have you?

A. I already answered that, sir.

Q. No, you talked about other things he did.

A. If you read the transcript, you'll see that I answered your question.

MR. BRANDT: Objection.

THE COURT: Sustained.

BY MR. MARTIN:

Q. You realize that the global mediated settlement agreement only requires him to testify on behalf of CIF only as a witness in a case, isn't that true?

MR. BRANDT: Calling for conclusion, Your Honor.

MR. MARTIN: Isn't that true.

THE WITNESS: Let me refer you to Page 4 of

the global mediated settlement agreement which you've read a few times today. But I'm going to refer you to the part you haven't read, it's about half way down, and it reads, "It is further agreed that without waiving any of his rights, Arthur Field shall also offer truthful testimony, shall agree to cooperate in any proceeding in state or federal court to include bankruptcy court and such cooperation shall include testimony and or deposition which shall be without cost to the receiver or note holders. However, out of pocket expenses will be reimbursed while traveling more than 50 miles from Greenville.

BY MR. MARTIN:

Q. Thank you, sir. You've never called him as a witness, did you?

A. I'm not finished with my answer. As I understand what I just read, he's required to provide truthful testimony. That doesn't matter if I call him as a witness or he volunteers testimony in a sworn affidavit or when he's sworn in under oath in oral argument as he was in this case, he gave sworn testimony to the court of New Jersey on at least three occasions I've identified for you. Pursuant to Page 4, he's obligated to give truthful testimony. It doesn't matter if I call him or not, he's got to testify truthfully and he hasn't done that.

Q. It is true that the agreement says he only has the duty to appear as a witness when called by CIF and you've never called him as a witness, isn't that true?

MR. BRANDT: Your Honor, we have plowed that ground 50 times today.

MR. MARTIN: He is evasive in his answer and I have a right to follow up on it.

THE COURT: I'll let him ask the question one more time.

BY MR. MARTIN:

Q. Isn't it true you've never called him as a witness, you've never subpoenaed him, you've never asked him to take a deposition, you've never served him with a request to produce, have you, not once?

A. You went one step too far, sir. I did serve him with a request to produce. No, I did not call him as a witness because I have not had the opportunity yet.

Q. And you lost in New Jersey and you're hoping to get it reversed?

THE COURT: That's asked and answered.

THE WITNESS: Sir, you're right.

MR. MARTIN: No further questions.

MR. BRANDT: Nothing further. I ask that this witness be excused?

THE COURT: Thank you, very much, sir. Thank

you for being here.

Anything else?

MR. CASE: Not from this side.

MR. MARTIN: Your Honor, we would like to present affidavits and an opportunity to respond to this witness that was a surprise witness to us, we did not know he was going to be here, so the Court can make a proper ruling.

THE COURT: No, sir, if you have something you want to put up, put it up now.

MR. MARTIN: This is why normally in a proceeding I have an opportunity to defend my client, today I didn't have that opportunity and therefore flying in a witness from New Jersey, a lawyer, how in the world would I know that that would be part of this case and I'm asking the Court for an opportunity to supplement the record in order to have a fair hearing for my client.

MR. BRANDT: If it please the Court, this is to rule to show case hearing for his client to show why he should not be held in contempt for violating the terms and conditions of the orders of this Court. Who testifies at the hearing ---

THE COURT: Point well-taken. When was it served? I forgot the date.

MR. BRANDT: I believe it was August 22nd.

MR. MARTIN: We did not get served, Your Honor.

THE COURT: Yes, you did. I've already ruled on that.

MR. MARTIN: I call Arthur Field.

THE CLERK: Raise your right hand.

ARTHUR FIELD, having been duly sworn, testified as follows:

Thank you. Give your full name for the record.

THE WITNESS: Dr. Arthur Field.

DIRECT EXAMINATION

BY MR. MARTIN:

Q. Dr. Field, would you please tell us what you have tried to do on behalf of CIF and the receiver in providing them the documents and complying with the global mediated settlement agreement?

A. From the very first day before the global mediated settlement agreement was signed, Your Honor, I have tried to cooperate ten thousand percent. I have gone way beyond anything this Court requested me to do. I know this Court does not think so but I can not imagine what I could have done more. I have spent countless hours working with Jerry Saad.

To be specific, before the global mediated

settlement was signed, Gene Connell asked me -- I'll go backwards. In May 2008, Your Honor asked me and again in July of 2008 Your Honor asked me to provide a listing to yourself and to all class counsel of all loans that were held by CIF. I did this. I included all loans that I knew to be held by LRI and loans all properties to be held by CIF. Gene Connell, class counsel at the time pursuant to your order, Judge, asked me to prepare an update of that in January of 2009 to get ready for the mediation before Judge Stilwell. I did that.

I then met with Jerry Saad, I met with class counsel and I met with any other expert they had and went through all those loans and explain to them all of those properties. The sale in New Jersey was clearly set forth on a page there. It said the contract of sale had been executed. The closing was only awaiting. The sheriff's deed and the writ of possession it said exactly how much and I gave them a copy of the contract, a copy of the HUD which I had already provided to Attorney Westrick. Attorney Westrick(ph) had been my attorney for two years and Attorney Westrick had been Mr. Salsman's attorney for four years. I had paid personally Mr. Westrick $96,000 at that point.

We went on and on. We showed up at the global mediation and I went through every document. The

global mediation agreement says that they had gone through every document. I also gave copies of all the loan files I had.

Now, as far as Lancaster Resources, Mr. Westrick had all those files because in 2008 I initiated a case against Lancaster Resources, Inc., and sent Mr. Westrick every document that CIF had. There were almost no documents. There was a note, an amended not, a revolving note, a revolving security agreement. The original note was prepared by Judge Hill. The revolving note was prepared by the Bannisters. The amended note was prepared by another judge. I forget which one, but that was it. That was all there was were those three documents. They were given those.

THE COURT: For the record, Judge Hill, did not prepare any documents. Attorney Hill prepared the documents and was subsequently elected to the Thirteenth Circuit bench.

THE WITNESS: Yes, sir, Attorney Hill. I apologize it. I called him by his present title. Nevertheless those documents were prepared. They were always prepared by attorneys, I didn't prepare them. The attorneys in New Jersey also had counsel. CIF had nothing.

I think what everybody misunderstands is what

CIF was. It raised money in South Carolina and from '99 to 2002 it lent that money directly to New Jersey. It had no lending function whatsoever. From 2002 on it had three relender and they were represented and managed by first Lancaster Resources and then second Attorney Scott Pfeiffer. All the documents dealing with loans were in his office but from the GMSA on, I then worked the entire time before July 23rd with Mr. Saad on numerous occasions in his office going over the documents. He got the keys to the office and he went there.

Now, there has been terrible misconfusion and misconception about this -- and by the way I'm willing to give them absolutely everything. Anything I have, they can have. I don't want any of it, I never wanted any of it, but if I've got it, they can come get it. They are welcomed to it. I have no problem with that and I tried to make that painfully clear for years.

But in any event, there were three offices inside the CIF offices in Easley. That wasn't the conference room. One room held the note holder files. Legal Eagle came and took those, boxed them up, took them to Legal Eagle and did $54,000. This is when the GMSA had been negotiated in April. Ralph Gleaton wen and said that that's a ridiculous amount of money. He represented CIF at the time ---

MR. BRANDT: Objection, Your Honor, hearsay.

THE WITNESS: I've got the ---

THE COURT: That's alright. Go ahead but we're not going to talk about the whole history of what went on. We're here for a specific limited purpose.

THE WITNESS: Yes, Your Honor, and the problem is I gave them all of these and I gave them in 2010 and 2011. Any time Jerry Saad contacted me, I gave him those documents. Now, did I have control and possession of them, no. Often I had to go find someone who had those documents, but I always do. I fly to New Jersey, I do anything this Court wants. I even show up at hearings that I'm not even expected to be at to try and help Jerry Saad get the information he needs because it was in my best interest in getting the money back to the note holders because I had money in the company.

Clearly, Your Honor, crafted a settlement that balanced the line between my Fifth Amendment Rights and I never stole a penny, Your Honor. I pled guilty to securities fraud, not theft and I never took a dime and I don't think even Joe Jordan is sitting right here right now from the Attorney General that said I took a dime.

I'm sorry you feel that way, Judge, but I didn't take those people's money. Nevertheless I went forward and helped both Jerry and Mr. Westrick(ph) and

Curt Stodghill and every other attorney involved at any time trying to relocate documents. Does Mr. Saad have a video, no, he doesn't. He can have it now. I had to get it to produce to the Attorney General and I didn't have it. It had to come from somebody else, I had to obtain it. He's welcomed to up. Do I have the 96 boxes, no. I gave him the location of them and told them they were being scanned. I gave them the scan. Those are the note holder files. Do I have the 96 boxes, no, I don't have the 96 boxes. They would take up the courtroom almost and I told them where they were and where to go get them. Whether he got them or not, I don't know. When I saw him in November of 2011, I told him did you get the boxes, he said, no, and I said I don't know if they're still there but I don't have them and if you want them, you've got to get them.

What's in those boxes are exactly what's in those scans. There is nothing in the scans that involves a loan. The scans were just of the note holder files. It took six months to scan them day and night and they got the scans of every page of note holder files. That has nothing do with Mr. Saad's ability to collect money. That has to do with class counsel paying out the money. As far as the loans go, Mr. Saad walked into CIF offices and cleaned them out. He took everything that was there and

that's where ever loan holder file was. Every file involving a loan was in CIF office. The only thing I have on my computer is word drafts of the blank documents when the lawyer courteously sent me a copy and I have given those to them.

What then happened was he requested more and more and I gave him more and more. I never held back, Judge. I wanted them to have it, I never didn't want them to have it. My intention was to cooperate at all times. In November I get handed a request for production and Judge, I think this is important so I'm telling you. I think that you really need to understand if you would they handed me a request for production at 3:00 p.m., after I had been there all day. I said to them and they called me up and said they had to prepare for you and I was happy to help.

I came in and I worked with them all day. He hands me the request for production and I said to Mr. Stodghill I am not a party, you can't give me this. This isn't how you do it. You need to subpoena me mostly because I was again fighting off the Attorney General who was attempting to get the documents, but I said, you know what, I'll cooperate anyway. I went home and I resent all the documents, 75 attachments. It was thousands of pages more I sent Mr. Saad.

THE COURT: When was that?

THE WITNESS: The night they handed me the request for production.

THE COURT: When was that?

THE WITNESS: November 29th of 2011. I send them more and I photocopy all of these and they're in the court record and I send them all more and then I start looking for any email I can find and I send them again. It's like the eighth time he's gotten copies of these emails and I sent all the emails again. And then amazing there is a power surge and the computer catches fire. I throw a blanket on the computer. I call Mr. Saad and said the computer is one fire. I'm going straight down to Computer Direct Outlet now. I'm going to buy a new computer and have them reclaim it. I hope, for God's sake, I can get anything else.

I did manage to do that. I put in more emails. The only emails I can't send him are the ones before 2005 because they're on the Charter account. They're not on the out mail or G-mail account and I have given Mr. Joe Jordan who is sitting the court authorization to get them and he can't get them. Nobody can get them. I wanted them. I wanted to give them to the State and I believe Mr. Jordan will gladly confirm I spent 447 hours given them every document. I will gladly

with no reservation give every document Mr. Saad wants. He can come to my house. I made that offer to Stan Case three months ago.

I don't know what to give them if they won't tell me what they're missing but they can have it all over again. I'm not obstructing ---

THE COURT: Thank you for the narrative. That's not the way we do things in a courtroom. You ask the question, Mr. Martin, and he answers it.

BY MR. MARTIN:

Q. Speaking about the 96 boxes, was the contract with a third party that said they would store them for a certain period of time?

A. Yes.

Q. What was the name of that company?

A. Empire Document, they scanned them all and they gave the scan to Mr. Saad.

Q. And did you tell Mr. Saad about the contract with Empire?

A. I did in July of 2009 when there was a rule to show cause and they objected to the $17,500 and I said to everybody do you not remember we entered into a contract and I even say on the record, and Mr. Saad is nodding yes and they wrote that down, and they all went over it and they all knew where the boxes were and they were getting

the scan and were happy with it.

Q. Did Mr. Saad have a copy of the Empire contract?

A. To my knowledge, a copy was exhibited because Tommy Winsor filed an affidavit and adhered to a rule to show cause then and everybody was pleased with that. There was no problem with the scanning.

Q. Was there a time period where if the documents won't picked up, they would be destroyed by Empire?

A. To my knowledge, there was a time period where the documents would no longer be owned by Empire.

Q. Did you remind Mr. Saad of that deadline?

A. Absolutely.

Q. Before the deadline passed?

A. Absolutely.

Q. And what did he say?

A. He said he kept them.

Q. Have you seen those documents?

A. I have not seen those documents since they were scanned but to my knowledge when they were being scanned there was a random check on those documents and the scans were complete. I provided the State of South Carolina with those scans as well and to my knowledge every document on the scan matches the spread sheet and it's fully scanned. There were 110,000 pages scanned and delivered.

Q. Now, as far as the loans, the other side of the equations, the loans that CIF made, I'd like to show you an exhibit which would be No. 4 and I'd ask you if you would review it and tell me what that is.

A. This is the loans as of July 25, 2008 I produced in response to Judge Miller's order. It is about 15 pages loan. It details a cover sheet on the loans and it detail details on each and every loan owned by CIF at the time. It also has a breakdown of each of the Lancaster Loans and the Lancaster properties. And it has notes concerning the status at that time of July 25th of 2008, and on the very last page it has a breakout on the Trazon loan and how the Trazon loan came about where Mr. Saad was the receiver on the Trazon Tiger Moore loan.

It also has an assignment of the chosen action on SRG 457 refers to the attorney, Arthur Miller and that the sale is pending so he breaks is out on great detail.

Q. Do you have any other records other than that?

A. I didn't even have that. I made this from the Quickbook records and I did give Mr. Saad the Quickbooks on Lyon Financial and Bradford Financial and a separate Quickbooks on Capital Investment Funding. I gave them numerous flash drives at the time and if he doesn't have them, he can have them again.

Q. Is there anything that he would need that he couldn't collect these loans? Anything that you may have that he doesn't have?

A. Absolutely not. He could have collected any of these loans.

MR. MARTIN: Your Honor, I'd like to introduce this Exhibit 4 into evidence.

MR. BRANDT: No objection.

(Documents marked as Defendant's Exhibit No. 4 for identification and admitted into evidence.)

BY MR. MARTIN:

Q. I want to show you what's been marked as Exhibit 5 and tell the Court what that is?

A. On January 28, 2009, I prepared again the third update of these forms. This says it was prepared at the request of Attorney Connell for mediation. It breaks out the loans again and it has an updated status on every single loan. It explains and Mr. Saad and I when we sat we actually check marked each of these loans as we went through it so he would know what they were because without my cooperation the loans meant nothing because they're just names. And I explained to him and on Page 14 it updates the SRG and it says, "The property has now been sold, we're simply waiting for an order of rejectment to be issued to the Court." Mr. Westrick was spending

October and November of 2008 trying to get the writ of possession for which he charged $40,000.

The writ of possession was the delay ---

MR. BRANDT: Your Honor, this is just dialogue with not being response to the question. It has nothing to do with this matter.

THE COURT: Sustained.

THE WITNESS: I've clearly set forth ---

THE COURT: No, you don't just get to talk. Ask questions.

BY MR. MARTIN:

Q. Please explain what those documents are?

A. I went through each and every loan and each and every property to give notice to Mr. Saad and the mediation because we were going to go through it at the mediation and the mediation dealt with each of these properties and how they would be handled and that was March of 2009 and this was prepared in anticipation of that.

MR. MARTIN: I'd like this to be admitted as Exhibit 5, Your Honor.

MR. BRANDT: No objection.

(Documents marked as Defendant's Exhibit No. 5 for identification and admitted into evidence.)

BY MR. MARTIN:

Q. Do you have the original documents for the Trazon loan?

A. No.

Q. Did you give copies of the Trazon loan to Mr. Saad?

A. I gave copies of the note, the amended note and the second amended note. Mr. Saad asked me if I had a PDF.

Q. Did you have a PDF?

A. No. That was the only thing he specifically asked.

Q. I'm going to show you now what will be marked as Exhibit 6 and please explain what that document is?

A. Exhibit 6 is a letter I sent to Stan Case on April 9, 2013. This may be the -- I met with Mr. Case the day before and I thanked him for his courtesy. I gave me a table of examples of cooperation. I gave him copies again of every single document I had provided. I believe there are over 400 pages here. There are two letters, first the letter of April 8, 2013 which you handed me two combined documents. The first is the letter of April 8, 2013 and Mr. Case received it and received Stan Case. It refers to the April 5th rule to show cause that was served on me and it says it requested my production and here is my production and I asked him specifically over and over

again what documents are missing and if he would confirm that he has received documents, "please confirm it or object," and I attached every single document that I have.

There are emails, there are documents, there are loan documents from the day I did this all the way back to 2009 and on the following day I bought him more and I filed both of these in court. It's every email that was every email that was ever sent back and forth between me, Jerry Saad, Chris Westrick to prove that I cooperated as much as humanly possible, but again saying if there is a document missing, just tell me and you'll get it. Nobody every responded.

MR. MARTIN: I would like to have the April 8th letter and the attachment admitted into evidence as Exhibit 6. Any objection?

MR. BRANDT: No objection.

MR. MARTIN: And I would have the April 9th letter and the attachments labeled as Exhibit 7. Any objection?

MR. BRANDT: No objection.

(April 8th letter and April 9th letter marked as Defendant Exhibit Nos 6 and 7 for identification and admitted into the record.)

BY MR. MARTIN:

Q. Mr. Field, there has been questions about the

Trazon note, the amended note and the modifications and I would like you to tell us what you know about those and what you gave to Mr. Saad and when.

A. Yes, this occurred in January 2012, Your Honor, after the November order to show cause. First there was Palmetto Bank loan and we needed information from Mr. Saad. Mr. Stodghill wrote me an email, don't ask Mr. Saad ask me directly, I said I can't and I can get into that but first I get an email from Mr. Saad saying do I have PDF copies of the original note of the Trazon documents to which I respond, do you mean the Palmetto Trazon documents or the CIF Trazon documents. He then emails me right back and says CIF Trazon. I tell him that I have no PDF because a PDF is a specific thing with the signatures on it and I don't have that. What I have is photocopies and I say what are you missing and he said he has not found the original note which didn't mean he didn't have a photocopy he didn't find the original.

He said, "I do not see a second amended note. I have the amended note," which is strange because he had a file with all of them and the amortization tables with them. I said fine, I will have my wife drive over and drop off copies of what I have. My wife does drive over the next day, drops it off and asks him if he now has the note, the amended note, the second amended note, and the

modification and he says, yes. That's the next day.

He now has everything. He still doesn't have the original note. The original note was recorded on the land records and returned to whoever recorded it and that's where the original note is but he has a photocopy. Everybody knows what the note terms are because Mr. Saad went to the point of preparing the spreadsheet in April showing all the different rate changes from all the different notes. There's never been a question he has the notes. It's only the original that's missing and I agree it's missing.

Q. And now it's a matter of public record?

A. It's been a matter of public record since the day it was recorded. CIF and Trazon were represented by lawyers. I had nothing to do with it.

Q. Mr. Westrick has appeared and has made several claims against you dealing with an action in New Jersey.

A. Yes.

Q. Would you please explain to the Court why you were sued and what happened.

A. I will back up to November 29, 2012 when I am sued in federal court in US District Court in South Carolina which I did not learn about until it arrives, part of Mr. Westrick's pleadings. I was sued, my children were sued, my wife was sued. This is happening

simultaneously with all these emails

MR. BRANDT: Your Honor, I don't see how this is responsive to ---

THE COURT: We don't need to go all the way back there unless this has something to do with what Mr. Westrick testified to, let's get to it.

THE WITNESS: I'm sorry. I was just trying to lay the foundation of what I was saying so there was no confusion. Mr. Westrick sued me when I was indicted. In fact as it turns out Mr. Westrick worked with the Attorney General prior to my indictment and the complaint is in the Attorney General's file.

MR. BRANDT: I don't know what this has got to do with ---

THE WITNESS: I was ---

THE COURT: Wait a minute. There's an objection.

MR. BRANDT: I just don't see what this has to do with whether he cooperated in the case or he delivered all the records.

THE COURT: That's what the issue is so get there.

THE WITNESS: I will.

THE COURT: Go there directly.

THE WITNESS: Mr. Westrick sues me and I am

served while I'm in jail. My wife is served. I file the day I get out of jail on 30 days bail I file the next day an answer without actually even had the opportunity to review the complaint because that day is the last day to answer but I do answer. I don't file special defenses because I'm dead tired. Later ---

MR. BRANDT: Your Honor ---

THE WITNESS: It's getting there.

MR. BRANDT: What does this got to do with this case?

THE WITNESS: Everything.

THE COURT: No. Mr. Westrick talked about your failure to cooperate and your obstructionist activity. That's what competent for you to testify to. So limit your testimony to that.

THE WITNESS: Yes, Your Honor, but would not my attitude about why and what occurred be relevant?

THE COURT: No, sir.

THE WITNESS: I filed a motion to dismiss approximately in November -- December 26th, 2012. I then get letter after letter after letter from Mr. Westrick for 25 days claiming that this missing, that page is missing, this page is missing, that page is missing but I'm getting copies of the letter he is filing with the judge.

MR. BRANDT: Your Honor, that has nothing to

do with ---

THE COURT: Sustained.

THE WITNESS: Please let me answer.

THE COURT: We want you to answer.

THE WITNESS: So on January 26, I write Mr. Westrick a letter saying -- this is the letter he referred to. This is the letter that he testified to that said I was obstructing. I write Mr. Westrick a letter saying you represented me and I know you're going to be a witness because one week earlier your law firm called me and told me you were going to be a witness in the case and I move to recuse you but clearly you aren't recusing yourself. As 90 percent member of CIF, I discharge you. That was perhaps a bad statement but I was very angry at everything. Things were showing up on a daily basis and i was being harassed constantly as was my family.

I did not send a copy of that letter to the presiding judge. I did not know who the presiding judge was. I had filed a motion and Mr. Westrick puts in everything about the GSMA, I don't. I only file a motion to dismiss based on jurisdiction, non convenience and a few other grounds for failure to state a cause, not res judicata. I don't bring the GSMA.

MR. MARTIN: Can we have a five minute break.

THE COURT: Yes. You may stand down,

Mr. Field and but you may not discuss your testimony.

(Whereupon, there was a brief break.)

Mr. Martin, I don't want to hear about all the wonderful things he has done. I want to hear about the things he has not done. In specific reference to the moving party in this case, he listed note holder files address that, video tape, the computer belonging to CIF, the emails, the outstanding loan from Trazon, the $305,000 check, the New Jersey case which would be the obstruction stuff, and the corporate records of CIF, additionally the York Mortgage Company files and the Bradford Financial, those are things that they've talked about. I want to hear about what we are hear to address.

BY MR. MARTIN:

Q. Computer, let's talk about computer.

A. It was my computer. It was not CIF computer ever. CIF computers were in the CIF offices and Mr. Saad took them. I observed them in his warehouse. The CIF computers had all those records on it. My computer has copies of documents I received from lawyers but also privilege matters because I am an attorney and I represent other people. They are welcomed and I gave the state -- Mr. Joe Jordan -- copies of all files that I have. I am more than willing to provide a flash drive by 5:00 p.m., tomorrow to Mr. Saad or Mr. Saad can come to my house and

do it himself. No issues and as long as Mr. Saad agrees to stay away from anything I show as a privilege client matter and he will clearly be able to do that, he can have it, no problem.

Q. Email.

A. I have given him every email I have repeatedly. They are in a file called CIF in hot mail. That's where they are and one is called SRG 457. I have repeatedly but he came come and he can have it all again, no problem.

Q. Trazon, I think we've covered that enough. Anything else about the Trazon loans?

A. David when he got Trazon before Mr. Saad because receiver the Trazon file was in Trazon's hands and they have discovery in that case.

Q. The New Jersey case tell me why you asked Mr. Westrick to be recused?

A. Because he was my lawyer and he said he would be a witness and he shouldn't be doing the case because he's clearly the witness. I have no problem with them suing 450 Calvary. He did not read from you in the transcript where the next sentence I said, Your Honor, they absolutely should get the $305,000. I'm furious they didn't get it.

Q. Now, let's talk about it. Tell us about that check.

A. That check was received in October 2008. It was exhibited to everybody. It could not be cashed because the title company instructed me not to cash it. The title company in New Jersey, Edwater Title runs the closing. They sent it and sent a copy of the bank statement to prove the funds were good. The writ of possession did not come plus the buyer took over the appeal. There is an email in the January 29th report that details all that. When the writ of possession finally got done and the appeal finally got done, there was a transfer. The buyer and CIF entered into a contract. It is in an email from Mr. Saad to Mr. Westrick saying a see a copy of the contract. Strangely enough it's only signed by Mr. Salsman, not Mr. Field. I never signed the contract. It is a joint venture ---

MR. BRANDT: Are we trying that case?

THE WITNESS: I'm answering his question.

THE COURT: Gone too far.

THE WITNESS: It's in the 2010 and 2011 reports about New Jersey.

BY MR. MARTIN:

Q. Did you tell Mr. Saad about the $305,000 check when it arrived?

A. I give him a photocopy which is how he had the exact amount and he told me to keep it on my bulletin

board. It was sitting on my wife's bulletin board for years.

Q. Now, let's talk about the ---

A. He asked for it I gave it to him.

Q. When was that?

A. The day he asked for it, it got driven over to his office. It took two days. There was an email exchanged back and forth in 2012 I believe and the reason there was an exchange is he promised to get me a receipt and then forgot to have his office do the letter of receipt.

Q. Now, you heard the claims of obstruction of justice in the New Jersey case. Would you please address those specifically.

A. You skipped over Cosomo. The Cosomo records were picked up from Paula Hainey at Scott Pfeiffer's office. Mr. Saad needed those records. I got them. I drove them from Scott's office straight ---

THE COURT: There is no question Mr. Saad has testified that you have done things to help. That's not what we're here about.

THE WITNESS: The affidavit says I did not give him the Cosomo records and he said that.

THE COURT: He did not testify to Cosomo.

THE WITNESS: He got them all and he got the

corporate book from CIF.

BY MR. MARTIN:

Q. When did he get the book from CIF?

A. He got that from --- it was in Easley.

Q. In the offices?

A. Yes. When he cleaned out the offices, that's where it was at because it had to be there for any note holder to be there to inspect it.

Q. Have you seen it since?

A. No.

Q. New Jersey case, specifically deal with these claims of obstruction of justice.

A. Absolutely not. I filed a motion for leave to file a counterclaim and a third party claim. The global mediated settlement specifically says if Field is sued again all defenses, all counterclaims and cross claims are preserved to him and the right to raise his claim for salary and severance pay is preserved. A filed a motion for leave to do that with the pleading attached with a letter to the court which says this is conditional on whether or not you agree to the motion to dismiss. If you do not agree to the motion to dismiss, I would ask Your Honor to file these or reject them or if you do BRANDT the motion to dismiss then it doesn't matter. She granted the motion to dismiss and muted the counterclaims. They were

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
William Tomz and Francis W. Tomz Individually and as Class Representatives	)	CASE # 2008-CP-23-3665
Plaintiffs, vs.	)	**NOTICE OF MOTION AND MOTION TO RECUSE**
Capital Investment Funding, LLC And Arthur M. Field	)	
Defendants.	)	

EXHIBIT B-1

OFFICIAL TRANSCRIPT

9/7/2013

P 162--184

THE COURT: Too far a field.

MR. MARTIN: Mr. Westrick testified that he did not come and testify in New Jersey and he could so we need to establish that he couldn't.

THE WITNESS: She swore me in and I said I couldn't leave the state and she said fine, you're an officer of the court. Mr. Westrick then had the oral argument and she asked me about eight question. One question was this property known prior to the global mediated settlement. I responded, yes, it was. Did he global mediated settlement include this. I said as far as I understand South Carolina law anything that could be raise or could have been raised should have been raised and after all I had filed a cross claim against CIF and we were obviously adverse. And all I was asking for was my severance pay but it was dismissed.

She then ruled on June 10th that the motion to reconsider was late and that even if it hadn't been late, she would still be denying it because she had learned that ---

THE COURT: We don't need to go into that.

BY MR. MARTIN:

Q. Was that then appealed?

A. Yes, it was appealed, late.

Q. And what happened to that?

A. The appeal was denied on August 8th.

Q. The next issue is about York and Bradford Finance. Tell us about what you have done with respect to those.

A. I will but you skipped over the very last thing in obstructionist. I filed a motion with the appellant court in New Jersey and copied the state court in New Jersey under Rue 2-98 asking for emergency relief specifically allowed under their rules. It was not obstructionist at all. I simply asked them to order whatever relief is permitted because the appellant rules specifically say that ---

MR. BRANDT: Objection.

THE COURT: It wasn't even in response to a question. Move on. Next subject.

MR. MARTIN: Can I just proffer it for the record, Your Honor.

THE COURT: He's already proffered it.

MR. MARTIN: He's just halfway through. Mr. Westrick continuously told us what happened in New Jersey was done due to his obstructionist and I need this for the record.

THE COURT: Make it very brief, Mr. Martin.

THE WITNESS: I never interfered with Mr. Westrick's ability to sue the other client. I gave

discovery when it was requested. I gave admissions when it was requested and if they would call me to testify in a deposition, I would gladly do so. I provided copies of all the contracts I had. I provided copies of all the documents. I have no objection whatsoever to them bringing the action. I couldn't figure out why I was a party to it when I was being simultaneously sued for the exact same thing here.

Q. Now, tells us about Bradford Finance and those issues?

A. They were two small loans. Bradford Financial had a very small loan from CIF on a revolving basis beginning in 2002. I gave Mr. Saad a copy of the Quickbooks which was extremely limited. If he's wants another copy, he's welcomed to another copy.

Q. What about York?

A. York was an independent company. It had one loan from CIF for $350,000 fully repaid. It's in the CIF Quickbooks. There is nothing else. It was repaid in 2004, I believe.

Q. There was claims that you have documents of Lancaster Resource previous to 2003. Tell us what you have with regard to Lancaster Resources that you claim you have not given them.

A. I didn't have any of it. Mr. Westrick managed to

obtain much of it in the LRI versus CIF case in New Jersey which is how I got a copy and then I got the other copies from Mr. Joe Jordan and Mr. Cathy under seal so what I have came from the State from LRI. I was never given it. The only ther thing I was an LRI presentation book which was given to me in 2007 by Mr. Robert Lobatti who was president of what was then LRI and then Skymark and I believe I gave that to Mr. Saad. If I did not give it to Mr. Saad, Mr. Saad is absolutely welcomed to it. I'll be more than happy to testify against Lancaster Resources anytime Mr. Saad needs me to.

Q. How about Malmouth Financial.

A. Existed only in 2002. It was the original relender. It was owned by Lancaster Resources. It took up to eight million dollars on individual cite specific loans. I listed those loans for Mr. Saad. It paid down to $800,000 under the order of the auditors. The $800,000 is there. Both the amount of the Lancaster Resources is in the Malmouth outstanding loan were listed in their bankruptcy. Those documents were delivered to Mr. Saad. I have nothing about Malmouth. Mr. Pfeiffer was the manager.

Q. If you were served with a deposition notice or a trial notice, would you be willing to offer truthful testimony on behalf of CIF?

A. Absolutely for hours and hours.

Q. Have you ever been served with any such documents?

A. No, and I don't understand why.

Q. Have you ever been asked to?

A. No.

Q. Have you ever filed a grievance against the receiver or counsel?

A. No. Nor assisted in one.

THE COURT: How about the judge?

THE WITNESS: You want me to say it on the record?

THE COURT: Yes.

THE WITNESS: Yes, sir, I did. I filed a grievance.

THE COURT: How many of them?

THE WITNESS: Just one against you.

THE COURT: How many judges?

THE WITNESS: One against you and one against Judge Few and I withdraw both.

THE COURT: No, sir, you didn't withdraw.

THE WITNESS: I withdrew Judge Fews.

THE COURT: No, you didn't.

THE WITNESS: Yes, I did.

THE COURT: Well, you did not withdraw one

against me. It was summarily dismissed.

BY MR. MARTIN:

Q. What was the grounds of the motion against Judge Miller since he brought it up?

THE COURT: That doesn't have anything to do with what we're talking about here.

MR. MARTIN: You just put it in the record.

THE COURT: No, sir, I'm not allowing you to go there.

MR. MARTIN: Fair enough.

BY MR. MARTIN:

Q. Have you ever represented any order of this Court to anyone?

A. Not to my knowledge at all as far as I understand the order. I am not a South Carolina lawyer and I was not represented by any lawyer here. I represented what I thought the order to say but it was the judge who ruled on the order, not me.

Q. There was a claim that you assured authority to reputiate the rescended, revoke and withdraw the legal action filed against you. Tell us what your relationship with CIF is at the present time?

A. I'm not 90 percent member and under the law I can undeclar the (inaudible).

Q. Was that done in any way or limit or prohibit CIF

from recovering for the loans for the note holders?

A. Absolutely not. It is my belief that CIF if it were back in business as Mr. Saad pointed out to me several times would be making a fortune now.

Q. There was a claim that you tried to circumvent the GSO by seeking to reassert your previous dismissed claims. What was that based on?

A. That the GMSA clearly states that if I am sued I may reassert my claims, defenses, and cross-claims and counterclaims. I never ever sued CIF ever. They sued me and I have never done anything but file request for leave to file a counterclaim.

Q. Was that ever granted?

A. No.

Q. Did any of those efforts inhibit Mr. Saad's ability to collect on the loans for CIF?

A. Not in any manner. In fact if I weren't a party it would be easier.

Q. There was mention about violations of the June 29, 2010 and October 10, 2011 orders. Is there anything you did that violates any of those orders of Judge Miller?

A. No. The June 29, 2010 order was the second order. I actually assisted part in crafting it following the scheduling conference order where it said that I had cooperated fully. Mr. Saad was here trying to get the

documents on WII(3) and Hooper. I agreed with him and WII 3 and Hooper were being obstructionists and I suggested Mr. Saad had subpoena power so the order specifically crafted by Mr. Stodghill says right in it that the five people that can be subpoenaed are BRANDT, Hooper, Pfeiffer, Pinean and one other. It does not mention me at all because I have no information about those people. I never even meet them.

Q. How about the other order?

A. The second order I was in court because the Attorney General was also here trying to get Mr. Saad to give them documents. The Attorney General tried to serve Mr. Saad with a subpoena. Judge Miller would not permit that. Mr. Ferra was here on behalf of CIF and Mr. Pfeiffer. It was out of the bankruptcy issue in front of the bankruptcy court here and the order was crafted because Judge Miller from the bench ruled that under no circumstance would anything be done that would involve or impinge my Fifth Amendment Rights at the time because I kept trying to give documents while not violating my Fifth Amendment and Judge Miller realized that and wrote clear in the order and actually sat and looked at the Attorney General and ---

THE COURT: This is outside of the scope of what we're here for.

MR. MARTIN: It's what they brought in their rule to show cause, Your Honor. They say in their first page he violated that order and I need to give him a chance to respond that he didn't violate that order. They brought it up and it's before you and I'm just trying to complete the record. That's all.

THE COURT: Finish it.

THE WITNESS: No. There was nothing in that order pertaining to me ordering me to do anything. It was specifically to protect my interests and again I kept trying to provide all the documents I could find and I will continue to do so without reservation.

MR. MARTIN: Thank you.

THE COURT: Wait a minute, how long do you anticipate this is going to be?

MR. BRANDT: Your Honor, has a good sense of what is going on in this case and ---

THE COURT: The only reason I ask is we have a day care problem so we can come back in the morning. I don't want to cut it short.

MR. BRANDT: I don't think I will take that long, Your Honor.

CROSS-EXAMINATION

BY MR. BRANDT:

Q. Mr. Field, you've obviously read all global

mediation settlement.

A. All the variations of it.

Q. Well, there's just one variation.

A. There were about eight.

Q. The one that's filed in the court and signed by the court that said you were going to be truthful. You haven't been truthful in all of your filings in the New Jersey court, have you?

A. Absolutely truthful.

Q. You have.

A. To the best of my knowledge at the time, yes.

Q. So is that how you're kind of falling back on everything, everything is to the best of your knowledge at the time?

A. When you make a statement that it's to the best of your information and belief.

Q. For instance, in the third-party complaint that you attempted to file you stated that Mr. Saad has paid his paramour not less than $40,000 from CIF?

A. Yes, sir.

Q. You believe that.

A. Absolutely.

Q. And you believe it has paid $100,000 to Mr. Westrick. Do you have any basis for those beliefs that you submitted to the Court?

A. I did have to submit them, they're in the Quickbooks records. There's $96,000 paid to Mr. Westrick the first time and then there's checks to Mr. Westrick after that. The first ones are the Golden Rochell(ph) Magnola and then the checks are to Traxler Llp.

Q. In Paragraph 44 of that you say you are a 90 percent member.

A. Yes, I am.

Q. Were you at the time or in the global settlement order were you not relieved of all office associates with CIF?

A. No, I'm a 90 percent member.

Q. You still have 90 percent of CIF?

A. Oh, yes, Mr. Saad sends me a 90 percent statement. Yes, I own 90 percent of the company. Under the operating agreement the 90 percent is there.

Q. You testified, did you not, that you did not raise the issue of res judicata in the pleadings in that case?

A. I only responded to res judicata.

Q. You filed a memorandum of law in support of the motion to dismiss and you said this matter is barred by the principals of res judicata and or collateral astopal, did you not?

A. Yes, I said that in the brief, not in the motion.

Q. Well, you testified that you did not raise that issue.

A. It is not one of the issues on which he should rule.

Q. I beg your pardon?

A. The motion is set forth on 11 separate grounds, that wasn't one of them.

Q. You presented that issue to the court, did you not?

A. Peripherally. I would present that issue in every case.

Q. You said that you did not have any other records in this case and yet you have introduced records that you introduced on different occasions. I believe this six and seven that you kept producing volumes of records after you said you didn't have the ability to produce any more.

A. No, I never said that. Those are the same ones I produced over and over and over again.

Q. Well, that's not what your testimony was.

A. No, it is. I don't have the ability to produce records before a certain date. Those records are after that date.e

Q. Is this after the computer fire or before the computer fire?

A. After.

Q. After the computer fire.

A. What I couldn't produce was anything before a certain date as far as emails go because it was Charter and Charter seems to have no access. The Attorney General had that same problem and I signed a release to them to go ahead and do it.

Q. I understand that you had a computer fire miraculously the day after you were presented with the request for production.

A. The fan froze, the dust inside caught fire and there was smoke and flames coming up. I had a double hard drive. I took it to Computer Direct, they hung the mother board on the wall as an example of a bad computer fire, and then I paid extra so they could recover as much from the hard drive as possible because those records protected me and I wanted as much kept as possible. They managed to get quite a bit and I kept giving more of it to Mr. Saad. The fire was actually horrible to me.

Q. It sounds horrible.

A. It was.

Q. Mr. Field, you testified that you over the telephone in the oral arguments before the judge that you delivered truck loads of documents to Mr. Saad.

A. I did.

Q. When did you deliver these truck loads of

documents?

A. Mr. Saad got Cosomo records that took the entire back. There were like 15 to 20 boxes that came. That was a truck load. The 115,000 pages of documents was a truck load and all these other documents I delivered were essentially truck loads of documents.

I gave Mr. Saad tons of documents. It wasn't relevant in the New Jersey case but I did say that and I mean I gave him documents.

Q. How did you assist Mr. Saad in the New Jersey case in collecting the $305,000?

A. I gave him all the documents I had. I flew up there. We toured the property. I worked with him and Elliot Salsman. I introduced him to Salsman, I introduced him to Westrick. I introduced him to Mr. Papalia(ph). I worked with him to try to get the money back and I gave him everything there was and any time he had a question for me about Mr. Salsman I answered it. Mr. Salsman wasn't involved in any of that.

Q. Wait a minute, Mr. Fields. You have looked at Plaintiff's Exhibit 1, I presumed, the notebook.

A. No, that was never shown to me.

Q. Let me let you look at that and I just want to know if you deny submitting all of these documents to the court in the case in New Jersey?

MR. MARTIN: I object, Your Honor, we've gone way far afield. We're talking about the New Jersey case. All their objections on the New Jersey case have been sustained. I'm saying what's good for the goose is good for the gander and I ask you rule this not relevant.

THE COURT: Are you just going to substantiate that this is ---

MR. BRANDT: That's all I'm trying to do.

THE COURT: I'll let him ask that.

BY MR. BRANDT:

Q. Under Tab 6 memorandum in support of the motion to dismiss, did you file this document in that?

A. I'd have to read it but I did file a document.

Q. Affidavit in support of the motion to dismiss, Tab 7.

A. I probably filed an affidavit in support as required.

Q. And you wrote this letter to Chris Westrick, did you not indicating that he was fired and that Jerry Saad was fired?

A. No, that letter actually says how come you keep lying to me about documents.

Q. Did you file the third party claim or requested third party claim with all of the requisite false information in it?

A. No.

Q. You didn't file it?

A. It was not false information. It was absolutely true and that third-party claim I believe would win.

Q. Everything in the third-party claim ---

A. Significantly I believe it's true and I think it would win and enough to make a case.

Q. And you didn't file a letter asking for emergency relief to try to get the federal court up there to stay this action?

A. No, I filed a motion and the motion has now been accepted by the Appellant Court, it's pending in front of Appellant court and the New Jersey Appellant Court does not accept anything it does not believe has merit because I moved for emergency ---

Q. Do you believe ---

MR. MARTIN: Let him finish.

THE COURT: Let him answer.

THE WITNESS: I'm an officer of the court of New Jersey and I dealt with the Appellant Court and the New Jersey Appellant Court accepted it yesterday and it is a motion to dismiss the new thing and for urgency relief under Rule 29-8. It is absolutely specifically permitted and it says this is not meant to interfere with the administration of justice and it asks that the matter be

returned to the lower court to finish against the other defendants. The appeal is holding up the case.

BY MR. BRANDT:

Q. Mr. Field, are you still licensed to practice law?

A. Apparently.

Q. Has your license been suspended?

A. No. Mr. Westrick tried to have it suspended.

Q. You have pled guilty under the terms and conditions of the plea agreement have you not?

A. Yes.

MR. BRANDT: I'd like the Court to take judicial notice of that.

I believe that's all I have.

THE COURT: I just want to ask you is that your signature?

THE WITNESS: Yes, Your Honor, it was in response to about 20 letters from Mr. Westrick and it was probably not the smartest letter ---

THE COURT: I just asked you if that was your signature, that's all.

THE WITNESS: Yes, Your Honor, but the bottom is wrong. I didn't send it.

MR. MARTIN: Do you mind if I look at it, Your Honor?

THE COURT: It's Exhibit No. 9. Do you not have a copy of that, January 17, 2013 letter signed by Mr. Field to Christopher Westrick. It's in the notebook you have.

THE WITNESS: And I asked him to recuse himself. I was very frustrated, Your Honor.

THE COURT: You said that Jerry Saad is discharged as acting manager under the terms of the operating agreement.

THE WITNESS: That's the only authority he had in New Jersey.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. MARTIN:

Q. Would you explain to us the difference between a receiver and a manager at CIF?

A. Yes, to my understanding Jerry Saad was appointed receiver through the GMSA of an LLC which doesn't actually have receivers, but because it is winding up, it has to have a manager. To my understanding, Jerry Saad was appointed receiver but his jurisdiction stops at the borders of South Carolina where this court stops. He did not sue me but CIF sued me in New Jersey. CIF must sue but its manager. This was discussed with New Jersey attorneys. The Attorney General of this state suggested

that I ---

MR. BRANDT: Objection, Your Honor, that's hearsay.

THE COURT: I'll sustain that and you're going way afield.

MR. MARTIN: You brought this up so I'm asking whether ---

THE COURT: I just asked him if that was his signature.

MR. MARTIN: Yes, but you asked about Exhibit 9, Your Honor.

THE COURT: Correct.

MR. MARTIN: I'm just trying to get for the record ---

THE COURT: He has gone way -- that is not responsive to the issue that was raised, Mr. Martin.

MR. MARTIN: It's their exhibit that you have accepted, Your Honor, over my objection and all I want for the record is for him to explain the difference between the manager and the receiver and why he did this in New Jersey.

THE COURT: Let me ask you this, do you have the authority to discharge Jerry Saad?

THE WITNESS: As manager, yes, as receiver, no. The operating agreement clearly gives me the right to

discharge him as manager.

MR. BRANDT: Mr. Saad, has informed me that he appointed himself manager after he was appointed receiver. We would state that categorically we would deny that he is manager.

THE COURT: Okay. Well, we're out of time and anything you want to tell me.

MR. MARTIN: Your Honor, I'd like to tell you that my client has done everything he's been asked to do. As you read the 2009 order it is clear and he has done everything he was supposed to do and he was supposed to wash his hands within 10 days of the thing. For four and a half years he has been helping and we're asking you to dismiss this matter.

THE COURT: Anything y'all want to say.

MR. CASE: Your Honor, we believe based on the record in this matter and the rule to show case that it would be appropriate for this Court to make a finding of contempt. We believe that Mr. Field should be ordered to turn over all the records in his possession to include computer records and back up records and video tapes and webpages and all written documents related to CIF and all the related companies by Friday of this week.

We would hand up to you proposed findings of fact. We would ask that the Court leave the record of

this hearing open so that we make submit statements providing costs incurred in connection with today's hearing in connection with responding to the claims that we contend are frivolous.

THE COURT: I'm going to find that the moving party has met their burden. I'm going to find that he is in contempt. He's admittedly at the very minimum admits that he didn't turn over the video tape. He admits that he didn't turn over the copy of the check that sat on his bulletin board. We can go on and on and I find that he has obstructed the efforts of the receiver to collect the funds. It is through his efforts costs the assets of the receiver extensively to pursue efforts to collect and I find he's just not cooperative. So I am going to order him to turn over everything by Friday, 5:00 and I'll take a look at your proposed findings of facts and see where we go from there.

MR. CASE: I would also like for Your Honor to consider imposing penalties against Mr. Field for the cost and expense that we associated with in attempting to pursue the claim in New Jersey and this.

THE COURT: Well, y'all submit that and I'll take a look at that. I think that's it.

---END OF TRANSCRIPT RECORD---

I, the undersigned, official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas, Greenville, South Carolina on the September 17, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

_____

Caroline Hiskell

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
William Tomz and Francis W. Tomz	)	CASE # 2008-CP-23-3665
Individually and as Class Representatives	)	
	)	
Plaintiffs,	)	
vs.	)	**NOTICE OF MOTION AND**
	)	**MOTION TO RECUSE**
Capital Investment Funding, LLC	)	
And Arthur M. Field	)	
	)	
Defendants.	)	

EXHIBIT C

OFFICIAL TRANSCRIPT

9/29/2016

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s).:2008CP2303665
	)	
William F. Tomz, et al,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Capital Funding, LLC, et al,	)	
	)	
Defendant.	)	
	)	

September 29, 2016
Greenville, South Carolina

B E F O R E:

HONORABLE EDWARD W. MILLER, Judge.

A P P E A R A N C E S:

STANLEY T. CASE, Esquire
Attorney for the Class Action Plaintiffs

GEORGE BRANDT, III , Esquire
Attorney for Jerry T. Saad

TOM STEPHENSON, Esquire
Attorney for Kathryn Taillon

Teresa B. Johnson, CVR-M, CM
Certified Court Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are taken and produced via



I N D E X

	DIRECT	CROSS	REDIRECT	RECROSS
Remarks	4			
Kathryn Taillon				
by Mr. Brandt	15			
Kirsten White				
by Mr. Brandt	75			
Certificate of Reporter	101			

EXHIBITS PAGE

NO.	DESCRIPTION	ID	EV
	PLAINTIFF EXHIBITS		
P-1	Account Statement	16	16
P-2	Account Statement	19	19
P-3	Account Statement	19	19
P-4	Account Statement	20	20
P-5	Account Statement	20	20
P-6	BB&T check	21	21
P-7	BB&T signature card	23	23
P-8	BB&T signature card	25	25
P-9	Prospectus	26	26
P-10	Letter to Eric Pantasari	35	35
P-11	Letter to Tracy Meyers	38	38
P-12	Statement	39	39
P-13	Floating Notes	40	40
P-14	Letter to Sharon Finch	46	46
P-15	Letter	47	47
P-16	Registered Agent Info	50	50
P-17	Statement of Dissolution	50	50
P-18	Articles of Termination	51	51
P-19	Huss Investment	59	59
P-20	Lackey Investment	60	60
P-21	Lancaster Investment	61	61
P-22	2011 Tax Return	65	65

EXHIBITS PAGE

NO.	DESCRIPTION	ID	EV
	PLAINTIFF EXHIBITS		
P-23	Check - Lion Financial	78	78
P-24	Satisfaction	80	80
P-25	Check - Empire Document Service	82	82
P-26	Motion to Set Aside Default	90	90
P-27	Motion to Dismiss	92	92
P-28	Brief in Support	95	95
P-29	Motion for Injunctive Relief	95	95
	DEFENSE EXHIBITS		
	(No exhibits offered.)		
	COURT EXHIBITS		
	(No exhibits offered.)		

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 29th day of September, 2016 at approximately 2:04 p.m.)

THE COURT: We are here on Tomz versus CIF for a rule to show cause.

MR. BRANDT: Please the Court, Your Honor, I would like to first submit affidavits of service on the, uh, rule to show cause order served on Mr. Field in this matter and also rule to show cause for Kathryn Taillon and Kirsten White that I would like to present to the Court.

THE COURT: Okay.

MR. CASE: And I believe Ms. Taillon and Kirsten White -- I'm Stanley Case, attorney for the class, I believe they were witness subpoenas for the rule to show cause hearing, Your Honor.

THE COURT: All right.

MR. BRANDT: If it pleases the Court, Your Honor, we believe -- my name is Buck Brandt. I represent Mr. Saad, who is the receiver in this case, who was appointed by order of this court in behalf of Capital Investment Funding to marshal the assets and proceed under the

mediated global settlement agreement and order approving the settlement that was issued in, I believe, 2009, August of 2009. It was a previous hearing held on this matter in -- I can't remember the exact date. Some time ago. The Court issued this order requiring Mr. Field to do certain things. That was on September 30th, 2013.

Mr. Saad has filed an affidavit with the Court that we would like to make a -- as evidence of this proceeding. We would like to introduce it into evidence in this proceeding. It sets out how Mr. Field had violated the terms and conditions of the orders of this court.

We believe that it is a prima facie case of contempt by Mr. Field. We believe under the law of South Carolina, it shifts the burden of responsibility to establish his defense or inability to comply with the court order. I can not help but notice that Mr. Field is not here. So I guess I have to defer to the Court how to proceed in this matter.

THE COURT: Well, where is he? Does anybody know?

MR. STEPHENSON: Your Honor, may I speak?

THE COURT: Yes, sir, Mr. Stephenson.

MR. STEPHENSON: For the record, my name is Tom Stephenson. I do not represent Arthur Field. I have never represented Arthur Field. I'm not here on behalf of Arthur Field. I'm here because his wife, Kate Taillon, was subpoenaed and she asked me to come.

THE COURT: Okay.

MR. STEPHENSON: So what I am going to tell you is based on what I have been told. I was informed, as were counsel for Mr. Saad, that Mr. Field was in the Carolina Center for Behavioral Health. I'm informed it's some sort of mental hospital. He's been there for about a week on a daily basis, from 9:00 to 3:00. I furnished with a letter because it was furnished to me and I didn't want to surprise anybody.

A week or so ago, I sent that letter to you. Several days ago.

And so he was there from 9:00 to 3:00. Yesterday, I was informed that he was committed by the Carolina Behavioral Health Center. I'm going to read the letter. Today, Mr. Field's

treatment provider at the Carolina Center for Behavioral Health deemed it necessary to hospitalize Mr. Field for his own safety. Mr. Field's discharge date is yet to be determined. I did secure this letter. I talked to his people. I believe it is genuine and I'm glad to hand it up to the Court ---

THE COURT: Okay.

MR. STEPHENSON: --- if the Court wants to see it. I am also informed that a global settlement was entered into before mediator Harry Goldberg, mediator from Columbia. I did not participate in this mediation. My client did not participate in this mediation. Others did not participate in this mediation. But the mediation settlement purports to settle everything. I understand that Mr. Field was there. This global settlement provides that my client, his wife, will pay $10,000 in cash --

MR. BRANDT: Please the Court, Your Honor. I'm not sure we need to go into this.

THE COURT: Wait. Let him finish. Let him finish.

MR. BRANDT: Excuse me.

THE COURT: Go ahead. Go ahead.

MR. STEPHENSON: That bothers me.

THE COURT: Hey, hey. Just --

MR. BRANDT: I beg your pardon.

MR. STEPHENSON: The settlement agreement says my client will pay $10,000, I think, to Mr. Saad and will authorize a mortgage to be placed on a house which she owns. She's willing to sign it. She will sign it today. It also requires other people to do certain things. I am informed everybody, including Mr. Field, will sign it. I'm also informed and I have in my possession, a power of attorney that authorizes Ms. White to sign on his behalf. This power of attorney was entered into on July the 12th of 2012. It's not something he entered into today. It was something that was entered into some time ago.

This power of attorney, according to what I have been told, is probably filed at the RMC office and therefore it could be acted upon. Again, I'm not here for him. Okay? I'm here because my client asked me to be here. There she is. I'm also informed that Ms. White is also here unrepresented. There she is.

THE COURT: Okay.

MR. STEPHENSON: Now, I attempted to persuade these fine gentlemen to call you this week and apprise you of all that and see where you wanted to go. None of them wanted to do it.

THE COURT: Well, let me -- let's straighten -- let me put some background on the record. Mr. Saad was appointed as receiver in this case, so he acts on my behalf. This case has been assigned to me. It was assigned to me in '08 or '09 when Judge Few had to recuse himself. I've been involved in it ever since. I'm in fairly regular communication with the receiver in this case. Mr. Field has alleged that that is improper ex parte communication, which, in my mind, demonstrates a fundamental lack of understanding of what a receivership is.

But having said that, I am aware of the mediation that you all have engaged in. Not you, Mr. Stephenson, but the parties have engaged in. I am aware that, uh, some of the terms of that proposed global settlement are, uh, -- which has not been executed and I understand that -- let me just say this, this case needs to be put to rest. It has caused

more anxiety and hard feelings over a long period of time than almost any other civil case I have ever been involved in.

Having said that, based on Mr. Field's conduct over the past seven or eight years and the fact that all of a sudden, he has committed to a mental institution on the eve of this rule to show case after having reviewed the affidavit, I find it -- I find that very curious. I will say this, I will not accept an attorney in fact signature on a settlement agreement involving this case. I agree that this matter needs to be resolved.

I don't mean to be pointed with you, Mr. Stephenson. But if he's been committed to a mental institution, then there's no way that this agreement could stand scrutiny in the future. He could come back, and based on his past conduct, he would come back and try to overturn this agreement if he thought it was to his advantage. That is my experience with him that -- in my personal dealings with him. So there's no way that that agreement is going to get signed today or approved today. He's got to do it.

I don't have any idea -- I don't know who the witnesses are. It seems to me that that power of attorney must have been executed at about the time that Mr. Field was going to enter a plea of guilty in the State Grand Jury proceedings in this case. I have no idea what the purpose of it is, whether or not it's been rescinded. All of that would have to be fully examined. So that's the groundwork that -- some background that I would put on the record with respect to this rule to show case.

I totally agree that this matter should be concluded. The 600 or so class members are getting pennies on the dollar. There is money there that has been hidden and diverted, unaccounted for. If Mr. Field had been forthright, we wouldn't -- this would have been over a long time ago. But he has monkeyed with the judicial system for the last six or eight years.

So what I would propose to do today, we can't -- I hope everybody hears that -- this case needs to end, I'm sure, much to the chagrin of class members who have lost life savings in a Ponzi scheme basically. But we

need to proceed with this -- the purpose of this rule to show cause hearing with the understanding that at some point this case needs to be resolved if there's any way we can get it resolved.

So does that sort of -- now, Mr. Stephenson, what would you like to say?

MR. STEPHENSON: I'm sort of here unwittingly.

THE COURT: Right.

MR. STEPHENSON: I don't represent Arthur Field. I was trying to be of help to the court and ---

THE COURT: And you are. You are.

MR. STEPHENSON: --- to everybody as to what his situation is claiming to be. I'm not representing him.

THE COURT: Right. Right. And I appreciate you being here. But this is a matter -- what I would propose to do is -- y'all intend to call witnesses?

MR. BRANDT: Yes, sir.

THE COURT: Okay. Then I would propose to go forward with whatever you're intending to do. If we have to -- I intend to reconvene the

hearing when Mr. Field has been released and certified that he's competent. And we'll come back. Right now, we're just going to go forward with collecting evidence with respect to the issues that are presented in the rule to show cause. I don't know that I can believe that Mr. Field was involuntarily committed. I have -- based on his past, I would have to have medical proof that that was the case. So with all due respect, we will proceed with the hearing. Okay.

All right. Mr. Brandt.

Thank you, Mr. Stephenson.

MR. BRANDT: Please the Court. Your Honor, I would like for Ms. White, who is a witness in this case, to be sequestered and I would like to call Ms. Taillon to the witness stand.

THE COURT: Okay. Ms. White, if you will, wait in one of the rooms right outside the courtroom, thank you very much.

(WHEREUPON, Ms. White exits the courtroom.)

THE COURT: Come on around if you would. Put your left hand on the Bible. Raise your right hand.

I have to do it.

KATHRYN TAILLON

having first been duly sworn, testifies as follows:

THE COURT: Thank you very much. Please have a seat. Please state your full name for the record.

THE WITNESS: Kathryn Taillon.

THE COURT: Okay.

DIRECT EXAMINATION

BY MR. BRANDT:

Q Ms. Taillon, are you married to Arthur Field?

A Yes, I am.

Q How long have you been married to him?

A I have been married to him approximately 30 years.

Q Okay. You participate in business activities with him?

A (Indiscernible.)

Q I'm going to show you a document and ask you if you can identify this. Tell me what it is and what it means to you.

A This is a York Mortgage Funding statement and it is showing $10,000 in the account as of -- it looks like December 31, 2008.

Q 2008?

A That's what I'm looking at.
Q Okay. And what are the last four digits of the number of that ---
A 63 --
Q --- account?
A 6333.
MR. BRANDT: All right. 6333. All right. I'd like to introduce this into evidence.
THE COURT: Okay. Anything?
(WHEREUPON, Plaintiff's Exhibit 1 is marked for identification and admitted into the record.)
BY MR. BRANDT:
Q What is the --
I'll show it to you. I'm sorry.
What is the address on this?
A 310 Thornblade Boulevard.
Q Okay. And do you reside at 310?
A Currently, yes.
Q And how long have you resided there?
A I don't remember. It's been probably 10 --
Q 10 or 12 years?
A Somewhere like that, yeah.
Q That is your address now?
A That's where I'm living right now.
Q Okay. Are you a resident of South Carolina?

A No, I'm a resident of Florida.

Q Okay. And how long have you been a resident of Florida?

A Probably about -- I can't remember the day. I would have to check my license and see, but it's been at least three or four years, if not more.

Q Do you -- you say you are a resident of Florida, but you live here. How many days a year do you spend in Florida?

A Well, I was trying to spend at least six months. But with everything going on here, I wasn't able to get there.

Q Okay. So you have not established your residency in Florida, but you are claiming residence?

A I'm claiming residence. I have my driver's license and I vote there.

Q But you haven't lived there?

A I've lived there, but not for extensive periods of time.

Q Okay.

A I would like to live there.

Q Okay. This is dated 2008, December 2008; is that right? That exhibit?

A If that's what it said, yes.

Q Okay. I'll show you another one in June of

2009 and ask if you can identify that.

A I can identify what it says on it.

Q Okay. What is it?

A It's an account statement for York Mortgage Funding.

Q How much money is in the bank?

A 10,108.90.

Q Okay. There is a check that had been written out on June 19th ---

A Okay.

Q --- reflected on here. Is that correct?

A I guess. I don't remember.

Q I'm going to show you attached to it a copy of that check and ask if that looks like a York Mortgage Funding check.

A It says York Mortgage Funding on it.

Q Okay. For how much?

A It looks $2.

Q And who is it made payable to?

A Secretary of State.

Q And who signed it?

A It looks like Arthur Field.

Q Okay. That's your husband, is that correct?

A Yes.

MR. BRANDT: I'd like to introduce this as

Exhibit number 2, please.

(WHEREUPON, Plaintiff's Exhibit 2 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q I'm showing you another one dated as of August 31st, 2009. How much money was in the account on that time?

A 10,108.90.

Q Okay. Same address for the --

A Yes.

Q So you were receiving these, is that right, at Thornblade?

A Well, York -- it was York Mortgage Funding. It was going to Thornblade Boulevard.

Q Okay. Well, you resided there?

A Yes.

Q So you received it there?

A It came to that address, yes.

MR. BRANDT: I'd like to have that marked please.

(WHEREUPON, Plaintiff's Exhibit 3 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q Here's another one, ma'am. This is one is dated your balance as of 1/29/2010 for York Funding.

A Yes.
Q Same thing?
A Uh-huh.
Q How much money was in the account?
A 10,108.90.
Q Okay.
MR. BRANDT: I'd like to introduce that please.
(WHEREUPON, Plaintiff's Exhibit 4 is marked for identification and admitted into the record.)
THE COURT: You've handed up two copies.
MR. BRANDT: I'm sorry.
BY MR. BRANDT:
Q I'll show you another one, ma'am, dated as of March 31st, 2011 and ask if you can identify that.
A Yes, the account was closed out.
Q Okay. I'd like to introduce that. Same address, is that right?
A (No audible response.)
(WHEREUPON, Plaintiff's Exhibit 5 is marked for identification and admitted into the record.)
BY MR. BRANDT:
Q I'm going to ask if you can identify this.
A I can identify it. It's a check.
Q Okay. Who is it made payable to?

A I can't read it.
Q I'll represent to you that it's made payable to you.
A Okay.
Q Okay. And it's for how much?
A It's for the account balance.
Q Okay.
MR. BRANDT: If we may have this marked please.
(WHEREUPON, Plaintiff's Exhibit 6 is marked for identification and admitted into the record.)
BY MR. BRANDT:
Q This is Exhibit 6. I ask if you can identify the attachment, which is part of Exhibit 6.
A It looks like it's the account and it was closed out.
Q Okay. And whose signature is on that?
A That's Arthur Field's.
Q Okay. So Arthur Field had the authority to sign -- to close out the account?
A I would have to look at the signature cards, but I would assume he would. I mean, I don't know. It was that long ago that I can't remember. I'm assuming there were signature cards.
Q It's got the same account number.

A Okay.
Q And it's got your name on the check?
A Uh-huh.
Q Is that correct?
A Yes.
Q And this is Exhibit 6. So that means you received the funds and deposited it into your account, is that right?
A I did receive the funds.
Q You did?
A It was made out to me. I did work for York, and I typed notes for them for several years and I never received a pay check.
Q Okay. I'm going to ask if you can identify this.
A Okay. It looks like a signature card.
Q Okay. And whose signatures are on there?
A My name and Arthur's name.
Q Okay. And are those your social security numbers?
A I know that's mine. I don't remember what his is. I would assume it is.
Q And the date on this account was opened on May 9th, 2002; is that correct?
A It says May 8th.

Q May 8th, 2002. Does it appear that you signed on May 9th, 2002?

A That's what it looks like.

MR. BRANDT: Okay. I'd like to introduce that please as Exhibit 7, I believe.

(WHEREUPON, Plaintiff's Exhibit 7 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q Now, you worked with York Funding, correct?

A Uh, yeah. I did notes and I kept the books for I don't remember how many years.

Q Okay. You participated in it from its inception; is that correct?

A I don't remember. I truly don't remember.

Q You don't remember anything about --

A I don't remember when I started participating.

Q Okay. Do you recall having a banking relationship with BB&T of South Carolina as shown by these documents?

A I -- I must have. My name is on it. I can't remember doing it now.

Q How many accounts did you open under York Funding?

A I don't know. One? I mean, I have no idea.

I don't remember.

Q Okay. What other banks did you open accounts in other than BB&T?

A In 2003?

Q Well, any time.

A In 2003, I truly don't remember what bank accounts I opened. I'm sure York was a business and that was an account. Usually, each business has a separate account. I don't know. I didn't open every business account. I don't do that. I mean, I just don't remember.

Q Let me ask you if you can identify that.

A This looks like what you just showed me. Is that correct?

Q Look at the account number on there, ma'am, on the front page.

A Okay.

Q Right there. Is it different? What are the last four digits of that?

A 779.

Q Okay. That's different than the other one, is it not?

A I guess so.

Q And is it your signature?

A That is my signature.

Q And is that your husband's signature?
A That looks like my sig --
Q Okay.
A It looks like my husband's signature.
Q Same date as the other one?
A Yes.
(WHEREUPON, Plaintiff's Exhibit 8 is marked for identification and admitted into the record.)
BY MR. BRANDT:
Q So there was more than one bank account. You don't remember, but there was at least another bank account?
A I don't remember. I apologize, but I don't remember.
Q Well, you took $10,000 out of that account, correct?
A I guess. I mean, that's what the check says.
Q What did you take out of this account that was just produced?
A I don't know.
Q You don't have any idea?
A I don't remember. I know I did work for York and I never got paid for York and I know that that account was sitting dormant for, I think, a few

years. I got a call from BB&T. They said it's just -- it was just there.

Q Let me ask you if you can identify this.

A That's a prospectus.

Q Okay. And what's the date of the prospectus?

A June 5, 2002.

Q Okay. And did you assist in the preparation of this prospectus?

A No.

Q You don't know anything about it?

A No, I did not assist in this.

Q You know nothing about it?

A I didn't assist in the writing of this prospectus.

Q Okay. Did you participate in the preparation of the information in this prospectus?

A No, I did not. I was working full-time and I was not -- I did not participate in writing any prospectus.

(WHEREUPON, Plaintiff's Exhibit 9 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q Do you know anything about York Funding as far as its formation? I'd like to introduce that.

A As far as its formation, no. I mean I typed up notes for them and I did some of the recordkeeping, but I never formed -- I mean, I never wrote a prospectus. I wouldn't even know -- I mean, I never participated in that. I had a full-time job and I was working.

Q Okay. Were you the manager of York Mortgage Funding, LLC?

A I may have been in the beginning.

Q Did you oversee all of the operations and the financial aspects of the business?

A Did I oversee all of that? I don't remember when it began. I mean, I was a manager. I knew about it. I did a lot of the administrative work for it.

Q What kind of administrative work?

A Typing the notes.

Q How many notes did you type?

A I don't remember.

Q Well, did you type one?

A Well, I at least typed one. But I don't remember. It was a long time ago. I truly don't remember. I don't believe there was a lot, but I don't know how many.

Q Could it have been several hundred?

A I don't think so.

Q When you did the notes, did you put them in sequence? In other words, did you start with note 1000 and go up?

A I don't remember. I don't remember.

Q I'm going to ask you to look at page 13 of the prospectus.

A Uh-huh.

Q These are all members of the management, members in management. Are you familiar with all those names?

A I am familiar with those names. This was back in 2002. To the best of my knowledge, I was not in York for much longer after this.

Q Oh, you weren't?

A I'm not sure. I mean, I don't remember. I remember my name here and I remember this. This was in 2002. I can't -- I can't testify as to anything else if I don't remember.

Q Okay. Well, now this refreshes your memory a bit showing you what your interest, your ownership interest in it is.

A Yes.

Q What was your ownership interest?

A It says 48 percent.

Q Okay. And who is the trust of B. Parker

Greenville, South Carolina?

A Who is it?

Q Yes.

A Who is she?

Q Yeah.

A I -- I know who she is and I know where she's from.

Q Well, who is it and where is she from?

A Her name -- excuse me. You don't have to be rude.

Q I'm not intending to be. Please tell me who she is and where she's from.

A Her name is Betty Parker and she was in, I believe, Trumbull, Connecticut.

Q Okay. Is she alive or dead?

A She is -- to the best of my knowledge, she is dead.

Q Okay. Who was the trustee, if you know, of the trust of B. Parker?

A I don't know because I think it changed. I don't remember.

Q Okay. Was Arthur Field?

A He may have, but I don't remember. I can't answer that truthfully if I don't see the documents. I just don't know. I think there were more than one

at some point.

Q Who would another one had been?

A I think it might have been one of the relatives.

Q Okay. But you and the trust of B. Parker had 96 percent of York Funding, correct?

A That's what it says in 2003.

Q Okay. And under number 3 on that same page ---

A Uh-huh.

Q --- does it not say on the last line, as manager, you, oversee all operations and financial aspects of the business?

A Yes.

Q Okay. So was this true at the time that you --

A It was just beginning. And yes, I would have. It just beginning and I don't remember what was going on at that point now because it was 2003. I truly don't remember.

Q Okay. Do you know what Capital Investment Funding is?

A Do I know what it is?

Q Yeah, yes, ma'am.

A It's a business.

Q Yes, ma'am. And who ran that business?
A Who ran that business? There were several people that ran that business.
Q Did Arthur Field -- was he a principle in running that business?
A Arthur Field was one of the people that ran that business.
Q Okay. Did York Funding do business with Capital Investment Funding?
A To the best of my knowledge, I don't believe so, but I am not sure, unless they were transferring money from CIF to York.
Q Okay. So as part of your job then, you would prepare the notes you are telling me for York?
A Yes.
Q For people who invested money in York?
A Yes.
Q Okay. And you the only employee? You said you were employed. Who else was employed?
A For York, I was -- I don't know if there was anybody else. I don't remember. There may have been independent contractors. I just don't remember.
Q Was Arthur Field employed by York?
A I don't know. I don't know if he was an employee of the company or not.

Q Do you know if he was paid by the company?
A I don't know if he got paid. I know when I did the work, I did not get paid.
Q You didn't?
A No.
Q Why would you --
A I don't know why. I mean, it was just -- at some point, I was hoping maybe I could get paid. But you know, it didn't happen until --
Q Where are the records for York?
A Where are the records for York? I don't have any records for York.
Q Where are they?
A I don't have them.
Q I didn't ask you that, ma'am. I asked if you knew where they were.
A Do you mean like computer records?
Q Any records.
A I don't know.
Q Well, the address on the bank accounts have your address on them.
A Uh-huh.
Q It says you are the managing member of the company. You are familiar with all operations and financial aspects of the business. Where are the

records?

A I don't know where the records are. There really weren't any records to keep. There might be bank accounts. I think you probably have them.

Q Well, you said you prepared notes.

A Yes, but I don't keep copies of the notes. They are certificates.

Q What about the original certificates that York would have --

A The original certificates would go to the noteholders.

Q Okay. And you are saying that as the -- overseeing all operations and financial aspects of the business that you would prepare original notes, have them signed, send out the original notes and did not keep any financial records?

A As far as I know. I don't have copies of the notes. Maybe that was an oversight at the time and I wasn't thinking clearly.

Q Well, now, it says that you have an MBA in business from the University of New Haven ---

A Yes.

Q --- in finance and economics from Sacred Heart University.

A Yes.

Q And it says you're experienced in pension, benefit management, legal administration, retail and financial services, you are employed by the law firm of Bannister and Wyatt PC in Greenville.

A Yes.

Q And you are a member of the Easley God Squad Powerlifting Team and hold several world records.

A Not anymore.

Q Okay. But are you saying with all that education that you wouldn't think it would be necessary to keep the records of the business?

A I screwed up. I mean, I don't know. It was a long time ago. I don't remember. We moved here. I had to start all over with the job. I wasn't paying attention and I just don't remember.

Q Well, you said you moved here. You were living here. The address of the business was where you were living.

A Yes.

Q So did you keep your business records at that location?

A I kept business records at that location. I don't have hard copies of anything. I can go back and see if I can find something. But I don't know. I

truly don't remember. I don't remember doing a whole lot of work on it.

Q Let me try to refresh your memory a bit more. Look at that document please or that package of documents.

A Uh-huh.

Q What is that?

A It looks like an application for a securities registration.

Q For?

A It looks like York Mortgage Funding.

Q Okay.

MR. BRANDT: I'd like to introduce this please.

(WHEREUPON, Plaintiff's Exhibit 10 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q Now, looking at the letter dated April 9th, it appears that this was signed by Mr. Field. Is that correct or incorrect?

A I have a question for you.

THE COURT: No, ma'am. You don't get to ask questions.

BY MR. BRANDT:

Q Is that Mr. Field's signature?

A It looks like his signature. These copies came from the South Carolina Attorney General.

Q Yes, ma'am. That's not what I'm asking, ma'am. I'm asking if that's his signature at the bottom of this letter.

A It looks like his signature, yes.

Q Okay. So wouldn't it be a fair statement to say that these are documents that were sent into the office of the Attorney General to register York Funding?

A Yes.

Q York Mortgage Funding, LLC?

A York Mortgage Funding, LLC, yes.

Q And this is April 9th, 2002.

A Yes.

Q And this is when you were the general manager of the business?

A Yes.

Q Does that refresh your memory any?

A Slightly. Again, it was 2002. I'm doing the best I can and I apologize, sir.

Q No apology necessary.

MR. BRANDT: I believe that was Exhibit 9, Your Honor.

THE COURT: That was 10.

MR. BRANDT: 10.

BY MR. BRANDT:

Q This is your signature on the application though, is it not?

A That looks like my signature, yes.

Q It's in two places on there.

A I see that.

Q Okay. So you actually filed the certificate and you were the managing partner or member; is that right?

A In that year, yes.

Q Okay. I'll ask if you can identify that.

A I don't know what you want me to say.

Q This appears to be a letter from the Attorney General's office that confirms the securities listed below have been registered for sale and authorized.

A Okay.

Q And it says the type, floating rate notes, Series 2002, do not less than six months after issuance at $1000. Is that correct?

A That's what it says.

Q Okay. It also says in the paragraph above that that the registration expires one year from June 5th, 2002.

A Okay.

Q And Arthur Field sent in the application and received it back. Was this your address, at the time, in Easley?

A Yes.

MR. BRANDT: Okay. I'd like to introduce this please.

(WHEREUPON, Plaintiff's Exhibit 11 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q What was Mr. Field's position with the company?

A What was his position?

Q Yes, what was his position with York Mortgage Funding LLC?

A He worked with it.

Q Did he have -- did he have an official capacity that he operated on, such as manager or president?

A I don't know if there were ever any -- I mean, I don't know if there was ever any titles. I mean, I don't remember.

Q In October of -- was he involved in the business from the time that it was begun until the time that it was --

A I believe so, yes.

Q Well, you were the managing member. You would know, wouldn't you?

A I said I believed so, yes.

(WHEREUPON, Plaintiff's Exhibit 12 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q Okay. All right. I'm going to show you this and ask if you would review that please.

A I don't know what this is.

Q I will represent to you that it is a statement under oath by Mr. Field representing York Mortgage Funding LLC dated -- it took place on Wednesday, October 8th, 2003 -- and ask if Mr. Field worked for the company at that time and was he authorized to testify in behalf of the company at that time.

A I can't answer that question. I don't know. He obviously testified and this is his statement, but I can't testify as to what he said or why he -- why they took his testimony. I don't know.

Q I'm not asking that, ma'am. I'm asking if he was authorized to speak for the company. Did he have a position with the company and was authorized to speak for it?

A I would assume yes. If they wanted him to take testimony, I'm sure that he did.

Q Okay. Thank you. (Pause.)

(WHEREUPON, Plaintiff's Exhibit 13 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q I'm going to ask you to look at this, ma'am. And I'm going to ask you to see if you recognize what those are.

A These are notes.

Q Are they notes for York Mortgage Funding LLC?

A Yes.

Q Are they issued to different people?

A As far as I can see, yes.

Q All right. And we testified earlier that you prepared the notes. These are notes that you prepared?

A These are most likely -- I mean, I can't remember preparing these exact ones, but it would have been something that I would have done.

Q If you would, look at the first note, please, ma'am, and tell me the date on it up at the top.

A July 18th, 2002.

Q Okay. And what is the note number?
A 105.
Q Okay. And that was issued to Ned or Laura Favre, it looks like?
A Uh-huh.
Q And who signed in behalf of York?
A It looks like Arthur.
Q Okay. And what is his position?
A It says president.
Q Okay. And this is at the very founding of the company. Did you appoint him or was there an election for him as president or do you recall?
A I don't remember.
Q The second note is dated what?
A July 16th, 2004.
Q Okay. And what is the note number?
A 1059.
Q Okay. And that was issued to Mr. and Mrs. Lackey?
A Yes.
Q Signed by Mr. Field?
A Yes.
Q And the next one?
A 1075, June 29th, 2004.
Q And that was to whom? First Truck -- Trust

Corp?

A Yes.

Q For Mr. Huss?

A Yes.

Q IRA. And the next one?

A James or Jill Lancaster.

Q Dated?

A March 16th, 2004.

Q And what's the note number?

A 1084.

Q Okay. What's the next one?

A Lancaster note number 1130.

Q Okay. And that was dated March 16th, 2005?

A That's -- yes.

Q It says senior note, Series 2005.

A Uh-huh.

Q Does that make any difference to you?

A It probably did, but I don't remember.

Q Okay. And what is the note number on that?

A 1130.

Q And the next one?

A 1136.

Q Dated what date?

A March 15th, 2005.

Q And that's in behalf of the Pennell, Patsy

Pennell; is that right?

A Yes.

Q Okay. Signed by Arthur Field?

A Uh-huh.

Q And the next one is dated what?

A Can't read it.

Q Okay. Can you tell what note number it is?

A 1137.

Q And is that in behalf of Mr. Huss?

A Yes.

Q Signed by?

A Arthur Field.

Q And the next one?

A December 29, 2005, 1164.

Q And that was to Mr. Huss also?

A Uh-huh.

Q And then the next one?

A 1183.

Q Dated?

A September 15th, 2005.

Q Signed by Mr. Field?

A Yes.

Q To Mr. Pennell -- Ms. Pennell. And the next one, what is the note number?

A 1196.

Q Dated July 26th, 2005.
A Yes.
Q In behalf of Mr. Lackey and Ms. Lackey, correct?
A Yes.
Q And the next one?
A September 16th, 2005.
Q To looks like Mr. and Mrs. Lancaster?
A That's -- yes.
Q And the note number, 1201?
A Yes.
Q And then the next one?
A 1245.
Q That's note number 1245?
A Uh-huh.
Q July 26th, 2006?
A Yes.
Q As to Mr. and Mrs. Lackey. And then the final one is note number what?
A 1361.
Q Okay. And that's dated January 2007?
A Yes.
Q And that's to the Lackeys also; is that correct?
A Yes. Uh-huh.

Q You were the manager of York Mortgage Funding and you testified that you prepared these notes?

A Yes.

Q Okay. And they started off at 1005 and they went all the way up to 1361, the ones that we have.

A If they are in sequential order, and they may not be. I mean, I just don't know. A lot of them could have been mistakes. If they are not printed out right, then they are destroyed.

Q Okay. Did that happen?

A It could have happened. Then it probably did happen.

Q Okay. You ran the --

A I know that -- I know that I did not type over 1000 notes anyway because I could never, ever do that and keep a job and do everything. That's not it. That's not the case.

Q This is 300 and -- if you are doing it sequentially, this was all 1005 to 1361, so it's about 356. That's possible?

A I don't recall that many people. I really don't.

Q It's possible that you issued that many notes.

A I don't know. I don't think so, but I don't know.

(WHEREUPON, Plaintiff's Exhibit 14 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q I'd ask if you can identify this.

A It's a letter from Arthur to Sharon Finch.

Q This is on York Mortgage Funding stationery dated August 6th, 2003?

A Uh-huh.

Q What does it look like it is?

A It's a letter telling her that, I guess, her note is going to mature.

Q So just the typical information from the president, Arthur Field, to a noteholder, is that right?

A That's what it looks like to me.

Q Okay. And the address, it looks like there are three office addresses on here?

A Uh-huh.

Q And it looks like your four telephone numbers.

A Okay. Uh-huh. Actually, there's three phone numbers and a fax number.

Q Three phone numbers and a fax number,

right.

(WHEREUPON, Plaintiff's Exhibit 15 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q I'm going to show you another document and ask if you can identify that.

A I've never seen this document.

Q I'm not asking you that. I'm asking if you can just identify what it is.

A I don't know. I've never seen it.

Q Okay. I'm going to call your attention to paragraph 6.

A Uh-huh.

Q It says certificate 5530 with attached detail summary, check number 1741, in the amount of $40 and an investment authorization form. Please note the exchange of this certificate from York Mortgage Funding LLC to Capital Investment Funding.

A Uh-huh.

Q Please post funds to passbook as investment cash income. You see that?

A Yes.

Q Okay. Does that mean that York Mortgage Funding exchanged notes with Capital Investment Funding?

A I don't know. I mean, I don't know. I didn't do this and I don't know about this. I can't -- I can't --

Q Are you denying that that occurred?

A I'm not admitting or denying it. I don't know. I don't want to admit something if I'm not sure if it's true or not.

Q I don't blame you. I'm not asking you to. Just as an aside, ma'am, looking at the addresses ---

A Uh-huh.

Q --- and telephone numbers ---

A Uh-huh.

Q --- for the Capital Investment Funding LLC letter ---

A Uh-huh.

Q --- are they all exactly the same as York Mortgage Funding?

A They appear to be, yes.

Q In fact, the only difference is the logo.

A Uh-huh.

Q Did Capital Investment Funding and York Mortgage Funding have their business in the same business location?

A That's what's on the letterhead. I don't know. I mean I did York work from my house.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
William Tomz and Francis W. Tomz Individually and as Class Representatives	)	CASE # 2008-CP-23-3665
	)	
Plaintiffs,	)	
vs.	)	**NOTICE OF MOTION AND MOTION TO RECUSE**
Capital Investment Funding, LLC And Arthur M. Field	)	
	)	
Defendants.	)	

EXHIBIT C-1

OFFICIAL TRANSCRIPT

9/29/2016

P 49--101

Q Well, once again, ma'am, it says according to this that you were the managing member and that you were in charge of all operations. Do you know where your offices were and do you recognize those three offices?

A I recognize those three offices, yes.

Q And is that where the business operated?

A It probably operated there and it probably did some -- I mean, I did work out of my home. I wasn't in there day to day. I wasn't in those offices. I was working.

Q Where were you working?

A I was working, at that point, I believe, at Bannister and Wyatt.

Q You were preparing the notes all the way up through 2007 working with the business, at least according to the exhibit that was previously --

A I believe so.

Q Okay. Do you know when, uh, the business was incorporated?

A Not off the top of my head, I don't.

Q Okay. I'm going to show you something from the Secretary of State for York Mortgage Funding.

A Uh-huh.

Q And it represents that you are the

registered agent for service of process.

A Uh-huh.

Q Does this appear to be an official document showing when you were incorporated?

A It was incorporated in 2002 and dissolved in 2009.

Q All right. I'd like to introduce this.

(WHEREUPON, Plaintiff's Exhibit 16 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q I'm going to ask if you can identify this.

A This was, I guess, when it was dissolved. Statement of Disassociation.

Q Right. Who was it signed by?

A It is signed by Arthur Field.

Q And what is his capacity on there?

A It says member manager.

Q And the date is June 3rd, 2009?

A Yes.

Q And it says member disassociated March 15th, 2003.

A Uh-huh.

(WHEREUPON, Plaintiff's Exhibit 17 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q That's not correct based on your earlier testimony then, is it?

A I don't know what you mean.

Q You said you were working with the company up preparing notes in 2007.

A I might have been. I mean, I don't remember. I may not have been a member at that point, but I might have been typing notes.

Q Okay. And this was filed, was it not, looking at the bottom, June 6th --

A 2009.

Q June 16th, 2009. And it looks like that $2 check that was made payable to the Secretary of State there. Is that right? That's that $2 check we saw earlier?

A Probably.

Q Okay.

A That's what it looks like.

MR. BRANDT: Did I introduce that, Your Honor?

THE COURT: Yes.

(WHEREUPON, Plaintiff's Exhibit 18 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q Uh, I'm going to show you articles of

termination ---

A Uh-huh.

Q --- and ask if you recognize that.

A I know what it is. I don't remember it, but I see it.

Q This was filed --

A 2009?

Q Looks like June 24, 2009 on the bottom right-hand side.

A Uh-huh.

Q And it's signed by whom?

A Arthur Field.

Q And it says it's in what capacity?

A Looks like manager.

Q And it's dated June 3rd, 2009?

A Yes.

Q Okay. And what happened to anything that was in -- I mean, you terminated the LLC.

A Uh-huh.

Q And it was closed?

A Uh-huh.

Q What happened to the funds in there?

A The funds as of --

Q Well, this is 2009.

A Uh-huh.

Q Closed up shop.
A Uh-huh.
Q What happened to the money that was still in that business?
A Was that the bank statement that you showed me earlier?
Q Well, I'm asking you. I mean, you were the manager.
A I mean, I don't remember. It was a long time ago. If that's what was on the bank statement, that's what was on the bank statement.
Q Okay. So there was still money in there and you ended up getting it all, right?
A I took it. I mean, it was what I was owed for doing my work. I never took a paycheck from York ever. I don't believe there were any noteholders or -- left that made -- there may have been some, but no one ever made a claim. I got a call from the bank, as far as I recall, like that that account was dormant.
Q Did you, as the manager, do the banking?
A I did some of the banking.
Q Okay. So you deposited the funds received from the notes?
A Not all the time. I mean, there were people in the office that did that too.

Q Okay.

A I don't know. Like I said, I did some of it. I didn't do all of it.

Q Okay. But you had several, several, at least according to the evidence submitted to the court, noteholders.

A Well, I don't know how many. I would have to really research that if I can find any documentation on it. I don't want to give you a number that is incorrect.

Q Did you ever talk to the noteholders? Did they ever call in and you talk to them ---

A No.

Q --- as managing member?

A No.

Q You never did? Was Arthur Field really running that entire show?

A I don't know if Arthur Field was running the entire show. It was -- it was with CIF. Obviously, they were working --

Q Hand and glove?

A Well, I don't know if it was hand and glove.

Q Well, you --

A I don't know -- I don't exactly know what

you're trying to imply.

Q I don't either. I'm asking you -- I have been asking you about the relationship between Capital Investment Funding and York Mortgage Funding LLC.

A I don't really know about Capital Investment Funding because I really didn't have any dealings with Capital Investment Funding.

Q All the offices --

A I was never in the offices.

Q Okay. You were a managing member but you were never there. You were in charge of all the financial aspects of the company, but you were never there?

A I was never in the offices, no.

Q Okay.

A And if that was a mistake and I probably should have been better at it, but I didn't know. I had no idea.

Q There is a tax ID number on the, uh, -- on the signature cards for the company.

A Okay.

Q So the tax ID, you, as a financial person, you assisted and you got a financial, I mean, a tax ID number. Did you file tax returns for the company?

A I think Arthur did. I may have assisted him. I don't remember.

Q Okay. Did you sign the tax returns as a managing member?

A I would have to see the tax returns. I don't know. I don't remember.

Q Did you ever have any meetings with any of the members listed on the prospectus?

A The members listed on the prospectus as far as York?

Q Mr. Field as trustee for the trust and the other members.

A I had spoken with them. I mean, I'm acquainted with them.

Q Mr. Field is not mentioned in that prospectus; is he?

A I don't know. I mean, I'd have to see it again. I don't know.

Q Well, let me show you -- I'll represent to you that his name is not in there.

A Okay.

Q Did he have that prospectus prepared?

A I don't know. I don't know if he did.

Q Do you know who else would have?

A I'm sure he was -- I mean, the prospectus

could have been prepared by his attorney.

Q Ma'am, this is a rule to show cause filed summoning Mr. Field to come to court. You understand that?

A Yes.

Q And you lived with Mr. Field?

A Yes.

Q Okay. And did you have an opportunity to read the affidavit submitted by Mr. Saad in this?

A I've read parts of it, yes.

Q I'd like you to look at this document please.

A Okay.

Q I'll represent to you, ma'am, that these are a series of documents and notes that are similar to records for York Funding and ask if you will look through there and see if you recognize these to be records of York Mortgage Funding LLC.

A They appear to be -- well, it says Capital Investment Funding on this too.

Q Take your time.

A It looks like both. I mean, you've got York and there is York. And these must be from the files, what it looks like that was in all these files, which I don't have, but you have.

Q I'll represent to you, ma'am, that as stated on page 1, the certificate 1075 was issued. This is one of the certificates we were talking about earlier for Mr. Huss. You see that? That's the first document in.

A Uh-huh.

Q And it had a maturity date of March 29th, 2005; is that correct?

A That's what it says.

Q And then March 9th of 2005, another certificate was issued, 1137, ---

A Uh-huh.

Q --- with a maturity date of December 2005.

A Uh-huh.

Q And I'll represent to you that that is in this package also. December 29th, 2005, another note was issued, certificate 1164 with maturity date of September 29th, 2006. I'll represent to you that that note is in here as note number, as I said, 1164. Then you see the part that says the switch?

A Yeah, was that part of the notes?

Q And --

A Was this part of York's notes?

Q I am asking you if Capital Investment Funding ever received any money from York to pay the

obligation represented in the $100,000 note?

A I can't remember. I don't know.

Q Did York ever transfer notes to Capital Investment Funding?

A Transfer?

Q Yes. Transfer the obligation to repay the notes.

A I'm not sure. It was a long time ago. I really don't remember. I would like to say it's a possibility. I just -- I don't want to say something that is incorrect.

(WHEREUPON, Plaintiff's Exhibit 19 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q Okay. Would you look through and see if there are any documents in this that are not records that appear to be of York?

A I don't know if this is a record or not.

Q Well, the first one is not. I'll represent to you the first one is not. That is a compilation of the information contained in the package.

A Okay. It looks like -- no, it's --

Q Documents that you prepared and are familiar with.

A I don't know if I prepared them. I mean, I

see checks going to Mr. Huss as far as payments on his note.

Q Do they appear to be all documents that were prepared?

A They appear to be documents for Mr. Huss.

Q Okay. And it appears based on the notes issued that he purchased notes.

A It looks like that to me, yes.

Q Okay. That's all. Thank you.

(WHEREUPON, Plaintiff's Exhibit 20 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q I'm going to show you another one for Mr. Glen Lackey.

A Uh-huh.

Q And ask if you can just do the same thing. Just look through that. See if there's anything in there that --

A I mean, I can look at this and I can attest to it looks like it's part of a file and you obviously have all of these files from York, which I don't have. I see where I typed notes if I, in fact, typed these. It looks like I did.

Q Uh-huh.

A But I don't know. I mean, I -- that's what

I can tell you.

Q But those documents appear to be original documents. Who, for instance, signed the checks in there?

A It looks like Arthur Field.

Q Who was he? The president of the company or a member of the company?

A I would say so, yes. I just don't know which. I really don't.

Q Or both?

A I don't know that.

Q You have Lancaster?

A No, Lackey.

(**WHEREUPON**, Plaintiff's Exhibit 21 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q I'm going to ask you to look at this last one for Mr. and Mrs. Lancaster.

A Uh-huh.

Q See if that appears to be the same type of documents.

A (Reviewing.)

They look like documents.

Q They fit the pattern of the other documents that are original York documents that you

participated in preparing for Mr. Field?

A I participated in preparing for the notes.

Q That's the only thing you did?

A That's pretty much what I did. I typed up the notes and I did some of the banking. And that is what I did.

Q Okay. Do you know how much money York received in notes? How much money over time?

A I have no idea.

Q Was it $10,000?

A I don't know. I don't know. I have no documents in front of me. I don't know the answer to that. I'm sorry.

Q I've shown you several hundred thousand dollars worth of notes.

Q And some of these may have been redeemed. I mean, I don't know. I don't know how much was in there. I have no idea.

Q Do you know what York did with the funds it received from the investors?

A I believe they worked with -- Scott Pfeiffer was the attorney. I believe he did a lot of the lending. I don't -- I didn't do the lending. I don't know where the money went.

Q Well, you were a signature on the bank. You

got the last $10,000.

A I did. I did and that is part of our settlement agreement that we were trying to work through. I am involved in that global mediated settlement where it specifically said that I have to pay back $10,000.

Q Ma'am, do you know what happened to the money that was deposited in that account prior to that $10,000 being deposited?

A I'm sure that notes were redeemed. I'm sure that money was invested. I can't tell you where it went or what it -- where the money went.

MR. BRANDT: I believe that's all I have, Your Honor.

THE COURT: Anything you want to ask?

MR. STEPHENSON: No, sir, Your Honor.

MR. BRANDT: Excuse me one second, Your Honor. Beg the Court's indulgence.

BY MR. BRANDT:

Q Did you -- did you -- that $10,000 was income to you; was it not?

A That was income to me.

Q Okay. And did you claim that on your taxes for the year that you received it?

A I don't remember.

that right?

THE WITNESS: I do. Not right now though.

THE COURT: Do you know where he is?

THE WITNESS: Right now?

THE COURT: Yes.

THE WITNESS: Yes, Carolina Behavioral Center.

THE COURT: And how long has he been there?

THE WITNESS: As an inpatient -- he's been a patient there since I believe it was last week. He was admitted to the emergency room on Tuesday night. Then I brought him into Carolina Behavioral Center the next day.

THE COURT: What was the admission for Tuesday night?

THE WITNESS: I've got the medical records with me. If you would like, I could show them to you. I've got the admission. It was --

THE COURT: Well, you could just tell me.

THE WITNESS: It was a panic attack. It was a mental breakdown. It was -- he -- he -- he was shaking, like, uncontrollably and he could barely walk.

THE COURT: You know the cause of that?

THE WITNESS: Stress. I mean, he's been under a lot of stress. There's a lot of lawsuits. We're trying and we've been trying to mediate this and trying to finish it and we thought we were very close to an agreement that everybody is on board with. And we were all set to go with this and then it keeps breaking down and we don't know why. We're all set.

If you don't think I can sign on his behalf, it will have to wait until he gets out because he's -- I visited him yesterday. I'm sorry if you don't think it's true, but I've seen him and he's -- you know, it's not a fun place to be.

THE COURT: You have any idea what the prognosis is? How long he's going to be there? When he's going to get out?

THE WITNESS: Well, he was talking -- he had -- he was speaking with a psychiatrist yesterday. I have yet to see the notes on it. But unfortunately, visiting hours are only on Wednesdays and on Saturdays. I saw him yesterday, but I didn't have any notes. I know that he actively wants to settle this so that we could just finally shut the door on this and

move on. And we are ready to do this. I understand, Your Honor, that it -- you don't think it would be acceptable if I signed on his behalf for such a huge settlement.

THE COURT: Correct. He's going to have to do it, unless he was totally and completely incapacitated and there's medical evidence that confirms that.

THE WITNESS: I can't get him out right now.

THE COURT: Okay. I understand that. We're going to reconvene this hearing when he is able to be here. I represent to you that my understanding is that everyone who came to the table at that mediation is interested in resolving the civil aspects of this -- of the lawsuits involved and putting this matter -- finishing this matter.

THE WITNESS: Can I answer that question?

THE COURT: That's not a question.

THE WITNESS: Oh, I was just going to say, yes.

THE COURT: Okay. Anything else?

MR. BRANDT: No, sir.

THE COURT: All right. Thank you. You can

step down. I'll ask one more question. Where did the $156,000 in cash that was taken out of your house, where did that come from?

THE WITNESS: The $160,000 --

THE COURT: 156,000 in cash. You called the police and they came to --

THE WITNESS: Oh, oh, oh, I didn't know what you were talking about. That was devastating actually.

THE COURT: Where did that money come from?

THE WITNESS: That money came -- some of it came from my parents and I had been putting money away because I have been really scared about what's going on. If anything happened to Arthur, the last time when I had to try to post bail, I needed money and I had been taking some money from my parents. I had been putting some -- I had money of my own and I just kept it. I had a friend of mine -- can I tell you this story?

THE COURT: Sure.

THE WITNESS: He was living with us. He was destitute. He had no where to go. He came in and he lived with us for over a year and he took

everything we had and it was devastating.

THE COURT: Why did you tell the police you didn't want to prosecute?

THE WITNESS: I didn't tell the police I didn't want to prosecute. That's not what I said. What they said, they said they found the matter closed and they had nothing else that they could do. I didn't -- I -- I didn't see any way I could actively open it. I actually did call an investigator about two months ago about reopening it because I found out why these people decided to close the case, which I did not know that.

THE COURT: What was that?

THE WITNESS: They thought -- the investigator thought -- the investigator that wrote up the report wasn't even at our house. This investigator just wrote it up from notes. What -- the investigator thought was I was in cahoots with this man that was staying there. I was feeding him the money and we were going to go run away and live off this money, which was absolutely absurd. And, I mean, to this day, I can not believe that happened because I had known this man since he was like 13 and I was,

you know, I was a power lifter with him. I felt badly for him and I took him in. This is what I got for it.

THE COURT: Okay.

THE WITNESS: My father had given me a large sum of money. He knew about that too. I converted it to cash. He knew where it was and he took all that.

THE COURT: Converted it to -- how did you receive it?

THE WITNESS: A check.

THE COURT: When did you get that?

THE WITNESS: It was during the time that this man was living there. I don't remember what year that was anymore. It was two or three years ago.

THE COURT: And your father sent you a check for what reason?

THE WITNESS: Because he was -- he was selling off some of his collections and it was going to be part of my inheritance, which his now gone.

THE COURT: Tell me what bank that check came from.

THE WITNESS: I was a Connecticut bank. It

might have been like Putnam Bank or something. I don't remember.

THE COURT: Okay. Anything else? All right. Thank you. You can step down. Thank you.

MR. BRANDT: Call Ms. White.

MR. STEPHENSON: Is my client excused?

MR. BRANDT: Well, I would say stay until the conclusion of the hearing. I don't care, Your Honor.

THE COURT: Well, this hearing is going to continue because Mr. Field is not here. So I -- as far as staying for the remainder of today, I don't have any --

You all want her to stay?

MR. BRANDT: I have no -- I don't care if she stays. I would like the subpoena to -- if necessary, she'd come back to the other hearing when it's reconvened based on the same subpoena so we do not have to serve her.

THE COURT: This subpoena will continue in full force and effect and when notified -- they will notify your attorney if this hearing is reconvened and they want you to be present. You understand that?

THE WITNESS: Understood.

THE COURT: Okay. All right. Thank you. The other thing I would ask is that you please apprise your lawyer when Mr. Field is released.

THE WITNESS: Yes, sir.

THE COURT: Okay. And Mr. Stephenson, I'd ask that you inform the court or counsel when she does that. Are you continuing in your representation?

MR. STEPHENSON: That remains to be seen as to what it morphs into. I have limited representation.

THE COURT: Okay.

MR. STEPHENSON: I don't represent Arthur Field. If I am told of his status, I will relay it to the Court.

THE COURT: Okay. Thank you very much.

MR. BRANDT: Shall I get her? I don't know where she is.

THE COURT: Yeah. We don't have a bailiff. Oh, no. Yeah, we do.

(WHEREUPON, there is a pause.)

MR. STEPHENSON: She's on the phone with her attorney, Your Honor.

THE COURT: Okay. Didn't know she had an attorney.

MR. STEPHENSON: Again, I don't represent this lady. I'm informed that she's represented by Charles Grove. I didn't know that. He wants to talk to Rodney. I've got nothing to do with that.

THE COURT: Okay. Thank you for that information.

Rodney, you're not involved in this rule to show cause.

MR. RODNEY PILLSBURY: No, Your Honor.

MR. BRANDT: It's news to me, Your Honor. That's the first I've heard. She's just a witness anyway.

THE COURT: Well, as soon as she gets off the phone, she needs to get in here.

MR. BRANDT: My examination of her will be very brief.

THE COURT: Okay. Do we have any noteholders here?

MR. BRANDT: Yes, sir.

THE COURT: All right. Ma'am, if you will, come and put your left hand on the Bible.

THE WITNESS: Where to?

THE COURT: Right here.

THE BAILIFF: Put your left hand on the

Bible and raise your right.

KIRSTEN WHITE

having first been duly sworn, testifies as follows:

THE COURT: Please have a seat and state your name for the record.

THE BAILIFF: Turn around this way.

MS. WHITE: Where?

THE BAILIFF: Right here.

MS. WHITE: Yes. Thank you.

THE COURT: State your --

MS. WHITE: Uh, --

THE COURT: Yeah. Go ahead. State your name.

MS. WHITE: Kirsten White.

DIRECT EXAMINATION

BY MR. BRANDT:

Q Okay. Ms. White, I just need to ask you a few questions. Tell me a little bit about yourself. How old are you?

A 47.

Q Okay. Are you married or not married?

A I, uh, -- I'm married.

Q Okay. Are you separated from --

A I was recently separated, not legally separated.

Q Okay.
A I'm currently --
Q You have any children?
A Uh, yes.
Q Okay. How many children do you have?
A I have three.
Q What are their ages?
A 12, 14 and 17.
Q What's your educational background?
A I have a business degree from Furman.
Q And what is your work history for the last 10 years?
A Uh, goodness. Uh, --
Q Well, are you employed now?
A I'm not.
Q Okay. When were you last employed?
A Last year.
Q With whom are you employed?
A Maggie Bailey, the attorney.
Q Pardon?
A Maggie Bailey.
Q Who is that?
A She's an attorney.
Q Okay. And do you work -- have you been working in the legal profession for a long period of

of yours too?

A Yes.

Q Okay. And Mr. Field didn't participate in that at all?

A Some. They both did.

Q Okay. Did Mr. Field approach you in March of 2009 about buying a note from Lion Financial?

A Yes.

Q Okay. Tell me about that.

A I don't remember. I did give a four-hour deposition last November.

Q Okay.

A I used some notes back then. I don't have those notes anymore.

Q Okay.

A And I don't remember the details.

Q I'm going to ask if you can identify this $52,500 check dated March of 2009.

A Yes. That's mine.

Q Is that a check that you --

I'd like to introduce that.

(WHEREUPON, Plaintiff's Exhibit 23 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q Is that a check that you used to buy this

A I don't recall the details. I'm telling you I don't remember.

Q Okay. Well, were you involved in it?

A As -- yes.

Q Isn't it true, ma'am, really that Mr. Field asked you to do this?

A He asked me if I would, yes.

Q And he provided the money for it?

A I don't remember -- I don't know if it was him or a company. I don't know.

Q Okay. But you didn't have $52,500?

A I did not.

Q Okay. And that note was eventually paid off, was it not?

A It was.

Q This was a note that was owed by Gary and Lori Malvern, correct, to Lion Financial?

A Uh, --

Q And that note was assigned to you along with the mortgage?

A That sounds correct. I really don't remember many details.

(WHEREUPON, Plaintiff's Exhibit 24 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q I'm going to ask you if, in September of 2012, if you signed this satisfaction of that mortgage on the property because it was paid off soon, before its maturity by the Malverns.

A He was able to -- his credit had been -- his credit was very bad in years prior. He was able to rebuild his credit. He went to Lending Tree and found a way to borrow money some years later, many years later. I believe the mortgage originated in 2006. So his credit greatly improved over -- between 2006 and 2012.

Q That six-year period.

A That is my understanding.

Q Okay. You didn't get the money though when he paid you, did you? You didn't get -- whatever was left that was due on that note, you didn't get it, did you?

A I don't -- I don't remember if I had a small residual of that. I don't -- I really don't remember.

Q In your deposition, you said you didn't get it. Have you changed your testimony from that?

A I don't remember today. I don't remember today.

Q Have you ever worked in the document

were bought to me, I think, initially by Legal Eagle. They had the boxes. Yes, it was Legal Eagle or something like that. It was not him.

Q Okay.

A Someone, a company, an actual company, I believe it was Legal Eagle, had possession of all of the boxes.

Q And you didn't do anything but make copies of them. You didn't do any indexes? You didn't do any --

A No, I wasn't provided an inventory of any of names to know if I had them all.

Q So you don't know if you had all of the notes or not or all of the note files?

A All of the applications? No, I don't know.

Q In fact, Mr. Field took some documents and told you not to copy them, representing that they were duplicates or something like that.

A Oh, they were. We separated them out. They were duplicates.

Q Okay.

A They were exactly the same.

Q Okay. So you had --

A It would have been so many more pages and so much more data to do identical pages.

Q To save paper, so to speak?
A Uh, no, not paper because it was already on paper.
Q Okay.
A To save time and data space.
Q So --
A They were identical.
Q So your only contact was Mr. Field and he gave you -- apparently, he had conversations with you during the course of your copying, is that right?
A Maybe occasionally, yeah. Once I got the boxes, I handled it.
Q Uh, what did you do with the records after you copied them?
A Uh, they had to be moved out of the Maribeth Center, out of my office.
Q Now, these were offices you rented for a month or two?
A Several months, many months.
Q How many months?
A Several months.
Q Two or three months?
A Longer than two or three.
Q Okay.
A I don't remember the dates.

Q It was just a little space that you made to do this project?
A Right.
Q You paid a little bit of rent?
A Yes, I did.
Q Okay. And I think you made, out of this $17,500, maybe $15,000 in two or three months. 15-plus-thousand dollars?
A I believe my note was about nine over several months.
Q Okay.
A It was -- I could figure out the dates if I thought about it. From June 2009 until some time in early 2010.
Q So you said something happened to them. You had to move them out. What did you do with them?
A I don't know what happened to the boxes.
Q You just walked out the door and left them?
A Yes.
Q You left the box -- you rented a space and you walked out the door and left the records for this company there?
A Yes.
Q Well, at your deposition, ma'am, I believe you said that you had them put in the dumpster. Which

is it?

A I did say that.

Q Well, which is true? This one or that one?

A I want to set the record straight today.

Q Okay. So let's do set the record straight. You didn't tell the truth at your deposition that you put them in the dumpster. You walked out the door and left them in the space that you rented.

A And when I went back to turn in the keys, they were not there.

Q Okay. Did you tell Mr. Field that you did that?

A That I did what?

Q That you left the records there. He knew --

A I don't remember what I told him.

Q Well, you were in contact with him, were you not?

A Yes, I guess.

Q Okay. So Mr. Field knew that the records that he gave you to copy were in that and you were walking out and leaving them there?

A I don't know what he knew.

Q Didn't you talk to him and tell him?

A I don't remember. This was 2010.

Q Okay. Uh, you still have a relationship

with Mr. Field? Any kind?

A Yes.

Q Okay.

A But not --

Q How often do you see him?

A It varies a lot.

Q When is the last time you saw him?

A Uh, last Tuesday night when I took him to the emergency room with Kate, I think. I think that was the last time.

Q So what was his condition?

A Very bad.

Q Okay. He was afraid of coming to this hearing?

A Yes. He was afraid y'all were going to put him in jail. That has been his -- I'm just telling you what his fear is.

Q Okay.

A We took him to his doctor. His doctor said put him in the car and take him to the emergency room and get him out of crisis.

Q You and his wife?

A Yes.

Q Now, it's not a big secret, is it, that his wife knows that you had a romantic relationship with

Mr. Field?

A She does. She does.

Q Yet, you're still sufficiently a friend that you would go over and help ---

A That is what happened.

Q --- take him to the emergency room?

A That is what happened.

Q Okay. You're a defendant in one or two lawsuits; are you not?

A One, yes.

Q One in federal court?

A Uh, I don't think so. Isn't it state court?

Q Well, have you been in the United States District Court, docket number 6:13-CV-02326 MGL-JDA?

A I don't know.

Q You don't?

A I don't. That number doesn't mean anything to me.

Q Okay. So it's a surprise to you that you are a defendant in a federal lawsuit against you?

A That particular one. I don't know if it was that one. I don't know the number.

Q Okay.

A There was one. It was dismissed.

Q There was one that was dismissed?

A And I don't know if it's the one to which you are referring.

Q Were you ever -- let me ask you if you can identify this.

I'd like this marked please.

(**WHEREUPON**, Plaintiff's Exhibit 26 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q Take your time to look at that.

A I'm not quite sure what it is. I see my name on it. I'm not quite sure what it is.

Q Okay. This is the document, I will represent to you, that was filed on December 31st, 2013 in Capital Investment Funding versus Arthur Field, et al, which would include you as a defendant.

A Okay.

Q And it was filed electronically on December 21st, 2013, and it appears, if you will look on the last page, that you signed it.

A Okay.

Q Is that your signature?

A That is my signature.

Q Okay. So you were aware of this lawsuit then?

A Yes. Now, that I see which one you are

referring.

Q Okay. Looking at this lawsuit, on page 3 of 7, there is a discussion that says White learned of the default on December 30th, 2013 through an acquaintance and never received, nor reviewed, any pleading in this matter. It appears that one day later, this motion to set aside the default and to dismiss was filed by you in the federal court.

A Can you please go back to that sentence?

Q Yes, ma'am. I've got a copy of it right here for you.

A Are they the same thing?

Q Yes.

A Uh, I'm not sure what that means. I don't remember the contents of this document.

Q You signed it?

A Yes, I imagined I knew what it was at the time. Right now, I don't. I'm not quite sure what it is.

Q Did you do the research necessary to prepare this document?

A No.

Q Who did?

A I don't remember it.

Q Isn't it true, ma'am, that Arthur Field

prepared this in its entirety and got you to sign it and you signed it?

A I don't know for sure who prepared it. I really don't. It was not me.

Q What contact did you have with Mr. Field regarding this?

A I don't remember. This was years ago. I do not remember.

Q Okay.

A I don't remember.

(WHEREUPON, Plaintiff's Exhibit 27 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q I'm going to show you this and ask if you recognize that. See if it's your signature on the last page of this document.

A That is my signature.

Q Okay. And what is this styled?

A I'm sorry. What was the question?

Q What does it say it is? It's a motion to dismiss by you.

A Yes.

Q And this is filed in your case, signed by you. The date that it was filed was two months later on February 14th, 2014. Did you do the research

necessary and did you prepare this document?

A No.

Q Isn't it true, ma'am, that Mr. Field prepared that document and got you to sign it?

A I think that's -- that's possibly what happened. I didn't prepare it.

THE COURT: Well, let me just interrupt. If you didn't do it, who did it.

MS. WHITE: I don't know because I wasn't there.

THE COURT: You signed it?

MS. WHITE: I did.

THE COURT: Who had you sign it?

MS. WHITE: Arthur had -- I guess it was Arthur.

THE COURT: No guessing about this.

MS. WHITE: Well, each document -- I don't remember each one individually, but I think it was him.

THE COURT: Did anyone else present you documents to sign?

MS. WHITE: I see what you're asking. No.

THE COURT: But you clearly did not prepare these documents?

MS. WHITE: No.

THE COURT: Arthur Field presented them to you for your signature, is that right?

MS. WHITE: Yes.

THE COURT: And these are filed electronically. Did you do it from your computer?

MS. WHITE: I don't know if it was ever done from my computer, if I had a copy of it, I'm not sure. I just can tell you I didn't prepare it.

THE COURT: But they were presented to you -- I'm not trying to put words in your mouth.

MS. WHITE: Right. I'm trying to comprehend what you are saying and I'm trying to remember.

THE COURT: Well, this is vital.

MS. WHITE: Okay.

THE COURT: You did not prepare them. Tell me -- tell me -- and I'm just telling you, now is the time to make a clean breast of this.

MS. WHITE: Yes, sir. That is what I'm trying to do. I really am.

THE COURT: Are you sure that Arthur

Field is the one that presented these documents to you for your signature to be filed with the court?

MS. WHITE: Yes.

THE COURT: Okay. I'm sorry to interrupt.

(WHEREUPON, Plaintiff's Exhibit 28 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q I'm going to prepare -- I'm going to show you a brief dated the same day that was filed, and ask if this was your signature on this document.

A Yes.

Q Was this too prepared by Arthur Field, given to you for your signature and electronically filed in this case?

A I believe it was, yes.

Q Okay. And you did not prepare it?

A No.

Q And he gave it to you.

(WHEREUPON, Plaintiff's Exhibit 29 is marked for identification and admitted into the record.)

BY MR. BRANDT:

Q I'm going to show you another one, ma'am, this was dated and electronically filed on July 8th, 2014 in the same case and ask if that is signa --

your signature on it.

A Yes.

Q And ask if Mr. Field prepared this document, had you sign it and filed it?

A May I see it?

Q Yes.

A (Reviewing.)

Yes.

MR. BRANDT: That's all I have, Your Honor.

THE COURT: All right. Ms. White, thank you very much. I'm going to tell you that because Mr. Field did not come, we're going to have to reconvene this hearing so I can not release you from the subpoena. The subpoena remains in full force and effect. When we need you to come back, we'll contact you and tell you -- we'll give you plenty of warning about when you should come back. Okay.

MS. WHITE: Yes.

THE COURT: You don't have any idea about when he's going to be released; do you?

MS. WHITE: I don't.

THE COURT: Okay. Anything else?

MR. BRANDT: No, sir. Not at this time.

THE COURT: You are free to go. We have your contact information, I presume?

MR. RODNEY PILLSBURY: No, we just have an address, Your Honor.

THE COURT: You have a phone number so we can call you so we don't have to send somebody out.

MS. WHITE: Yes, I would prefer that.

THE COURT: I'm sure you would.

MR. BRANDT: What is that?

THE COURT: She is going to provide phone numbers so we can contact her for the next hearing so she'll know. She's indicated on the record, under oath, she will come pursuant to a phone call.

MR. BRANDT: Do you know what the number is, ma'am?

MS. WHITE: (864)420-7555.

MR. BRANDT: Thank you.

THE COURT: Okay. Thank you very much.

MS. WHITE: Thank you.

THE COURT: Yes, ma'am.

Okay. Yeah. Well, I just want for the record, Mr. Saad, you have filed your affidavit with the court, is that correct?

MR. STEPHENSON: That's correct, Your Honor.

THE COURT: And that indicates that the -- you adopt and incorporate for this hearing all the exhibits and your affidavit as submitted, is that right?

MR. STEPHENSON: Yes, sir.

MR. BRANDT: And I think I moved to introduce all the documents that we presented. I just wanted to make sure.

THE COURT: Yes. I've got 1 through 29. All right. We will reconvene this hearing when we learn that Mr. Field is available.

To the noteholders, uh, I just want to thank you all for -- I don't remember you all. You probably remember me. Probably have my picture on the wall and you use it as a dartboard. I don't blame you.

But -- Buck, could you step aside? I can't see.

I want to thank you all for being here. I want to -- I hope you all appreciate the efforts that Mr. Saad and the legal teams have gone through to try and collect this. I hope you all can see the incredible difficulties that, uh,

they faced. I wish I had better news for you. I will tell you that you all have any sentiment with respect to the settlement of the case -- are y'all --

SPEAKER: What do you mean?

THE COURT: Well, what we're talking about doing is putting this -- putting an end to it, all these lawsuits. We can't find where the pot of gold is. I think I just -- at some point, we've got to, for your piece of mind, put the thing to rest.

SPEAKER: I agree with you. I do. Matter of fact, he's still doing damage.

THE COURT: Okay. Yes, ma'am.

SPEAKER: I know the money is not coming. I know the money is gone. He is very smart, manipulative and narcissistic. He's an evil person and a very good chameleon. I have seen him -- judge, I have seen him interchange money to people and then on the other side giving this appearance of having no money, taking advantage of people. He plays to whatever. He doesn't know the difference between right and wrong.

THE COURT: Well, I agree with everything you said except the last part about knowing the

difference between right and wrong. I think he knows. He just doesn't care. I'm not trying to pick at you.

SPEAKER: And I think the family is equally manipulative as he is.

THE COURT: All right. I agree with you completely. So if we can, uh, --

SPEAKER: I would like him to be held accountable in some way.

THE COURT: Yes, ma'am. I've been telling Mr. Saad all these years as we went through this, he will be held accountable in this life or the next. I want to tell you I honestly believe that these gentlemen have done everything they can to make him accountable in this life. We're -- they don't have the evil genius that he has to be able to unwind that thing. So anyway, I want to thank you all for being here. We'll let you know when the next hearing is.

(WHEREUPON, the proceedings conclude at approximately 4:01 p.m.)

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 14th day of November, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Teresa B. Johnson

Official Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
William Tomz and Francis W. Tomz	)	CASE # 2008-CP-23-3665
Individually and as Class Representatives	)	
	)	
Plaintiffs,	)	
vs.	)	**NOTICE OF MOTION AND**
	)	**MOTION TO RECUSE**
Capital Investment Funding, LLC	)	
And Arthur M. Field	)	
	)	
Defendants.	)	

EXHIBIT D

OFFICIAL TRANSCRIPT EXCERPTS

3/17/2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

WILLIAM F. TOMZ AND FRANCIS W. TOMZ, INDIVIDUALLY AND AS CLASS REPRESENTATIVES,	)	
PLAINTIFFS,	)	2008-CP-23-03665
-VS-	)	TRANSCRIPT OF RECORD
CAPITAL INVESTMENT FUNDING, LLC, AND ARTHUR M. FIELD,	)	
DEFENDANTS.	)	

MARCH 17, 2017
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE EDWARD W. MILLER

A P P E A R A N C E S:

ATTORNEYS FOR PLAINTIFFS:

GEORGE BRANDT, III, ESQ.
STANLEY T. CASE, ESQ.
GENE M. CONNELL, JR., ESQ.

ATTORNEY FOR DEFENDANTS:

MICAJAH P. CASKEY, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

modified. The original order of restitution requiring Arthur Field to pay two point nine -- two point eight seven seven (2.877), I think, is the exact number and some change.

And what this settlement is intended to do is to replace the remaining restitution payments and substitute all the payments that we're going to get in here for restitution. It also, we believe, has the effect of making this Global Settlement subject to all the laws and conditions of restitution oversought by, you know, parole and so forth.

The second part is -- that's a condition, which I'm sure Judge Miller will address, is that this Settlement Agreement will be void if Judge Miller decides in his view that he ---

(Cell phone rang)

MR. SAAD: There are things that ---

MR. FIELD: Excuse me. I'm sorry. I turned it off. My apologies.

MR. SAAD: There are actions that Arthur has done that's -- on the rule to show cause that are at a level of contempt that he will want to issue sanctions. So that's going to be Judge Miller's duty to weigh, benefits of the settlement versus whatever actions he sees are appropriate for the rule to show cause in the matters that we've brought before him in the last three years.

profits he might make if he ever sells, or publishes, or produces any work, book, movie from this or anything related to CIF. It's a longshot. And the likelihood is, you know, I don't think anybody should expect anything out of it, but if he ever does, and he certainly is capable of writing, and writing [illegible] something come about.

My [illegible] to me many times you want to [illegible]l, go write a book about t[illegible] and it could sell a lot because [illegible]s been -- and it certain[illegible]ent value.

Th[illegible]titution order to be modifi[illegible]mbers of CIF, which are Arthur Field, Brad Kelley, [illegible]ey, Log Cabin Financial and, I think there's one more. I can't remember. They all -- Oh, Calvin Williams. They all have to give up their membership interest so that we don't have them as owning part of CIF once we do the settlement.

There's a little bit more details as we go along and, you know, we could probably spend another hour or two going through the details, but I want to just highlight a few more intricacies.

As I said, Thornblade house will be deeded to CIF. Arthur Field and Kathryn Taillon will -- we will allow them to stay there rent free until October 31st. They want them

are you?

MR. MASSEY: I'm Gary Massey. My father was Floyd H. Massey.

THE COURT: Okay. Member of the Class?

MR. MASSEY: Yes, sir.

THE COURT: All right. I'm going to give y'all a chance to talk in just a minute.

MR. MASSEY: All right.

THE COURT: Okay. But for the attorneys for any of the Defendants is who I'm first addressing.

MR. CASKEY: Nothing from the Defendant, Your Honor.

THE COURT: All right. Thank you. All right. Yes, sir.

MR. MASSEY: Jerry Massey from South Carolina. My father, Floyd Massey, had a substantial ---

THE COURT: If you could keep your voice up.

MR. MASSEY: My father is Floyd H. Massey.

THE COURT: Yes, sir.

MR. MASSEY: Had a substantial amount invested in Capital Investment. My question for you, Mr. Saad, is you've been working on this for how many years now?

MR. SAAD: Almost nine.

MR. MASSEY: Nine years. On a scale of one to ten, this settlement, how it sits with you, what is your honest number on where this falls, on a scale of one to ten? Is

your -- I guess I would say your approval of it, where would it be?

(Pause)

THE COURT: Let me just ---

MR. MASSEY: That's an honest question.

THE COURT: I think it is an honest question, but let me just step in. You're asking -- and I've said this many times. And I think members of the Class, you've heard me say it before. Mr. Saad and the attorneys involved in this have worked diligently. And, you know, I don't know that we need to get into emotional ---

MR. MASSEY: I don't think that's an emotional number.

THE COURT: Well, ---

MR. MASSEY: I think it's a very subjective number. I'd just like to know his opinion of ---

THE COURT: Okay. Well, ---

MR. MASSEY: Of one to ten.

THE COURT: You comfortable doing that, Mr. Saad?

MR. SAAD: Yeah, I'll ---

THE COURT: Okay.

MR. SAAD: --- address it. Because it's -- it's not a direct question. It's, I mean, what are we measuring? My comfort with it? I believe it's the right thing to do. I believe we have mental fatigue. You know, if you're in an airplane and you got mental fatigue, the wing's going to

fall off sooner or later and the thing's going to crash.

This -- this will go on, and on, and on, and on. And I sit through depositions, and I sit through hearings. And I view what a waste of energy, what a pure waste of energy to fight for something like this when I know the money's not going to be there.

But I kept -- I believe it was the right thing to do to get us to this point because I think what my goal and what I was internalizing, you know, I profess this to everybody, but I always viewed to get that house because I think it's a statement to the noteholders.

He lived in a nice house. And I've heard it over and over again from too many of the noteholders. And so I see this as a symbolic victory that Arthur is relinquishing, you know, his primary asset. And it's a big one. And it hurts.

I think he's -- I think it -- I think it's a meaningful taking from him. And so that's why I think it's the right thing for the Class.

I don't think -- do I think this is fair? Life is not fair. People get hit by cars. They have heart attacks. Y'all were not treated fairly, but it happens. So I'm not here to make things fair to you. I'm just doing the best I can. And I think this is the best we're going to do.

MR. MASSEY: Okay. So what's that number? If you put one to ten?

ratio, this man spent five days in jail. That's a travesty in the history in the annals of the courtroom. And I for one am going to do everything I can to make the citizens of South Carolina aware of this travesty.

I will say this, these shareholders and all of us, it's like when my father came to Mr. Fields, he thought he was getting the fine wine. I don't know how many of you have ever tasted a muscadine, but it looks like a grape. Once you bite into it, it's bitter and it's bad.

And what Mr. Fields did was not only unethical, it was so selfish and deceitful. And he has not paid anything -- very -- hardly anything for it.

The chapters that should be written would be about the people that are in their own prison like my mother for the rest of her life. She's eighty-five years old and there's nothing for her to live on. She's in her own prison.

And all these folks that are in nursing facilities or in their apartments or they can't get the care they need because they invested everything they had. Are you kidding me? Are you kidding me?

Yes, I will fight until Hell freezes over for the lives of these people because he took not only their money, but he took their souls. He took their lives. He took their future.

Yes, it's much more valuable. Listen, money is not the

MR. SAAD: We'll probably get something on the high side of a million three. And then we've got to pay attorney's ---

MR. MASSEY: No, I'm not talking about that number. The one to ten.

MR. SAAD: I'm sorry. What?

MR. MASSEY: The one to ten.

MR. SAAD: I say if we're measuring if it's the right thing to do, I'd say it's a -- it's a nine.

MR. MASSEY: Okay. Can I respond to that?

THE COURT: Yes, sir.

MR. MASSEY: You mentioned that it would hurt Mr. Field. You also mentioned he could write a book, write a movie. Let me tell you what the plot for that movie should be. The plot should be these countless members, this class action suit, like my father, who worked twenty-five years in the mill, worked two jobs, had four hundred thousand dollars -- everything he had he invested with this man because he trusted him.

My mother, you talking about -- listen, I'm going to say this. Bernie Madoff will be in prison for the rest of his life. If you look at the average shareholder who lost, what Mr. Fields did is triple what the average shareholder had. He had thousands, thousands of clients.

If you look at the hundreds of clients and do the

ratio, this man spent five days in jail. That's a travesty in the history in the annals of the courtroom. And I for one am going to do everything I can to make the citizens of South Carolina aware of this travesty.

I will say this, these shareholders and all of us, it's like when my father came to Mr. Fields, he thought he was getting the fine wine. I don't know how many of you have ever tasted a muscadine, but it looks like a grape. Once you bite into it, it's bitter and it's bad.

And what Mr. Fields did was not only unethical, it was so selfish and deceitful. And he has not paid anything -- very -- hardly anything for it.

The chapters that should be written would be about the people that are in their own prison like my mother for the rest of her life. She's eighty-five years old and there's nothing for her to live on. She's in her own prison.

And all these folks that are in nursing facilities or in their apartments or they can't get the care they need because they invested everything they had. Are you kidding me? Are you kidding me?

Yes, I will fight until Hell freezes over for the lives of these people because he took not only their money, but he took their souls. He took their lives. He took their future.

Yes, it's much more valuable. Listen, money is not the

only thing we're talking about here today. This is, you know, this whole process stinks to high Heaven. And I can tell you, we've all bitten into a muscadine.

And we know the difference between muscadine wine and truly fine wine. And we're not getting that today. And it's got to change.

And whatever it takes to overcome all of his little, you know, antics to try to avoid taking responsibility as a man -- you know, what -- God's word says that a righteous man does what's right even though it costs him, even if it hurts.

Zacchaeus, when the Lord, you know, told him to come down from the tree, went to his house, he said, listen, everything I've taken, I'll give three times what I've taken. He did what was right. A good name is to be cherished more than anything.

This man needs to make his name right. And he needs to do what's right by these people. And this stinks. It's wrong.

THE COURT: Okay. Thank you very much.

(Members in the audience said amen)

THE COURT: Is there anyone else from the Class who would like to address Mr. Saad or make any statement?

MR. SPATES: I have something I'd like to say.

THE COURT: Yes, sir.

MR. SPATES: I'm Dennis Spates (phonetics). And I found something new -- learned something new. Mr. Fields was sentenced to ten years in jail. He spent five days. I was -- I always thought crime doesn't pay. Well, Mr. Fields and Judge Maddox proved that statement wrong. It does pay.

He stole thirty-eight million dollars from the citizens of South Carolina and he's going to give back one point nine million or two point nine. Now, I don't think that's right.

THE COURT: All right. Anyone else?

(No response)

THE COURT: I have a couple of questions. I've got some serious concerns. What is the anticipated effective date of this Global Settlement Agreement? Upon his full -- the payment of everything that's agreed to?

MR. SAAD: If -- it would be no later than December 31st, 2018, but he has the twenty thousand dollars incentive to make it December 31st, 2017.

THE COURT: Okay.

MR. SAAD: And that's just on the eighty-five thousand dollar payment. Everything else -- all the documents to effect the deal have been signed and are now held in trust. So we have a signed deed. We have signed assignments of mortgages and notes. We have -- we have the leases ---

THE COURT: Well, my question is this. I understand the financial. But in order to approve this, this GSA

you've got to go through the process. And the likelihood of recovering that is diminishing greatly.

THE COURT: Okay.

MR. SAAD: And the fact that his daughter is the deed holder on the Thornblade house, it as originally purchased through funds that touch some of these defendant companies, but ultimately it was in Kathryn's name, and then she deeded it to Allyson even though Allyson didn't live there in 2012, I think. So to get that property away from Allyson, it's another lengthy process of -- and you've got to show -- you've got to prove that it was taken to defraud creditors.

And there's appeals. And appeals, Arthur's very good about filing appeals. But that's -- so that's what we're facing. That's why I say, do I think it's fair? No. But do I think it's the best we're going to get? Yes, I do.

THE COURT: Okay.

MR. SAAD: Monetarily.

THE COURT: Okay. All right. Well, ...

(Pause)

MR. SAAD: Five years restitution. It was a hundred a ninety-two thousand dollars. So we're getting substantially more, a million plus.

THE COURT: All right. Thank you. I'll tell y'all right now I'm not going to approve this settlement today, if I approve it at all. And I think a lot of you, I don't know

how you all feel, but I think you now understand that this money is -- disappeared. And where it is, we have been unable to find it. And there have been diligent efforts to do that.

And I believe there have been diligent efforts to hinder that search. I have no financial skin in the game in this, but what I -- the skin in the game I have in this involves these pending rules to show cause and potential contempt of court. And I would love to see all of y'all get your money back. We just don't think that's going to happen.

But there have been, I think some serious matters and prevarications instituted by Mr. Field in violation of orders of this Court, which in my mind is very, very serious. Every effort that we've made to follow the paper trails has been resisted. And I understand that the computers were turned over, is that right, Mr. Saad?

MR. SAAD: Yes, sir.

THE COURT: And a search was performed. I guess what we're doing is morphing into the rule to show cause. And so I -- tell me what the search of the computer revealed.

MR. BRANDT: Well, if it please the Court, Your Honor. I'm Buck Brandt.

THE COURT: Yes, sir.

MR. BRANDT: I represent Mr. Saad as receiver in this

A. I started the Computer Forensics Unit in 2002. And since then I've had training in cell phone forensics, computer forensics. I've done over a -- thousands of devices of cell phones and computers.

THE COURT: Okay. All right. Did you examine any computers in this matter?

A. I did.

THE COURT: Okay. Would you tell us about that, dates and times and what you -- what all you did.

A. On 17 December I met with Mr. Fields at 9:05 am at the parking lot in Wells Fargo over on the parkway. And I took possession of some computers of his, which I've got he signed for that I took them, and when I gave them back he signed for them.

I waited to hear that you had an order giving me permission to go ahead and start searching them. Which once I did I started looking for deleted -- I was told that that was the main issue was any deleted things after two pm on December 8th, 2016.

So using my software forensic program, EnCase, I noticed -- one of the first things I noticed was that there's a program called CCleaner, which is a -- it's a utility that you run on your computer that cleans up temporary files, broken files and can overwrite things that are deleted in your unallocated space or deleted area.

It's used for -- we actually use that program on our forensic computers because we do a lot of child porn cases. So we'll run that to clean out our cache, information like that. So it's a program I'm familiar with.

I did notice that there were -- that it had been run on 12/15 at 9:29 am. And this is a copy of my report. You can -- that's your ---

THE COURT: All right. Thank you.

A. This screen shot right here, Your Honor, is the -- you can see the program CCleaner right there was run -- last access was 12/15 on 16 at 9:29 was when it was run.

THE COURT: Okay. Does anybody want to take a look at that? Shawn, can you run about, I don't know, three or four copies?

(Pause)

THE COURT: All right. Let's go ahead -- let's mark that.

(Whereupon Court's exhibit 1 was marked)

THE COURT: Well, these guys -- they can share. Thank you, Shawn. All right. Go ahead, Mr. Perry.

A. I was stating on the 12/15 that there were some forty-four thousand files that had been overwritten. So I can't -- I can't tell you what -- what those files were that were overwritten.

THE COURT: Okay.

A. Whether it was pictures, or documents, or utilities, there's just no way of knowing. This here gives you -- it shoes you an example of the over -- when it overwrote the files it gives it a name.

And these -- if you were to go through all forty-four thousand of them, none of these Z's -- and that's the name of the file. You can see over here, this is the area of a data. It's blank because it's been overwritten.

THE COURT: Okay.

A. So ...

THE COURT: All right. Shawn, I guess, make about five copies of that. You got any other ones that you want to ---

A. I'm sorry?

THE COURT: You got any other ---

A. Yeah, there was two more screen shots.

THE COURT: And, Shawn, let's go ahead and make -- you out of paper? You need some paper? Do you need some more paper?

(Pause)

THE COURT: All right. Yeah, Mr. Caskey.

MR. CASKEY: Yes, sir. I just wanted to -- Micah Caskey. I wanted to note for the record a renewal of our motion for recusal. We seem to be going ---

THE COURT: New grounds?

MR. CASKEY: We seem to be going into the rule to show

cause issues, Your Honor.

THE COURT: We are, yeah.

MR. CASKEY: And given that it's a continuation of that hearing that we addressed some months ago, I just want to renew that motion for recusal based on the grounds that we covered in the last hearing.

THE COURT: Okay. Denied.

MR. CASKEY: Thank you, sir.

THE COURT: Let's just make them one exhibit. So here's the -- here's the marked. It's going to be -- are there four pages?

A. Yeah, there were four screen shots.

THE COURT: Okay. So four page -- one exhibit, four pages.

(Whereupon the documents were attached collectively as Court's exhibit 1)

THE COURT: Okay. Go ahead.

A. There were two type of web based emails that were deleted on 12/12 at 7:01 am, which were a Hotmail and a OWA, which stands for Outlook Web Access. And that's on screen shot three. You can see the mail servers and the little round thing with a slash, means it was deleted, but it also says over here last access on this date. And over here file was deleted.

THE COURT: Okay.

A. And then it was run on 12/15.

THE COURT: All right. So your department uses that particular application?

A. CCleaner?

THE COURT: Yes.

A. Correct.

THE COURT: All right. Is there -- how do you -- did it wipe clean the entire hard drive or just specific files?

A. It does. You actually can go into the settings and pick specific type files to have it wiped. Then you can have it wipe the unallocated space, which is the deleted area without touching any of your stuff that's on your computer itself.

THE COURT: Okay.

A. So ---

THE COURT: But the ones you're referring to were -- they had not been deleted. They were files ---

A. They were files that had been deleted, ---

THE COURT: Okay.

A. --- but had not been overwritten. The name of the files had not been overwritten, but the content was overwritten.

THE COURT: Okay. All right. And does this CCleaner -- can it initiate -- can it just start on its own?

A. If you go into the settings when you first load it on

your computer and you go to settings -- well, at any time you have it, you can go into the settings and you can set it to run upon booting your computer up. However, but you have to go in and manually actually set it to do that. However, if that had been the case, the last access date for CCleaner should have been the 17th and not the 15th.

THE COURT: Okay.

A. Because if it -- if it auto ran on the 15th it should have auto run on the 17th.

THE COURT: Okay. All right. Anybody want to ask any questions of Mr. Perry?

MR. CASKEY: Yes, Your Honor.

THE COURT: All right.

MR. CASKEY: May it please the Court?

Cross Examination by Mr. Caskey:

Q. Thank you, Mr. Perry, for being here today.

MR. CASKEY: Again, for the record, it's Micah Caskey.

Q. I just have a couple of questions. Which laptop are we talking or which computer are we talking about here?

A. This was the ASUS.

Q. This is the laptop?

A. Yes.

Q. Okay. And are you familiar with the purpose of that laptop, what my client used that laptop for?

A. I'm sorry. I may ---

MR. CASKEY: Yes, sir.

THE COURT: Don't interrupt.

A. One computer would not -- I could not get it to read. It would not fire up. I couldn't get it to connect. There was a problem with it, whether it was the boot record or some type of problem with it. The second one was this one.

And then I had a desk -- desktop that was -- the Martins had at the law firm. And I did not -- I haven't done that one because they had it in their possession during the time of -- what we're referring to, the time-frame.

In other words, they had the computer. Therefore, he couldn't have deleted anything off of it. So I didn't do anything on it.

Q. So the Court ordered you to analyze that computer and you didn't do it because you didn't think that it could have been part of the deleted scope of that, right?

A. Couldn't be.

Q. Couldn't be. Unless he went into the office of the attorneys and accessed it, right?

A. Pretty much, yeah.

Q. Well, we wouldn't know that because you didn't even test that?

A. That's correct.

Q. Okay. So in the sum of the three computers that this Court ordered you to analyze, you've -- you analyzed one, is

specifically said, this is the one that I have run the software programs on because of the virus. I said, and this other one, which contained -- is the laptop, contains all the CIF material.

Q. Thank you, Dr. Field.

MR. CASKEY: Your Honor, I don't have any further questions.

THE COURT: Y'all have any questions?

MR. BRANDT: No, sir.

THE COURT: Anybody else have any questions they want to ask him?

MR. CASKEY: None from the Defendant.

THE COURT: All right. You can step down. All right. Anything else?

MR. CASKEY: Your Honor, we just renew all previous objections and motions in this case.

THE COURT: Okay. Same rulings. All right. Any comments from any of the members of the Class, anything y'all want to say? Yes, ma'am. If you would, state your name for the record.

MS. DENTON: Yes. I'm Janet Denton. And my husband was George Denton. And we invested, I think, because my husband was developing Alzheimer's. And we went to get our money and -- which was maturing, and they told us that we couldn't do it, that it had -- we had to have acted within a

certain period of time previously.

But I went home and read the letter that was presented to us. And I was in my -- we were in our rights to get our money at that time.

He got worse. He was put in a nursing home. And this affected him really greatly because we had always worked really hard for our money. And this was something we had depended on when we retired.

And I would just like to know when he moves to Florida what type home is he going to live in? Where is the money coming from? And would he like to live on his Social Security for the rest of his life? Because that's what I'm having to do.

THE COURT: Yes, ma'am.

MS. DENTON: Thank you.

THE COURT: Thank you. Anyone else? Yes, ma'am.

MS. LOCKHART: I'm Nancy Lockhart. I'd like to know why we're just now checking his computers? Why are we -- we've waited nine years. Why are we just now checking them?

THE COURT: Well, ---

MS. LOCKHART: And one other question.

THE COURT: Yes, ma'am.

MS. LOCKHART: Why don't we sell his house now? Why is he allowed to live in it until October? And also the daughter, why not start now? Why wait another year?

THE COURT: Okay. Valid questions. The computers were -- it was -- they're -- we didn't obtain the right to do that except through the litigation, okay? And I can't speak to what the State Grand Jury -- what they looked at, what they could do. We were limited in a lot of ways, if you remember, because of a pending criminal investigation. That has some of the -- something to do with what's -- the delay in this.

The next -- your second -- oh, I'm not party to the negotiations for this proposed Agreement. So what went into that, it's a give and take on both sides.

I will tell you that I think what Mr. Saad has said about the analogy of mental fatigue is very real. And I imagine you all are feeling some of that too. It has been -- the amount of angst that has been imposed on the people involved in this litigation has been -- it's pretty enormous.

And so I have not decided whether I will agree to this or not. I don't particularly like the idea of the way this is being driven, that -- but I'm going to take it under advisement and think about it.

And, you know, at some point everything's got to come to an end. And that's sort of, I think, where, you know, is it now or do we go on for another five years with more of the same? Because I can promise you it will be the same.

Some people just know no other way. So is there anything else we need to -- anything from the Class attorneys?

MR. CASE: No, sir, Your Honor.

MR. PILLSBURY: Your Honor, if I may. Rodney Pillsbury. I'm CIF counsel in the State Court case also in the Federal Rico case.

Just wanted the Court and the noteholders to know that we -- we've been actively negotiating everything on every element. I mean, if you look at the Settlement Agreement, it is how many pages? Fifteen before you get to signatures? Sixteen pages of detail, after detail, after detail. And exactly what you expressed from the outside looking in is very valid.

What I can tell you is I was the point person in negotiations working with Jerry September through December, carried over into December. And he spent countless hours. And he hasn't paid himself a dime in years on this file. He's doing it to finish and to bring closure and do the best that he can for all of you.

I mean, I could tell you every meeting I've had with him, that has been his number one concern. And so just from working side by side with him, I can tell you that there wasn't an aspect of this that he didn't give that he wasn't thinking what is in the best interest of the noteholders?

And even the timing of moving out, there were reasons

pro and con. There were statements made. And at some point you just concede certain things in order to get the entire deal done.

But I know, you know, I can't tell you the number of hours that Jerry has had, probably more than two hundred or so, I mean, literally while he's trying to run a CPA practice trying to get every detail nailed down. And so I just wanted everybody to know that this wasn't something that was just sort of thrown together at the last minute.

And there are some details that have some heartburn in them, but -- and I think, you know, we can probably answer any questions that you may have privately about any particular details, but I can tell you that it was absolutely done trying to extract everything that he believed was reasonably obtainable. Thank you.

THE COURT: Yes, sir.

MR. CONNELL: Your Honor, I felt maybe I should say something since I started this. I'm Gene Connell.

THE COURT: Yes, sir.

MR. CONNELL: Back nine years ago my neighbor came to me about a Capital Investment Funding that -- and had a problem with that. He's Mr. Tomz, who started this lawsuit. Since that time and in the last nine years there have been five law firms involved in this thing including a law firm in New Jersey.

And we -- I want to point out something for y'all. Mr. Pillsbury spent five years looking at documents, trying to trace any emails, trying to figure out whether somebody in Germany might have some money, trying to figure out whether there's some secret bank accounts. So -- so the Court understands, it's not us giving up, it's us not being able to find anything else after nine years other than what we have and maybe this money that might be available in New Jersey.

I mean, we're not giving up on y'all. We have spent -- I've been in since the beginning. And I want to point out all these people here have been in it all the way through. And we have looked at everything, millions of pages of documents, records, emails.

Your Honor's been in the case all this time. You're the second judge. I had -- I got a subpoena from the State-wide Grand Jury. Your Honor remembers about that. I had gotten some documents.

So our point is is that this is the best that we can find with what we have. We have looked at everything we can think of.

If y'all want to come -- the files in my office, I think, are at least six banker's boxes. I'm sure that -- I don't know how many you have. A hundred and twenty banker's boxes. How many do you have, Mr. Pillsbury?

MR. PILLSBURY: A lot.

MR. CONNELL: Lots. In one -- in one part of the Federal case, I was looking at it yesterday because we're still involved with that, there are three hundred and seventy some filings between us and Mr. Fields and the Court.

And we've had this case in Federal Court, we've had it State Court. It was in Horry County. It is -- it has been investigated as much as any case I can remember. I've probably done a dozen consumer fraud class actions in my practice.

So so far all of y'all -- we did not -- this is not something we entered into lightly. There were two mediations. We all came to them. This is all we could find at this point.

THE COURT: Okay. Yes, sir.

MR. DONALD: Just one quick statement. My name is Ray Donald.

THE COURT: Okay.

MR. DONALD: After this, if the Court settles it, agrees with it or not, would there be any way for anybody in the Class -- I think we would all like to have some sort of a number from Mr. Saad or Mr. Connell, whoever, that says -- we've had one payment already of approximately two and a half to three percent. In two years, whatever the date is,

can you give us some sort of a number -- is there going to be -- because right now one point five million on thirty-nine million, that's less than three percent.

I mean, is it three cents on a dollar? Is it five cents on a dollar? Is it two cents on a dollar? And when can we see some sort of a -- if it's nothing from New Jersey, that's -- that's a blessing if we get anything from New Jersey. But today with what you have, when will we see a payment and approximately how many cents on the dollar do you plan on paying out after you pay all the legal fees and all that stuff?

That's, I think, what the Class would like to hear. A concrete date, a concrete number is all we're asking for. If we lose our, excuse my English, but our fannies, I'm not going to say another word, but if we lose that, we've lost that. Tell us today what we can go home and buy a refrigerator with, you know? Buy ninety-nine dollars worth at Home Depot, but buy something. Let us know.

Can I pay my home owner's insurance? You know? I'm not going to buy a home anymore, but maybe I can pay my insurance. That's all we would like to know.

THE COURT: Okay. Well, I'm sure when the time comes Mr. Saad can do that. He's -- he is very good at that. I would point out too, to the Class members, if you're concerned about the diligence of the efforts to recover

these funds, the State Law Enforcement Division did an extensive investigation.

So it's not just been the private -- these gentlemen and their -- everyone that associated with them. It's also been the State that has done an investigation.

And if you all have followed the -- read any of the documents about how this was accomplished -- I called it a shell game many years ago. And I am more convinced today that it's a shell game than I have ever been.

There may be money somewhere, Luxembourg, hidden away in the Caribbean or something. We can't find it. The only person that would know where it is sits right there. And he's not going to tell us. Yes, sir.

MR. SPATES: Dennis Spates. According to -- when he got his ten year sentence he made an agreement with Judge Maddox that he would help find the money to get out of jail. Well, according to what you've said so far, you said earlier, he's done everything he could to keep from helping.

So as far as I'm concerned he's broken his agreement with that parole and should go back to jail for ten years and see if maybe he can come up with some ideas now.

THE COURT: Okay. Well, I doubt ---

MR. SPATES: Ten years is nothing for that kind of money.

THE COURT: Yeah. I doubt that you're alone in that

sentiment. That is not -- that issue's not before me. And so is there anything else anybody wants to say?

It's been a long arduous process. And I am taking this matter under advisement. I have already made a conclusion with respect to contempt of court and whether -- how I act on that, I'm going to think about. Okay. If there's nothing else, we'll be adjourned.

MR. BRANDT: Thank you, Your Honor.

MR. CASE: Thank you, Your Honor.

(Hearing Ended at 12:27 pm)

(End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 17th day of March 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 9, 2017

Susan W. Hudgins

Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
William Tomz and Francis W. Tomz Individually and as Class Representatives	)	CASE # 2008-CP-23-3665
	)	
Plaintiffs,	)	
vs.	)	**NOTICE OF MOTION AND MOTION TO RECUSE**
Capital Investment Funding, LLC And Arthur M. Field	)	
	)	
Defendants.	)	

EXHIBIT E

OFFICIAL TRANSCRIPT EXCERPTS

9/15/2017

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

WILLIAM F. TOMZ AND
FRANCIS W. TOMZ,

PLAINTIFFS,

-VS-

CAPITAL INVESTMENT
FUNDING, LLC AND
ARTHUR M. FIELD,

DEFENDANTS.

2008-CP-23-03665

TRANSCRIPT OF RECORD

SEPTEMBER 5, 2017
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE EDWARD W. MILLER

APPEARANCES:

ATTORNEYS FOR PLAINTIFFS:

GEORGE BRANDT, ESQ.
STANLEY CASE, ESQ.

ATTORNEY FOR DEFENDANTS:

MICAJAH CASKEY, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

THE COURT: Yes, sir.

MR. BRANDT: Please the Court, Your Honor?

THE COURT: Well, before we get started, I was informed that somebody walked in and said that they were here to be a court reporter.

MR. CASKEY: Your Honor, Micah Caskey for the Defendant. The Defendant did hire Ms. Vickie Stewart, who's seated -- sitting in the first row ---

THE COURT: Well, you may ask her to leave the courtroom. Under Rule 605 I'm not allowing a recording of these proceedings. We have an official transcript, okay?

MR. CASKEY: Yes, sir.

(Whereupon Ms. Stewart exited the courtroom)

THE COURT: All right. I just -- for anyone else in here, I am not permitting the recording of this outside of the transcript that will be provided by the court reporter. So if anyone has a recording device, you need to turn it off. And if I find that it is -- there has been a recording, I will treat it as contempt of court, criminal contempt of court.

And I'll also tell Mr. Field that when you requested the transcript from the last hearing, you asked for the court reporter to transcribe remarks made between myself and my law clerk. Those are not part of the record, and they were not provided to you. And it is inappropriate for you

to know what they -- what is said between me and my law clerk. You understand that? Mr. Field?

(Whereupon Mr. Field conferred with his attorney)

MR. FIELD: I understand what you said, Judge. Yes.

THE COURT: Well, do you understand it's inappropriate for that to be included in any record?

MR. FIELD: I wouldn't know, Judge. I don't ---

THE COURT: Are you telling me that you didn't ask the court reporter to transcribe remarks?

MR. FIELD: I felt that it was important to transcribe everything that was said in court. Perhaps I was wrong.

THE COURT: We do not transcribe the conversations that you have with your attorney, nor with your adversaries' attorneys. And you do not transcribe the private conference I had with my law clerk.

MR. FIELD: Yes, Your Honor. It's fine. I apologize.

THE COURT: Okay. Mr. Brandt.

MR. BRANDT: Please the Court, Your Honor? I'm Buck Brandt. And I'm here representing Mr. Saad in this matter. The -- there are actually five issues before the Court today. And I don't know how the Court is going to take up these issues or leaves some out there or whatever.

There's an issue of a rule to show cause where a hearing was held sometime in the past where we were requesting that various people be held in contempt of court,

primarily Mr. Field. The Court reserved the ruling in that matter.

In addition, Your Honor, on, I believe it was March 17th, 2016, a motion was filed before the Court to approve an 88-page agreement that the parties had negotiated over a period of approximately one year that is an executory contract that provided for parties who are signatories to the contract to do certain things. Since that executory contract was executed, the parties who were required to do certain things had not done certain things.

And as a result of that we have filed motions against -- regarding Kirsten White to comply with the terms and conditions of the agreement, a motion as to Arthur -- Allyson Field, Kathryn Taillon and Arthur Field to comply with the terms and conditions of the agreement, and an amended motion regarding Arthur Field to comply with the terms and conditions of the agreement. That is what we're here for today.

We are ready, willing and able to comply with the terms and the conditions of the Global Settlement Agreement and move forward with the settlement of this case, but for reasons that we do not know, that has not happened. So I don't know how the Court wishes to proceed.

If the Court wishes us to step back and talk a minute and try to resolve these issues, I'm happy to. If the Court

THE COURT: The house ...

MR. BRANDT: The house being the property at Thornblade. And ---

THE COURT: The house belonging to Mr. Field.

MR. BRANDT: That's correct. Well, actually belonging to his ---

THE COURT: His wife, his daughter, whatever.

MR. BRANDT: --- his daughter.

THE COURT: Yeah, the ---

MR. BRANDT: It is my understanding, Your Honor, that an insurance claim has been made. And the insurance company has actually provided a check to Mr. Field that is now in Mr. Bannister's trust account, I have been told. Don't know when it was put there. Don't know how much it was.

But it is my understanding that the parties have agreed that that insurance claim for the damage done to the house will be assigned to my client. My client will then take over that claim and proceed to resolve the claim with the insurance carrier both by negotiating a settlement for the claim and by making the necessary repairs to the property for the damage done to the house, not by Mr. Field, but by the leak that was done to the house.

It is my understanding that the agreement is that my client and his repair people will have the access necessary to go to Mr. Field's house within seventy-two hours of

ago, I did not think I was obligated to sell my house unless the Global Settlement Agreement was approved by you and Judge Maddox. I don't understand why I would sell my house if the Global Settlement Agreement was not approved ending all of this, any future actions.

I agreed to sell my house in exchange for the Global Settlement Agreement ending everything. I just simply don't understand why I would sell my house if the agreement is not approved.

THE COURT: Did you prepare this document?

MS. WHITE: Yes.

THE COURT: Unlike previous filings?

MS. WHITE: I prepared that document myself over a period of three days because it is what I understood. And it still is my understanding.

THE COURT: Well, you executed the Global Settlement Agreement, right? You signed it. I'll show you the original. I ---

MS. WHITE: Yes.

THE COURT: --- have it right here.

MS. WHITE: I am unclear as to what takes place before the Global Settlement Agreement ---

THE COURT: I'm ---

MS. WHITE: --- is approved, if that makes sense.

THE COURT: You signed it, right? I'm not -- I'm not

MS. WHITE: Yes, I signed it.

THE COURT: Okay. And you graduated from Furman University, correct?

MS. WHITE: I have a bachelor's degree.

THE COURT: Okay. From Furman University.

MS. WHITE: But not a law degree.

THE COURT: Ma'am, did you graduate from Furman University?

MS. WHITE: Yes, I did.

THE COURT: Okay. You're -- and you are pro se, correct?

MS. WHITE: Yes, I am.

THE COURT: You were married to a lawyer, correct?

MS. WHITE: I was seven years ago.

THE COURT: And you have submitted some -- well, you've already testified that Arthur Field presented documents for you to file in this case, is that right?

MS. WHITE: I did.

THE COURT: Did you consult with him about the terms of this agreement?

MS. WHITE: (Negative nod).

THE COURT: Who -- how did you decide to sign this agreement? Who did you talk to?

MS. WHITE: I actually did ask my ex-husband and he

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 5th day of September 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 6, 2018

Susan W. Hudgins

Circuit Court Reporter

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 5th day of September 2017.

I do further certify that I am neither of kin, counsel, or interest to any party hereto.

March 6, 2018

Susan W. Hudgins

Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
William Tomz and Francis W. Tomz	)	CASE # 2008-CP-23-3665
Individually and as Class Representatives	)	
	)	
Plaintiffs,	)	
vs.	)	**NOTICE OF MOTION AND**
	)	**MOTION TO RECUSE**
Capital Investment Funding, LLC	)	
And Arthur M. Field	)	
	)	
Defendants.	)	

EXHIBIT F

OFFICIAL TRANSCRIPT EXCERPTS

11/27/2017

STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT
COUNTY OF GREENVILLE

Willaims F. Tomz,

Plaintiff,

vs.

Capital Investment Funding, LLC,

Defendant.

EXCERPT OF RECORD
2008-CP-23-3665

November 27, 2017
Greenville South Carolina
Sworn Testimony of Arthur Field

B E F O R E:

The Honorable EDWARD W. MILLER

ELECTRONICALLY FILED - 2018 Jul 19 12:28 PM - GREENVILLE - COMMON PLEAS - CASE#2008CP2303665

of CIF as a named insured and shall immediately deliver to CIF a certificate and shall have all proceeds of such policies and renewal to and be paid directly to CIF. Now, this is a side bar.

THE COURT: Let me just ask you this.

MR. CASKEY: Yes, sir.

THE COURT: Your client just stated that CIF was on the policy, and that, when it was renewed, somehow they didn't get placed on the policy.

So I'm going to request or I'm going to order that you all contact this insurance company and show that what he just told me is true and correct.

It's very difficult, Mr. Caskey, to nail down your client and what he says. But that was a clear statement he made under oath, and I would like -- I want to find out if it's true, because he is now blaming the insurance company for not including CIF on the renewal of the policy.

MR. FIELD: If I may, Your Honor?

THE COURT: Well, let me just tell you Mr. Field, you're under oath.

MR. FIELD: I know.

THE COURT: Mr. Field, I'm not through

ELECTRONICALLY FILED - 2018 Jul 19 12:28 PM - GREENVILLE - COMMON PLEAS - CASE#2008CP2303665

speaking. You're under oath. And if I find out that you're misrepresenting facts to me, I will take appropriate sanctions, and I will not be light.

So speak to your attorney before you get up and talk.

MR. CASKEY: Your Honor, Dr. Field is going to take my advice and discontinue his comments to the Court today. We will be happy to comply with that instruction, Your Honor. That being that we get the documentation from the insurance company regarding the distribution of proceeds, and --

THE COURT: Well, no, no, no. When CIF was placed on the policy. And I -- because he clearly stated that CIF was listed on the policy and, when it was renewed, somehow they were not.

MR. CASKEY: And, Your Honor, if I may. I have a copy of the declarations page which it is noted here that it was amended March 14th of 2017 in which it identifies CIF as the mortgagee.

The named insureds here, which is, I think, the problem in the distribution are Arthur Field, Katie Talon, and -- it just says Kate here. Okay, excuse me. Field, comma,

ELECTRONICALLY FILED - 2018 Jul 19 12:28 PM - GREENVILLE - COMMON PLEAS - CASE#2008CP2303665

Arthur, and Alison and Talon, comma, Kate.

So I think, unless I misunderstood Dr. Field's comments, the issue here was that CIF was not named as an additional insured, even though they were listed on the policy as the mortgagee.

Nonetheless, Your Honor, we'll clear this up.

THE COURT: Well, no. It's a moving target. It's always a moving target.

MR. CASKEY: We're happy to get this cleared up with the insurance company, Your Honor.

THE COURT: All right, great.

Mr. Pillsbury, I told you I would give you chance to response to that. What is it that you want to say?

MR. PILLSBURY: Your Honor, the first thing is, he started with that I called him and left him a message.

THE COURT: This would have been right after the hailstorm in March.

MR. PILLSBURY: I do not talk to Mr. Field on the phone for these very reasons. Ever since there were some accusations made by Miss Talon's counsel, I had discontinued any --

ELECTRONICALLY FILED - 2018 Jul 19 12:28 PM - GREENVILLE - COMMON PLEAS - CASE#2008CP2303665

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
William Tomz and Francis W. Tomz	)	CASE # 2008-CP-23-3665
Individually and as Class Representatives	)	
	)	
Plaintiffs,	)	
vs.	)	**NOTICE OF MOTION AND**
	)	**MOTION TO RECUSE**
Capital Investment Funding, LLC	)	
And Arthur M. Field	)	
	)	
Defendants.	)	

EXHIBIT G

OFFICIAL RECORD ON APPEAL
EXCERPTS AND AFFIDAVITS

Appellant
6
10/27/14 sH

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AFFIDAVIT OF RICHARD A. LACKEY

PERSONALLY appeared before me, Richard A. Lackey, who being duly sworn, deposes and says as follows:

1. My name is Richard A. Lackey and my address is 1 Pristine Drive, Greer, South Carolina, in the Thornblade community.

2. I hold a Bachelor's of Science degree from Georgia Tech University, as well as a Master's degree. I was Vice President of Operations for Swiss-Tex Foam Packaging from 1974 to 1988. For the past 26 years, I have served as President/CEO of Del-Tec Packaging, Inc.

3. My company has financially supported the Greenville Pops, an orchestra run by Arthur Field.

4. I attended a hearing on September 17, 2013, at 2:00 p.m. at the Greenville County Courthouse in the case of *William F. Tomz v. Capital Funding, et al.*, C/A No. 2008-CP-23-3665.

5. I noticed that the courtroom had a large camera in it. Shortly after coming in to the courtroom, the Judge started making negative comments directed at Arthur Field. He stated Arthur was a criminal and that he had stolen $40 million from victims. These statements happened at the beginning of the hearing, before any of the lawyers had spoken or witnesses testified.

6. I had never seen a judge act in such a way. As a business owner, I had been involved in litigation, and it troubled me greatly that a judge would seem so biased against a person from the start of a case.

7. I was troubled by this behavior, by the judge, and felt he should probably recuse himself from this case based on these comments.

Richard A. Lackey

Sworn to before me this
18th day of September, 2014.
Parvathy Chandrasekar
Notary Public of State of SC
My commission expires: 9/8/2020

PARVATHY CHANDRASEKAR
NOTARY PUBLIC
COM. EXP. 9-8-2020
SOUTH CAROLINA

Appellant
H
10/29/14 SH

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF EVANGELOS C. ORFANEDES
COUNTY OF GREENVILLE)

PERSONALLY appeared before me, Evangelos C. Orfanedes, who being duly sworn, deposes and says as follows:

1. My name is Evangelos C. Orfanedes and I reside at 104 Antigua Way, Greer, SC 29640. I am a retired Vice President for Rockwell International, and I have a Bachelor's degree from the University of Virginia, and a Master's in Business Administration.

2. I have known Arthur Field for several years.

3. I was present at a hearing in downtown Greenville at the Courthouse at 2:00 p.m. on September 17, 2013. It was in the case of *William F. Tomz v. Capital Investment Funding et al* C/A No. 2008-CP-23-3665. The case was against Mr. Field.

4. At the very opening of the hearing, the judge entered the Courtroom from a door behind the desk, and immediately begin stating words to the effect of "Well, Mr. Field, we know why you are here. You are here because you stole over $40 million and pled guilty to it." On these initial comments, the judge gave me the impression that he came into the Courtroom with the attitude that Arthur was a criminal and would be "nailed to the cross."

5. These comments were made before Arthur's lawyer began speaking.

6. I was appalled at the judge's comments and behavior, and it seemed to me that the judge was in an adversarial relationship with Arthur, rather than being an impartial judge. I have never seen this kind of behavior in a courtroom before in my many years of business experience.

Evangelos C. Orfanedes

Sworn to before me this
11 day of September, 2014.
Lauren White
Notary Public of 6/11/2024
My commission expires: Greenville County, South Carolina

LAUREN WHITE
NOTARY PUBLIC
MY COMMISSION EXPIRES 6/11/2024
SOUTH CAROLINA

1

Appellant
I
10/27/14 SH

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AFFIDAVIT OF HENRY C. VAN DYKE

PERSONALLY appeared before me, Henry C. Van Dyke, who being duly sworn, deposes and says as follows:

1. My name is Henry C. Van Dyke, and I reside at 506 Thornblade Boulevard, Greer, SC. I have Bachelor's and Master's degrees in Civil Engineering, and I am a retired Senior Vice President of Fluor Daniel Corporation.

2. I have known Arthur Field for many years, as we are neighbors in the Thornblade neighborhood in Greer, South Carolina.

3. On my own accord, I attended a motion hearing held on September 17, 2013, at 2:00 p.m. at the Greenville County Courthouse in the case of *William F. Tomz v. Capital Funding, et al.*, C/A No. 2008-CP-23-3665. I understood that the hearing required Arthur Field to respond to issues regarding his production of documents.

4. Soon after the judge entered the courtroom, he said a number of disparaging remarks regarding Mr. Field. These included referring to Mr. Field as a criminal and that he had stolen millions of dollars from his note holders. The exchange between the judge and the defense attorney was very surprising and appeared to be biased.

5. In my opinion, the judge was frustrated with Mr. Field's continued legal actions with the Receiver and with the court.

Henry C Van Dyke
Henry C. Van Dyke

Sworn to before me this
18th day of September 2014.
Notary Public of South Carolina
My commission expires: 1-30-2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2013 DEC 11 AM 8 55

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

ENTERED COMPUTER

Case No. 2008-CP-23-3665

Capital Funding, LLC and Arthur M. Field, of whom Arthur M. Field is the Appellant ..... Appellant,

v.

William F. Tomz and Francis W. Tomz, individually and as class representatives ..... Respondents.

NOTICE OF APPEAL

Arthur M. Field appeals the Orders of The Honorable Edward W. Miller dated October 1, 2013, and November 7, 2013, granting Respondents' Order on a Rule to Show Cause, and denying Appellant's Motion to Alter or Amend the earlier order pursuant to Rule 59(e), SCRCP. Copies of both orders are enclosed with this Notice. The parties received notice of entry of these orders on October 3, 2013, and November 12, 2013.

December 9, 2013

Bradford N. Martin, Esq. (SC Bar No. 3658)
Laura W. H. Teer, Esq. (SC Bar No. 16698)
Brook Bristow, Esq. (SC Bar No. 76038)
BRADFORD NEAL MARTIN & ASSOCIATES, P.A.
Post Office Box 10410
Greenville, South Carolina 29603
864.552.9990
864.552.9992 (facsimile)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMER

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE 2017 JUN 13)	
William F. Tomz and Frances W. Tomz, Individually and as Class Representatives, Plaintiffs,)	MOTION TO RECUSE
)	Case No. 2008-CP-23-3665
versus)	
Capital Investment Funding, LLC and Arthur M. Field,)	MOTION AND ARGUMENT
Defendants.)	

The undersigned hereby moves this Court to recuse the Hon. Edward Miller from any and all further action in the above-captioned matters and any other matters, which may now come before the courts of South Carolina involving any of the above named or persons related thereto, whether civil, criminal, administrative or otherwise.

Judge Miller appears to have become highly prejudiced as a result of one or more *ex parte* communications and/or exposure to various extra-judicial sources, and has been irrevocably tainted as a direct result. No hearing on the merits has ever taken place in this matter, no evidence has ever been tendered, no testimony has ever been heard. Field was dismissed from this action in August, 2009. On December 14, 2011, in an informal presentation to the Note Holders, Judge Miller exhibited extreme bias, made highly prejudicial statements on the bench in front of the Note Holders, the public and the Attorney General, and acted in a manner unbecoming of a judge as evidenced by the Transcript of such hearing.

Judge Miller apparently has been exposed to massive amounts of *ex parte* highly prejudicial material, news articles, emails, phone calls, letters, correspondence, and/or conversations from outside sources, CIF Noteholders, the Receiver, the Receiver's attorney, and the Attorney General and/or from numerous counsel herein and has solicited or knowingly accepted or viewed such material in the absence of the adverse parties and failed to give notice thereof.[1] His bias is manifestly apparent.

[1] All factual allegations in this Motion are to be taken as true. State v. Shaw, 276 S.C.190, 277 S.E.2d 140 (S.C. 1981). Field enters this Motion without consenting to jurisdiction over the person.

FACTS AND TRANSCRIPT EXCERPTS

Judge Miller's prejudice is easily observed from the Official Transcript December 14, 2011, (Caroline Hiskell Circuit Court Reporter) of the informal meeting of the Receiver and Noteholders. Such informal meeting was not scheduled by the Court and notice was not provided to Field or any of the other former parties herein. No hearing is listed on the "Actions" section of the Case Records, Public Index, of the Clerk's Office.[2] Hence, the informal meeting must be deemed an *ex parte* communication, as would any other in or out of court communications between the Receiver and Judge Miller.[3] No Report of the Receiver was ever submitted to any of the former parties herein.

First and foremost: No hearing on the merits has EVER been held in this matter. No evidence or sworn testimony of any sort concerning the underlying merits of any claim or defense has EVER been heard by Judge Miller. The parties entered into a Global Mediated Settlement Agreement at the initial pleading stage after Plaintiffs' counsel had a full and complete opportunity to review the assets and liabilities of Capital Investment Funding, LLC and were fully satisfied therewith.

Consequently, it must follow that ANY opinion Judge Miller has concerning the parties' liability or the merits of the case MUST be drawn from extra-judicial sources or improper communications.

Judge Miller formed numerous highly prejudicial opinions of Field (a former party) and improperly, repeatedly and emphatically voiced such opinions on the bench to Class members and the public in the presence of Creighton Waters, a Deputy Attorney General from the State Grand Jury Division, whom he permitted to speak at the hearing. Waters had no standing and his presence was highly prejudicial.[4] (How did Waters know to attend?) Judge Miller lauded Waters and implied there was a State Grand Jury investigation and the Note Holders should act accordingly.

[2] The last item listed in the Official Records of the Clerk is dated October 12, 2011.
[3] Field was notified of the Informal Meeting only by the Receiver on November 28, 2011, but the Receiver requested Field NOT attend such meeting. Receiver told Field his presence might be inflammatory and no action would be taken at the informal meeting and Field had fulfilled all obligations to the Receiver and had nothing to add to the proceeding, which would simply be a report to Noteholders of Receiver's progress. Field confirmed this in a letter to Receiver and asked him to submit it to Court, *infra*.
[4] Judge Miller was fully aware the GMSA sealed all documents, correspondence and records delivered by Field to the Receiver and Judge Miller previously denied the State's attempt to obtain those records. D.A.G. Waters had no standing in the court, was not a party, and his interests were adverse to Field's, and this was well known to Judge Miller, who treated him as a friend of the court, see infra.

To wit, Judge Miller stated the following (all excerpts are Judge Miller's statements, i.e. "The Court", except where noted); Miller speaks to public first 7 pages:

a) Transcript, p.3: THE COURT: "And I also want to tell you that I am also aware of your frustration. If I haven't heard about it, I could have guessed it. You made investments with the intent to rely on those investments and they're not there. They've been inappropriately removed from your possession. I just want you to know everyone involved in this case is aware of that."

b) Transcript, pp.3-4: THE COURT: "Another judge was given this case to begin with, he was removed, and I was substituted. I was substituted shortly before the settlement of the case, the global settlement. When I came into this and didn't exactly know what kind of fish tank I was getting thrown into. It was a very complicated matter and I tried to get up to speed. Fortunately, there are a lot of very competent qualified people that are representing you and doing everything they can to cover the proceeds.[5] But in any event, the global settlement, which was reached after a couple of hard days of mediation, mediated by retired appellate court judge, Samuel Stilwell... Now, there are a number of other folks. The two class co-counsel are up here, Mr. Case, Mr. Connell, and I would recognize some other folks up here you all may recognize. **I would recognize Mr. Creighton Waters with the Attorney General's Office and I know you all have questions you'd like to ask him."**

c) Transcript, pp.4-5: "I am not and can not be personally involved in a lot of the work that's gone on in this case. Mr. Saad has done an extraordinary job. Mr. Saad and the person that are working with them....have done an extraordinary job. And it is – **I will just tell you some of the most complex dodging and weaving shell game type stuff that I've seen and I've been involved in. when I was a lawyer for 25 years I was a**

[5] According to the Report of the Receiver, he collected roughly $1.2 Million over 2.5 years and spent 75% of those funds on himself, his staff and his lawyers. No funds whatsoever have been distributed to the Note Holders since the inception of the Tomz action. A total of $1,045,000 was spent. Transcript p.30.

defense lawyer and I've seen quite a few, but this [is] as sophisticated a shell game as I've seen."

d) Transcript, p.5: "Well, although each of you would like to know all the information but I think that you will understand and trust each of you to have [the] ability to invest. You are intelligent folks and you can understand..."

e) Transcript, p. 6: "So I guess I'm asking you to continue a level of trust in me as overseeing this case and the people who are doing the hard work in trying to recover your money. Having said that, we are going to tell you some things about what has already occurred, a little historical stuff, and you'll get a flavor for the complexity that these folks have been faced with and what they uncovered in certain things."

f) Transcript, pp.7-8: "The other thing, and I guess I might as well do it now, is—Creighton, would you just stand up and I'm going to let Creighton speak to you if you would." MR. WATERS: "Most of y'all haven't met me, my name is Creighton Waters. I'm an attorney in the criminal division of the Attorney General's Office. And one thing I know that everybody has a lot of concern about is, is there an investigation and what the status of that investigation is and questions along those lines. ...What I can tell you that is that in any case where there are allegations of criminal activity, the Attorney General's Office takes that very seriously. I understand that probably a very unsatisfying answer for many of you but because of the lack of detail, but again, there are statutory rules that exist to protect the integrity of the process and I'm not at liberty to violate those even if they are frustrating....I'll be here after the proceedings have concluded. If anybody wants to approach [me], I'd be glad to talk with you..."

g) Transcript p.8: "Let me just say this, ladies and gentlemen, he [Waters] can't talk with you about and he can't talk with me about it. That's how stringent these rules are and y'all ought to be very thankful in the big picture we have persons with kind of integrity who follow the rules

exactly as they are written.[6] So it ought to restore some faith in our system. And I will tell you that Mr. Saad is cooperating with any appropriate persons with whom he needs to cooperate with.[7] **And the other thing I would point out to you is the fact that Mr. Waters is here and y'all just have to make a reasonable inference about that. I think that covers it."**

h) Transcript, p.13: "Now, there are a number of qualified people that are also working with Mr. Saad in this investigation from our perspective aside from any other investigation that might be going on (implying a criminal investigation), and Curt Stodghill, that's sitting over there in the box with the yellow tie on. He is an attorney. He's been intimately involved in a lot of this. There's another gentleman that's been working with him. He is also an attorney, Mr. Robert Pohl and he's not here today. They have done very impressive work."[8]

i) Transcript pp.13-16: MR. SAAD[9]: "I think it would probably benefit all to kind of paint a broad picture of what was in the company when I took over on August 27, 2009...there was a confession of judgment that was part of the mediated settlement agreement which accounted for 38 Million and some odd thousand dollars of Note Holder debt that's unpaid. That was almost all the liabilities that the company had. ....On the books, here's where it was at that point in time. There's about $18 Million of loans to the or was the parent company in New Jersey, Lancaster Resources, Inc. There's about $11 Million loan to Cosimo, which is a South Carolina company. There was about a $2.5 Million dollars loaned to Lion Financial which was another New Jersey company. There was

[6] In light of the many egregious abuses of the State Grand Jury Act committed by S.C. Waters and those working with him and under his direction, this statement, based upon no information whatsoever known to Judge Miller, is highly inappropriate and inaccurate.
[7] Any such 'cooperation' would be a direct violation of the GMSA.
[8] Neither Stodghill nor Pohl have an appearance in this matter and any communication between the Court and such attorneys must, by definition, be extra-judicial and/*or ex parte*. Further, the U.S. Bankruptcy Trustee entered a pleading in the matter handled in federal court by Stodghill and Pohl, wherein it was alleged these were the WORST attorneys with whom the Trustee had ever dealt and moved they be dismissed as totally incompetent and Judge Miller had been made aware of this.
[9] Lion Financial, LLC is a South Carolina company. Saad makes it clear that the liabilities of the Company were $38 Million and the assets of the company were $38 Million and recounts various significant loans which were substantially repaid. He also makes it clear Field did not participate in any fraudulent activity and instituted law suits to collect money due CIF. This would certainly contradict the allegation of "shell game" made by Judge Miller, *supra*.

about a million dollars loaned to Trazom, which was a South Carolina company. There was about $444,000 loaned to a company that basically was involved in the tax credits, a South Carolina rehabilitation tax credit issue. And then there was about $400,000 to a half a dozen or a dozen loans to smaller companies that were outstanding. There were also several real estate properties that were entitled in the company's name and the amount that was reported on the books, not necessarily the value of those, the value that was reported on the books are as follows: there was about $200,000 for a condominium in New Jersey. There was about $1 Million on a residential lot in New Jersey. There's $140,000 in a residential lot in Easley, South Carolina. There was $930,000 on the drag strip in Greeleyville. There's $906,000 on a warehouse in Anderson and there was a million seven on a restaurant property on Congaree Road in Greenville. This was offset with about a million dollars in mortgage that was out there...That accounts for roughly the $38 Million dollars. What that means is money went into the company over the years from '99 to 2007 and over those years the moneys went out to these various loans. They went to New Jersey early on and the loans were over $30 Million. So those loans had paid down. Cosimo, the loans were, I think up to $15 Million and the loans were paid down, but when the music stopped in 2009 [i.e., 2008], that's where all these things were...For example, the litigation going on in New Jersey, there's a long history of relationship between CIF and LRI. LRI was its parent for several years....Through some process in 2002, 2003, they separated and became independent parties but they were still a loan relationship. Over the course of time there was money paid. lots of money. [by LRI] a lot of interest paid and it was a performing loan for a long time, but early in 2007 or late 2007, 2008, LRI was not paying and they defaulted on their loan and at that time Arthur Field was the manager of CIF and he instigated a lawsuit to collect money, and part of the claims on that lawsuit were fraud and, I believe, civil conspiracy. The focus of the lawsuit was the people in New Jersey did a lot of unscrupulous things that resulted in the collateral not being secured, not being collected. That lawsuit was filed [by Field] in federal court in New Jersey. It was active for a long period of time and then LRI filed for bankruptcy... There are other parties involved in that lawsuit, over '40 parties that were named as defendants by Capital Investment Funding [by Field, as attorney and manager]...the whole lawsuit is still active and we believe that we will be able to get...that lawsuit moving forward."

j) Transcript pp.18-20: MR. SAAD: "...The people in the Upstate are familiar with Lake Keowee. It's a profile, high value, property by the lake and the projects that were going on there had the appearance of being very high profile and very profitable enterprises. ...we were concerned about the lack of credible information dealing directly with the borrowers.[10] Within the first year we had foreclosure actions going on those properties and to stop the foreclosure actions, we filed bankruptcy." THE COURT: "Let's explain. The first lienholders were filing the foreclosure actions to take the properties where your money was invested, okay, so you get the flavor of what's going on. Someone had a superior lien and they're trying to get their money out of this real estate where your money was invested." MR. SAAD: "We ended up taking over the companies because they were in default. Our loan agreements [Cosimo's] allowed us to take over their ownership rights to membership pledge agreements so I became the manager of those companies. I obtained all the records...and what we discovered was a very severe lack of credible information, lack of attention to detail. There were no formal accounting records and only one income tax return filed over the course of 4 or 5 years on one entity, one on another, and two on two others. All this group of loans constituted about $7 Million of the $11 Million that was outstanding loan to Cosimo."

k) Transcript, p.21: THE COURT: "Correct me, if I'm wrong, the value of the property at the time all this was going on was less than the amount of

[10] The 'borrowers' were a variety of independent, third-party LLC's, none of whom had any relationship whatsoever with CIF, Cosimo, Field or any other CIF member at the time the loans were made by Cosimo, LLC. As a result of the security agreement between Cosimo, LLC and such 'borrowers', the membership interest in all such companies is eventually acquired by Cosimo when the borrowers default. Cosimo, and then the Receiver, take control of the properties, as noted by Saad. Judge Miller negligently or intentionally confuses the borrowers with Cosimo (the lender) or CIF or Field (the source of funds). Judge Miller, in comments directed to the Note Holders and D.A.G. Waters, mischaracterizes the 'foreclosure' as a first lienholder with a "superior lien", which is not possible given that Cosimo, LLC owned the properties. Saad's observations concerning "lack of attention to detail, accountings and tax returns" pertain to the Borrowers, not to CIF nor to Cosimo, LLC, both of which kept rigorous records. CIF voluntarily subjected itself to semi-annual audits in 2004, 2005, and annual audits every other year by independent CPA firms, changed randomly every 3 years.

money owed so that the bank (?), who's in primary position, they get paid first and there's not enough left to pay back the loans involving your money. That's what happened."[11]

l) Transcript, p. 21: MR. CONNELL: "And that is from real estate speculation, right? Is that why the property value went below mortgage?" THE COURT: "It probably was inflated value on the property and if I'm mistaken some of the development that was done out there, the infrastructure was slip shod to say the best."[12]

m) Transcript, p.25: THE COURT: "I think what you said the note was for $950,000, but the actual amount of cash received was $760,000. Does everybody – they took out a 10% origination fee on a loan and they took out prepaid interest so that while Cosimo gets $760,000, they signed to pay back Nine Hundred and something." [13]

n) **Transcript p. 29: THE COURT: "Having heard that and I've heard it three or four times and I still do not have a complete understanding of it. When I say shell game, a lot of these people are connected in other matters and it's moving around and it's hard to keep up with which has got the pea under it. ....All the $38 Million we're trying to find it, but ladies and gentlemen, we don't know where it all went. We know $18 Million is up in New Jersey. There are a lot of things we can not tell you because it might impair our ability to pursue some of this stuff, but I wanted Jerry to give you an idea the flavor of**

[11] That does not remotely recount what happened or even what Saad had stated. The Lake Keowee properties are worth vastly more than Cosimo's original loan, even considering the claimed encumbrances, which have little to no merit and are being challenged. All acts, however, were done by the Borrowers.

[12] The original value of the property at the time of the loans was never in question by anyone. The Court has simply invented this concept of 'inflated value', further evidence of its prejudice. How would Judge Miller have any notion of the 'infrastructure' of Keowee properties, or the property valuation, absent prior *ex parte* communication or extra-judicial activity or groundless prejudice?

[13] Judge Miller is totally confused or deliberately obfuscating matters to cast Field, CIF and/or Cosimo in a bad light. Saad states, the Keowee borrowers, obtained a loan from an independent third party, apparently for $900,000 and such party imposed legal origination fees and prepaid interest, as is customary in commercial loans. Apparently, Cosimo (which had been sold to another independent third party) received partial repayment as a result. All of this is routine in the commercial lending business. The Court has intentionally characterized this as nefarious. As noted by Saad on page 28, Transcript, "All that happened in 2009..." NONE of these loans or actions described by Saad on pages 24 to 29 of the Transcript involved Field, CIF, Cosimo, Pfeiffer or ANY related party.

what he's been dealing with. And I'm telling you if you could the work that the attorneys have done, they have gone through computers, deleted emails. They have gone through reams of convoluted documents to find out what they know. I know I'm off the track..."[14]

o] Transcript, p. 31: MR. SAAD: "Trazom, that's the one that's owned by Arthur Field's son and they took over a warehouse years ago before receivership. There's a million dollar loan on the books and they pay that like clock work. There's $103,000 paid to date. Lion Financial, they paid all that they had was $95,000. They liquidated the company and that was all they had...."

p] Transcript, p. 39: MR. SAAD: "The Trazom loan is the warehouse of Anderson and that's Trazom again is the company that is owned by a family member of Arthur Field. It's a viable warehouse, it's a good piece of property, it's a valuable piece of property. I question whether we should try to liquidate that loan and I had an appraisal on that property. The appraisal came back out and I think it was $2.8 Million. There's a first mortgage on about $1.4 Million and we hold a second mortgage on $1 Million. It is leased by a company called Inergy and they are automobile manufacture and they manufacture for a multitude of car companies....I think and I've talked with real estate people about this and have come to the same conclusion, my belief is if we want to liquidate that loan today, we could probably get or buy it for 50 cents on the dollar. ...I think ultimately we'll get full value. There's equity in that property. It's a solid piece of property...Unfortunately, the terms of that loan was very long...at some point what I'm going to make efforts to get them to refinance it and get Inergy to renew their lease...and pay us off."

[14] How could the Court know any of this without any prior hearings on this matter or any prior evidence or testimony? What "deleted emails"? What "convoluted documents"? What purpose existed to these statements except to prejudice the Note Holders, the Attorney General, and a potential jury pool since this informal hearing was apparently open to the public? Saad recounted where the money was when the CIF winding up was declared. Judge Miller simply ignored that accounting to inflame the Note Holders and the Attorney General even further. He was successful at both.

q) Transcript, p.46: THE COURT: "We have set aside some time for Mr. Arthur Field to make some comments if he wanted to. He had declined to be present. **He sent a letter and I'm not going to read it. It's self-serving and it's not worth going through. There is nothing of substance in it."**[15]

r) Transcript, p.49: MR. CONNELL: "Another question that has been asked is why don't you put this man [Field] in jail? I think you all know that Mr. Case and I are not with the Attorney General's Office...I do not put anybody in jail...That is for other authorities, as the judge has said."

s) Transcript, p.50: MR. CONNELL: **"...somebody has gotten the list of Capital Funding Investor's names somehow and has been contacting individuals...I don't know how the list could have gotten out..."**[16]

t) Transcript, p. 53: THE COURT: "How could you understand the complexities of how the monies have been moved and shuffled and I promise you, ladies and gentlemen, you have not heard a tenth of it. It's like peeling the layers off an onion."

u) Transcript p.54: THE COURT: **"I do want to tell you that Mr. Creighton Waters has been here in his capacity with the Attorney General's Office with an outstanding law enforcement member who I've known for over 30 years and I've got the utmost respect for him. They've heard everything we've said—I don't know what all they've heard but I want to tell you that they are here, okay, they don't go willy-nilly anywhere and they are paying attention. I don't know if you noticed, but they're taking notes."**

v) Transcript, p.57: THE COURT: "And if I'm not mistaken, wasn't it presented that these were collateral loans....**So it was floated out there**

[15] Field was instructed by Saad not to attend. Field learned of the hearing only from Saad, not the Court. The letter (Exhibit A) was sent to Saad, not the Court. There is no mention in the Transcript of the Court receiving the letter, so it must have been given to Judge Miller off the record in an *ex parte* communication.

[16] The list of Note Holders was delivered by Field to Connell to enable his firm to contact the potential class in 2008. It was given to Saad on Excel spread sheet in 2009 and again on December 14, 2011, at his request and possibly to Judge Miller in 2009. Nobody other than Saad, Judge Miller and Connell received this list and it was part of the GMSA seal and was not to be disclosed to any third person. The only way a third party could have obtained such list was improperly and in violation of the GMSA.

that these were collateral loans and in fact they were not." MR. GEORGE: "Some people might go to jail." THE COURT: "They might."[17]

w) Transcript, pp.59-60: THE COURT: "And let me say that early on in the receivership, Mr. Field was cooperating to an extent with Mr. Saad, providing information, and telling him about people and that sort of thing. There is nothing else he can offer. We wanted to get as much information as we possibly could."[18]

x) Transcript p.62: MR. SAAD: "The biggest issue with that question is the state of the economy and I think to a very large extent the loss that has been incurred has been to a large extent as a result of the economy. For example, if the property that we had a second mortgage on for the value of $2 Million, we had a first mortgage of a $1.2 Million and our second mortgage was $400,000, in normal times we could sell the property and get full recovery even if we got a discount. But as we've seen in today's market prices have plummeted particularly in commercial property."

y) Transcript p.66: MR. MAULMAN: "...As far as any lawsuit against Arthur Fields, has the statute of limitation been tolled? Don't you only get a 3 year statute?" THE COURT: "Things may be coming to light which may cause an ---initiate a cause of action. Things are being discovered through pursuit of these other matters."[19]

z) Transcript, p. 67: MR. MAULMAN: "...does the AG have access to that information if they wanted to have access if there was an investigation?"

[17] Judge Miller has no evidence concerning such loans and has no knowledge of the Prospectus where all such loans, and the collateral supporting same, were fully disclosed at all times. Judge Miller makes a highly prejudicial and uninformed remark, which offends common sensibility and reflects a true lack of impartiality. Saad tried to explain the collateral interest, and the bankruptcy issue, and the fraud claims against LRI, and the Court simply ignored Saad and implied Field was the criminal.

[18] Field cooperated fully with Saad for 3 years at Field's expense, including travel around South Carolina, travel to New Jersey, providing Saad with thousands of documents under seal, meeting with Saad on numerous occasions in Saad's office or with his staff, and responding to every request, including one made at 9 A.M. on December 14, 2011, just prior to the hearing.

[19] Field was dismissed in August, 2009, from this action. The action was initiated in March, 2008. Any actions of Field ended on January, 2008. This hearing took place in December, 2011. Any and all causes of action were dismissed, or are time barred not later than March, 2011. It was highly improper of the Judge to make this remark, and furthermore, how would the judge have access to any such information other than resulting from extra-judicial or *ex parte* activity?

> **THE COURT: "I don't know if you all remember but we sat in this courtroom when we settled this matter in 2009 and that was how we were able to get an agreement was that Mr. Field refused to give up his Fifth Amendment Rights. If he's innocent, I don't know why he would need those but that was written into the agreement and we got into—well, I was kind of in a pickle because of the law with respect to the State Grand Jury and there's a specific judge who – it's a long story, but the bottom line is there is no Fifth Amendment Right for a corporation and these were corporate documents and will that that the—I think I said before that Mr. Saad will continue to cooperate with any appropriate person in pursuit of all relevant issues surrounding the failure of CIF."**

This final statement may be the most egregious. Judge Miller admits the existence of a State Grand Jury investigation. He draws a wholly improper inference concerning the Fifth Amendment. Any judge should be fully aware a person has the absolute constitutional right to invoke the protection of the Fifth Amendment, the South Carolina Constitution and S.C.C.A.14-7-1760 and it is improper to draw an inference therefrom. Judge Miller indicates he has no problem at all with the Receiver violating the GMSA, after he had fully assured Field in 2009 that he would "never permit the Attorney General to make an end run around Field's rights". Stating an innocent person need not invoke the Fifth Amendment is tantamount to calling that person a criminal when he has done so.

ARGUMENT

Judge Miller's actions violate numerous Canons of Judicial Conduct, SCRCP Rule 501. Certainly his conduct does not avoid the appearance of impropriety and reflects bias and the lack of an impartial position. Such conduct violated several portions of Canons 1, 2, and 3, and S.C.C.A.14-7-1770, and was done to incite the public and the Note Holders. Field is hugely prejudiced and irreparably injured as a direct result.

Canon 1 states:

> An independent and honorable judiciary is indispensable to justice...A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

The Comment thereto states, "The integrity and independence of judges depends in turn upon their acting without fear of favor."

The numerous highly prejudicial, inflammatory, inaccurate, and unwarranted statements concerning Arthur Field made by Judge Miller on December 14, 2011, referenced above reflects a lack of integrity and independence. Field was not before Judge Miller. Field was no longer a party to the action. Field's activity was not germane to the proceeding and no comments were relevant or necessary. The Judge exhibited huge favor for the Receiver, the Class counsel and for the South Carolina Attorney General and disfavor of Field, even though no proceeding on the merits was pending.

Canon 2A states, "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Implying Field, who was not in court, was a "criminal" does not reflect impartiality. This was not a criminal proceeding. This was not even a civil proceeding on the merits. No such proceeding had ever taken place and no evidence had ever been received by the Court of any type, so Judge Miller had no evidence of any culpability on the part of Field or any other person. This matter had been mediated in March, 2009, and the parties had reached a Global Mediated Settlement Agreement before a retired Appellate Court Judge wherein all parties consented to the terms and no liability on the part of any party or entity was admitted. Field was fully entitled to the benefit of the bargain of the GMSA and had previously been denied that benefit by Judge Miller.

Consequently, any opinion expressed by Judge Miller reflects solely his bias, prejudice and a lack of impartiality and was wholly improper while presiding over an informal meeting. He had no business whatsoever referring Note Holders to confer with his good friend Creighton Waters, the Deputy Attorney General, nor introducing him or letting him speak to the Note Holders in open court. Judge Miller's violation of Canon 2 is apparent from the transcript and is egregious and has and will harm Field.

Clearly, having expressed a personal opinion while on the bench concerning Field, based upon non-evidentiary matters, Field's and the public's confidence have been eroded in Judge Miller's ability to carry out further judicial responsibilities in this matter "with integrity, impartiality and competence". *Comment*, Canon 2A, SCRCP Rule 501.

It would further appear from the Transcript that Judge Miller was "playing to the crowd" in uttering his improper comments. He appears to have been trying to impress the Note Holders and/or the Attorney General, possibly in response to numerous emails received from Note Holders and/or their appearance in the courtroom. This violates Canon 3B(2), "...A judge shall not be swayed by partisan interests, public clamor or fear of criticism."

It also is an overwhelming violation of Canon 3B(5), "A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice..."

Judge Miller's statements, which were highly inflammatory, made while on the Bench in a judicial capacity, certainly manifested bias or prejudice against Field and were clearly meant to incite the Note Holders. These horrible statements could not have resulted from anything other than extra-judicial bias, prejudice or *ex parte* communications; they certainly didn't result from any evidence, documents or testimony. Even the Receiver indicates Field had fully cooperated and no claims existed against Field and no evidence of any wrongdoing by Field was found.

Canon 3B(7)(a), states:

> A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding...

It must be concluded various persons had private conversation(s) or contact with Judge Miller and such were highly prejudicial and caused Judge Miller to have a bias against Field. Alternatively, Judge Miller dislikes Field as a result of out of court communications from third parties, the State or the press, and misused his judicial authority to besmirch Field in open court and essentially directed the Note Holders to file complaints with the Attorney General, in an already dismissed civil proceeding or the pending State Grand Jury investigation. This is unconscionable.

Judge Miller has exhibited considerable bias against Field in court prior hereto, and the acts and statements of December 14, 2011, (See Transcript) are in violation of the Canons of Judicial Conduct. Disqualification is prudent and mandated under Canon3(E)(1). "Under Canon 3(E)(1)(a), a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to, instances where he has a personal bias or prejudice against a party." Cf., Patel v. Patel, 359 S.C. 515, 599 S.E.2d 114(S.C. 2004).

Recusal is absolutely essential here. It is axiomatic that the expectation of a fair and impartial tribunal is a basic tenet of all cherished notions of due process embodied in the United States Constitution. In re Murchison, 349 U.S. 133, 75 S.Ct. 623 (1955). A reasonable person would believe Judge Miller could not act in an impartial manner after reviewing the above listed statements from the bench made on December 14, 2011. "The responsibility of a judge is to decide matters that have been submitted to the court by the parties. The judge may not, having decided a case, advocate for or, as in this case, materially assist one party at the expense of the other. Such advocacy creates the appearance, and perhaps the reality, of partiality on the part of the judge." *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 815 N.E.2d 286, (Ohio 09/07/2004)(2 year suspension and permanent exclusion from the bench); *Disciplinary Counsel v. Squire*, 116 Ohio St.3d 110 (Ohio 10/25/2007). "Judges must scrupulously avoid *ex parte* communications whether or not they consider them. Judges should avoid the appearance of impropriety when they carry out their duties." *Taylor v. Public Convalescent Service*, 245 Ga. 805, 806 (267 S.E.2d 242) (1980).

Similar conduct has often been the grounds for censure or permanent removal of a judge. See, e.g., *In re Davis*, 630 S.E.2d 281, 368 S.C. 662 (S.C. 05/08/2006); *In re Richland County Magistrate Stocker*, 608 S.E.2d 865, 362 S.C. 486 (S.C. 02/07/2005); *In re Bamberg County Magistrate Singleton*, 605 S.E.2d 518, 361 S.C. 364 (S.C. 11/08/2004)(permanent removal for *ex parte* contacts).[20]

[20] "...Canon 3 of the Code of Judicial Conduct "requires a judge to disqualify himself... in a proceeding in which the judge's impartiality might reasonably be questioned, ... Thus, the question is not only whether the particular judge is, in fact, impartial but whether a reasonable person would question the judge's impartiality on the basis of all the circumstances." *State v. Webb*, 238 Conn. 389, 460, 680 A.2d 147 (1996), aff'd after remand, 252 Conn. 128, 750 A.2d 448, cert. denied, 531 U.S. 835 (2000); accord *Ajadi v. Comm'r of Correction*, 280 Conn. 514, 527, 911 A.2d 712 (2006); *Papa v. New Haven Federation of*

This Motion must be decided prior to any other business before the Court in this case and of grave consequence and may be immediately appealable if denied, since it goes to the merits, may result in the unsealing of records previously sealed (assuming they even remain sealed, which appears not to be the case) and the Receiver seeks to hold Field in contempt of a non-existent court order, or one improvidently done by Judge Miller and irreparable harm will result. Brailsford v. Brailsford, 669 S.E.2d 342, 380 S.C. 443 (S.C.App. 2008); Ex parte Capital U-Drive-It, Inc., 630 S.E.2d 464, 369 S.C. 1(S.C. 2006). All appellate rights are preserved hereby.

> A charge of bias [or prejudice] must be deemed at or near the very top in seriousness, for bias kills the very soul of judging- fairness. . . . [A] charge of . . . bias [or prejudice] against a trial judge in the execution of his or her duties is a most grave accusation. It strikes at the very heart of the judiciary as a neutral and fair arbiter of disputes for our citizenry. Such an attack travels far beyond merely advocating that a trial judge ruled incorrectly as a matter of law or as to a finding of fact, as is the procedure in appellate practice. A judge's personal integrity and ability to serve are thrown into question, placing a strain on the court that cannot easily be erased. Attorneys should be free to challenge, in appropriate legal proceedings, a court's perceived partiality without the court misconstruing such a challenge as an assault on the integrity of the court. Such challenges should, however, be made only when substantiated by the trial record.

McKenna v. Delente, 123 Conn. App. 137, 144--45, 1 A.3d 260 (2010). See Abington Ltd. Partnership v. Heublein, , 246 Conn. 820; Tracey v. Tracey, 97 Conn. App. 285, 903 A.2d 679(2006). Field has been deprived of procedural and substantive due process.

Teachers, 186 Conn. 725, 744, 444 A.2d 196 (1982). Disqualification is required even when no actual bias has been demonstrated if a judge's impartiality might reasonably be questioned "because the appearance and the existence of impartiality are both essential elements of a fair exercise of judicial authority." *State v. Webb, supra*, 460--61; see also R. Flamm, Judicial Disqualification (1996) § 5.4.1, p. 150 ("Judicial decisions rendered under circumstances suggesting bias or favoritism tend to breed skepticism, undermine the integrity of the courts, and generally thwart the principles upon which our jurisprudential system is based. Since an appearance of bias may be just as damaging to public confidence in the administration of justice as the actual presence of bias, acts or conduct giving the appearance of bias should generally be avoided in the same way as acts or conduct that inexorably bespeak partiality."). Indeed, prevention of the appearance of impropriety is of vital importance to the judiciary and to the judicial process. *Bonelli v. Bonelli*, 214 Conn. 14, 19, 570 A.2d 189 (1990). "Members of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved..." *Abington Ltd. Partnership v. Heublein*, 246 Conn. 815, 823, 717 A.2d 1232 (1998), aff'd after remand, 257 Conn. 570, 778 A.2d 885 (2001)." *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, No. SC 17807 (Conn. 06/02/2009).

Judge Miller should certainly not have commented concerning any implication or inference relating to the Fifth Amendment. Such comments were highly improper and prejudicial and have irreparably damaged Field in the public's eye and tainted a jury pool in any future criminal case. "The framers of the Bill of Rights recognized the dangers inherent in self-incrimination, and as a result, placed in the Fifth Amendment a prohibition against compelling a witness to testify against himself. This prohibition against compelled self-incrimination is a basic constitutional mandate which is not a mere technical rule, but rather, a fundamental right of every citizen in our free society." State v. Thrift 312 S.C. 282, 296, 440 S.E.2d 341, 349 (1994). Therefore, it is legally proper for persons facing criminal prosecution...to invoke their Fifth Amendment privilege against self-incrimination...." Griffith v. Griffith, 332 S.C. 630, 506 S.E.2d 526 (App. 1998). "It is desirable the jury not know that a witness has invoked the privilege against self-incrimination since neither party is entitled to draw any inference from such invocation. 1 McCormick on Evidence, § 137 (1992). See also 3 Wharton's Criminal Procedure, § 354 (13th Ed. 1991) (no inference may be drawn from witnesses' assertion of privilege since exercise of right is personal...and should not be used to hurt...); 98 C.J.S. Witnesses § 455 (general rule that no adverse inference may be drawn from witness' assertion of the privilege)." State v. Hughes, 328 S.C.146, 493 S.E.2d 821 (S.C. 1997).

Nor should Judge Miller ever have signed a Rule to Show Cause when he knew Field was not a party and could not be subject to a Request for Production. Any impartial judge would not have done so.

Field respectfully requests Judge Miller recuse himself from these and all future proceedings, as required by Canon 3. Failure to do so will irrevocably harm Field and any other former party herein.

Arthur Field *Pro Se*
310 Thornblade Blvd., Greer, SC 29650

I hereby certify service in accord with the SCRCP.

Arthur M. Field, pro se June 11, 2012.

17

EXHIBIT A

December 9, 2011

Jerry Saad
Receiver
1249 S. Pleasantburg Dr.
Greenville, SC 29605

Dear Receiver Saad:

Thank you for informing me of the Special Meeting on December 14, 2011 in the Tomz / CIF matter. As you know, as a result of the Global Mediated Settlement Agreement, I was dismissed from the case when all matters were settled. I am no longer a party to this action and do not receive court notices.

I understand the purpose of the meeting is for you to report your progress to the Court and to provide the Noteholder Class members with an opportunity to ask you and Judge Miller general questions. As we discussed, it was your opinion my presence would add nothing to your important task on that date. I have worked closely with you over the last 3 years and will continue to support your efforts to recover and liquidate all assets belonging to CIF, which were turned over by the limited liability company to your control when I resigned as its Manager in your favor. I pray you are successful in all efforts, can repay the Class members as much as possible, and eventually will return the company to its equity members. I am sure all class and CIF members are grateful for your efforts in this task in the face of a prolonged recession. When I projected this severe economic downturn in 2008, I never expected it would be so protracted. I know this has made your appointed job even more difficult than anyone ever expected and significantly reduced the ability to recover asset value far more than we all had originally thought probable.

Please read this letter into the record of the Court. I wish you, Judge Miller, the attorneys and all class members all the blessings of the holiday season.

Sincerely,

Arthur M. Field, Ph.D.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
William Tomz and Francis W. Tomz Individually and as Class Representatives	)	CASE # 2008-CP-23-3665
	)	
Plaintiffs,	)	
vs.	)	**NOTICE OF MOTION AND MOTION TO RECUSE**
Capital Investment Funding, LLC And Arthur M. Field	)	
	)	
Defendants.	)	

EXHIBIT H

LETTERS TO COURT REPORTER
SUSAN HUDGINS
RE
OMISSIONS FROM
OFFICIAL TRANSCRIPT OF 3/17/2017
AND
OFFICIAL TRANSCRIPT OF 9/5/2017

LETTERS DATED:

6/23/2017
7/1/2017
9/9/2017
1/25/2018

c/o 310 Thornblade Blvd.
Greer, SC 29650 (864) 234 2130
6/23/2017

Court Reporter

Re: March 17, 2017 Hearing before Judge Miller
13th Judicial Circuit, Greenville
2008-cp-23-3665 *Tomz v. Capital Investment Funding, LLC*

Susan Hudgins
Court Reporter
PO Box 273
Moore, SC 29369

Dear Ms. Hudgins:

I hereby request the transcript of the Hearing held before Hon. Edward Miller at roughly 2:30 p.m. on March 17, 2017 in Greenville. Please be sure to include all comments made by Judge Miller, whether to counsel, witnesses or his court clerk.

I also request an electronic copy of the entire voice recording of the hearing.

I will assure payment of the cost of transcription and production of the electronic record. If there is an additional fee for expediting this, please advise.

If you have any questions, please contact me directly. Kindly let me know cost and payment terms or arrangements.

Many thanks for your assistance.

Sincerely,

Arthur M. Field

c/o 310 Thornblade Blvd.
Greer, SC 29650 (864) 234 2130
7/1/17

Re: March 17, 2017 Hearing before Judge Miller
13th Judicial Circuit, Greenville
2008-cp-23-3665 *Tomz v. Capital Investment Funding, LLC*

Susan Hudgins
Court Reporter
PO Box 273
Moore, SC 29369

Dear Ms. Hudgins:

Thank you for your swift and courteous reply. Enclosed is a money order for $70 as requested for the expedited transcript.

Please be sure to transcribe the off-hand comment(s) made by Judge Miller. During the presentation made by Mr. Saad describing a book to be written by me, His Honor quietly, but distinctly and audibly, said to his Clerk: "Field will be writing that book in prison." I could easily hear this sitting at counsel table. It is essential his exact words be transcribed and I appreciate any effort you must employ to accurately report that remark interjected during Saad's presentation and any others audible on the recording.

It is also essential you preserve the original recording in the event this matter becomes the subject of an appeal.

Many thanks for your assistance.

Sincerely,

Arthur M. Field

Cc: M. Caskey, Esq.

c/o 310 Thornblade Blvd.
Greer, SC 29650 (864) 234 2130
9/9/2017

Re: March 17, 2017 Hearing before Judge Miller
13th Judicial Circuit, Greenville
2008-cp-23-3665 *Tomz v. Capital Investment Funding, LLC*

Susan Hudgins
Court Reporter
PO Box 273
Moore, SC 29369

Dear Ms. Hudgins:

On July 1, 2017, I requested a verbatim Transcript of the above hearing, which you provided. I requested that all statements made during the course of the proceeding be transcribed. In reviewing the Transcript I observed that an audible statement was omitted from page 13.

The Official Court Reporter Manual of the State of South Carolina Section II, D states "The court reporter is responsible for providing appellants and other parties with a timely, accurate, verbatim record of court proceedings;..." Section VI, A,3 states "All aspects or phases of proceedings in civil cases must be recorded verbatim. ..." Section VI D states "The court reporter is responsible for obtaining a clear, complete and understandable record of the court proceedings...."

Challenge is made to the omission of the clearly audible statement heard by one or more persons in the court room.

Pursuant to Section XIIIC and S.C.A.R.607(i), I hereby request the Transcript be retained until further notice or not be destroyed without notice to me in care of the above address.

Many thanks for your assistance.

Sincerely,

Arthur M. Field

Cc: M. Caskey, Esq.

c/o P.O. Box 26092
Greenville, SC 29616
Jan. 25, 2018

Re: September 5, 2017 Hearing before Judge Miller and
March 17, 2017 Hearing before Judge Miller
13th Judicial Circuit, Greenville
2008-cp-23-3665 *Tomz v. Capital Investment Funding, LLC*

Susan Hudgins
Court Reporter
PO Box 273
Moore, SC 29369

Dear Ms. Hudgins:

September 5, 2017 Transcript: Please once again prepare a verbatim Transcript of the hearing held at 2pm in the above matter on September 5, 2017. Let me know the anticipated cost and I will obtain a Money Order for you. Delivery should be made within the time and manner prescribed in S.C.A.R. 207. You may leave a message at 864 419 6609 or email me at arthurfield424 @hotmail.com. I requested a copy previously on September 11, 2017. Since I believe this is a second copy, please charge me the reduced copy price provided in the Court Reporter Rules Manual.

March 17, 2017 Transcript: On July 1, 2017, I requested a verbatim Transcript of the March 17 hearing, which you provided. I requested that all statements made during the course of the proceeding be transcribed in accord with Section VI of the Court Reporter Manual. In reviewing the Transcript I observed that an audible statement was omitted from page 13, as requested in my July 1 and September 11 letters. Challenge is again made to the omission of the clearly audible statement heard by one or more persons in the court room and I again request you correct the record. Statements made by a Judge during a hearing on the record from the bench are not protected by any judicial privilege in my opinion. These are not the same as statements made by a judge to his clerk in chambers as part of the deliberative process. To remind you, Judge Miller clearly stated "Field will be writing that book in prison." I request you provide me with a corrected page 13 to insert that statement during Mr. Saad's presentation.

Pursuant to Section XIIIC and S.C.A.R.607(i), I hereby request the September 5, 2017 audio recording and the March 17, 2017 audio recording both be retained until further notice pending the resolution of the appeals as I requested previously.

Many thanks for your assistance.

Sincerely,

Arthur M. Field

Cc: M. Caskey, Esq. G. Brandt, Esq. B. Bannister, T. Stephenson, K. WhiteS. Case, Esq. Clerk, Court of Appeals, R. Pillsbury

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
William Tomz and Francis W. Tomz	)	CASE # 2008-CP-23-3665
Individually and as Class Representatives	)	
	)	
Plaintiffs,	)	
VS.	)	**NOTICE OF MOTION AND**
	)	**MOTION TO RECUSE**
Capital Investment Funding, LLC	)	
And Arthur M. Field	)	
	)	
Defendants.	)	

EXHIBIT I

FILING OF ARTHUR FIELD
2/5/2016

SHOWING AFFIDAVIT OF FIELD DATED 10/27/2014
IN SUPPORT
OF FIELD'S MOTIONS TO RECUSE
FILED 6/11/2012 AND 4/15/2013

WRITTEN ON AFFIDAVIT
"DO NOT CLOCK JUST PLACE IN FILE"

2/5/16

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2016 FEB 5 PM 2:47
ENTERED COMPUTER

CLERK
GREENVILLE COUNTY COURT HOUSE

2008-CP-23-3665

THE ATTACHED AFFIDAVIT WAS FILED BY ME ON 10/27/14. IT HAS EXHIBIT ATTACHED WHICH WAS A MOTION TO RECUSE I FILED ON OR ABOUT 6/11/12. IN ADDITION I FILED A MOTION TO RECUSE ON OR ABOUT APRIL 15, 2013, WHICH CAN NOT BE LOCATED IN THE FILE BUT IS REFERENCED IN THE AFFIDAVIT. THE SECOND MOTION WILL BE SUBMITTED AS THE "MISSING" EXHIBIT ON 2/8/16. TO CORRECT THE RECORD TO REFLECT DOCUMENTS SUBMITTED.

Timothy Field

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

William F. Tomz and Frances W. Tomz, Individually and as Class Representatives,
Plaintiffs,

vs.

Capital Investment Funding, LLC and Arthur M. Field,
Defendants.

Case No. 2008-CP-23-3665

AFFIDAVIT

2013 FEB 5 PM 2 47

Do Not Clock
Just place
in file

Arthur Field (hereinafter "Field"), being duly sworn, states as follows to the best of his information, belief and recollection:

1. On June 11, 2012, I filed a grievance complaint with the South Carolina Commission on Judicial Conduct against Hon. Edward Miller for his conduct during an informal meeting of the Noteholders of CIF on December 14, 2011. Upon information, the grievance complaint was denied due to lack of proof of this and other ex parte meetings. The Commission did not address the other issues raised in the grievance complaint.
2. On or about April 15, 2013, I filed a Motion to Recuse the Hon. Edward Miller from all further proceedings herein. A copy of that Motion is annexed as Exhibit A. Even though I personally delivered the Motion to the Greenville Clerk of Court's office, with the proper Motion Cover Sheet attached and paid the $25 Motion Filing Fee, the Motion was never docketed by the Clerk and does not appear in the Index for this case.
3. Prior to the Rule to Show Cause hearing, I had appeared in this matter pro se. I retained Bradford N. Martin, Esq. to represent me at the Rule to Show Cause Hearing. Mr. Martin filed a Motion to Quash on September 12, 2013 and a Motion for Continuance on September 15, 2013.
4. On September 17, 2013, the hearing in the Rule to Show Cause was held before Judge Miller.
5. When Judge Miller entered the courtroom, he sat at the bench and immediately began making disparaging statements about me, out loud, which was audible to the public spectators. To the best of my recollection, Judge Miller called me "a criminal" and said I

"stole $38 Million." Judge Miller did not preside over any evidentiary hearings in the case.

6. During the course of the Rule to Show Cause hearing on September 17, 2013, Judge Miller referred to the fact I had filed a grievance complaint several times in open court. He personally questioned me on this from the bench and introduced this into the record.

7. Judge Miller's audible statements from the bench showed clear bias against me and were heard by me, my wife (Kate Taillon), my daughter (Allyson Field), three of my neighbors who attended the hearing (Henry Van Dyke, Richard Lackey, and Angie Orfanedes), and my attorney (Mr. Martin). These public statements from the bench were made by Judge Miller prior to the formal 'call' of the case.

8. Because of the obvious and extreme bias flagrantly expressed in open court by Judge Miller, I immediately turned to Mr. Martin and asked if he would immediately attempt to argue my Motion to Recuse, which I delivered to the Clerk of Court on June 13, 2012, since it was evident Judge Miller was biased.

9. Judge Miller then had some discussions with his Law Clerk and the Court Reporter, which I could observe but could not hear.

10. The case was then "called" and counsel identified themselves; then my attorney, Mr. Martin, began his argument on the Rule to Show Cause.

11. The Official Transcript prepared by the Court Reporter omits the public statements made by the Judge described above, the colloquy conducted with court personnel, and omits the 'call' of the case. It starts with Mr. Martin's argument to the Court.

12. When the Official Transcript was ordered, Court Reporter Hiskell confirmed to me that she was in physical possession of the official tape but refused to allow review of the tape or deliver the tape to correct obvious errors and/or omissions in the Transcript. I requested Ms. Hiskell do both on several occasions, to no avail. The Transcript clearly begins after several minutes of court proceedings.

13. During the course of the Hearing, Judge Miller clearly indicated he was angry at me about the filing of the grievance. Judge Miller denied Mr. Martin's request for recusal, without permitting or considering the formal motion pending in the matter properly filed by me and relevant to any contempt proceeding. Judge Miller threatened to hold Mr.

Martin in contempt of court when he objected to the manner in which the hearing was conducted.

Arthur M. Field

Sworn to before me this
27th day of October 2014.

Notary Public of South Carolina
My commission expires: 01/30/2016

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)))	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
William F. Tomz and Frances W. Tomz, Individually and as Class Representatives, Plaintiffs, versus Capital Investment Funding, LLC and Arthur M. Field, Defendants.	)	MOTION TO RECUSE Case No. 2008-CP-23-3665 MOTION AND ARGUMENT

The undersigned hereby moves this Court to recuse the Hon. Edward Miller from any and all further action in the above-captioned matters and any other matters, which may now come before the courts of South Carolina involving any of the above named or persons related thereto, whether civil, criminal, administrative or otherwise.

Judge Miller appears to have become highly prejudiced as a result of one or more *ex parte* communications and/or exposure to various extra-judicial sources, and has been irrevocably tainted as a direct result. No hearing on the merits has ever taken place in this matter, no evidence has ever been tendered, no testimony has ever been heard. Field was dismissed from this action in August, 2009. On December 14, 2011, in an informal presentation to the Note Holders, Judge Miller exhibited extreme bias, made highly prejudicial statements on the bench in front of the Note Holders, the public and the Attorney General, and acted in a manner unbecoming of a judge as evidenced by the Transcript of such hearing.

Judge Miller apparently has been exposed to massive amounts of *ex parte* highly prejudicial material, news articles, emails, phone calls, letters, correspondence, and/or conversations from outside sources, CIF Noteholders, the Receiver, the Receiver's attorney, and the Attorney General and/or from numerous counsel herein and has solicited or knowingly accepted or viewed such material in the absence of the adverse parties and failed to give notice thereof.[1] His bias is manifestly apparent.

[1] All factual allegations in this Motion are to be taken as true. State v. Shaw, 276 S.C.190, 277 S.E.2d 140 (S.C. 1981). Field enters this Motion without consenting to jurisdiction over the person.

Exhibit A

FACTS AND TRANSCRIPT EXCERPTS

Judge Miller's prejudice is easily observed from the Official Transcript December 14, 2011, (Caroline Hiskell Circuit Court Reporter) of the informal meeting of the Receiver and Noteholders. Such informal meeting was not scheduled by the Court and notice was not provided to Field or any of the other former parties herein. No hearing is listed on the "Actions" section of the Case Records, Public Index, of the Clerk's Office.[2] Hence, the informal meeting must be deemed an *ex parte* communication, as would any other in or out of court communications between the Receiver and Judge Miller.[3] No Report of the Receiver was ever submitted to any of the former parties herein.

First and foremost: No hearing on the merits has EVER been held in this matter. No evidence or sworn testimony of any sort concerning the underlying merits of any claim or defense has EVER been heard by Judge Miller. The parties entered into a Global Mediated Settlement Agreement at the initial pleading stage after Plaintiffs' counsel had a full and complete opportunity to review the assets and liabilities of Capital Investment Funding, LLC and were fully satisfied therewith.

Consequently, it must follow that ANY opinion Judge Miller has concerning the parties' liability or the merits of the case MUST be drawn from extra-judicial sources or improper communications.

Judge Miller formed numerous highly prejudicial opinions of Field (a former party) and improperly, repeatedly and emphatically voiced such opinions on the bench to Class members and the public in the presence of Creighton Waters, a Deputy Attorney General from the State Grand Jury Division, whom he permitted to speak at the hearing. Waters had no standing and his presence was highly prejudicial.[4] (How did Waters know to attend?) Judge Miller lauded Waters and implied there was a State Grand Jury investigation and the Note Holders should act accordingly.

---

[2] The last item listed in the Official Records of the Clerk is dated October 12, 2011.

[3] Field was notified of the Informal Meeting only by the Receiver on November 28, 2011, but the Receiver requested Field NOT attend such meeting. Receiver told Field his presence might be inflammatory and no action would be taken at the informal meeting and Field had fulfilled all obligations to the Receiver and had nothing to add to the proceeding, which would simply be a report to Noteholders of Receiver's progress. Field confirmed this in a letter to Receiver and asked him to submit it to Court, *infra*.

[4] Judge Miller was fully aware the GMSA sealed all documents, correspondence and records delivered by Field to the Receiver and Judge Miller previously denied the State's attempt to obtain those records. D.A.G. Waters had no standing in the court, was not a party, and his interests were adverse to Field's, and this was well known to Judge Miller, who treated him as a friend of the court, see infra.

To wit, Judge Miller stated the following (all excerpts are Judge Miller's statements, i.e. "The Court", except where noted); Miller speaks to public first 7 pages:

a) Transcript, p.3: THE COURT: "And I also want to tell you that I am also aware of your frustration. If I haven't heard about it, I could have guessed it. You made investments with the intent to rely on those investments and they're not there. They've been inappropriately removed from your possession. I just want you to know everyone involved in this case is aware of that."

b) Transcript, pp.3-4: THE COURT: "Another judge was given this case to begin with, he was removed, and I was substituted. I was substituted shortly before the settlement of the case, the global settlement. When I came into this and didn't exactly know what kind of fish tank I was getting thrown into. It was a very complicated matter and I tried to get up to speed. Fortunately, there are a lot of very competent qualified people that are representing you and doing everything they can to cover the proceeds.[5] But in any event, the global settlement, which was reached after a couple of hard days of mediation, mediated by retired appellate court judge, Samuel Stilwell... Now, there are a number of other folks. The two class co-counsel are up here, Mr. Case, Mr. Connell, and I would recognize some other folks up here you all may recognize. **I would recognize Mr. Creighton Waters with the Attorney General's Office and I know you all have questions you'd like to ask him."**

c) Transcript, pp.4-5: "I am not and can not be personally involved in a lot of the work that's gone on in this case. Mr. Saad has done an extraordinary job. Mr. Saad and the person that are working with them....have done an extraordinary job. And it is – **I will just tell you some of the most complex dodging and weaving shell game type stuff that I've seen and I've been involved in, when I was a lawyer for 25 years I was a**

[5] According to the Report of the Receiver, he collected roughly $1.2 Million over 2.5 years and spent 75% of those funds on himself, his staff and his lawyers. No funds whatsoever have been distributed to the Note Holders since the inception of the Tomz action. A total of $1,045,000 was spent. Transcript p.30.

defense lawyer and I've seen quite a few, but this [is] as sophisticated a shell game as I've seen."

d) Transcript, p.5: "Well, although each of you would like to know all the information but I think that you will understand and trust each of you to have [the] ability to invest. You are intelligent folks and you can understand..."

e) Transcript, p. 6: "So I guess I'm asking you to continue a level of trust in me as overseeing this case and the people who are doing the hard work in trying to recover your money. Having said that, we are going to tell you some things about what has already occurred, a little historical stuff, and you'll get a flavor for the complexity that these folks have been faced with and what they uncovered in certain things."

f) Transcript, pp.7-8: "The other thing, and I guess I might as well do it now, is—Creighton, would you just stand up and I'm going to let Creighton speak to you if you would." MR. WATERS: "Most of y'all haven't met me, my name is Creighton Waters. I'm an attorney in the criminal division of the Attorney General's Office. And one thing I know that everybody has a lot of concern about is, is there an investigation and what the status of that investigation is and questions along those lines. ...What I can tell you that is that in any case where there are allegations of criminal activity, the Attorney General's Office takes that very seriously. I understand that probably a very unsatisfying answer for many of you but because of the lack of detail, but again, there are statutory rules that exist to protect the integrity of the process and I'm not at liberty to violate those even if they are frustrating....I'll be here after the proceedings have concluded. If anybody wants to approach [me], I'd be glad to talk with you..."

g) Transcript p.8: "Let me just say this, ladies and gentlemen, he [Waters] can't talk with you about and he can't talk with me about it. That's how stringent these rules are and y'all ought to be very thankful in the big picture we have persons with kind of integrity who follow the rules

exactly as they are written.[6] So it ought to restore some faith in our system. And I will tell you that Mr. Saad is cooperating with any appropriate persons with whom he needs to cooperate with.[7] **And the other thing I would point out to you is the fact that Mr. Waters is here and y'all just have to make a reasonable inference about that. I think that covers it.**"

h) Transcript, p.13: "Now, there are a number of qualified people that are also working with Mr. Saad in this investigation from our perspective aside from any other investigation that might be going on (implying a criminal investigation), and Curt Stodghill, that's sitting over there in the box with the yellow tie on. He is an attorney. He's been intimately involved in a lot of this. There's another gentleman that's been working with him. He is also an attorney, Mr. Robert Pohl and he's not here today. They have done very impressive work."[8]

i) Transcript pp.13-16: MR. SAAD[9]: "I think it would probably benefit all to kind of paint a broad picture of what was in the company when I took over on August 27, 2009...there was a confession of judgment that was part of the mediated settlement agreement which accounted for 38 Million and some odd thousand dollars of Note Holder debt that's unpaid. That was almost all the liabilities that the company had. ....On the books, here's where it was at that point in time. There's about $18 Million of loans to the or was the parent company in New Jersey, Lancaster Resources, Inc. There's about $11 Million loan to Cosimo, which is a South Carolina company. There was about a $2.5 Million dollars loaned to Lion Financial which was another New Jersey company. There was

---

[6] In light of the many egregious abuses of the State Grand Jury Act committed by S.C. Waters and those working with him and under his direction, this statement, based upon no information whatsoever known to Judge Miller, is highly inappropriate and inaccurate.

[7] Any such 'cooperation' would be a direct violation of the GMSA.

[8] Neither Stodghill nor Pohl have an appearance in this matter and any communication between the Court and such attorneys must, by definition, be extra-judicial and/*or ex parte*. Further, the U.S. Bankruptcy Trustee entered a pleading in the matter handled in federal court by Stodghill and Pohl, wherein it was alleged these were the WORST attorneys with whom the Trustee had ever dealt and moved they be dismissed as totally incompetent and Judge Miller had been made aware of this.

[9] Lion Financial, LLC is a South Carolina company. Saad makes it clear that the liabilities of the Company were $38 Million and the assets of the company were $38 Million and recounts various significant loans which were substantially repaid. He also makes it clear Field did not participate in any fraudulent activity and instituted law suits to collect money due CIF. This would certainly contradict the allegation of "shell game" made by Judge Miller, *supra*.

about a million dollars loaned to Trazom, which was a South Carolina company. There was about $444,000 loaned to a company that basically was involved in the tax credits, a South Carolina rehabilitation tax credit issue. And then there was about $400,000 to a half a dozen or a dozen loans to smaller companies that were outstanding. There were also several real estate properties that were entitled in the company's name and the amount that was reported on the books, not necessarily the value of those, the value that was reported on the books are as follows: there was about $200,000 for a condominium in New Jersey. There was about $1 Million on a residential lot in New Jersey. There's $140,000 in a residential lot in Easley, South Carolina. There was $930,000 on the drag strip in Greeleyville. There's $906,000 on a warehouse in Anderson and there was a million seven on a restaurant property on Congaree Road in Greenville. This was offset with about a million dollars in mortgage that was out there...That accounts for roughly the $38 Million dollars. What that means is money went into the company over the years from '99 to 2007 and over those years the moneys went out to these various loans. They went to New Jersey early on and the loans were over $30 Million. So those loans had paid down. Cosimo, the loans were, I think up to $15 Million and the loans were paid down, but when the music stopped in 2009 [i.e., 2008], that's where all these things were...For example, the litigation going on in New Jersey, there's a long history of relationship between CIF and LRI. LRI was its parent for several years....Through some process in 2002, 2003, they separated and became independent parties but they were still a loan relationship. Over the course of time there was money paid, lots of money, [by LRI] a lot of interest paid and it was a performing loan for a long time, but early in 2007 or late 2007, 2008, LRI was not paying and they defaulted on their loan and at that time Arthur Field was the manager of CIF and he instigated a lawsuit to collect money, and part of the claims on that lawsuit were fraud and, I believe, civil conspiracy. The focus of the lawsuit was **the people in New Jersey** did a lot of unscrupulous things that resulted in the collateral not being secured, not being collected. That lawsuit was filed [by Field] in federal court in New Jersey. It was active for a long period of time and then LRI filed for bankruptcy... There are other parties involved in that lawsuit, over 40 parties that were named as defendants by Capital Investment Funding [by Field, as attorney and manager]...the whole lawsuit is still active and we believe that we will be able to get...that lawsuit moving forward."

j) Transcript pp.18-20: MR. SAAD: "...The people in the Upstate are familiar with Lake Keowee. It's a profile, high value, property by the lake and the projects that were going on there had the appearance of being very high profile and very profitable enterprises. ...we were concerned about the lack of credible information dealing directly with the borrowers.[10] Within the first year we had foreclosure actions going on those properties and to stop the foreclosure actions, we filed bankruptcy." THE COURT: "Let's explain. The first lienholders were filing the foreclosure actions to take the properties where your money was invested, okay, so you get the flavor of what's going on. Someone had a superior lien and they're trying to get their money out of this real estate where your money was invested." MR. SAAD: "We ended up taking over the companies because they were in default. Our loan agreements [Cosimo's] allowed us to take over their ownership rights to membership pledge agreements so I became the manager of those companies. I obtained all the records...and what we discovered was a very severe lack of credible information, lack of attention to detail. There were no formal accounting records and only one income tax return filed over the course of 4 or 5 years on one entity, one on another, and two on two others. All this group of loans constituted about $7 Million of the $11 Million that was outstanding loan to Cosimo."

k) Transcript, p.21: THE COURT: "Correct me, if I'm wrong, the value of the property at the time all this was going on was less than the amount of

[10] The 'borrowers' were a variety of independent, third-party LLC's, none of whom had any relationship whatsoever with CIF, Cosimo, Field or any other CIF member at the time the loans were made by Cosimo, LLC. As a result of the security agreement between Cosimo, LLC and such 'borrowers', the membership interest in all such companies is eventually acquired by Cosimo when the borrowers default. Cosimo, and then the Receiver, take control of the properties, as noted by Saad. Judge Miller negligently or intentionally confuses the borrowers with Cosimo (the lender) or CIF or Field (the source of funds). Judge Miller, in comments directed to the Note Holders and D.A.G. Waters, mischaracterizes the 'foreclosure' as a first lienholder with a "superior lien", which is not possible given that Cosimo, LLC owned the properties. Saad's observations concerning "lack of attention to detail, accountings and tax returns" pertain to the Borrowers, not to CIF nor to Cosimo, LLC, both of which kept rigorous records. CIF voluntarily subjected itself to semi-annual audits in 2004, 2005, and annual audits every other year by independent CPA firms, changed randomly every 3 years.

money owed so that the bank (?), who's in primary position, they get paid first and there's not enough left to pay back the loans involving your money. That's what happened."[11]

l) Transcript, p. 21: MR. CONNELL: "And that is from real estate speculation, right? Is that why the property value went below mortgage?" THE COURT: "It probably was inflated value on the property and if I'm mistaken some of the development that was done out there, the infrastructure was slip shod to say the best."[12]

m) Transcript, p.25: THE COURT: "I think what you said the note was for $950,000, but the actual amount of cash received was $760,000. Does everybody – they took out a 10% origination fee on a loan and they took out prepaid interest so that while Cosimo gets $760,000, they signed to pay back Nine Hundred and something." [13]

n) **Transcript p. 29: THE COURT: "Having heard that and I've heard it three or four times and I still do not have a complete understanding of it. When I say shell game, a lot of these people are connected in other matters and it's moving around and it's hard to keep up with which has got the pea under it. ....All the $38 Million we're trying to find it, but ladies and gentlemen, we don't know where it all went. We know $18 Million is up in New Jersey. There are a lot of things we can not tell you because it might impair our ability to pursue some of this stuff, but I wanted Jerry to give you an idea the flavor of**

---

[11] That does not remotely recount what happened or even what Saad had stated. The Lake Keowee properties are worth vastly more than Cosimo's original loan, even considering the claimed encumbrances, which have little to no merit and are being challenged. All acts, however, were done by the Borrowers.

[12] The original value of the property at the time of the loans was never in question by anyone. The Court has simply invented this concept of 'inflated value', further evidence of its prejudice. How would Judge Miller have any notion of the 'infrastructure' of Keowee properties, or the property valuation, absent prior *ex parte* communication or extra-judicial activity or groundless prejudice?

[13] Judge Miller is totally confused or deliberately obfuscating matters to cast Field, CIF and/or Cosimo in a bad light. Saad states, the Keowee borrowers, obtained a loan from an independent third party, apparently for $900,000 and such party imposed legal origination fees and prepaid interest, as is customary in commercial loans. Apparently, Cosimo (which had been sold to another independent third party) received partial repayment as a result. All of this is routine in the commercial lending business. The Court has intentionally characterized this as nefarious. As noted by Saad on page 28, Transcript, "All that happened in 2009..." **NONE of these loans or actions described by Saad on pages 24 to 29 of the Transcript involved Field, CIF, Cosimo, Pfeiffer or ANY related party.**

what he's been dealing with. And I'm telling you if you could the work that the attorneys have done, they have gone through computers, deleted emails. They have gone through reams of convoluted documents to find out what they know. I know I'm off the track..."[14]

o) Transcript, p. 31: MR. SAAD: "Trazom, that's the one that's owned by Arthur Field's son and they took over a warehouse years ago before receivership. There's a million dollar loan on the books and they pay that like clock work. There's $103,000 paid to date. Lion Financial, they paid all that they had was $95,000. They liquidated the company and that was all they had...."

p) Transcript, p. 39: MR. SAAD: "The Trazom loan is the warehouse of Anderson and that's Trazom again is the company that is owned by a family member of Arthur Field. It's a viable warehouse, it's a good piece of property, it's a valuable piece of property. I question whether we should try to liquidate that loan and I had an appraisal on that property. The appraisal came back out and I think it was $2.8 Million. There's a first mortgage on about $1.4 Million and we hold a second mortgage on $1 Million. It is leased by a company called Inergy and they are automobile manufacture and they manufacture for a multitude of car companies....I think and I've talked with real estate people about this and have come to the same conclusion, my belief is if we want to liquidate that loan today, we could probably get or buy it for 50 cents on the dollar. ...I think ultimately we'll get full value. There's equity in that property. It's a solid piece of property...Unfortunately, the terms of that loan was very long...at some point what I'm going to make efforts to get them to refinance it and get Inergy to renew their lease...and pay us off."

[14] How could the Court know any of this without any prior hearings on this matter or any prior evidence or testimony? What "deleted emails"? What "convoluted documents"? What purpose existed to these statements except to prejudice the Note Holders, the Attorney General, and a potential jury pool since this informal hearing was apparently open to the public? Saad recounted where the money was when the CIF winding up was declared. Judge Miller simply ignored that accounting to inflame the Note Holders and the Attorney General even further. He was successful at both.

q) Transcript, p.46: THE COURT: "We have set aside some time for Mr. Arthur Field to make some comments if he wanted to. He had declined to be present. **He sent a letter and I'm not going to read it. It's self-serving and it's not worth going through. There is nothing of substance in it."**[15]

r) Transcript, p.49: MR. CONNELL: "Another question that has been asked is why don't you put this man [Field] in jail? I think you all know that Mr. Case and I are not with the Attorney General's Office...I do not put anybody in jail...That is for other authorities, as the judge has said."

s) Transcript, p.50: MR. CONNELL: **"...somebody has gotten the list of Capital Funding Investor's names somehow and has been contacting individuals...I don't know how the list could have gotten out..."**[16]

t) Transcript, p. 53: THE COURT: "How could you understand the complexities of how the monies have been moved and shuffled and I promise you, ladies and gentlemen, you have not heard a tenth of it. It's like peeling the layers off an onion."

u) Transcript p.54: THE COURT: **"I do want to tell you that Mr. Creighton Waters has been here in his capacity with the Attorney General's Office with an outstanding law enforcement member who I've known for over 30 years and I've got the utmost respect for him. They've heard everything we've said—I don't know what all they've heard but I want to tell you that they are here, okay, they don't go willy-nilly anywhere and they are paying attention. I don't know if you noticed, but they're taking notes."**

v) Transcript, p.57: THE COURT: "And if I'm not mistaken, wasn't it presented that these were collateral loans....**So it was floated out there**

[15] Field was instructed by Saad not to attend. Field learned of the hearing only from Saad, not the Court. The letter (Exhibit A) was sent to Saad, not the Court. There is no mention in the Transcript of the Court receiving the letter, so it must have been given to Judge Miller off the record in an *ex parte* communication.

[16] The list of Note Holders was delivered by Field to Connell to enable his firm to contact the potential class in 2008. It was given to Saad on Excel spread sheet in 2009 and again on December 14, 2011, at his request and possibly to Judge Miller in 2009. Nobody other than Saad, Judge Miller and Connell received this list and it was part of the GMSA seal and was not to be disclosed to any third person. The only way a third party could have obtained such list was improperly and in violation of the GMSA.

that these were collateral loans and in fact they were not." MR. GEORGE: "Some people might go to jail." THE COURT: **"They might."**[17]

w) Transcript, pp.59-60: THE COURT: "And let me say that early on in the receivership, Mr. Field was cooperating to an extent with Mr. Saad, providing information, and telling him about people and that sort of thing. There is nothing else he can offer. We wanted to get as much information as we possibly could."[18]

x) Transcript p.62: MR. SAAD: "The biggest issue with that question is the state of the economy and I think to a very large extent the loss that has been incurred has been to a large extent as a result of the economy. For example, if the property that we had a second mortgage on for the value of $2 Million, we had a first mortgage of a $1.2 Million and our second mortgage was $400,000, in normal times we could sell the property and get full recovery even if we got a discount. But as we've seen in today's market prices have plummeted particularly in commercial property."

y) Transcript p.66: MR. MAULMAN: "...As far as any lawsuit against Arthur Fields, has the statute of limitation been tolled? Don't you only get a 3 year statute?" THE COURT: "Things may be coming to light which may cause an ---initiate a cause of action. Things are being discovered through pursuit of these other matters."[19]

z) **Transcript, p. 67:** MR. MAULMAN: "...does the AG have access to that information if they wanted to have access if there was an investigation?"

---

[17] Judge Miller has no evidence concerning such loans and has no knowledge of the Prospectus where all such loans, and the collateral supporting same, were fully disclosed at all times. Judge Miller makes a highly prejudicial and uninformed remark, which offends common sensibility and reflects a true lack of impartiality. Saad tried to explain the collateral interest, and the bankruptcy issue, and the fraud claims against LRI, and the Court simply ignored Saad and implied Field was the criminal.

[18] Field cooperated fully with Saad for 3 years at Field's expense, including travel around South Carolina, travel to New Jersey, providing Saad with thousands of documents under seal, meeting with Saad on numerous occasions in Saad's office or with his staff, and responding to every request, including one made at 9 A.M. on December 14, 2011, just prior to the hearing.

[19] Field was dismissed in August, 2009, from this action. The action was initiated in March, 2008. Any actions of Field ended on January, 2008. This hearing took place in December, 2011. Any and all causes of action were dismissed, or are time barred not later than March, 2011. It was highly improper of the Judge to make this remark, and furthermore, how would the judge have access to any such information other than resulting from extra-judicial or *ex parte* activity?

THE COURT: "I don't know if you all remember but we sat in this courtroom when we settled this matter in 2009 and that was how we were able to get an agreement was that Mr. Field refused to give up his Fifth Amendment Rights. If he's innocent, I don't know why he would need those but that was written into the agreement and we got into—well, I was kind of in a pickle because of the law with respect to the State Grand Jury and there's a specific judge who – it's a long story, but the bottom line is there is no Fifth Amendment Right for a corporation and these were corporate documents and will that that the—I think I said before that Mr. Saad will continue to cooperate with any appropriate person in pursuit of all relevant issues surrounding the failure of CIF."

This final statement may be the most egregious. Judge Miller admits the existence of a State Grand Jury investigation. He draws a wholly improper inference concerning the Fifth Amendment. Any judge should be fully aware a person has the absolute constitutional right to invoke the protection of the Fifth Amendment, the South Carolina Constitution and S.C.C.A.14-7-1760 and it is improper to draw an inference therefrom. Judge Miller indicates he has no problem at all with the Receiver violating the GMSA, after he had fully assured Field in 2009 that he would "never permit the Attorney General to make an end run around Field's rights". Stating an innocent person need not invoke the Fifth Amendment is tantamount to calling that person a criminal when he has done so.

ARGUMENT

Judge Miller's actions violate numerous Canons of Judicial Conduct, SCRCP Rule 501. Certainly his conduct does not avoid the appearance of impropriety and reflects bias and the lack of an impartial position. Such conduct violated several portions of Canons 1, 2, and 3, and S.C.C.A.14-7-1770, and was done to incite the public and the Note Holders. Field is hugely prejudiced and irreparably injured as a direct result.

Canon 1 states:

> An independent and honorable judiciary is indispensable to justice...A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

The Comment thereto states, "The integrity and independence of judges depends in turn upon their acting without fear of favor."

The numerous highly prejudicial, inflammatory, inaccurate, and unwarranted statements concerning Arthur Field made by Judge Miller on December 14, 2011, referenced above reflects a lack of integrity and independence. Field was not before Judge Miller. Field was no longer a party to the action. Field's activity was not germane to the proceeding and no comments were relevant or necessary. The Judge exhibited huge favor for the Receiver, the Class counsel and for the South Carolina Attorney General and disfavor of Field, even though no proceeding on the merits was pending.

Canon 2A states, "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Implying Field, who was not in court, was a "criminal" does not reflect impartiality. This was not a criminal proceeding. This was not even a civil proceeding on the merits. No such proceeding had ever taken place and no evidence had ever been received by the Court of any type, so Judge Miller had no evidence of any culpability on the part of Field or any other person. This matter had been mediated in March, 2009, and the parties had reached a Global Mediated Settlement Agreement before a retired Appellate Court Judge wherein all parties consented to the terms and no liability on the part of any party or entity was admitted. Field was fully entitled to the benefit of the bargain of the GMSA and had previously been denied that benefit by Judge Miller.

Consequently, any opinion expressed by Judge Miller reflects solely his bias, prejudice and a lack of impartiality and was wholly improper while presiding over an informal meeting. He had no business whatsoever referring Note Holders to confer with his good friend Creighton Waters, the Deputy Attorney General, nor introducing him or letting him speak to the Note Holders in open court. Judge Miller's violation of Canon 2 is apparent from the transcript and is egregious and has and will harm Field.

Clearly, having expressed a personal opinion while on the bench concerning Field, based upon non-evidentiary matters, Field's and the public's confidence have been eroded in Judge Miller's ability to carry out further judicial responsibilities in this matter "with integrity, impartiality and competence". *Comment*, Canon 2A, SCRCP Rule 501.

It would further appear from the Transcript that Judge Miller was "playing to the crowd" in uttering his improper comments. He appears to have been trying to impress the Note Holders and/or the Attorney General, possibly in response to numerous emails received from Note Holders and/or their appearance in the courtroom. This violates Canon 3B(2), "...A judge shall not be swayed by partisan interests, public clamor or fear of criticism."

It also is an overwhelming violation of Canon 3B(5), "A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice..."

Judge Miller's statements, which were highly inflammatory, made while on the Bench in a judicial capacity, certainly manifested bias or prejudice against Field and were clearly meant to incite the Note Holders. These horrible statements could not have resulted from anything other than extra-judicial bias, prejudice or *ex parte* communications; they certainly didn't result from any evidence, documents or testimony. Even the Receiver indicates Field had fully cooperated and no claims existed against Field and no evidence of any wrongdoing by Field was found.

Canon 3B(7)(a), states:

> A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding...

It must be concluded various persons had private conversation(s) or contact with Judge Miller and such were highly prejudicial and caused Judge Miller to have a bias against Field. Alternatively, Judge Miller dislikes Field as a result of out of court communications from third parties, the State or the press, and misused his judicial authority to besmirch Field in open court and essentially directed the Note Holders to file complaints with the Attorney General, in an already dismissed civil proceeding or the pending State Grand Jury investigation. This is unconscionable.

Judge Miller has exhibited considerable bias against Field in court prior hereto, and the acts and statements of December 14, 2011, (See Transcript) are in violation of the Canons of Judicial Conduct. Disqualification is prudent and mandated under Canon3(E)(1). "Under Canon 3(E)(1)(a), a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to, instances where he has a personal bias or prejudice against a party." Cf., Patel v. Patel, 359 S.C. 515, 599 S.E.2d 114(S.C. 2004).

Recusal is absolutely essential here. It is axiomatic that the expectation of a fair and impartial tribunal is a basic tenet of all cherished notions of due process embodied in the United States Constitution. In re Murchison, 349 U.S. 133, 75 S.Ct. 623 (1955). A reasonable person would believe Judge Miller could not act in an impartial manner after reviewing the above listed statements from the bench made on December 14, 2011. "The responsibility of a judge is to decide matters that have been submitted to the court by the parties. The judge may not, having decided a case, advocate for or, as in this case, materially assist one party at the expense of the other. Such advocacy creates the appearance, and perhaps the reality, of partiality on the part of the judge." *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 815 N.E.2d 286, (Ohio 09/07/2004)(2 year suspension and permanent exclusion from the bench); *Disciplinary Counsel v. Squire*, 116 Ohio St.3d 110 (Ohio 10/25/2007). "Judges must scrupulously avoid *ex parte* communications whether or not they consider them. Judges should avoid the appearance of impropriety when they carry out their duties." *Taylor v. Public Convalescent Service*, 245 Ga. 805, 806 (267 S.E.2d 242) (1980).

Similar conduct has often been the grounds for censure or permanent removal of a judge. See, e.g., *In re Davis*, 630 S.E.2d 281, 368 S.C. 662 (S.C. 05/08/2006); *In re Richland County Magistrate Stocker*, 608 S.E.2d 865, 362 S.C. 486 (S.C. 02/07/2005); *In re Bamberg County Magistrate Singleton*, 605 S.E.2d 518, 361 S.C. 364 (S.C. 11/08/2004)(permanent removal for *ex parte* contacts).[20]

---

[20] "...Canon 3 of the Code of Judicial Conduct "requires a judge to disqualify himself... in a proceeding in which the judge's impartiality might reasonably be questioned. ... Thus, the question is not only whether the particular judge is, in fact, impartial but whether a reasonable person would question the judge's impartiality on the basis of all the circumstances." *State v. Webb*, 238 Conn. 389, 460, 680 A.2d 147 (1996), aff'd after remand, 252 Conn. 128, 750 A.2d 448, cert. denied, 531 U.S. 835 (2000); accord *Ajadi v. Comm'r of Correction*, 280 Conn. 514, 527, 911 A.2d 712 (2006); *Papa v. New Haven Federation of*

This Motion must be decided prior to any other business before the Court in this case and of grave consequence and may be immediately appealable if denied, since it goes to the merits, may result in the unsealing of records previously sealed (assuming they even remain sealed, which appears not to be the case) and the Receiver seeks to hold Field in contempt of a non-existent court order, or one improvidently done by Judge Miller and irreparable harm will result. Brailsford v. Brailsford, 669 S.E.2d 342, 380 S.C. 443 (S.C.App. 2008); Ex parte Capital U-Drive-It, Inc., 630 S.E.2d 464, 369 S.C. 1(S.C. 2006). All appellate rights are preserved hereby.

> A charge of bias [or prejudice] must be deemed at or near the very top in seriousness, for bias kills the very soul of judging- fairness. . . . [A] charge of . . . bias [or prejudice] against a trial judge in the execution of his or her duties is a most grave accusation. It strikes at the very heart of the judiciary as a neutral and fair arbiter of disputes for our citizenry. Such an attack travels far beyond merely advocating that a trial judge ruled incorrectly as a matter of law or as to a finding of fact, as is the procedure in appellate practice. A judge's personal integrity and ability to serve are thrown into question, placing a strain on the court that cannot easily be erased. Attorneys should be free to challenge, in appropriate legal proceedings, a court's perceived partiality without the court misconstruing such a challenge as an assault on the integrity of the court. Such challenges should, however, be made only when substantiated by the trial record.

McKenna v. Delente, 123 Conn. App. 137, 144--45, 1 A.3d 260 (2010). See Abington Ltd. Partnership v. Heublein, , 246 Conn. 820; Tracey v. Tracey, 97 Conn. App. 285, 903 A.2d 679(2006). Field has been deprived of procedural and substantive due process.

Teachers, 186 Conn. 725, 744, 444 A.2d 196 (1982). Disqualification is required even when no actual bias has been demonstrated if a judge's impartiality might reasonably be questioned "because the appearance and the existence of impartiality are both essential elements of a fair exercise of judicial authority." *State v. Webb, supra*, 460--61; see also R. Flamm, Judicial Disqualification (1996) § 5.4.1, p. 150 ("Judicial decisions rendered under circumstances suggesting bias or favoritism tend to breed skepticism, undermine the integrity of the courts, and generally thwart the principles upon which our jurisprudential system is based. Since an appearance of bias may be just as damaging to public confidence in the administration of justice as the actual presence of bias, acts or conduct giving the appearance of bias should generally be avoided in the same way as acts or conduct that inexorably bespeak partiality."). Indeed, prevention of the appearance of impropriety is of vital importance to the judiciary and to the judicial process. *Bonelli v. Bonelli*, 214 Conn. 14, 19, 570 A.2d 189 (1990). "Members of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved..." *Abington Ltd. Partnership v. Heublein*, 246 Conn. 815, 823, 717 A.2d 1232 (1998), aff'd after remand, 257 Conn. 570, 778 A.2d 885 (2001)." *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, No. SC 17807 (Conn. 06/02/2009).

Judge Miller should certainly not have commented concerning any implication or inference relating to the Fifth Amendment. Such comments were highly improper and prejudicial and have irreparably damaged Field in the public's eye and tainted a jury pool in any future criminal case. "The framers of the Bill of Rights recognized the dangers inherent in self-incrimination, and as a result, placed in the Fifth Amendment a prohibition against compelling a witness to testify against himself. This prohibition against compelled self-incrimination is a basic constitutional mandate which is not a mere technical rule, but rather, a fundamental right of every citizen in our free society." State v. Thrift 312 S.C. 282, 296, 440 S.E.2d 341, 349 (1994). Therefore, it is legally proper for persons facing criminal prosecution...to invoke their Fifth Amendment privilege against self-incrimination...." Griffith v. Griffith, 332 S.C. 630, 506 S.E.2d 526 (App. 1998). "It is desirable the jury not know that a witness has invoked the privilege against self-incrimination since neither party is entitled to draw any inference from such invocation. 1 McCormick on Evidence, § 137 (1992). See also 3 Wharton's Criminal Procedure, § 354 (13th Ed. 1991) (no inference may be drawn from witnesses' assertion of privilege since exercise of right is personal...and should not be used to hurt...); 98 C.J.S. Witnesses § 455 (general rule that no adverse inference may be drawn from witness' assertion of the privilege)." State v. Hughes, 328 S.C.146, 493 S.E.2d 821 (S.C. 1997).

Nor should Judge Miller ever have signed a Rule to Show Cause when he knew Field was not a party and could not be subject to a Request for Production. Any impartial judge would not have done so.

Field respectfully requests Judge Miller recuse himself from these and all future proceedings, as required by Canon 3. Failure to do so will irrevocably harm Field and any other former party herein.

s/ Arthur Field

Arthur Field *Pro Se*
310 Thornblade Blvd., Greer, SC 29650

I hereby certify service in accord with the SCRCP.

Arthur M. Field, pro se June 11, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
William Tomz and Francis W. Tomz	)	CASE # 2008-CP-23-3665
Individually and as Class Representatives	)	
	)	
Plaintiffs,	)	
vs.	)	**NOTICE OF MOTION AND**
	)	**MOTION TO RECUSE**
Capital Investment Funding, LLC	)	
And Arthur M. Field	)	
	)	
Defendants.	)	

EXHIBIT J

MEMORANDUM OF SECRET EX PARTE MEETINGS
WITH 'AGENDA'
BETWEEN
JUDGE E. MILLER
AND JERRY SAAD
AND
S.C. ATTORNEY GENERAL REPRESENTATIVES
4/19/2012 AND 4/26/2012

SHOWING JUDGE MILLER DIRECTING SAAD TO BRING:
1) LAWSUIT AGAINST FIELD IN N.J. (ITEM #2 & ACTION #3)
2) RULE TO SHOW CAUSE AGAINST FIELD (ITEM #11 & Action #7)
3) GLOBAL RICO AGAINST FIELD AND FAMILY (ITEM #13 & Action #9)

Capital Investment Funding, LLC
Meeting With SC AG Officials
April 26, 2012

Agenda

In Attendance:
Jerry T. Saad, Receiver for CIF
Sharon Wilson, Executive Assistant to Jerry Saad
SC Attorney General Representatives
- Creighton Waters
- Brian Petrano
- Bob Cathey
- Joe Jordan

General Overview
- A. Background
- B. Receiver's Report – 12-31-11
- C. Loans and Properties
- D. Discussion of Litigation

Discussion of Litigation
1. Pfeiffer Malpractice Litigation
2. New Jersey Matters
   - LRI (Lancaster Resources, Inc.) Bankruptcy
   - Civil Litigation – CIF vs Katz, Caserta, et al
   - 457 Carlton Road Civil Litigation – Complaint Ready To File
   - Union Square Condo-Sales Proceeds Held In Escrow
3. LOP Capital Matter
   - Federal Lawsuit – CIF Plaintiff
   - Federal Lawsuit – LOP Plaintiff
   - State Lawsuit – LOP Plaintiff – Appealed to SCCofA
4. EarthArtist - Seneca Cotton Mill
   - $175,000 offer
   - Conditional Assignment of Mortgage to John Richard ("Dick") Young
   - Foreclosure / Collection
5. Collection on Guarantees – Hopper / Pinion / Gantt et al
6. SD Trust
   - Chapter 7 Trustee – no action taken
   - Pfeiffer Deposition still open
7. WE #3 Company
   - Foreclosure Litigation

Capital Investment Funding, LLC
Meeting With Judge Miller
April 19, 2012
(continued)

8. Trazom Loan –
    - Lease Renewal
    - Loan renewal
    - Recent discovery of $138,954 delinquency / past due
    - Offer from Davyd Field to settle for $800,000
    - Interrelated to CIF $1,000,000 payment to LRI

9. Tcholok loans (Oregon) foreclosure started – problems with mortgages

10. Other Dead Loans Not Yet Investigated
    - Lion Financial
    - Lancaster Mortgage
    - Monmouth Financial
    - Bradford Financial
    - He Will Provide / Aladdin's Café & Grill

11. Arthur Field – CIF Records / Subpoena / Rule to Show Cause

12. Pfeiffer Law Firm – Records / Files (Cosimo / SD Trust / WE4 / Rolling Hills / etc...)
    - Need to review various files
        - Trazom immediately
        - Other Cosimo related closings

13. Global RICO – target filing by June 2012

Actions

- Pfeiffer Malpractice Case– proceed
- New Jersey – CIF vs Katz et al - proceed
- New Jersey – 457 Carlton Road / Salzman / Field – file lawsuit asap
- EarthArtist – sell note for $200,000 to Dick Young
- Collections-Guarantors–Proceed/Judgments/ Supplemental Proceedings
- SC Trust – Contact Fort to buy Claims
- Arthur Filed – File Rule To Show Cause asap
- Trazom Loan – accept off of $800,000 for full satisfaction of note & mortgage
- RICO / Civil Conspiracy – Move forward asap – file by June
- Attorney General Meeting

BRADFORD NEAL MARTIN & ASSOCIATES, PA

ATTORNEYS AT LAW

201 West McBee Avenue, Suite 302
Post Office Box 10410 (29603)
Greenville, South Carolina 29601

bmartin@bnmlaw.com
Phone: (864) 552-9990
FAX: (864) 552-9992

December 9, 2014

The Honorable Edward W. Miller
Greenville County Courthouse
305 East North Street
Greenville, South Carolina 29601

Re: *William F. Tomz v. Capital Funding, et al*
C/A No.: 2008-CP-23-3665

Dear Judge Miller:

I received a copy of a proposed Order in the mail on December 8, 2014 from George Brandt, III. Since I have not had an opportunity to review it prior to its being sent to you, I would make the following objections:

1. On page 2, the Order finds that the individuals who signed Affidavits were neighbors of Defendant Field and that they testified on his behalf at his sentencing hearing. None of this was in the record and therefore is an improper finding.

2. The paragraph regarding Defendant Field's pleading guilty in his sentencing was not a part of the record, nor of the Motion to Settle the Record.

3. The Order makes a finding that the proposed Affidavits do not claim that a trial transcript is in any way inaccurate or incomplete. This is incorrect. All three of the Affidavits referred to comments made before the transcript began.

4. On page 3, the Order makes a finding that no effort was made by the Appellant to provide testimony in keeping with the proposed Affidavits at the hearing. Under South Carolina law, Affidavits are an appropriate way to address testimony missing from a transcript.

I would appreciate your revising the Order taking these factors into account.

Respectfully,

Brad Martin

Bradford N. Martin

BNM/pm

cc: George Brandt, III, Esq.
Dowse Bradwell Rustin, IV. Esq.