

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

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IN THE MATTER OF THE PROCEEDS
FROM BONDS AND OTHER SECURITY TC05-047
FOR THE BENEFIT OF CUSTOMERS
OF S&S COMMUNICATIONS

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Transcript of Proceedings
May 8, 2007

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BEFORE THE PUC COMMISSION

Chairman Dusty Johnson
Vice-Chair Gary Hanson
Commissioner Steve Kolbeck

COMMISSION STAFF

Rolayne Wiest
John Smith

ORIGINAL

Reported by Carla A. Bachand, RMR, CRR

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1 TUESDAY, MAY 8, 2007

2 CHAIRMAN JOHNSON: Good afternoon. We will begin the
3 hearing in Docket TC05-047. It's in the matter of the proceeds
4 from bonds and other security for the benefit of customers of
5 S&S Communcations. The time is approximately 1:30 p.m. in the
6 afternoon, the date is May 8, 2007, and the location of the
7 hearing is here in Room 412 of the State Capitol building. I'm
8 Dustin Johnson, commission chairman. Commissioner Gary Hanson
9 and Steve Kolbeck are also present. I'm presiding over this
10 hearing. This hearing was noticed pursuant to the commission's
11 order for and notice of hearing, which was issued March 20th,
12 2007, and the supplemental order for and notice of hearing
13 issued April 27th, 2007.

14 There are three main issues to be decided at this
15 hearing. Number one, whether each claim should be allowed,
16 denied or consolidated with another duplicate claim. Number
17 two, what share of the S&S proceeds should each claim receive,
18 and number three, what action the commission should take
19 regarding the 35 shares of Aberdeen Finance Corporation stock
20 and the \$2500 installment payment obligation.

21 All parties have the right to be present and to be
22 represented by an attorney. All persons testifying will be
23 sworn in and subject to cross-examination by the parties. The
24 commission's final decision may be appealed by the parties to
25 the State Circuit Court and the State Supreme Court. I will

1 note that we are broadcasting on the Internet so I would ask
2 all people who are testifying to speak slowly and clearly into
3 the microphone. We also have a reporter here. Ms. Carla
4 Bachand will act as the court reporter today. Rolayne Wiest,
5 the commission's counsel, will act as hearing examiner and will
6 conduct the hearing subject to the commission's oversight. She
7 may provide recommended rulings on procedural and evidentiary
8 matters. The commission may overrule its counsel's preliminary
9 rulings throughout the hearing. If not overruled, the
10 preliminary rulings will become final rulings. And at this
11 time I would happily turn the hearing examiner duties over to
12 Ms. Wiest.

13 MS. WIEST: Thank you. This is Rolayne Wiest. First
14 we will take appearances of the parties. Who represents staff
15 in this case?

16 MR. SMITH: Thank you, Ms. Hearing Examiner. This is
17 John Smith, counsel for staff. I have here with me today, I
18 think they are with me, if they are not now, they will be,
19 Keith Senger and Heather Forney as of this point in time will
20 be the witnesses for staff.

21 MS. WIEST: Thank you. And is there anyone in the
22 audience who is going to appear today, any claimants or
23 otherwise? The record should indicate there is not. So at
24 this point I guess I would ask Mr. Smith, do you have any
25 opening statement?

1 MR. SMITH: Not really. I do have a couple of -- very
2 brief and then a little mini preliminary matter, if I may.

3 MS. WIEST: Go ahead.

4 MR. SMITH: Thank you. As I think the chairman has
5 accurately stated, the purpose of the hearing here today is to
6 consider and hopefully put a very significant amount of
7 resolution on a process that we have been now going through for
8 almost four years, and that is the S&S bond proceeds hearing.
9 As Ms. Wiest I think stated, or maybe it was the chairman, also
10 we do have the issue of the Aberdeen Finance stock and the
11 \$2500 installment debt that we have also noticed for hearing
12 and those are the issues before us today.

13 At the outset, I would like to request that the motion
14 that we made be amended, the motion that was served on
15 claimants on March 20th, in one very minor respect that I think
16 you will comprehend immediately. We recommended that as a part
17 of the order, that the executive director be directed to
18 immediately disburse proceeds. We'd like a very slight
19 amendment so that that disbursement would not happen until any
20 appeal time has run, and for very obvious reasons. Once we
21 send out this money, it ain't coming back, so just on the off
22 chance -- there's nobody here today and we probably won't have
23 an appeal, but I would recommend that that process await the
24 running of the appeal time. You will see in an exhibit that
25 will eventually be introduced here I hope that that coincides

1 pretty well with the end of the term on a couple of CDs that
2 those funds are in right now as well. With that, I'm going to
3 proceed, if it's okay.

4 MS. WIEST: And I will grant your motion.

5 MR. SMITH: Thank you. At the outset, what I'd like
6 to do is to request that the commission take judicial notice of
7 the first five exhibits that I would like to offer, and those
8 are Exhibits 385, 386, 387, 388 and 389, and I don't know,
9 Carla --

10 MS. WIEST: I didn't get those all written down?

11 MR. SMITH: I'll get them all here. They are 385,
12 386, 387, 388 and 389, and I'll explain to you what those are.
13 The first of those, 385 is the order granting certificate of
14 authority in Docket TC00-114. That's 385. That's the COA
15 order that granted the COA to S&S in the first place.

16 The second exhibit is 386, which is -- it's sitting
17 right here. I myself pulled that from the files this morning
18 after being directed as to its whereabouts by Delaine Kolbo,
19 who is -- she knows if we have to, we will call her up here to
20 certify to it as the custodian of records. What it is is the
21 entirety of the record in Docket TC02-166. That was the
22 revocation proceeding, the order to show cause and ultimately
23 revocation proceeding with respect to S&S.

24 The reason why I'd like to have that in is if you will
25 note in our motion, we made certain references to that record,

1 particularly with regard to claim fraction and a few other
2 matters that witnesses in that proceeding testified to. Also
3 it contains a very significant amount of analysis of what
4 happened in this case and how we got to where we are at, and I
5 would like it to be in the record. It's already gone through
6 extensive lawyering to get it there and just so that that
7 information is available to Ms. Wiest and the commission, if
8 you feel you need it to render your findings and order in this
9 case.

10 The next one is 387. That is just the findings of
11 fact, conclusions of law and notice of entry of order in Docket
12 TC02-166 and again, that's the revocation proceeding. The next
13 one is order regarding notice to potential claimants in this
14 docket, Docket TC05-047, marked as Exhibit Staff 388. That is
15 the notice that we ultimately sent out on March 20th and it's
16 an order of the commission.

17 And lastly, this one is a little more unusual, but I
18 have no other way of laying a foundation for it really, so it's
19 the plan of reorganization and order confirming plan in the
20 case of In Re Aberdeen Finance Corporation, Case no. 04-10175,
21 U.S. Bankruptcy Court, District of South Dakota, that's marked
22 as Exhibit 389. Those are official records of the United
23 States District Court that we received in the ordinary course
24 of business as a claimant in the Aberdeen Finance case. With
25 that background, I would move the admission of those five.

1 exhibits, based on judicial notice.

2 CHAIRMAN JOHNSON: Mr. Smith, Madam Hearing Examiner,
3 if I could -- Mr. Smith, the title for 387 was again?

4 MR. SMITH: 387 is findings of fact, conclusions of
5 law, notice of entry of order in Docket TC02-166.

6 CHAIRMAN JOHNSON: But you have introduced 386 as the
7 entire record of that docket.

8 MR. SMITH: Wait a minute. No, the entirety of the --
9 that's 386. I'm on the wrong -- that's 387 is the findings of
10 fact.

11 CHAIRMAN JOHNSON: The findings of fact are not a part
12 of the record?

13 MR. SMITH: They are not a part of the evidentiary
14 record. They may be in there, they may not, I don't know. To
15 tell you the truth, I didn't read that whole thing. I didn't
16 look in there, so they might be. And there might be other
17 overlaps as well, that's possible. I'll put it this way, the
18 reason I introduced that whole record is because it's easy and
19 that way you have it. I don't know exactly precisely what's in
20 there, but it's the entirety of the record in that case.

21 CHAIRMAN JOHNSON: 387 functions as insurance?

22 MR. SMITH: It's insurance, it's making sure -- the
23 only purpose for these really, a lot of the reason is history
24 and not knowing -- I had no idea prior to today what was going
25 to happen here today. I didn't know whether we would have 50

1 people in this room or none, so we had to sort of take a
2 preemptive approach to what we did.

3 CHAIRMAN JOHNSON: Thanks for the clarification.

4 MS. WIEST: Those exhibits will be admitted.

5 EXHIBITS:

6 (Staff Exhibit Nos. 385 through 389 received into
7 evidence.)

8 MR. SMITH: With that, I would call Keith Senger as
9 our first witness.

10 Thereupon,

11 KEITH SENGER,

12 called as a witness, being first duly sworn as hereinafter
13 certified, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. SMITH:

16 Q. Keith, would you please state and spell your name for
17 the record?

18 A. Keith Senger, K-E-I-T-H S-E-N-G-E-R.

19 Q. Where are you currently employed?

20 A. I am currently a utility analyst for the South Dakota
21 Public Utilities Commission.

22 Q. Could you describe your educational background
23 briefly?

24 A. I have an accounting degree from Northern State
25 University and with minors in economics and management

1 information systems.

2 Q. I am wondering, have you been touching electrical
3 wires before you came in here?

4 A. No.

5 Q. Prior to joining the commission staff, could you
6 really briefly describe your professional employment history?

7 A. I was employed for about five and a half, six years by
8 the Department of Legislative Audit, which is the state entity
9 under the legislature that audits the State of South Dakota and
10 various other entities. After that I worked about a year as
11 the audit manager over at the Department of Transportation and
12 then I started here at the Public Utilities Commission in
13 January of '99.

14 Q. At legislative audit, what general types of work did
15 you perform?

16 A. Mostly auditing, either compliance auditing or
17 financial auditing of the various departments in state
18 government.

19 Q. Did those reviews involve reviews reviewing contracts
20 and similar types of documents?

21 A. Yes.

22 Q. Did those reviews involve determining whether they
23 conformed to laws and rules of the agency?

24 A. Yes.

25 Q. Did they involve determining whether vouchers

1 submitted on contracts were within the scope of what the
2 contract authorized?

3 A. Yes.

4 Q. How about DOT, what did that involve?

5 A. That was more of the same. Primarily it was auditing
6 the independent contractors that did work for the Department of
7 Transportation, as far as engineer contractors.

8 Q. So that work also involved analyzing contracts and the
9 data that goes along with them and making judgments about those
10 documents?

11 A. Correct.

12 Q. Let's turn to here at the PUC, can you describe the
13 types of cases, generally, that you work on here at the PUC?

14 A. Electric, natural gas rate cases, telephone rate
15 cases, certificate of authorities, and whatever else gets
16 thrown my way.

17 Q. With respect to rate case analysis, are these the kind
18 of cases that involve the creation and use of spread sheet type
19 mathematical models to perform financial analysis, et cetera?

20 A. Yes.

21 Q. And have you had considerable experience in doing that
22 kind of analysis?

23 A. Yes, I have.

24 Q. Would you characterize -- based upon the work that you
25 have done using that kind of spread sheet analysis, would you

1 state that you developed a high level of expertise in designing
2 and using Excel type spread sheets to organize and analyze
3 large amounts of data?

4 A. Yes.

5 Q. Did you utilize that expertise to analyze the
6 information that the commission received from the claimants and
7 other information received by staff related to this proceeding?

8 A. Yes.

9 Q. Moving on to a different type of work, then, have you
10 been involved before here at the commission in handling
11 applications by telephone companies for certificates of
12 authority here in South Dakota?

13 A. Yes, I have.

14 Q. Would you say numerous times?

15 A. Numerous, yes.

16 Q. Has your work here at the commission involved
17 interpreting what services are covered and allowed by a
18 certificate of authority?

19 A. Yes.

20 Q. And is this something you have also done many times?

21 A. Yes.

22 Q. I have handed you, Keith, a copy of ARSD
23 20:10:24:04.05 entitled performance bonds. Are you familiar
24 with this rule of the commission?

25 A. Yes, I am.

1 Q. And have you ever been involved with a certificate of
2 authority application where bonds have been required?

3 A. Many times.

4 Q. Under what circumstances does the commission generally
5 require a bond?

6 A. Generally if the company is collecting deposits,
7 prepayments or offering any sort of prepaid services, generally
8 the commission requires they provide a bond.

9 Q. Looking at the end of the first -- last sentence of
10 the first paragraph of that rule, is it your understanding that
11 the word "customer" means a customer for the particular
12 telephone service that the commission is authorizing through
13 the certificate of authority that it issues?

14 A. Yes.

15 Q. Have you ever worked on an application for a
16 certificate of authority to provide wireless service here in
17 South Dakota?

18 A. No, I have not.

19 Q. And why is that?

20 A. Because we do not have -- issue certificate of
21 authorities for wireless service.

22 Q. And is that because neither the commission nor in fact
23 the State of South Dakota may do so under Section 332 of the
24 federal Telecom Act?

25 A. Say that again.

1 Q. Is that because neither the commission nor the State
2 of South Dakota may exercise such authority under Section 332
3 of the Telecommunications Act of 1996?

4 A. That's correct.

5 Q. So it follows that we have not required companies to
6 post bonds as a condition of providing wireless service in
7 South Dakota.

8 A. That is correct.

9 Q. Do some of the companies that we provide certificates
10 of authority to also provide services to customers other than
11 the services that the commission authorizes under the
12 certificate of authority it issues?

13 A. Yes.

14 Q. And those kind of services, do you have examples of
15 what some of those -- the companies, other services they may
16 provide?

17 A. Cable TV, Internet services, wireless or cellular
18 services.

19 Q. So let me ask you this. Is it your understanding,
20 then, that when we require a company that provides both
21 wireless service and a service that we authorize through a
22 certificate of authority to post a bond, that bond is only
23 applicable with respect to the landline service that we
24 authorize under state law?

25 A. That is correct.

1 Q. When did you first become involved with S&S
2 Communications?

3 A. Approximately June or July of 2000 when they filed
4 their original application for a certificate of authority.

5 Q. Excuse me a minute while I bring these up to him. My
6 own exhibit pile here is pretty disorganized, so pardon me if
7 it takes a little shuffling here to find things. Showing you
8 Staff Exhibit 385, that's the certificate of authority that's
9 already been received into evidence. Are you familiar with
10 this order?

11 A. Yes, I am.

12 Q. Directing your attention to the conditions, would you
13 describe the bond coverage, what bond coverage the order
14 required?

15 A. The order requires at a minimum a \$50,000 bond, surety
16 bond, and 100 percent coverage for all prepaid amounts under
17 the collateral agreement or the nonrecourse agreement, as it's
18 referred to.

19 Q. Okay, so the two types of security were either bond
20 coverage or coverage under the nonrecourse agreement or the
21 collateral agreement, as it was called in that document?

22 A. Yes, that's correct.

23 Q. Now turning your attention to Exhibit 387, that's the
24 decision in TC02-166.

25 A. I have it.

1 Q. Okay, were you involved in that proceeding?

2 A. Yes, I was.

3 Q. And what happened as a consequence? What led to that
4 proceeding and then what was the result?

5 A. This proceeding was brought forth for various reasons,
6 mostly because S&S Communication failed to provide service.
7 About June 2nd they quit providing service to all customers.

8 Q. What effect did S&S's ceasing of operations have on
9 the bonds issued for the protection of S&S customers?

10 A. It led the commission to start collecting on those
11 bonds.

12 Q. In addition to collecting on the bonds, did that also
13 apply to the other kinds of security that we had received?

14 A. Yes, it did.

15 Q. Now I'd like to turn your attention to Staff Exhibit
16 or Exhibit Staff 390.

17 A. I have it.

18 Q. Okay, can you walk the commission through that, again
19 very briefly, and just describe for them what that is and the
20 various pages? We can start with page one and walk right
21 through it if you like. I noted in putting that together I
22 have the dates a -- they are not in date order and for that I
23 apologize.

24 A. If I could start on page three probably.

25 Q. Why don't we start on page three and four.

1 A. Page three is the original \$50,000 bond that S&S
2 provided to the commission for the coverage under the original
3 certificate of authority.

4 Q. Page five.

5 A. Page four --

6 Q. Or page four, pardon me.

7 A. Page four is the notice of cancellation of the \$50,000
8 bond.

9 Q. Page one.

10 A. Page one is a \$75,000 bond that actually replaced the
11 \$50,000 bond. This bond was determined -- the bond coverage
12 went from \$50,000 to \$75,000 as a result of filing requirements
13 that showed that S&S needed to increase their bond.

14 Q. And finally, would you turn to page five of the
15 exhibit?

16 A. Do you want to do page two first?

17 Q. Oh, okay, I'm sorry.

18 A. Page two is the cancellation of that \$75,000 bond.

19 Q. That bond was cancelled, do you know -- we will look
20 at another exhibit here in a minute, but was that bond replaced
21 by another bond?

22 A. Yes, that bond was replaced by another \$75,000 bond.

23 Q. From a different company?

24 A. From a different company, correct.

25 Q. Thank you. Next turning to page five.

1 A. Page five is the bond release and assignment. It
2 essentially released -- it was the agreement between staff and
3 the company, the Allied company, for those two previous bonds I
4 spoke about and payment of \$30,000 in release for any other
5 claims.

6 Q. And do you know, was that, the execution of that
7 release and the settlement of these bond claims, our claims
8 against them, approved by the commission?

9 A. Yes, it was.

10 Q. I think, if my recollection serves me right, did that
11 occur on or about December 12th of 2006?

12 A. That sounds pretty close.

13 Q. Give or take two weeks. Along about that time.

14 MR. SMITH: Staff would offer Staff 390.

15 MS. WIEST: It's admitted.

16 EXHIBITS:

17 (Staff Exhibit No. 390 received into evidence.)

18 Q. (BY MR. SMITH) Now turning your attention to Exhibit
19 Staff 391.

20 A. I have it.

21 Q. Would you please describe for the commission what
22 these two pages of these two documents are?

23 A. Page one of Staff Exhibit 391 is a \$75,000 bond. That
24 replaced the \$75,000 bond in the previous exhibit. Page two is
25 the release and assignment of claim in which the commission

1 received \$75,000 from collection of that bond.

2 MR. SMITH: Thank you. I would offer Staff 391.

3 MS. WIEST: It's admitted.

4 EXHIBITS:

5 (Staff Exhibit No. 391 received into evidence.)

6 Q. (BY MR. SMITH) Next turning to Staff 392, could you
7 please describe that for the commission?

8 A. Staff Exhibit 392 is the fourth bond we received. It
9 is a replacement for the bond in Staff Exhibit 391. It, too,
10 is a \$75,000 bond and page two again is the release and
11 assignment where the commission received \$75,000 in collection
12 of that bond.

13 MR. SMITH: Thank you. Staff would offer Staff 392.

14 MS. WIEST: Exhibit 392 is admitted.

15 EXHIBITS:

16 (Staff Exhibit No. 392 received into evidence.)

17 Q. (BY MR. SMITH) Let's turn to staff 393, Keith, if you
18 would.

19 A. I have it.

20 Q. Would you please describe what's in this package of
21 materials here? This one is going to be maybe a little bit
22 more involved. But would you tell the commission what page one
23 is?

24 A. Yes. Page one is referred to as the irrevocable
25 letter of credit that we received from Aberdeen Finance

1 Corporation.

2 Q. And when did we receive that?

3 A. We received that September 13th, 2002.

4 Q. Was this irrevocable stand-by letter of credit ever
5 approved or accepted by the commission?

6 A. No, it was not.

7 Q. But possession of it was maintained by the staff.

8 A. Correct.

9 Q. Did there come a time when this document was presented
10 for payment to Aberdeen Finance Corporation?

11 A. Yes.

12 Q. And did that occur shortly after S&S Communications
13 ceased?

14 A. Yes, shortly after S&S ceased providing services, this
15 letter was presented by commission staff to Aberdeen Finance
16 Corporation for payment.

17 Q. Now I'd like to call your attention to Exhibit 389,
18 which has already been received into evidence, I think.

19 MS. WIEST: Yes.

20 A. I have it.

21 Q. (BY MR. SMITH) Looking at that document, would you
22 then take a look at pages two and three of Exhibit 393?

23 A. It appears that this is a front and back document, we
24 only have every other page.

25 Q. Oh, really? I've got --

1 A. What staff exhibit?

2 Q. Staff Exhibit 393. I have both pages.

3 A. Oh, on 393 we have everything. You sent me to 398.

4 On 393, we have all the pages.

5 Q. Okay.

6 A. 398 I have every other page. I have odd numbers.

7 Q. We will have to correct 398. Again, that's an
8 official record of the U.S. District Court. 389, pardon me. I
9 think we are fine for now.

10 (Brief pause.)

11 Q. (BY MR. SMITH) Anyway, Keith, and I don't know how
12 that occurred in the copying here, but we will get that fixed.
13 Let's turn to pages two and three of Exhibit 393, please.

14 A. I have it. Page two of Exhibit 393 is our certificate
15 for 35 shares of Aberdeen Finance Corporation.

16 Q. And how did we come by that?

17 A. Making a long story short, after we submitted -- when
18 we submitted our payment for the \$125,000 irrevocable letter of
19 credit to Aberdeen Finance Corporation, payment was not made
20 and in the end Aberdeen Finance Corporation filed bankruptcy.
21 The bankruptcy plan called for the commission to receive 35
22 shares of Aberdeen Finance Corporation equity in lieu of debt
23 of the \$125,000 letter of credit.

24 Q. And following the issuance of the order by the
25 bankruptcy court confirming plan, we received this stock

1 certificate in the mail?

2 A. That is correct.

3 Q. Looking at the order confirming plan again, just
4 calling your attention to it, is that all we received as a
5 result of the letter of credit?

6 A. No, we also received \$2,500 worth of debt payable in
7 four annual installments, first payment to begin I think it's
8 either September or October of this year. The annual payments
9 would be \$625 each, if my math is correct.

10 Q. Thank you. Let's take a look then at page three of
11 document 393, pages three and four.

12 A. This would be four and five.

13 Q. Pardon me, four and five.

14 A. Page four is a letter from Aberdeen Finance
15 Corporation, Kathy Getty, the secretary/treasurer, providing us
16 with a resolution of the stockholders of Aberdeen Finance
17 Corporation.

18 Q. And could you just, in a couple of sentences, tell us
19 what that resolution was all about?

20 A. Commission staff had began negotiations with Aberdeen
21 Finance Corporation trying to liquidate our 35 shares of stock.
22 We made a tentative offer to Aberdeen Finance Corporation for
23 them to pay us \$1,000 for each share, a total of \$35,000,
24 \$1,000 per share. This resolution more or less turns us down.

25 Q. Can you take a look a little below? Isn't what this

1 resolution does is it asks us to give them until June 1st to
2 consider and figure out what their finances are and whether
3 they could respond favorably?

4 A. Yes, that is correct. Essentially the last resolution
5 asked for another six months before we do anything and that six
6 months would end about June 1st, 2007.

7 Q. Then let's look at the next page of the exhibit, a
8 letter dated January 10th, 2007. Would you explain what that
9 is?

10 A. This is a letter from staff to Aberdeen Finance
11 Corporation acknowledging the resolution and that we agreed not
12 to transfer the stock, to give them more time until June 1st.

13 Q. And then let's look at the last four pages of the
14 exhibit. Is that a document you recognize?

15 A. Yes. The last four pages of this exhibit, the first
16 of which is a letter from Aberdeen Finance Corporation, making
17 what I would call a counteroffer to purchase the 35 shares for
18 \$3,500, that's \$100 per share, and they would make an advance
19 payment to us for the \$2500 owed over the next four years.
20 Essentially they would pay us the \$2500 upon acceptance of this
21 offer instead of waiting for the next four years.

22 Q. And what are the next three pages?

23 A. The next two pages are the financial statements, a
24 balance sheet and an income statement of Aberdeen Finance
25 Corporation, and the very last sheet is some additional

1 information regarding the loans that Aberdeen Finance
2 Corporation makes, a number of loans, collections, various
3 things like that.

4 Q. Are you aware, are these financial statements, are
5 these audited financial statements?

6 A. I have no indication that they are audited.

7 Q. But you don't actually know whether they are or not?

8 A. I do not know, but I do not see any note at the bottom
9 that indicates they would be audited financial statements nor
10 are there any notes or any auditors letter.

11 Q. Calling your attention to one other fact here, on page
12 one the letter indicates, does it not, that the offer that we
13 had made, namely the \$1,000 share offer, was in fact, this
14 wasn't management, this offer was vetted at the annual
15 stockholders meeting and it was the shareholders of Aberdeen
16 Finance that rejected that offer and a counter motion was made?

17 A. That is correct.

18 Q. Thank you. Take a look, then, now, Keith, at Exhibit
19 394. I would move admission first of 383.

20 A. 393.

21 MR. SMITH: Or 393, excuse me.

22 MS. WIEST: Exhibit 393 has been admitted.

23 EXHIBITS:

24 (Staff Exhibit No. 393 received into evidence.)

25 Q. (BY MR. SMITH) This higher math is tough for me.

1 Let's take a look now at 394. Do you recognize this document?

2 A. Yes, I do.

3 Q. What is it?

4 A. It is a motion for order of determining claim and
5 claim amounts for the proceeds.

6 Q. Was this document served upon all known claimants to
7 the S&S proceeds?

8 A. Yes, it was. It was mailed to all known claimants
9 that submitted claims to us.

10 Q. And when did that occur?

11 A. March 20th, 2007.

12 Q. Did we receive return mails from some of the
13 claimants?

14 A. Yes, we had some addresses that were incorrect, people
15 had moved. We received numerous pieces of mail that were
16 returned. We did additional work to find those new addresses
17 and remailed that out to new addresses in an attempt to find
18 all of the people.

19 Q. And did we continue that process until we no longer
20 received any return mails?

21 A. That is correct.

22 Q. Calling your attention now to some spread sheets that
23 are at the back of this document, about halfway in the middle,
24 I guess, could you describe for the commission what those are?

25 A. Exhibit A is the list of claimants that staff

1 recommended denial for. Exhibit B is the list of claimants who
2 had filed multiple claims, meaning they had two or more claims
3 for the same contract, S&S contract. Exhibit C was staff's
4 recommendation for claimants to be allowed to actually receive
5 part of the bond proceeds.

6 Q. I notice the heading of Exhibit B is chopped off of
7 mine, but I believe that's what it is, in the copying process.

8 A. Mine says Exhibit B, consolidated.

9 Q. Okay. And then let's turn to the next page, and if
10 you could, just briefly describe what that is.

11 A. The next page is what we would consider Exhibit D.
12 That was an individual sheet that was sent to all the claimants
13 that contained the personal information for each contract,
14 whether it be denied, whether it be allowed, or whether it be
15 consolidated. The one that we have here does not have any
16 specific information. The information from Exhibit A, B and C
17 was actually merged onto this sheet, provided to the claimant
18 so they could see all of their individual information.

19 Q. And when you say merged, that means that the
20 information that appeared on each one of these individual pages
21 called Exhibit D was precisely the same information for these
22 identified fields that is on the spread sheets.

23 A. That is correct. All the information from claimant
24 one on Exhibit A, B or C would match the information onto here.

25 Q. Can you explain why we did that?

1 A. We did that for simplicity sake so the customers could
2 see their individual information, because it was hard to get
3 their information from Exhibit A, B or C because of the wealth
4 of information there. This provided their own personal sheet
5 and personal information.

6 Q. Thank you. The next page, what is that?

7 A. The next page is a blank notice of dispute and request
8 for hearing that we sent to all the claimants. In case they
9 were disputing staff's recommendation, one of their remedies
10 was to complete this notice of dispute and request for hearing
11 and send it back to us.

12 Q. And then the next two pages, just briefly.

13 A. The next two pages is what I would consider the top
14 letter that was sent to everybody explaining the whole
15 situation, explaining the process, giving the time and date of
16 this hearing on when they could come and meet before the
17 commission and discuss any of their issues they had.

18 Q. And the last page is what?

19 A. The last page is the order and notice of hearing for
20 the hearing that we are here today on.

21 MR. SMITH: Thank you. Staff would move for the
22 admission of Staff 394.

23 MS. WIEST: Exhibit 394 has been admitted.

24 EXHIBITS:

25 (Staff Exhibit No. 394 received into evidence.)

1 Q. (BY MR. SMITH) With respect to the Exhibit A, that's
2 the denials, if you can, can you describe for the commission
3 what the grounds were, reasons we stated for denying claims
4 that are on that list?

5 A. The first -- I'm going to start from the bottom up
6 because it's probably easier to indicate that way. S&S had
7 what we considered investors where people actually invested in
8 S&S where they gave money to S&S Communications and they
9 actually received what we consider a letter stating you are
10 going to receive so much money back at an interest rate. We
11 consider those investors. Investment amounts we did not
12 consider to be covered under the bonds or any of the sureties,
13 so they were put in the denied category.

14 The second reason for denial was wireless service.
15 S&S Communications also offered a wireless service prior to
16 them ever getting into the landline phone service. These
17 claims are for wireless service contracts. Another reason for
18 denial was out of state. We had a number of claimants from
19 Iowa, North Dakota, Montana, Nebraska, even California,
20 Minnesota, that actually wanted to -- that submitted claims for
21 our bond. It's staff's recommendation that those be denied
22 because they are not a South Dakota customer under the
23 jurisdiction of this commission and not covered under the bond.

24 Another reason for denial was the amount paid was
25 fully realized. Let me explain that. A number of S&S's

1 customers could not afford to pay the \$3,000, the \$5,000,
2 \$10,000 up front, whatever the contract amount may be, so they
3 went through different financing entities to actually finance
4 that, where the financing entity actually paid S&S
5 Communications some amount and the customer then made monthly
6 payments usually to these entities.

7 Upon S&S's -- when S&S quit providing service, many of
8 these customers actually quit paying and after several
9 litigation and communications with staff and everything, many
10 of these financial institutions decided that they couldn't
11 collect on those loans any more because some of them were more
12 on a lease contract and for various other reasons. So they
13 quit paying on there and so we consider that the amount of the
14 loan forgiven. Well, the amount of loan forgiven, the
15 principal amount of the loan forgiven actually exceeded the
16 amount of service left on the contract, so therefore, those
17 customers actually received all the service that they paid for.

18 Another one that we had is the contract term had
19 actually expired, where they submitted a claim, they were still
20 getting service, the contract had expired and when S&S quit
21 providing service, they lost their service, but they should
22 have discontinued getting service months before that because
23 their contract with S&S had actually expired.

24 Q. You may have mentioned this. Did this category also
25 include claims where the amount or to the extent they were

1 covered by insurance and they received insurance proceeds?

2 A. Well, actually, we didn't have any of those identified
3 on this exhibit.

4 Q. Okay.

5 A. Our later exhibit we do.

6 Q. Okay. Thank you. Okay, let's go to those later
7 exhibits. Let me ask you this. Since we sent out that notice
8 on March 20th and subsequent notices to return mails, et
9 cetera, have we heard from claimants regarding errors or
10 disagreements with our recommendations as noted on those three
11 exhibits?

12 A. Yes, we have.

13 Q. And how have these been handled?

14 A. For the most part, you know, if customers would call
15 that they needed a name change, for example, many times their
16 business manager would have filled out the claim form, they
17 changed the name. Sometimes we actually got notice from the
18 claimant themselves that they actually received the piece of
19 mail but their address had changed. They would call us, we
20 would discuss it and we would simply make that change. On the
21 ones where there was actually numbers that changed, where it
22 would change the claim amount that they had, we actually went
23 back through their records to see what they had provided and at
24 times we found typos or we were reading the contract a little
25 bit different than they were and if they identified those and

1 if staff looked at them and if we agreed with them, we made the
2 change right into the exhibit.

3 Q. Thank you. Let's now turn to Exhibits 395 and 396,
4 those are the larger spread sheet documents.

5 A. I have them.

6 Q. Is that me or you? I don't think I actually did
7 anything. Okay, Keith, I don't know if I --

8 CHAIRMAN JOHNSON: Do we know what's causing that, so
9 that we can get it fixed?

10 MS. AXTHELM: It's a constant mike.

11 CHAIRMAN JOHNSON: That's always the case.

12 Q. (BY MR. SMITH) Are we okay now to go?

13 A. I'm ready.

14 Q. Is your mike on?

15 A. I think it's on, yep.

16 Q. Let's now turn again, Keith, to take a look at
17 Exhibits 395 and 396, that's the large spread sheets.

18 A. I have them.

19 Q. Would you please explain what those are, what they are
20 entitled and what they are in relation to what we have been
21 talking about here?

22 A. I'll start with Exhibit 396, if I may. 396 is
23 entitled Exhibit E, confidential version, and what this exhibit
24 lists is all our corrected information from the previous
25 Exhibits A, B and C, which we just discussed in Staff Exhibit

1 394. This is all the corrected information as staff sees it.
2 That is a confidential version.

3 Exhibit 395 is the exact same information with several
4 columns, the business name, the claimant's first name and last
5 name, yeah, with those three columns removed for confidential
6 reasons and that's a nonconfidential version. But essentially
7 all the information on Exhibit 395 and 396 are identical.

8 Q. The only reason we deleted that information is we
9 elected not to parade all these people's personal information
10 out in public.

11 A. That is correct.

12 Q. I don't know that it makes any difference which
13 document we look at, so I'm going to refer to them
14 interchangeably.

15 CHAIRMAN JOHNSON: Ms. Wiest, is it appropriate for me
16 to ask a clarifying question about what we are looking at with
17 the exhibit? So Exhibit E nonconfidential version contains the
18 exact same information as we were looking at with Exhibits A,
19 B, C and D, only it's organized numerically by claim?

20 A. No, that is not correct. Exhibit E, whether you look
21 at the confidential version or the nonconfidential version, is
22 all of the information from A, B and C, but it has been
23 corrected for all the claimants that called in and corrected
24 their information. Exhibit 395 and 396, which are both Exhibit
25 E, confidential version and nonconfidential version, are

1 identically the same.

2 CHAIRMAN JOHNSON: Okay. One more question, if I
3 might, Madam Hearing Examiner. So is this current as of today?
4 Any complaints we have had from people calling in has been
5 updated in this spread sheet?

6 A. Yes, that is correct, and I think John will be getting
7 into that in a little bit.

8 CHAIRMAN JOHNSON: My apologies for jumping the gun.

9 Q. (BY MR. SMITH) A note on that and we were going to
10 get into this. But can you just explain why we didn't go back
11 and call them A, B and C again?

12 A. For simplicity sake, because if the commission
13 approves this, we didn't want them referring to Exhibit A, B
14 and C being approved and getting confused which was the correct
15 one, so we called it Exhibit E, just gave it a new exhibit
16 number for simplicity sake.

17 Q. We did segment the information as we did in the first
18 three exhibits into the three categories of data.

19 A. Yes, if you will look, we changed it around a little
20 bit. The first three pages are what staff would consider the
21 allowed claims. The fourth page lists all the consolidated
22 claims and the fifth page lists what staff would consider
23 denied claims.

24 Q. Okay, Keith, without wasting too much time on it, but
25 now I want to turn to the substance of what these documents

1 show. And if we could, and again I think with respect to maybe
2 quickly, consolidated, the reason for that is always the same,
3 is it not?

4 A. Pardon me? I didn't understand that.

5 Q. With respect to the consolidated claims, the reason
6 for consolidation, our recommendation of consolidation is
7 always the same.

8 A. Correct.

9 Q. And what is that reason?

10 A. The reason is because at one point the commission
11 determined that all complaints against S&S would be considered
12 claims against the bond, so at one point in time we had people
13 who submitted a complaint against S&S that was given a CT03
14 docket number and then also they submitted a bond claim for, so
15 we had duplicates. At times we had people just submitting them
16 to us willy nilly when we sent out our second notice, we had
17 people sending second and third, sometimes we would have four,
18 I think in one case we have four claims against the bond for
19 the exact same contract.

20 Q. With respect to consolidated claims, in your
21 consideration of the claim into which the other claims were
22 consolidated, have you considered any supplemental information
23 that may have been provided in those subsequently filed claims
24 in making your decision?

25 A. I believe the answer is no, unless I am

1 misunderstanding your question.

2 Q. I think you are misunderstanding me. When we talk
3 about consolidation, if we received in a subsequent bond claim
4 filing, in a subsequent round new information that may have
5 changed our opinion, for example, we look at something and we
6 see new information that shows that in fact they did write a
7 check on X date and pay, did you consider all of that when we
8 considered the allowed claim or the one into which it was
9 consolidated?

10 A. Yes.

11 Q. So we considered all the information together in our
12 recommendations?

13 A. That is correct. Thank you for clarifying.

14 Q. And let's go now to denial and maybe just point out, I
15 think it's really simple to see, would you just explain where
16 the reasoning is, where the reason columns are for the
17 commission, please?

18 A. Yes. If you look at about two-thirds of the way to
19 the right side of the page, right before the first double line,
20 the column to the left of the first double line, it says reason
21 for denial. There are the two -- in there we have now added
22 those two claims that John referred to earlier as insurance
23 recovery, which is another reason for denial.

24 Q. And one last clarifying question on those particular
25 two claims. Did we serve the March 20th notice on those two

1 entities?

2 A. Actually, no, we didn't. After our mailing was
3 complete and printed and we were stuffing envelopes, we
4 realized that these two entities may have received an insurance
5 payment or some other sort of forgiveness, so while we were
6 stuffing envelopes, we actually called, sent an e-mail. We did
7 receive confirmation back from both of these entities that they
8 no longer had claims against the bond, so instead of redoing
9 our previous Exhibit A, B, C and D, we just did not mail it to
10 them and didn't change the information. But then we added them
11 in, we moved them from the accepted to the denial category at
12 their request.

13 Q. And I guess we don't want to identify -- do we want to
14 identify those two claims by number? Is that important to the
15 commission?

16 A. I could identify -- I would prefer not to use the
17 names, claim 16 and 46.

18 Q. And did we receive an e-mail from the chief financial
19 officer of those two companies, who is the same person, telling
20 us -- requesting that those claims be dismissed?

21 A. Yes, we have an e-mail placed in the other exhibit,
22 the individual claim file, of this same financial officer for
23 both companies requesting that -- or indicating they no longer
24 had a claim.

25 Q. Thank you. Before I turn to the allows, which I think

1 is the meat of the matter here, let's turn a minute, let's
2 consider the claims themselves. This one is kind of an awkward
3 exhibit here. In there are -- in two boxes that are sitting up
4 with the commissioners are 384 files marked as exhibits, as
5 Staff Exhibits 1 through 384. Would you please explain for the
6 commission, to the commission what those files are?

7 A. Those files contain all of the information that the
8 commission has received, whether it be a complaint against S&S
9 or whether it be a bond claim form and the relevant information
10 that was received from it. I also need to note that the
11 exhibit number on each one of those files matches the claim
12 number on Exhibit E and also with Exhibit A, B and C, but those
13 are no longer relevant.

14 Q. And have we spent the last two months or so scouring
15 through all that stuff to make sure that everything is in those
16 files?

17 A. Actually, I would have to say we spent probably the
18 last two and a half years going through those, but yes, they
19 were entered in probably anywhere between a year and a half to
20 two years ago, all the information was entered in and the last
21 two months we have been going through each file making sure the
22 information is correct on our own and from contacts we have
23 with the individual claimants.

24 MR. SMITH: I am going to offer Staff Exhibits 1
25 through 384.

1 MS. WIEST: Exhibits 1 through 384 are admitted.

2 EXHIBITS:

3 (Staff Exhibit Nos. 1 through 384 received into
4 evidence.)

5 MR. SMITH: Thank you.

6 Q. (BY MR. SMITH) Now, Keith, let's go to the spread
7 sheet labeled allowed claims.

8 A. Exhibit E?

9 Q. Exhibit E, pardon me. And that's either Exhibit 395
10 or 396, it doesn't matter. Would you please walk the
11 commission from left to right across the top of the page, the
12 category descriptions, and please describe for them what each
13 of these columns is and what type of computations lead one to
14 the number results that we see in successive columns to the
15 right.

16 A. Starting at the left most column, claim number is
17 specifically the number that staff assigned as a claim. The
18 second column titled docket number or bond claim batch, I call
19 it a reference number for us. It either has a CT03 number
20 representing the docket number for the complaint or else it has
21 the words "first" or "second," which helps us denote when the
22 bond claim was received. Those would all be bond claim forms.
23 It would either be received under the first batch or the second
24 batch.

25 The third column is the business name and I'm going

1 off of Exhibit 396 is the business name. That information was
2 taken from the information, either the bond claim form or from
3 the complaint. The next column, first name is just the
4 claimant's first name, the last name is the claimant's last
5 name. The next column would be city, that's essentially the
6 city that the individual, the mailing address -- the city of
7 the mailing address for the individual. The next column, ST
8 denotes the state in which they currently live in.

9 The next column entitled total contract amount, that
10 amount was taken from the information received and it denotes
11 the total contract amount that the individual claimant had with
12 S&S Communications. The next column entitled contract term
13 years is the term of the contract in years. The next column
14 entitled date contract signed is merely the date that the
15 claimant signed the contract with S&S. The next column,
16 percent of contract remaining is simply a calculation of how
17 much of the term is remaining on the contract as of June 3rd,
18 2003, the date that S&S Communications quit providing service.
19 It's simply a division calculation.

20 The next column entitled contract remaining value is
21 simply the percent of contract remaining times the total
22 contract amount, which gives us how much essentially service, a
23 dollar amount of the service that is left on the contract after
24 S&S quit providing service. The next column entitled amount
25 financed and forgiven or insured is a number of -- contains a

1 number of different information. Most of them are actually
2 zeros, but as I indicated earlier, some of the claimants
3 actually financed their contract payments and that's the amount
4 that the finance company actually forgave. Or it indicates the
5 amount that the claimants received in insurance or some other
6 type of settlement with third parties.

7 The next column is recommended claim amount and in
8 parentheses I put staff calculated. That is a staff calculated
9 number, which essentially takes the contract remaining value
10 less the amount financed and forgiven or insured to come up
11 with the recommended claim amount, the amount that we believe
12 that they had a valid claim for on the proceeds. The next
13 column is staff's recommended disposition. We kind of
14 discussed that earlier, whether it be allowed, consolidated or
15 denied. The next column titled reason for denial, on all the
16 allowed claims, that would read not applicable, because the
17 claim was allowed. But in the other ones, whether it be
18 consolidated or denied, we just give a brief explanation of why
19 we consolidated or denied them.

20 The next three columns are a calculation under the
21 straight line allocation method. The first of those three
22 columns titled straight line claim fraction is a calculated
23 amount that we calculated which represents the amount of -- the
24 claim fraction that each individual would receive. When you
25 add the total of the straight line claim fraction, it should

1 equal one. Now, because of rounding when you get to the very
2 last page of the allowed, when you carry it out to about the
3 sixth, seventh decimal, we do have -- it doesn't quite equal
4 one, but we are talking fractions of a penny there.

5 The next line is the estimated straight line
6 distribution. What that amount is is the claim fraction
7 multiplied times \$180,000. The \$180,000 is the sum of the two
8 \$75,000 bonds we received and the \$30,000 bond. That \$180,000
9 is an amount that's subject to change, it's just kind of a
10 placeholder. And the only reason why we list that is to give
11 the individuals an estimated amount that they would receive and
12 to provide some information to the commission. We are not
13 asking the commission to approve that column, we are looking at
14 the claim fraction is the important number, because once we
15 have the claim fraction, it doesn't matter if we have one
16 dollar of proceeds or \$200,000 of proceeds, we can calculate
17 how much each individual would get.

18 The third column under the straight line allocation
19 section is a distribution of the 35 shares. That number there
20 represents the number of shares that each claimant would
21 receive if the commission decided to distribute the shares.
22 Essentially what we did is we took the claim fraction times 35
23 and it gives you the estimated distribution of shares.

24 The next four columns represent what we call a
25 weighted allocation. This is a somewhat different calculation

1 than the straight line. The straight line purely calculates it
2 based on time. The weighted allocation actually gives some
3 credence to the argument that those customers who came in,
4 became customers of S&S at the end were hurt the most because
5 the service they received was a cheap service. So if you
6 received a year, two years, three years of your contract, you
7 may have actually received benefit than had you used a
8 different long distance carrier. So what we did is we weighted
9 them to provide a higher distribution to those individuals who
10 came in at the end.

11 Let me go through those four individual columns. The
12 first column is the weighted contract claim amount. What that
13 amount is is I took the -- I took the recommended claim amount
14 from previous columns times the percent of contract remaining.
15 That essentially lowered everybody's claim amount, but those
16 people who had 90 percent of their service left to receive, it
17 only lowered it by 10 percent. Someone who received 90 percent
18 of their service, only had 10 percent of their service left, it
19 lowered their claim by 90 percent. Therefore, reducing the
20 claim amount on an inverse relationship of the amount of time
21 that was left on their contract, essentially giving those who
22 came in last bigger credit for their contract amount. Those
23 that came in way early in the situation, a smaller fraction of
24 the claim.

25 Then I took the total of the weighted contract amount

1 and I divided it by the -- excuse me, I took the individual's
2 weighted contract amount and divided it by the total weighted
3 contract amount to come up with a weighted claim fraction,
4 which you see in the next column. The column following that is
5 estimated weighted distribution, based on the \$180,000. Again,
6 that just took the weighted claim fraction times the
7 remaining -- excuse me, it took the weighted claim fraction
8 times the \$180,000. Again the \$180,000 is just an estimate.
9 Then the last column on that spread sheet is the estimated
10 distribution of the 35 shares based on the weighted allocation.
11 Again, it's just the weighted claim fraction times the 35
12 shares.

13 Q. Thank you. I'd like to now call your attention to
14 Exhibits 397, Staff 397 and Staff 398. I think those are
15 stapled together, Ms. Wiest, in the ones that we have by the
16 admin people downstairs, they got stapled together, but I think
17 they are both there. Do you have those, Keith?

18 A. Yes, I do.

19 Q. Would you please describe what these are for the
20 commission and go through them?

21 A. Staff Exhibit -- or Exhibit Staff 397 is a summary of
22 all the substantive changes that were made as a result of the
23 mailing, the notice to customers that we sent out on March 20th
24 of 2007. This summarizes all the changes from Exhibit A, B and
25 C, the changes that we made to Exhibit A, B and C which result

1 in our new Exhibit E. Should I go through each individual
2 claim?

3 Q. I think they are self-explanatory. The two on the
4 top, denoted claim 16 and claim 46, those are the two that we
5 have already discussed; is that correct?

6 A. Yes, the first and the third claims on there were
7 already discussed. They were the company who called and said
8 they no longer have a claim.

9 Q. The primary reason for the changes really was mistakes
10 that we made in in-state and out-of-state determinations.

11 A. Yeah, in-state, out-of-state determinations, typos on
12 a date. One of them we were reading the contract a little bit
13 different, we came up with a different contract amount than
14 they did.

15 Q. And all of these have been incorporated in Exhibit E,
16 whether the confidential or nonconfidential version.

17 A. That is correct.

18 Q. Let's take a look at 398. Please explain what that
19 is.

20 A. 398 is a summary of the written disputes that we
21 received back from the customers on our March 20th, 2007
22 mailing. Essentially we received two claimants who submitted a
23 written dispute based on that stock form that we sent them.
24 Should I go through each -- those two?

25 Q. If the commissioners are interested, I mean, it puts

1 it in writing. These were disputes, so I think they might want
2 to at least have an explanation of what happened here.

3 A. The last of the two claim disputes on there, claim 356
4 was the first one that we received. We had and still have this
5 claim listed as denied because it was a wireless service
6 contract. The claimant submitted the notice of dispute and
7 request for hearing, I received that, I called the individual,
8 talked to him. Their big concern was why does a wireless
9 service preclude me from making a claim on the bond.

10 I explained to him the jurisdictional issues, that
11 these bonds were issued for landline service, landline long
12 distance service. He began to understand. I made it clear to
13 him that he still could come to the commission and actually
14 have a hearing, present his case, but when I indicated to him
15 that if the commission did accept his dispute and actually paid
16 him for the wireless, the amount of money that he received
17 wasn't worth his time to sit on the phone or to actually come
18 to Pierre. And he indicated to me that he would not be calling
19 in and that he would not come to the commission meeting.

20 Claim 59 is a little bit more complicated. We
21 originally had this as an accepted claim. It still is an
22 accepted claim. The individual who submitted this dispute
23 indicated that they may have a possible future claim against
24 the bond related to some third-party litigation. We had
25 numerous discussions with the claimant on this and in the end,

1 the claimant sent me an e-mail on May 7th indicating that he
2 wanted his dispute withdrawn.

3 MR. SMITH: Thank you. Staff would offer Staff's
4 Exhibits 395, 396, 397 and 398.

5 MS. WIEST: Those four exhibits are admitted.

6 EXHIBITS:

7 (Staff Exhibit Nos. 395 through 398 received into
8 evidence.)

9 Q. (BY MR. SMITH) Keith, could you take a look at
10 Exhibit 399? I was supposed to take that a while ago. It's
11 real simple, I just wanted it in the record.

12 A. I have it.

13 Q. Okay, can you describe what that is? I'll ask you a
14 leading question. Is that the notice that we mailed out back
15 in 2005, in August, and then follow up in September and October
16 of 2005?

17 A. Yes, this is the notice that we mailed to all
18 individuals that we believed that were customers of S&S that
19 had not already either filed a claim against the bond or a
20 complaint against S&S.

21 Q. And we got those names from?

22 A. Most of those names were received from a list that S&S
23 provided us after they quit providing service that they said
24 was a complete list of all their customers.

25 Q. Did we also look at information that had been provided

1 from financing companies that we had reason to believe would
2 have been involved in this?

3 A. Yes, that is correct. We also knew of three financing
4 institutions that were actually financing S&S contracts and we
5 either subpoenaed or they voluntarily gave us all the
6 information for all customers that they had loans with that had
7 a South Dakota address.

8 Q. Is it your opinion that we did everything that could
9 reasonably be expected to give notice to former S&S customers
10 of their right to file a claim?

11 A. Yes. We made direct mailings and we also posted
12 notices in numerous statewide newspapers.

13 Q. Now I'd like to call your attention to Staff Exhibit
14 403.

15 A. I have that.

16 Q. Is that familiar to you?

17 A. Yes, it is.

18 Q. Would you please describe for the commission what that
19 is?

20 A. This is a letter and an order from the commission that
21 was sent out to all the claimants that were listed on previous
22 exhibits, whether they be accepted, denied or consolidated
23 claimants. It was mailed to all the claimants that we knew of
24 that indicated that at this hearing we would also be taking up
25 the issue of what to do with the Aberdeen Finance Corporation

1 stock or shall I say the offer that was made to us. It let's
2 them know that they can either appear at the hearing or be here
3 by telephone or participate by telephone, excuse me.

4 Q. Did you receive any calls or other communications from
5 claimants relative to that notice?

6 A. It's hard -- I did receive phone calls following the
7 mailing of this. It's hard to tell whether it was related
8 specifically to this, but I do not recall anyone that contacted
9 me regarding -- excuse me, there were --

10 Q. Is there somebody that might operate an elevator that
11 might have called you?

12 A. Yes. We actually had two people call in -- thank you,
13 John -- we had two people call in that expressed their belief
14 regarding what we should do with the Aberdeen Finance
15 Corporation stock.

16 Q. And what was that expression?

17 A. Take the money and distribute it, from both of the
18 individuals who called in.

19 Q. Is the reason you are not identifying them by name
20 because we have had a policy here of not doing that?

21 A. Yes. I could dig through my files and get you the
22 actual claimant number if you would prefer. I don't have that
23 right in front of me, I've got it in my file here. I could dig
24 on my personal notes.

25 Q. Backing up again to Exhibits 395, 396, that's Exhibit

1 E, and again the purpose of the E is because that follows D,
2 which is the last exhibit that we had in our mailing, but the
3 weighted versus straight line claim fractions, you have listed
4 those both in a neutral fashion. Do you have a recommendation
5 on behalf of staff as to which of those methods the commission
6 ought to approve today?

7 A. It's my belief that the commission should approve the
8 straight line allocation method.

9 Q. Do you have a set of reasons for that?

10 A. Mostly because it's the most straightforward, it's the
11 clearest, it's the simplest method of calculating, and also it
12 treats all customers exactly the same. It doesn't take into
13 any consideration of when the contract was signed or whatever,
14 it just simply calculates it based on the amount of time they
15 had left on their contract.

16 Q. In addition to the notice that we provided and setting
17 this business of the stock on for hearing today in addition to
18 the claims themselves, did the commission request us to do
19 anything else at the April 24th meeting involving the stock?

20 A. Yes. The commission ordered staff to seek out a
21 professional view of what the 35 shares -- let me correct
22 myself there. They directed us to seek out professional
23 individuals who could help us decide whether or not the offer
24 provided to us from Aberdeen Finance Corporation was an offer
25 that the commission should accept or reject or make other

1 recommendations.

2 Q. And what steps did you take and other members of staff
3 to do that?

4 A. We contacted various individuals, whether be attorneys
5 or whatever, and started compiling a list of names of
6 consultants who would possibly do this. We contacted two
7 ourselves and we also had a third consultant actually contact
8 us. We did not seek them out, he sought us out.

9 Q. You said we contacted. How many did we contact,
10 three?

11 A. I want to say two. One second.

12 CHAIRMAN JOHNSON: For those listening on the
13 Internet, we will just note that we haven't had an interruption
14 in the sound but we are just allowing the witness to gather
15 some information.

16 A. We contacted two and we had a third contact us is what
17 my notes indicate.

18 Q. (BY MR. SMITH) Okay, thank you. Are you aware of
19 whether there was a complicating reason why we could not
20 contact additional persons that had been recommended to us by
21 various people? You may not know because some of those
22 conversations were between me and -- are you aware at all of
23 the conflict of interest problems that occurred as a result of
24 a particular accounting firm that Aberdeen Finance happens to
25 use and the company that they are now about to merge with?

1 A. Yes, we did -- I didn't include them in my notes
2 because I didn't see them as a viable contact, but we did
3 contact a third entity and it just so happened that the
4 individual we contacted worked for the CPA firm who was also
5 the entity that represented Aberdeen Finance Corporation in the
6 bankruptcy and I think was their current -- is still their
7 current accountant, so we did contact three.

8 Q. Thank you. In addition, are you aware of whether or
9 not we also had conversations with the securities division
10 involving this situation?

11 A. Yes. We had some e-mail communications and phone
12 conversations.

13 Q. And did you provide the plan of reorganization and
14 other documents relevant to this issue, the offer letters, et
15 cetera, to the people over at Division of Insurance?

16 A. Yes, I did.

17 Q. And those financial statements that were attached?

18 A. Yes, I did.

19 Q. Thank you. Calling your attention now to Exhibits
20 Staff 401 and 402.

21 A. I have them.

22 Q. Could you please describe what these exhibits are for
23 the commission?

24 A. Exhibit 401 is a letter addressed to, well, gentlemen,
25 John and myself, and it is information that a consultant

1 provided us in regard to his evaluation of the Aberdeen Finance
2 Corporation offer that we received, based on the financial
3 statements, the bankruptcy plan and other information that
4 staff was able to provide him. That's Exhibit 401.

5 Exhibit 402 is a letter we received from a second
6 consultant who did essentially the same thing, reviewed the
7 financial information that we had from Aberdeen Finance
8 Corporation, the offer, the bankruptcy plan and maybe some
9 other information that staff had actually provided to them in
10 an e-mail.

11 Q. I'm sure the commissioners can read these for
12 themselves and draw their own conclusions, but would you want
13 to take just a few minutes to sort of characterize these two
14 exhibits and the divergence of opinion that seems to be
15 expressed in them?

16 A. Well, it seems kind of shocking how two different
17 consultants looking at the exact same information can come up
18 with two very different opinions. Staff Exhibit 401 I would
19 say is a very -- it's probably the more detailed of the two
20 where the consultant actually went into the financial
21 information, drew up some conclusions, made some adjustments to
22 the financial statements. Clearly this person has had a
23 banking background, is familiar with GAAP accounting and
24 essentially if I could summarize his conclusion, is that it
25 appears that the \$100 an offer made is probably one that the

1 commission should accept, but again, that's based on the
2 information that he had given to him. The Exhibit 402 I would
3 say doesn't go into quite the detail on the financial
4 statements but gives kind of the opposite opinion and indicates
5 that the \$100 an offer we received is probably one that we
6 should not accept.

7 Q. Did he express an opinion concerning the number we
8 have thrown out before, which I think it was a little bit
9 incorrect, the number you used on the 24th, the book value
10 number?

11 A. Yeah, the book value, book value of the shares is
12 \$1,250. He did indicate that an offer about that amount, maybe
13 discounted slightly, would probably be something that the
14 commission should look at and accept, and actually he
15 referenced at times maybe \$1,000 per share would be a better
16 amount for the commission to accept.

17 Q. And did that consultant offer at least one alternative
18 other than those that we had identified in our mailing?

19 A. Yeah, he offered to get out his checkbook and pay \$150
20 a share today for them.

21 Q. In his list of alternatives, he also proposed one
22 other possibility, did he not, in I think it was his -- in his
23 list of options?

24 A. Oh, well, we could --

25 Q. The --

1 A. He actually made four recommendations. We could keep
2 the shares for a few more years. We could actually sell them
3 at auction or we could distribute the 35 shares to the 250 plus
4 parties.

5 Q. And what about option one, isn't that a little
6 different than the options we had looked at?

7 A. Yeah, I mean, that option -- that option is
8 essentially to sell them at book value with the payments over a
9 60-month period at a seven percent annual interest rate. If
10 you discount that, you would come up with about \$1,000 per
11 share. I was probably summarizing that, if they could pay for
12 them all today, but he was simply saying sell them back at book
13 value, \$1,250, and charge seven percent interest and collect
14 that over 60 months.

15 Q. Thank you. Again that's all the exhibits I have for
16 you. With respect to back on Exhibit E again, do you have a
17 recommendation to offer to the commission? You have given
18 yours on the straight line versus weighted methods. Beyond
19 that, what would your recommendation be to the commission
20 today?

21 A. My recommendation would be to, as far as Exhibit E is
22 concerned, is to deny all the claims that we have listed under
23 the denied category. I would recommend that the commission
24 make a motion and approve consolidation of all the claims that
25 are listed under the consolidated claims. And I would

1 recommend that the commission approve all the allowed claims
2 and approve the recommended claim amount and use the straight
3 line allocation claim fraction -- and approve the straight line
4 claim fraction allocation method.

5 MR. SMITH: Thank you. That's all the questions I
6 have.

7 MS. WIEST: Mr. Smith, I don't have 399, 403, 401 or
8 402 offered yet. 399, 403, 401 and 402.

9 MR. SMITH: 401 and 402, I would offer those now.

10 MS. WIEST: Okay, Exhibits 399, 403, 401, 402 are
11 admitted.

12 EXHIBITS:

13 (Staff Exhibit Nos. 399, 401, 402 and 403 received
14 into evidence.)

15 MR. SMITH: Had I had 403 admitted?

16 MS. WIEST: No, I just did that.

17 MR. SMITH: Sorry. I am tendering Keith for
18 commissioner questions.

19 EXAMINATION

20 BY CHAIRMAN JOHNSON:

21 Q. On Exhibit 385, it refers to a collateral agreement
22 and then you referred to it I believe as nonrecourse
23 agreements. Could you give us some more information on what
24 that means? And if it is -- if I'm trying to get information
25 that's really not important for this proceeding, feel free to

1 tell me that, too. I still want kind of an answer, but you
2 don't have to dive into a bunch of depth if it's unnecessary.

3 A. First of all, what I referred to as the collateral
4 agreement or the nonrecourse agreement is the same thing. The
5 order refers to it as a collateral agreement. It has come to
6 be known, staff refers to it lately as the nonrecourse
7 agreement. What that is, when S&S Communications first started
8 providing service, it was prior to the commission even knowing
9 that they were providing service or giving them a certificate
10 of authority. So when they came in and asked for a certificate
11 of authority, they had a large number of customers already and
12 accepted a large number of prepayments already.

13 During the process of trying to get some sort of
14 coverage, staff said -- and at that point I think that amount
15 was somewhere in the neighborhood of, according to S&S
16 information they gave us at that time, it was somewhere in the
17 neighborhood of \$600,000 to \$800,000 worth of prepayments that
18 they had already collected and that they needed -- service that
19 they yet needed to provide.

20 So I indicated to them I need an \$800,000 bond. They
21 indicated there's no way that they could get an \$800,000 bond.
22 I told them, I said, well, see if you can get some other sort
23 of surety toward us. They came back and at that time
24 predominantly they were using Aberdeen Finance Corporation for
25 the company who was financing the S&S loans. At that point we

1 believed that number was somewhere in the neighborhood of about
2 six to \$700,000 of the \$800,000 that they were giving, most of
3 that was actually loaned out. What they offered to us was
4 Aberdeen Finance Corporation agreed that if S&S Communications
5 should quit providing service, they would cease collections on
6 those loans to S&S customers.

7 The difference between the total amount that
8 Aberdeen -- excuse me, that S&S Communications told us was
9 prepaid amounts and the recourse agreement was supposed to be
10 covered in bonds. So originally, if the total unearned revenue
11 by S&S at that time was \$800,000, then Aberdeen Finance
12 Corporation said that they had \$750,000 worth of loans sitting
13 out there so the bond calculation would have been \$50,000.
14 Now, those numbers are not exact, I'm just giving some
15 estimates.

16 Q. Thank you. Exhibit 385, the certificate of authority,
17 notes that S&S should be required to maintain a \$50,000 surety
18 bond as well as additional bonding to provide 100 percent
19 coverage of the prepaid amounts. Did they maintain that level
20 of bonding?

21 A. We believed they did, based on the information they
22 provided us. At the end when they -- they also had to provide
23 reports, yearly reports to determine their bond calculations.
24 After about their third or fourth report, we started noticing
25 inconsistencies, names were disappearing, and I just told them,

1 I said, I don't believe you guys are providing all the
2 information, so they provided us with some supplemental
3 information. At that time it was clear that they were
4 underbonded because their reports were less than accurate.

5 Q. Thank you. You noted investors and the fact that
6 staff has recommended denial for all claims of those that you
7 decided to categorize as investors. We didn't receive any
8 disputes from any investors, any informally or formally?

9 A. I did not take any phone calls from any investors. I
10 did not receive any formal written disputes. Prior to our
11 March 20, 2007 notice, we have had discussions with numerous
12 investors, one of which who didn't even submit a claim to us,
13 actually had a complaint issued before the commission and had
14 that complaint actually withdrawn. But we have had discussion
15 with a number of those investors but not in response to recent
16 action of the commission, we have not heard anything.

17 MR. SMITH: Mr. Chairman, if I might, I did have a
18 conversation with at least one investor. It just so happened
19 that I am the one who got that call.

20 CHAIRMAN JOHNSON: Okay.

21 MR. SMITH: He did not, for whatever reason, elect to
22 either file a notice of dispute. Several of them I will add,
23 too, are represented by attorneys, and they have been served,
24 the attorneys were served with all of this. Greg Rediger over
25 at Miller, he represents a couple, a number of them.

1 Q. (BY CHAIRMAN JOHNSON) Okay, I am moving now to
2 Exhibit A and I'll pause for just a moment so Mr. Senger can
3 get resituated. Because we now have Exhibit E, I'm not sure
4 that this matters, but on Exhibit A --

5 A. Can you give me a staff exhibit number?

6 Q. Yes. They were part of Exhibit 394.

7 A. Thank you.

8 Q. Which was the first half was the staff motion and the
9 second half was the spread sheets.

10 A. I have it.

11 Q. Exhibit A, there is a line underneath claim number 332
12 and the fields are all vacant except for the fifth and sixth
13 from the right. I want to verify that's not -- we are not
14 missing information there.

15 A. No, as you can see, the line entitled claim 332 has
16 all the information, then there is kind of almost a blank line
17 and then the next claim is 333. Essentially that was just a
18 cut and paste error that I had. I just copied denied an amount
19 claim in there and didn't -- into a blank line.

20 Q. I am still in Exhibit 394 and there appear to be a few
21 instances where there are fields highlighted and specifically
22 claim numbers one, 59 and 312, and I think because I've read
23 the staff motion, I understand why two of the three highlighted
24 are that, there was some confusion as to what the effective
25 date was for a couple of those large customers.

1 A. Could you give me those claim numbers one more time?

2 Q. Sure. One, 59 and 312. I understand two of the
3 three, but I don't understand the third so I was hoping to --
4 if the highlighting is important, I was hoping to get your --
5 some information on it.

6 A. I am fumbling because to me the claim number doesn't
7 mean a whole lot. The name behind the claim number means more,
8 so I am going into Exhibit E to find out who the claimant was.

9 Q. Perhaps I can narrow it down for you a little bit, Mr.
10 Senger. Claim number 312.

11 A. I have it.

12 Q. It's a claim that is not mentioned specifically in the
13 staff motion, as claims one and 59 were. 312 is highlighted in
14 Exhibit B, but is not highlighted in E. Is that of any
15 importance?

16 A. I do not believe 312 is. I would have to go into --
17 claim 312 is a consolidated claim because it's a duplicate with
18 CT03-064, and if I go into 064, which is not an easy cross-
19 reference.

20 MR. SMITH: Here it is right there.

21 A. On claim 312, I believe the highlighted on Exhibit B
22 was probably a note to myself of some point to go back and
23 check that one. When I look, I have in front of me Exhibit 312
24 and that contract sign date, the column that is highlighted,
25 agrees to the contract sign date that is listed on the proof of

1 claim. So I believe that that may have just been a previous
2 note to myself that I never unhighlighted it. That column is
3 correct.

4 Q. (BY CHAIRMAN JOHNSON) Okay.

5 A. And the other one was 159?

6 Q. The others I believe are both addressed. There were
7 some date issues that were addressed in the motion for order
8 determining claims and claim amounts and establishing claim
9 fractions. So it was mostly 312 I was concerned about. I have
10 a bunch of other questions. Maybe I'll ask two more and let my
11 colleagues hop in here, too. You noted that you had two --
12 I'll back up. Commission staff sent out to every claimant
13 information on the decision that was facing the commission with
14 regard to the AFC stock, correct?

15 A. That is correct.

16 Q. Following that letter, you received only two opinions
17 from claimants regarding what this commission should do with
18 that AFC stock.

19 A. Yes.

20 Q. Both opinions were that the commission should sell the
21 stock at the offer price of \$100 a share and then distribute
22 the proceeds; is that right?

23 A. Yes, but that offer also included accept the \$2500 up
24 front instead of waiting for the four years, but yes, that was
25 the opinion of both the individuals who called.

1 Q. Did those -- it's in the last 24 hours we have
2 received the two consultants' letters of advice; is that right?

3 A. That's correct.

4 Q. So in speaking with the investors, did you get any
5 feel for their level of sophis -- I am trying to ask this
6 question in a way that's legally acceptable, but in the
7 conversation did the claimants that you spoke to give any
8 indication that they understood how far below book value \$100 a
9 share was?

10 A. One of the individuals in particular was a manager of
11 an elevator who appeared to have a very sound knowledge for
12 financing and he clearly knew, in my opinion, the situation
13 that we were in and that the \$100 an offer was far less than
14 anything else that we had offered prior to, it was below book
15 value. I believe that he understood that. As far as the other
16 one, I'd have to look back to my notes to refresh my memory of
17 who that individual was. I can't recall it off the top of my
18 head.

19 Q. In the letter, the advice letter from Ketel
20 Thorstenson, I believe suggestion number three was to sell at
21 an auction. Do you have any idea whether or not technically
22 that option is available to the commission?

23 A. I was involved in conversations between, and some of
24 them secondhand, between John Smith and Gail Sheppick. It is
25 my understanding that there is possibly -- we may possibly be

1 precluded from doing that because of some security laws that I
2 can't speak to at all, but it may not be legally possible for
3 us to put them out on eBay and ask people to bid on them.

4 CHAIRMAN JOHNSON: Mr. Smith, will you have anyone
5 providing any information as to whether or not the auction
6 option is available to the commission?

7 MR. SMITH: We could have -- Mr. Sheppick is here at
8 my request and we could certainly see if he would be willing to
9 step up to the mike and speak about it. You know, we just got
10 this yesterday and I've been scrambling like a mad man just to
11 get ready today. If I had some time, yeah, I could dig into it
12 and give you a definitive answer. I don't know, because we are
13 going to have to wait for at least I'm going to say a minimum
14 of five weeks after a decision for the appeal time to run, if
15 the commission doesn't want to bolt to a conclusion on this
16 issue, I would say don't do it and we'll take a little more
17 time and do that kind of research.

18 CHAIRMAN JOHNSON: At this time I'll wait to decide
19 any other questions I've got until later.

20 MS. WIEST: My only question was does the court
21 reporter need a break? Let's take a ten-minute recess.

22 (Whereupon, the hearing was in recess at 3:20 p.m.,
23 and subsequently reconvened at 3:30 p.m., and the following
24 proceedings were had and entered of record:)

25 CHAIRMAN JOHNSON: We are back on the Internet and we

1 will get started here with our hearing in just a few moments.

2 MS. WIEST: At this time are there any further
3 questions from any of the commissioners?

4 EXAMINATION

5 BY COMMISSIONER KOLBECK:

6 Q. I just have one question for you. If you look at
7 Exhibit E, I don't think it matters which version, I just have
8 questions on number 100, yeah, 100, 157 and then 340, 351, 352,
9 they have out-of-state addresses. Could you explain why they
10 did not get omitted?

11 A. I can either take those individually or address them
12 as a group.

13 Q. As a group is fine. I'm sure they have the same
14 answer.

15 A. I think they may change a little bit. I know
16 specifically claim 100 is a dual state business. They have
17 locations in North Dakota and South Dakota. We took only a
18 portion of the claim as it applies to South Dakota. If you
19 will look, for claim 100, I'm sure there is another claim down
20 in the denied that we actually separated it and we could go
21 down there and look based on the business name, you will see
22 that same business name as being part of it being denied. I
23 can go through all the rest of them if you would like.

24 Q. No, that's basically the premise, is if they have a
25 business location --

1 A. Yeah, there are a few that claimants who actually
2 lived in South Dakota, took service when they were in South
3 Dakota, had service from S&S. When S&S discontinued service,
4 they were still in South Dakota, but after S&S quit providing
5 service, the individual or the business may have moved to a
6 foreign state. We still consider them a South Dakota claimant
7 because the business was in South Dakota and just because they
8 moved doesn't remove them. It's at the time when this took
9 place is what we considered. There are I'm sure a few of
10 those, but I can't think of any other reason off the top of my
11 head without going through every one why in that case a North
12 Dakota or a foreign state would receive a payment.

13 COMMISSIONER KOLBECK: Okay, thank you.

14 MR. SMITH: I might note on that, if I might, several
15 of those where we changed, if you look at the changed exhibit,
16 which I think is 387, those were precisely that. We had a
17 Nebraska address, a Minneapolis address, one was a Montana
18 address. Initially we believed they were out of state and when
19 we dug into it, we realized that in fact they were located here
20 relative to the S&S service and had moved after the fact.

21 VICE-CHAIR HANSON: Thank you, Ms Wiest.

22 EXAMINATION

23 BY VICE-CHAIR HANSON:

24 Q. Keith, I'd like to ask you some questions pertaining
25 to the summaries and valuations and maybe my questions are

1 premature, I don't suspect that you know the answers to these,
2 but just on the off chance that you do. The questions will all
3 be on the equity statement and the income statement, assets and
4 liabilities. First of all, jump away from that and I'll just
5 ask, do you know what our percent of the ownership is? I
6 shouldn't say ours, but the 35 shares, any idea what the
7 percent of that is?

8 A. Roughly 2.5 percent. You take 35 divided by 1,442.
9 That roughly equates to 2.5 percent.

10 Q. I should know the number of shares total and I did
11 not. 1,140 you say?

12 A. 1,442.

13 Q. Thank you. A lot of this depends upon cash flow and
14 dividends, things of that nature, whether it makes sense to
15 hold on to these or not. Do you know historically, have they
16 paid dividends?

17 A. I do not know anything prior to the bankruptcy,
18 anything about Aberdeen Finance Corporation, their financial
19 situation. What I can tell you about dividends is I believe
20 the bankruptcy plan and the covenants that Aberdeen Finance
21 Corporation has with Wells Fargo prevents them from paying any
22 dividends until Wells Fargo is paid in full regarding AFC's
23 debt to Wells Fargo, the debt covenants cover that.

24 Q. Are there any other holders of debt that that applies
25 to other than Wells Fargo? Do they have to pay their debt to

1 any other entity?

2 A. Well, keep in mind that a stockholder is always at the
3 bottom of the totem pole, whether it is where Wells Fargo holds
4 a lien on all AFC's assets, they of course have first rights to
5 any money that Aberdeen Finance Corporation would come up with.
6 Next, and I don't know the exact order, it's been a long time
7 since I've studied this, but I do know that even unsecured debt
8 has a priority in front of stockholders when you are talking
9 liquidation, whether you are talking bankruptcy or whatever.
10 All other debts have to be paid, I know payroll fits into there
11 on a bankruptcy, and like I said, I don't have the priority
12 memorized, but I know that stockholders are at the bottom of
13 the list. So indirectly answering your question, yes, all
14 other debt has to be paid before stockholders.

15 Q. The reality of course here as we attempt some way to
16 figure out what the value of the stock is, that there has to be
17 a market for it in order to -- we could surmise that it's worth
18 any amounts of money and if there isn't a market for it, then
19 it doesn't matter, does it?

20 So perhaps my exercise is going to be totally
21 unnecessary, but I still would like to examine it anyway. And
22 I am reminded of what I said last time and what I was reminded
23 just a moment ago by another party is that we are spending lots
24 of time with lots of folks, lots of taxpayers money on this and
25 in the hopes that we might make a little difference between

1 \$3500 and \$4500. So it's a challenge from that perspective.

2 However, when you look at the income statement and you
3 see that the interest collected on small loans, if that's
4 annualized, it shows \$39,000 a quarter, so annualizing that is
5 nearly \$470,000 a quarter, and if you analyze the monthly
6 amount as well, that is \$476,000, so it would appear that they
7 collect interest of approximately \$470,000 a year, and it is
8 marked interest as opposed to P and I. So that sends up a flag
9 immediately that there's a pretty significant amount of money
10 flowing into the company. It also shows something that I'm
11 rather curious about. On the first page under assets, it shows
12 a building worth \$44,800. It also shows right under that
13 building, it shows equipment, and I wouldn't imagine that you
14 would have any idea whether that equipment is computers or
15 what, personal property, I wouldn't imagine it's air
16 conditioning and things of that nature. Do you know?

17 A. Well, no, I do not know, but what I can tell you about
18 building and equipment, those two amounts on the balance sheet,
19 is that if you go down to the liabilities, keep in mind you
20 don't record depreciation as a liability, you record it as a
21 contraasset. So they recorded it in the wrong place. If you
22 further go down to liabilities, you can see that that \$44,000
23 building is just about fully depreciated. You can see that the
24 \$92,000 worth of building equipment is just about fully
25 depreciated. Now, depreciated value, when you take the book --

1 when you take the asset value minus the depreciation, that does
2 not mean, especially on something like a building, does not
3 always mean what the building is worth on a market value, if
4 you are going to sell that.

5 Q. Exactly. And that's the question. I want to get to
6 the depreciation in a moment, but what I was curious about was
7 the building and whether the equipment was office equipment.
8 It says building equipment, but it's \$100,000 worth of building
9 equipment.

10 A. If I was to guess, and this is purely a guess, is that
11 the equipment represents computers, air conditioning, heating
12 system, but that is purely a guess. I do not know that. I
13 can't think of what other equipment they would have that would
14 total that amount.

15 Q. It shows furniture and fixtures of \$59,000, so I was
16 really curious what equipment they have for \$92,000. On the
17 income statement, on the other hand, it shows under income
18 \$1,400 for a month and nearly \$3,300 for the quarter. If those
19 are annualized, then they are approximately \$17,000 a month.

20 A. What was that for?

21 Q. Excuse me, \$17,000 annually. That's for rental
22 income. It appears what they are doing is paying themselves
23 rent, they are renting out the building from themselves. If
24 that's the case, then they are paying \$17,000 a year rent,
25 that's a net net net because it shows they are paying taxes and

1 utilities, et cetera, in other areas under expenses.

2 A. I don't know if I would make that conclusion. I mean,
3 it's possible. If they are recording the building on their
4 balance sheet and then renting it out to themselves, if that
5 truly is the case --

6 Q. It should be expensed.

7 A. They probably are not accounting for that properly. I
8 have not even noticed that. When I look at rent income, I
9 believe that they may have a little corner of their building
10 that they are renting out to some other business, some other
11 individual or something. That's my first impression of what
12 rent income would be, but I do not know that. I am just purely
13 speculating based on my first guess and what I see net rent
14 income. I do not know that.

15 Q. And you are right, except that under expenses, it
16 doesn't show any expenses for rent. So they have an asset
17 somewhere is what I'm getting at and they are receiving \$17,000
18 a year for that asset and the only asset that I see that they
19 could be receiving income off of is the building, and if they
20 are using a portion of that building for their company and in
21 addition to that they are receiving \$17,000 in rent, then the
22 building has to be worth at least a couple hundred thousand
23 dollars.

24 A. It's also possible, just possible, purely guessing,
25 that one of the individuals working there may be paying for --

1 paying that rent for a car, but that would maybe be more of a
2 lease, but there is another option, but my first guess is
3 building, but there are other -- a few other assets that they
4 could be renting out and I don't know who to.

5 Q. They would have to rent out about four or five pretty
6 good fleet of cars for \$17,000, but that's okay. I'm trying to
7 get through this, figure out exactly -- and there are so many
8 different questions in my mind as I look at this that it just
9 doesn't seem like it's -- that we can make an easy decision
10 that it's worth -- that we should sell shares at \$100 a share,
11 especially with the type of figures once they are annualized.
12 It looks like a pretty viable business. I'm not sure which
13 gentleman it was said they would pay \$150 a share, but it
14 sounds like that would be a pretty good deal. When you look at
15 the interest that they pay on a monthly basis, they are showing
16 \$5,800 a month, so \$72,000 a year. Do we know if that is all
17 interest or if there's principal involved there, too, since
18 they have to pay off Wells Fargo?

19 A. I do not know the answer to that question. My guess
20 would be that it is all principal and most of that is probably
21 Wells Fargo principal because I do know that the notes payable
22 on the liability section of about a little over \$913,000, all
23 of that except for, oh, between \$100,000 and \$200,000 is owed
24 to Wells Fargo. So I'm presuming that that interest, most of
25 that is due to Wells Fargo under the debt covenants of the

1 bankruptcy plan. I do not believe that they would record
2 principal in there, at least I wouldn't record principal in the
3 interest expense category.

4 Q. Like you say, you're right, they made a couple of
5 other changes here that a person of your stature would not be
6 making either, such as the reserve for losses showing it as a
7 liability, when it shows they have \$350,000 funded, and if the
8 \$350,000 is a funded account, then it depends on how you are
9 showing your assets and liabilities, but under these
10 circumstances, showing it as a liability when in essence it's
11 an asset, and then showing that they have reserve for
12 depreciation, if those are all funded, then they have a couple
13 hundred thousand dollars more, so they have about \$550,000 in
14 funded accounts that they are showing as liabilities.

15 A. But keep in mind those are not assets, those are
16 contraassets. They are negative assets.

17 Q. But if they are funded accounts, then they are -- then
18 they end up being of value. I know how they are subtracted
19 here.

20 A. I wouldn't say that the reserve for losses has any
21 value. That serves as an estimate of what they believe their
22 bad debts expense for the year is going to be, and it's,
23 according to GAAP, you list that as a contraasset. That should
24 be listed right under the notes receivable of \$2.9 million and
25 that \$350,000 should be actually subtracted. It's got a credit

1 balance, so therefore, I think their accounting software just
2 threw it down in the liabilities, and the same with reserve for
3 depreciation, it's got a credit balance so maybe the way they
4 set up their Quick Books or whatever they are doing is it just
5 threw it down in the liabilities. But funded accounts --

6 Q. It would be like if I had, personally if I had
7 overpaid my income taxes for years because I wanted to hide
8 some cash and I had \$30,000 sitting in it with the Internal
9 Revenue Service, is that a liability or is it an asset?

10 A. That's an asset because somebody owes you something
11 back.

12 Q. That's correct. And if I take that same amount of
13 money and I put it in a savings account, it's my savings
14 account and I call it my building, which I claim is worth
15 \$44,000 and it's actually worth a couple hundred thousand and I
16 put it in as a reserve for depreciation on the building, then
17 I've understated my asset of my building and I've understated
18 my financial assets on the amount of cash on hand. I'm
19 concerned that there are potentially games being played on the
20 finances and my challenge is that there are so many questions
21 that I can't arrive at a conclusive position as to what the
22 value is.

23 A. I will certainly agree to that statement.

24 VICE-CHAIR HANSON: Thank you.

25 CHAIRMAN JOHNSON: Here is how I read that reserve for

1 losses, Commissioner Hanson. I view that less as a savings
2 account and more as maybe -- I think it's mislabeled, although
3 you are certainly right, we don't have good information to make
4 that determination, but I almost read that as anticipated
5 accounts receivable writeoffs.

6 A. That is not a cash account. I think you stated it
7 very accurately. It's anticipated. There is actually no money
8 in any account, there's no dollars sitting there. It's just in
9 anticipation. Same with depreciation, that is a noncash
10 account. There is no money sitting there. Every year when you
11 take depreciation expense, at the end of the year when you
12 close your books, that depreciation expense flows into your
13 reserve account on the balance sheet. And it's just an
14 accumulation of all the years of depreciation that you have
15 taken.

16 VICE-CHAIR HANSON: That's correct, that's how it is
17 supposed to be. And that's my question, is that how it
18 actually is?

19 A. Your question to me is that. I cannot answer that. I
20 would have to assume that's what it is. But again, I'm making
21 an assumption.

22 VICE-CHAIR HANSON: Well, I won't cover the other
23 questions that I have pertaining to it because I think that
24 makes the point of my concerns with valuations and with the
25 amount of cash flow that they are showing and hard to tell what

1 the true expenses are, I just -- I think we need to do a little
2 more auditing to know that. And again, I'm reluctant to go
3 through any more of a delay on it because I recognize how
4 much -- how many of our assets are being devoted to this when
5 we can be doing other things with our time for the taxpayers.
6 Thank you, Mr. Chairman. Excuse me, Ms. Wiest.

7 CHAIRMAN JOHNSON: There's a new sheriff in town.

8 MS. WIEST: Any other questions from commissioners?

9 CHAIRMAN JOHNSON: I do have a few more.

10 EXAMINATION

11 BY CHAIRMAN JOHNSON:

12 Q. You noted, Mr. Senger -- well, first I'll tell you
13 that I'm referring to Exhibit 399 and that was a notice sent
14 out to possible claimants that had not yet filed anything with
15 this commission.

16 A. That is correct.

17 Q. Can you give me a ballpark of how many of those were
18 sent out? Are we talking dozens or hundreds?

19 A. Hundreds. I can tell you that we believe that there
20 were well over 600 customers of S&S Communications, based on
21 all the information we received from contacts from customers,
22 from S&S information and from the financing corporation, we
23 have compiled a list of well over 600 customers. Now, this
24 notice would have not been sent to those customers who we have
25 on our list that already had a complaint filed with us or that

1 already had a bond claim form filed with us. I don't know, we
2 had a hundred some complaints, at that point we probably had
3 50, 60 bond claim forms, so those six hundred some customers
4 minus we already had information that received that. I would
5 say it's probably in the neighborhood of 300 to 400 customers
6 received that.

7 Q. Do we have any rough idea of what percentage of the
8 money that S&S owed to people was reported to the commission?

9 A. Reported when?

10 Q. By claimants.

11 A. About -- let me do some checking before I make a
12 statement there. For landline long distance service, that
13 would be excluding investors and excluding wireless and the
14 various other things, I'm going to say it was about half of the
15 dollars claimants actually made a claim on, of the dollars that
16 we know, that we believe was an unearned revenue by S&S
17 Communications, service that they needed to provide yet.

18 Q. Thanks. Mr. Senger, do you have much experience in
19 your professional past with bankruptcies?

20 A. No.

21 Q. Strike that question, then. One couldn't help but
22 notice -- well, let me not go there quite yet. Mr. Senger,
23 have you reviewed the bylaws or any other governing documents
24 of Aberdeen Finance?

25 A. We have those. My review on them has been very

1 limited. We received those about maybe a week ago and my
2 review has been very limited.

3 Q. I'll ask the question anyway on the off chance that
4 you know the answer. Is there any right by a large shareholder
5 or a majority shareholder to compel minority shareholders to
6 sell their stock that you are aware of?

7 A. A right of large shareholders to compel the small
8 holders to sell their stock? I do not believe -- I am not
9 aware of such a right in the bylaws.

10 Q. I'll tell you what I'm driving at. If you will look
11 at Exhibit 401, that is the advice letter received by CAMELS
12 Consulting or maybe it's C-A-M-E-L-S Consulting. In his
13 final -- in his second to final sentence of his advice, he
14 notes, if I'm correct and there is a large shareholder that
15 could flush out minority shareholders by minimizing income and
16 buying their stock for \$100 per share, then you have no choice
17 but to bail out and take anything you can get for the stock. I
18 didn't know if Mr. Recker was speaking to some sort of a right
19 that large shareholders had to be able to force out small
20 shareholders.

21 A. I believe that he is addressing what could be viewed
22 as an occurrence that can happen with closely-held
23 corporations. Essentially, if a majority of the stockholders,
24 those who are in control, they control when and if ever
25 dividends are paid. What I think he's referring to here is if

1 several of the largest stockholders that represent a majority
2 are able to have that control, they can make the decision to
3 never pay a dividend, and I think that's what he's referring to
4 there, is that if you have got your money tied up in stock in
5 this corporation and you are never going to receive a dime for
6 it, they can flush you out by making a minimal offer for those
7 shares and essentially almost force you to accept it because
8 that's something rather than nothing.

9 Q. Mr. Senger, were you surprised in the Ketel
10 Thorstenson advice letter that there wasn't a greater discount
11 for the lack of rights that are afforded to minority
12 shareholders?

13 A. I was extremely surprised.

14 Q. Were you surprised that there was not a greater
15 discount taken for the lack of a liquidity of these stocks, a
16 lack of a market?

17 A. Extremely surprised.

18 Q. Do you have any basis in your professional experience
19 to know what appropriate discount rates might be for those
20 characteristics?

21 A. Yes, you can -- there is formulas out there that you
22 can discount future values, various things like that. That
23 could be calculated.

24 Q. But you wouldn't -- you wouldn't have a professional
25 opinion to what an appropriate discount rate would be?

1 A. I wouldn't call my opinion on that being professional,
2 no.

3 Q. Okay. My final question is one couldn't help but
4 notice that there was no staff recommendation provided, at
5 least not that I heard, of what the commission should do with
6 the stock. I know commission staff has laid out a number of
7 options. At least one additional option was put forth by Ketel
8 Thorstenson's advice letter. Did staff have a recommendation?

9 A. I can certainly make one. I think it may have been
10 kind of an oversight. You do have two more professional
11 opinions in front of you than my opinion. My opinion takes the
12 information from these two opinions and additional information
13 that I have and the luxury of knowing -- not knowing, but
14 having communicated with customers, S&S customers and knowing
15 that they are frustrated with this whole process, knowing that
16 this thing has drug on forever.

17 I, one, believe that in my opinion, that a majority of
18 these customers do not want the stock. What are you going to
19 do with one one-hundredth of a share or one-tenth of a share?
20 Our largest claimant would receive 3.5 shares. Everybody else
21 would receive less than a share. So it's my opinion that I do
22 not believe that distributing the stock is probably the best
23 thing to do for the customers.

24 I believe that pursuing a counteroffer that staff has
25 already discussed in a small portion with Aberdeen Finance

1 Corporation to accept the \$6,000 offer, the \$3500 per share and
2 the \$2500 up front, accept that offer with a counter that they
3 allow all of the S&S customers the option to purchase their
4 portion of the shares back that they would have received had we
5 distributed those shares, that they can buy those shares back
6 for the \$100 a share price, granted that would be prorated, if
7 they received one-tenth of a share, they would buy one-tenth
8 back at 10 bucks. They couldn't necessarily buy more than
9 those shares back, because they could only buy their portion of
10 the share back.

11 I believe that is the commission's best offer at this
12 point. It may not be the best financial decision come five,
13 six, seven, eight, 10 years down the road, but I believe -- I
14 firmly believe that that's what the customers want. They want
15 finality to this.

16 Q. I think it is likely in Exhibit 393 -- I lied, I have
17 more questions.

18 A. Can I lie up here?

19 COMMISSIONER KOLBECK: Can I ask a question? Keith,
20 is that an option or is that something we would have to wait
21 for, buying back the stocks?

22 A. What I can tell you is we -- I can tell you
23 everything, but we have had some preliminary discussions about
24 such a counteroffer with Kathy Geddy, who is the treasurer-
25 secretary, and another individual, who I cannot remember his

1 name, but he is also a stockholder. He is an attorney and I
2 think that he actually was an attorney for Aberdeen Finance
3 Corporation and is kind of helping them through this process to
4 save money for Aberdeen Finance Corporation. Whether he's
5 getting paid or not I don't know, but he is a stockholder,
6 similar situation we are in.

7 And the indication that we got is if the commission
8 was to direct staff to make such a counteroffer, that they
9 would seriously consider it. In fact it -- one indication was
10 it sounded like a good idea. But we also told them point blank
11 that it is our belief that very few of the S&S customers would
12 actually take the option and buy the stock back. And that's my
13 belief. I may be totally wrong there, but that's my belief, is
14 that very few would take that stock purchase back option and go
15 that route. Now, granted again, as we had indicated in a
16 previous meeting, that all of this is subject to Wells Fargo
17 approving this.

18 Q. (BY CHAIRMAN JOHNSON) Mr. Senger, in Exhibit 393,
19 which is the package of materials regarding Aberdeen Finance
20 Corporation, the April 6th letter from Aberdeen Finance, which
21 tenders some kind of an offer for the stock and the \$2500, do
22 you have the exhibit in front of you?

23 A. I do.

24 Q. The second to the last paragraph on that page says,
25 there is the possibility that one of the shareholders would be

1 willing to pay the \$2500 cash balance. The word "possibility"
2 is a little troubling. In conversations that you have had with
3 Ms. Geddy or others from AFC, do you have reason to believe
4 that possibility is a probability or even something more than
5 that?

6 A. I believe it is definitely stronger than a
7 possibility. I do not believe it is 100 percent certain. It's
8 my belief that this would be an individual who would take care
9 of this portion of the offer. I believe that individual is
10 possibly someone who is a stockholder in the company. I
11 actually believe it may be part of the Rich family themselves,
12 which would include Kathy Geddy. I do not know that, but
13 that's what I believe. But she has indicated that it's more of
14 a probability than a possibility, and she also -- she couldn't
15 give me any guarantees, but she said if we could make this
16 work, she would see to it that that took place.

17 Q. Mr. Senger, it seems to me that the only piece of
18 leverage that this commission has over Aberdeen Finance is the
19 specter of us distributing shares. I suspect that that is not
20 something AFC wants. Do we weaken our counteroffer stance by
21 taking share distribution off the table?

22 A. Do we -- repeat your question again.

23 Q. Do we weaken our counteroffer strategic positioning by
24 taking the distribution of shares off the table? At some point
25 if AFC -- sure, if AFC has reason to believe that if 100 bucks

1 is all we can get, then 100 bucks is what we will take doesn't
2 put us in a very good negotiating position. In what ways am I
3 wrong?

4 A. Let me answer your question this way. I do know that
5 Aberdeen Finance Corporation has indicated to me personally
6 that they do not want another two hundred fifty some
7 stockholders. They do not want fractional shares. They do not
8 want that. That is a bargaining tool, there is no doubt. Do
9 we weaken our offer, do we weaken our leverage against Aberdeen
10 Finance Corporation? Yes, I believe we do somewhat, but I tend
11 to look at it on a personal standpoint, is I'm not -- I don't
12 believe that we should be looking at it that way. My goal here
13 in making recommendations to the commission is to do the best
14 thing for the customers. Although it is a leveraging
15 possibility that we have, I do not believe that we should use
16 such a leveraging tool if it's going to hurt or cause problems
17 for the claimants. I do not believe it's in the best
18 interests -- let me state it this way. I don't believe it's in
19 the best interests of the S&S customers, the claimants, to
20 receive these shares.

21 CHAIRMAN JOHNSON: Thanks. Ms. Wiest, that's all I
22 have.

23 MS. WIEST: Any other questions?

24 EXAMINATION

25 BY MR. RISLOV:

1 Q. Greg Rislov. Keith, I read these letters, they just
2 came in I believe yesterday, last night, whatever, so no one
3 has had a lot of time to go over them, and I'm referring to the
4 letters from the consultants trying to attach a value to those
5 shares of stock. As I read it, both of those analyses were
6 viewing it as the firm as an ongoing business and the
7 stockholders as owning a portion of that business, I guess
8 exactly 35 shares. Would you say that's correct?

9 A. I would.

10 Q. Now, it's my understanding the value of an investment
11 is determined by the ability of the investee or investor to
12 extract a return on and return of their investment. I think
13 I've heard you answer that question a number of times today and
14 I know you are not an attorney, but if there's a portion of
15 this that I find troubling, it's knowing, and I think
16 Commissioner Johnson just used the word leverage, if there is
17 leverage or if a corporation such as AFC, if there's the
18 ability to actually extract from that company, let's say they
19 are very successful in the next several years and we are
20 willing to wait for five or six years to realize any return, if
21 there is the ability of a minority, a very small minority, less
22 than 10 percent of the shareholders to extract a return on and
23 return of whatever capital they may have in that business or
24 whatever value we are talking about on these letters, the
25 CAMELS letter or the Ketel Thorstenson letter, and again I

1 realize you are not an attorney, but has there been any review,
2 is there any knowledge of what ability we would have or these
3 potentially very small shareholders would have in extracting
4 that value?

5 A. I have not done any review. The only information that
6 I can give regarding that is my personal opinion of the dilemma
7 of a minority stockholder in a closely-held corporation, but I
8 have not done any review, whether on a legal end or a financial
9 end of what power they would have. But I do believe the power
10 is extremely limited.

11 MS. WIEST: Any further questions from commissioners?
12 If not, any redirect, Mr. Smith?

13 MR. SMITH: Mr. Chairman, did you have a question?

14 REDIRECT EXAMINATION

15 BY MR. SMITH:

16 Q. Just a couple of things, Keith. With respect to the
17 financial statements and their accuracy at least, looking at
18 those, are they anomalous from what one might normally expect
19 to see from a GAAP reporting public company, for example?

20 A. There are -- I'm not sure I quite grasp what you are
21 asking, but there are things reported in here that are not GAAP
22 compliant, yes.

23 Q. Even the actual labeling of the one statement is not
24 what you would see with any kind of SEC reporting company, is
25 it?

1 A. Yeah, but one thing I do want to note is that this
2 entity mirrors, not mirrors, but resembles a bank and there are
3 certain exceptions, different account names, various things
4 that banking type institutions do. I do not have a lot of
5 knowledge regarding the differences. The differences aren't
6 vast, but they do account for some things a little bit
7 differently than a mining institution or an industrial business
8 or whatever. But yes, some of the account names are I'm not
9 going to say abnormal, but did cause me to pause and look and
10 think about exactly what they are recording in those accounts,
11 but there again, the name on the account means nothing. I
12 mean, you can name it whatever you want just so long as you
13 know what's in that account and what it's tracking.

14 Q. With respect to the trust we might have in the
15 financial statements, approximately how far are we away from
16 the order confirming bankruptcy plan? Do you recall when --
17 it's on the exhibit, it's on the front page of Exhibit 3 --
18 wait a minute. I think it's 389.

19 A. The order is dated September 11th, 2006, so we are --

20 Q. So they have only been out from under the supervision
21 of the trustee and they are still not totally out from under
22 it, but actively since then; is that a probability?

23 A. That is correct, but I would still say that this plan
24 does have various covenants that they have to follow or they
25 could be back into bankruptcy fairly quickly.

1 Q. And are two of those covenants, if we look at page 10
2 of the plan --

3 A. I do not have page 10.

4 Q. Oh, you are missing that. Here is the one they
5 recopied correctly.

6 A. Okay.

7 Q. And if we look at those, if we look at paragraphs 10,
8 11 and 15 and then on the previous pages loan covenants, and I
9 guess does that give you a little additional comfort that the
10 records they are keeping are at least reasonably accurate?

11 A. Yes. I do know that they have to provide this
12 information to the bank. I can't remember how often, it's
13 probably in one of these covenants, without reading it, but the
14 bank does get a copy of these all the time. It's my belief
15 that these financial statements are not -- there are some
16 errors in there, but I do not believe that they are grossly
17 misstated, but I have nothing to lead me to believe that they
18 are grossly misstated. When you make some of the movements
19 back and forth and change some of the credit accounts that
20 should be a contraasset from the liabilities and do various
21 things like that, I don't believe that they are grossly
22 misstated by any means. I do have some confidence in what I
23 have, but I make that statement without doing any auditing,
24 without doing any looking, just doing a review of the
25 statements that I have seen.

1 Q. Just to clarify again, and I think you talked about
2 this, but again, at least under normal accounting practices, a
3 reserve for doubtful accounts is in no way a cash account, is
4 it?

5 A. Correct. It is a contraasset that actually acts as an
6 estimated bad debts expense that they record on their balance
7 sheet.

8 Q. And its purpose is simply to make a fair adjusting
9 entry to properly reflect the true value of any -- of a
10 receivables account.

11 A. It's kind of a forward looking account to try and
12 estimate what the value of their asset is.

13 Q. As to the leverage issue with shareholders, would you
14 agree that we have made the threat and we made the offer to the
15 shareholders; is that a fair statement? Is that what we see
16 when we see that series of letters?

17 A. Yeah, we have made the threat, not only in those
18 letters, but on the phone when I was speaking with Kathy Geddy,
19 I mentioned it again. I said, I don't believe you want these
20 customers on there, and her response was, Keith, because of
21 Wells Fargo and because of the situation that we are in right
22 now, this is the absolute most that Wells Fargo themselves
23 would ever approve while we are under their debt covenants.
24 And I indicated that there is a possibility that one of the
25 stockholders themselves might want to buy these shares, not

1 Aberdeen Finance Corporation buying them back, putting it back
2 into their treasury, and she indicated to me that that offer
3 was made to all the stockholders themselves and nobody accepted
4 that offer. What that tells me is that even the people, even
5 the shareholders that are running the business today are not
6 confident enough in the business to raise their price over the
7 \$100 per share. They don't have the ability to because of debt
8 covenants and control by Aberdeen Finance Corporation, nor do
9 they have any stockholders that even want more shares.

10 Q. It is a fact, is it not, that this offer was made us
11 with knowledge that if we rejected it, the probable consequence
12 would be a distribution of shares?

13 A. We clearly indicated to them that if this offer gets
14 accepted (sic), that we would -- we may likely be moving toward
15 distribution of shares and she indicated to me, well, you
16 guys -- if that's what you guys have to do, that's what has to
17 be done. So yes.

18 MR. SMITH: Thank you, that's all the questions I
19 have.

20 MS. WIEST: Any other questions?

21 EXAMINATION

22 BY CHAIRMAN JOHNSON:

23 Q. Mr. Senger, Mr. Smith asked you about Wells Fargo and
24 you mentioned that Ms. Geddy had mentioned that Wells Fargo
25 wouldn't allow them to pay anything more than \$100 per share.

1 Have we verified that with anyone at Wells Fargo?

2 A. No, I have not discussed that with Wells Fargo.

3 Q. Okay, there was also a line of questions by Mr. Smith
4 regarding the financial reports. I also note it seems as
5 though you, as well as some of the commissioners, have concerns
6 about -- and I think both of the advice letters also mention
7 there is not complete information there. Did we make any
8 attempt to request additional financial information or reports
9 from AFC?

10 A. I did not, and if I did get anything, the only
11 relevant information that a person could get would date back to
12 September 11th would be their starting point, was it September
13 11th that date was, their post bankruptcy date when they came
14 out of that order. So that would be part of September,
15 October, November, December, there's four months of information
16 that we don't have. Now, keep in mind the balance sheet is a
17 snapshot in time, so we have that information as it's been
18 updated. The only additional information that would give us is
19 approximately three and a half months of income statement type
20 information. But no, I have not requested that information.

21 Q. Mr. Senger, if the commissioners decided that \$100 was
22 an unacceptable price per share, would you have any secondary
23 recommendation?

24 A. I would recommend --

25 CHAIRMAN JOHNSON: That question is probably out of

1 order since Mr. Smith didn't ask him about that.

2 MS. WIEST: I'll give you leeway.

3 CHAIRMAN JOHNSON: Thank you very much, Ms. Wiest.

4 Mr. Senger, go ahead.

5 A. Let me try and clarify that. Is that including the
6 counteroffer, if you guys decide we don't even want to
7 counteroffer, we don't want the \$100 per share, we don't want
8 to counteroffer, what would my next recommendation be?

9 Q. (BY CHAIRMAN JOHNSON) That's right.

10 A. I believe -- I still believe the last thing we want to
11 do at this point is distribute the shares. That's my personal
12 viewpoint and I base that solely on I, if I was an S&S
13 claimant, I would not want those shares. I would not want the
14 hassle. So that would be my absolute last recommendation to
15 you. If you guys decide to not accept the \$100, I believe
16 about the only option left is to hold the shares for a period
17 of time and hope in the future we get a better offer. In that
18 time, we would get \$2500 paid over four years, which is of far
19 less value than getting \$2500 paid today because of the present
20 value. And I firmly believe that such a recommendation may be
21 lacking in the fact that because of the lack of power that the
22 commission has -- let me put it this way. Even if the company
23 becomes extremely successful, they are able to pay all their
24 debt and make money hand over fist, I am not convinced that our
25 bargaining power would allow us to extract, if you want to use

1 that term, more than \$100 per share. I believe it would be out
2 of the goodness of their heart to do such.

3 CHAIRMAN JOHNSON: Thanks very much, Mr. Senger. Ms.
4 Wiest, thank you.

5 MS. WIEST: Any other questions?

6 COMMISSIONER KOLBECK: Can I ask Mr. Smith a question?

7 MS. WIEST: You can ask him a question, but anything
8 he states is not evidence.

9 COMMISSIONER KOLBECK: Maybe Keith can answer this.

10 EXAMINATION

11 BY COMMISSIONER KOLBECK:

12 Q. Are we taking leeway with this trying to propose a
13 value for these stocks or is our custodial duty to just
14 distribute what we have collected? Are we stretching things or
15 are we in the right frame of mind or have we gotten kind of off
16 track?

17 A. I believe our custodial duty is to distribute
18 proceeds. Now, to me, not being an attorney, I believe that
19 means when we get cash, when we get money, we have to
20 distribute that. Regarding the shares, I suppose you could
21 view those as proceeds, but we have had discussions about this,
22 whether that is the duty of us to distribute those. I think
23 one could very easily come to the conclusion that it's our duty
24 to distribute those, but I don't think we can overlook the duty
25 to try and do what's best for the consumers. But there is a

1 question, and I believe it's probably a legal question, of
2 whether or not we are obligated to distribute these shares.

3 Now, can we sit on these shares for 10 years and never
4 look at them? No, I do not believe that -- I believe we would
5 be violating our custodial duty not to do anything with them,
6 just to let them sit there, but I think that our duty is to try
7 and maximize proceeds, and if that means distributing those
8 shares to the customers because we can't get anything for them,
9 then that would be our duty.

10 Q. Actually, if you look in Ketel Thorstenson's, it says
11 the benefit -- if you look at number two on the second page, it
12 says the benefit to the creditor group would be that if AFC
13 then decided to redeem the fractional shares, they must pay
14 full, undiscounted appraisal value without the discount. Do
15 you see that as an option? You can correct me if I'm wrong,
16 but the way I'm reading that is if we fractionalize these
17 shares and they go up to AFC and say, I want my -- I want this
18 share in, is that an obligation that they have to abide by?

19 A. You know, when I first read that, I believed that he
20 is indicating that the threat of distribution would be enough
21 to get Aberdeen Finance Corporation to pay something more than
22 \$100 per share. As I read it again, it may be something
23 different, but what I will state is I don't care who has the
24 shares, whether it be the commission or whether it be the
25 claimants, that I don't believe that we will ever have the

1 bargaining power or the force to have Aberdeen Finance
2 Corporation pay us book value for those shares if Aberdeen
3 Finance Corporation decides not to do so. I don't believe that
4 we can force them to do anything. The whole problem behind
5 this is we are powerless.

6 I mean, on a closely-held corporation, you don't have
7 to distribute. There's nothing forcing anyone to distribute.
8 If the majority stockholder, whether that be one, two, three,
9 four people, if they decide to not make any distributions and
10 pay themselves in extremely high wages, they can do that. Ten
11 years down the road when this company is doing well, we may
12 never see a dividend and they could pay the majority
13 stockholders, make them employees and pay them that way.
14 There's nothing stopping them from doing that. They can do
15 whatever they want. There may be some legal method that you
16 can do to force it out, I do not know. But I just don't see
17 how he can make a statement that we can extract book value out
18 of these shares.

19 Q. I just don't want to get into the -- I want to
20 eliminate the doubters or whatever that we could have, would
21 have, should have, obviously, and in my mind I'm just thinking
22 that it would be -- I disagree with your analysis, that I think
23 it would be cut and dried if we took the shares and divided
24 them up equally and be done with it. That would alleviate our
25 custodial duty and move on. Whether we got more or less or

1 anything like that, that's yet to be seen. I guess those are
2 my concerns. Is our custodial duty to bargain and find the
3 best price or is it just this is what we have gotten, this is
4 what the bankruptcy court says we get, is it just our custodial
5 duty to just distribute that?

6 A. You know, maybe this isn't a question and maybe I am
7 speaking out of turn, but I believe besides our custodial duty
8 to distribute proceeds, I believe the commission -- the
9 commission is here to protect the consumers and if distributing
10 the shares is the only option that we have, the only viable
11 option, then that's what must be done. But I also believe that
12 we need to watch out for those consumers and do what we can for
13 them and I've stated my opinion on that, and we have heard from
14 several of the customers. I am wishing I would have heard from
15 more. My guess is if I would have heard from more, we would
16 have got more of the same, take the money and run and get it
17 paid out. I personally, I personally would want the ability to
18 choose what I invest in, not have someone decide what I'm going
19 to invest in myself.

20 COMMISSIONER KOLBECK: Well put. Thank you.

21 MS. WIEST: Commissioner Hanson.

22 EXAMINATION

23 BY VICE-CHAIR HANSON:

24 Q. Keith, I hate prolonging this but I want to ask one
25 question. It's a yes or no, please. Have you seen the bylaws

1 for this corporation?

2 A. Yes, I have seen them.

3 Q. Why haven't those been introduced to us as evidence?

4 MR. SMITH: I will mark them and have Keith introduce
5 them. I have them right here. Pardon me. We certainly could
6 have done that.

7 VICE-CHAIR HANSON: Thank you very much.

8 EXHIBITS:

9 (Staff Exhibit No. 404 marked for identification.)

10 MR. SMITH: Commissioners, are you going to want to
11 see copies of that document?

12 VICE-CHAIR HANSON: I am going to want to look at it,
13 yes.

14 MR. SMITH: Right now?

15 VICE-CHAIR HANSON: No.

16 MR. SMITH: Not right now?

17 VICE-CHAIR HANSON: Correct.

18 MR. SMITH: I guess the answer is no for right now.
19 Because if we are going to get copies, we gotta get her going
20 and get them.

21 VICE-CHAIR HANSON: I simply need to ask a question,
22 then, of whether I am permitted to or someone else can. How do
23 I introduce as evidence if I am curious about valuation of a
24 property, for instance, just want to go get a ballpark figure
25 and check with the director of equalization for property tax

1 valuation? Can I do that or am I not permitted to even engage
2 in that?

3 MR. SMITH: That might be better directed to your
4 counsel up there than me.

5 MS. WIEST: Well, I would think if you wanted
6 additional evidence, the best course would be to direct staff
7 to gather that evidence.

8 VICE-CHAIR HANSON: Thank you.

9 MR. SMITH: Sounds fine.

10 VICE-CHAIR HANSON: I don't have any further questions
11 at this time. Thank you.

12 MR. SMITH: Do you, commissioners? Otherwise we
13 probably should get the new exhibit, the bylaws, introduced.

14 REDIRECT EXAMINATION

15 BY MR. SMITH:

16 Q. That's a document that you requested from Kathy Geddy,
17 is it not?

18 A. Correct.

19 Q. And you received that from her --

20 A. Correct.

21 Q. -- directly?

22 A. Correct.

23 Q. And do you recognize that as the document we received?

24 A. Yes.

25 Q. Back about three-fourths of the way to the back is the

1 share restrictions; could you take a find of that? It's
2 referenced in the share certificate.

3 A. I have the article, share certificates and transfers.
4 What are you looking for?

5 Q. I think there's some smaller print and I don't have a
6 copy of it now.

7 A. Okay, referring to transfer of shares. We have
8 certificate of shares, section one, section two --

9 Q. The smaller print.

10 A. I don't see any smaller print.

11 Q. Isn't that that single spaced?

12 A. Okay, yes. Restriction on transfer, Section 3?

13 Q. Right. Have you read that before today?

14 A. Completely, no. I have read portions of it.

15 Q. I know what it says, but I'm not the witness here.

16 But if you took a quick read of it, doesn't it say that
17 whenever a person is going to transfer shares, that they are
18 required to give notice to the corporation and permit the
19 corporation to give them 15 days to purchase the shares on the
20 same terms?

21 A. Yes. Section 3, paragraph A mentions the 15 days as
22 you just discussed.

23 MR. SMITH: Thank you. That's all I have.

24 MS. WIEST: Are you going to offer it?

25 MR. SMITH: Pardon me. Staff would offer Exhibit 404.

1 MS. WIEST: It's been admitted.

2 EXHIBITS:

3 (Staff Exhibit No. 404 received into evidence.).

4 MS. WIEST: Any further questions of this witness? If
5 not, thank you. Mr. Smith, do you have another witness?

6 MR. SMITH: Yes, Heather Forney, please. Staff would
7 call Heather Forney.

8 CHAIRMAN JOHNSON: Are you planning to call Mr.
9 Sheppick as a witness?

10 MR. SMITH: I could and maybe we could do that first.
11 Heather is literally going to be two minutes, seriously.

12 CHAIRMAN JOHNSON: Out of courtesy, maybe an out of
13 office witness, maybe allow them to go home for dinner.

14 MR. SMITH: Again, this is probably more -- I had not
15 intended to call Gail. I guess what I would do --

16 CHAIRMAN JOHNSON: I don't mean to force a witness on
17 you, Mr. Smith. If you are not prepared or not interested in
18 calling Mr. Sheppick, please don't do so.

19 MR. SMITH: I'll put it this way. I don't really have
20 a whole lot of questions to ask of Gail. But it does occur to
21 me that the commissioners maybe ought to have the opportunity
22 to address some of your questions to him. He was kind enough,
23 I asked him if he could possibly be here today and he was kind
24 enough to be here and sit through a whole lot of boring stuff.
25 So we might at least show him the courtesy to see what he

1 thinks. Thank you. So I guess staff will call Gail Sheppick.

2 Thereupon,

3 GAIL SHEPPICK,

4 called as a witness, being first duly sworn as hereinafter

5 certified, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. SMITH:

8 Q. Gail, would you please state and spell your name for
9 the reporter?

10 A. My name is Gail Sheppick, that's G-A-I-L, last name is
11 S-H-E-P-P-I-C-K.

12 Q. And by whom are you employed?

13 A. By the State of South Dakota.

14 Q. In what position?

15 A. I'm the Director of Securities.

16 Q. Can you give us just a very brief run down of what
17 that job entails?

18 A. We regulate the offer and sale of securities, the
19 registration of securities, broker dealers, franchises,
20 business opportunities, everything to do with securities we
21 regulate.

22 Q. Is there a minimum business size where you can't
23 regulate them?

24 A. No.

25 Q. So a company like Aberdeen Finance with 78

1 shareholders and a relatively small company still falls under
2 your jurisdiction?

3 A. Yes, they do.

4 Q. Have we provided you with some of the information
5 regarding -- that we have, including the bylaws, the letters
6 back and forth with Aberdeen Finance, the bankruptcy plan, et
7 cetera?

8 A. Yes.

9 Q. And you have had a chance to review that information
10 in the context of the -- review the financial statements that
11 were provided along with that in the context of that back and
12 forth among us involving this situation.

13 A. Yes.

14 Q. And maybe based on that and rather than be too
15 question and answer about this, because I think really what I'd
16 like to get to is to get to where the commissioners can kind of
17 just pick your brain a little bit about what you think. You
18 have seen the offer that we made to sell for 1,000 shares,
19 which honestly, I still feel was a reasonable offer. We are
20 offering to sell at a discount to book. You have also seen
21 that at their annual meeting, the shareholders of Aberdeen
22 Finance rejected that offer, despite knowing that the probable
23 alternative is we would distribute fractional shares to 260
24 people. Maybe you could just share with the commission some of
25 your thoughts about that, and then at some point here I'd also

1 like to see what you think maybe about particularly the idea of
2 the auction that Mr. Thorstenson suggested in his
3 recommendations.

4 A. Mr. Chairman, members of this commission, I'm pleased
5 to be here today to talk about some of these issues because I
6 think you are faced with a difficult situation here as to
7 valuation. I think what you have to do as far as valuation
8 goes, what will the market bring today. I mean, isn't that
9 what happens on the New York Stock Exchange every day? These
10 are not freely-traded securities, this is a private company.
11 These are unregistered securities. You can't have a public
12 auction and expose that security to the public. That's a
13 public offering. So you can't do that.

14 So what have you done? You have gone to the insiders,
15 you have gone to the people who exchanged their debt for
16 securities. The people that you went to to sell these things
17 to exchanged their debt, \$3500 for each share, and not one of
18 them want to buy it. You gotta remember they exchanged \$3500
19 in debt for each share that they got and none of them want it.
20 You have got a small, few member family that owned this thing
21 until bankruptcy, and then it spread out of course to the
22 creditors of the company. And the insiders don't even want to
23 give you more than \$100, and you have no more leverage in the
24 world that is more effective than to have a small, privately-
25 held company that faces the fact that all of a sudden, the

1 commission can cause me to have three hundred some odd more
2 shareholders. Every time I have a meeting, I can't even afford
3 the postage now. That is the biggest leverage that you could
4 ever have on a privately-held company.

5 I'm telling you, they are getting close enough to the
6 number of shareholders, if they had a million dollars net
7 worth, you could force them into being a reporting company,
8 which is extremely costly. So when you go to a company like
9 this and you say, if you don't buy these securities, we are
10 going to distribute them and everybody is going to have a
11 fractional share and you are going to have to send notices to
12 everybody, that's about as big a threat as you are going to
13 get.

14 And so I don't know how you place value, I'm not an
15 accountant, thank goodness, after listening to this today that
16 I didn't become a CPA rather than an attorney, because I'm
17 telling you, but yes, do minority shareholders have rights?
18 Yes, they cannot be oppressed. And you could go for 10 years
19 and if they had lots of money and never paid a dividend, yes,
20 the minority shareholders could sue and force the majority to
21 pay dividends.

22 But the issue here today is that none of us are
23 clairvoyant and you have got all the leverage in the world
24 today to make that decision and you find no takers, no insiders
25 will even offer over \$3500 and you can bet those insiders can

1 afford \$3500. So I'm not trying to convince you one way or
2 another what to do, but to me I think that's what you have to
3 go back to. I mean, there's your market. These are not freely
4 transferable. They are restricted.

5 I just saw a deal the other day on an ethanol plant.
6 I mean, this ethanol plant is worth like three or \$400 million,
7 and they were trying to decide the value of securities so they
8 could have a reverse stock split. And it's not a publicly-
9 traded company, and this analysis was done by experts that cost
10 a fortune, I mean, when you got it, it was a thick book and
11 every kind of analysis you can imagine. And even a company of
12 this size that had paid shareholders back over five times their
13 investment already was discounted 20 percent on the value of
14 those shares simply because it wasn't publicly traded. That's
15 by the experts.

16 Can you imagine what a company like Aberdeen Finance
17 would be discounted? I mean, I don't know where they come up
18 with these values, but in my opinion, I think the commission
19 has done its due diligence. Whether it's a bad mistake or not,
20 who knows, you might hold those two years and they are worth a
21 fortune, but you gotta make your decision based on what you
22 know today. And what you know today is that there's no market
23 and you have got as much leverage as you will ever have and
24 that is a distribution to 300 more people. Nobody wants 300
25 more shareholders in a small company. It has no advantage to

1 them whatsoever. And it's not like, well, so what if I got
2 300, it's not that simple. They gotta deal with them from now
3 on. I guess that's about all I have to say, unless you have
4 any questions.

5 MS. WIEST: Any questions from the commissioners?

6 EXAMINATION

7 BY CHAIRMAN JOHNSON:

8 Q. I do have a couple of clarifying questions. First off
9 I'd like to say, Mr. Sheppick, thank you very much for your
10 comments. I'm not trying to chase you out of state government,
11 but you would have been one of the best professional witnesses
12 we have ever had here if you had been paid, so thanks for your
13 service to the state.

14 A. Well, thank you.

15 Q. I want to make sure I heard you right on two things.
16 First off, you are saying that the law would not allow,
17 currently allow the Public Utilities Commission to auction
18 these shares, that option is not legally available to us.

19 A. No, that's not available.

20 Q. Okay. Secondly, you said that you are not trying to
21 advise us one way or the other, but it seems to me, and I want
22 to make sure I'm reading your -- I'm listening to your advice
23 right here, all of your advice points to really scream the
24 recommendation sell, sell, sell. Am I mischaracterizing your
25 testimony?

1 A. Well, unlike you, I don't want to commit myself to
2 that, but let's face it, this was a family-run business. They
3 at one time, in order to operate, the way they used to operate
4 and they did for years, was they sold people promissory notes.
5 Could I get a drink of water just a second?

6 Q. Sure.

7 A. The way these people operated, and I got involved with
8 them in a securities aspect, was that they were just selling
9 everybody promissory notes. That's where they got the money to
10 loan out. Well, they can't do that any more, so I don't know
11 how that affects them. They could have a public offering if
12 they wanted, but we wouldn't let them sell any more, they were
13 selling unregistered securities in the form of promissory
14 notes.

15 And so, you know, they can't do that any more, and at
16 that time just a handful of people owned that company, and like
17 I said, then when they went through bankruptcy, then the
18 bankruptcy court distributed shares for debt. And now they are
19 saying we don't even care if three hundred something more
20 shareholders come on board with fractional shares? I don't
21 know, it seems to me like they have told you themselves what
22 they think the company is worth and you have been fair because
23 you have offered it to people who just exchanged their debt,
24 \$3500 debt for that, and they don't want it either.

25 All of the people that are so-called interested

1 parties in this thing have had a chance to look at this and,
2 sure, there's always a speculator out there, if you could find
3 one, you know, that says, gee, I'll give you \$10,000 as a
4 gamble, but it's a private company, you can't be out public
5 soliciting to sell an insolvent company by the government. You
6 don't even know if these financials are accurate that you give
7 the buyer. The liability there is tremendous. That's my
8 opinion.

9 CHAIRMAN JOHNSON: Thanks very much.

10 MS. WIEST: Any other questions?

11 EXAMINATION

12 BY VICE-CHAIR HANSON:

13 Q. And we thank you very, very much for your opinion, Mr.
14 Sheppick. No disrespect to our analyst, Mr. Senger, I feel
15 like another window has been opened here and some more fresh
16 air has come in on the subject. I really appreciate your
17 opening remarks and testimony. Just one question. In your
18 opening remarks, you said that there was a point at which the
19 company could reach, and I believe you said the one million
20 mark, and they could be forced into being regulated by the
21 shareholders.

22 A. Yes, if you have a company that -- and you have over
23 500 shareholders and a net worth of a million dollars, you
24 become what's called a reporting company, and what that
25 basically, under the theory is, if you get that many people out

1 there holding shares of a privately-held company, the law says
2 you are not private anymore, whether you like it or not. And
3 so you have to start filing with the SEC quarterly financials,
4 annual financials, they are called 10 Qs and 10 Ks. And you
5 can look up any company that's a reporting company on the
6 electronic system called EDGAR, and so that's how securities
7 become freely tradable, because if you are a reporting company,
8 you don't have to be registered per se, because when somebody
9 wants to buy your stock, they have access to immediate
10 information about that company and they can look them up and
11 say, well, do I want to invest in here or not. Whereas private
12 companies, you may not have that kind of information.

13 VICE-CHAIR HANSON: Thank you very, very much for your
14 testimony. Appreciate it.

15 MS. WIEST: Any other questions from commissioners or
16 advisors? Mr. Smith.

17 REDIRECT EXAMINATION

18 BY MR. SMITH:

19 Q. Just one, Gail, on the other counteroffer that Keith
20 and I made or we have discussed, we haven't made a counteroffer
21 and we are not going to do so unless the commissioners think
22 it's a good idea, but the idea of accepting the money but
23 subject to obviously firming up the kind of mushy \$2500 offer
24 to also prepay that debt obligation, and secondly, the idea of
25 giving -- we would do this only on condition -- we would accept

1 it only on the condition that AFC would then issue a stock
2 option back to each claimant, each person who gets a
3 distribution of stock from us, and that option would give them
4 the option, every one of those claimants then would have the
5 option at his own election whether to take his, whether it's a
6 buck, which is the lowest number anybody is going to get, a
7 dollar, up to the highest is going to be in the several
8 thousand dollars worth of whatever or several hundred dollars I
9 should say here and afford them the option, if they think
10 putting their money back into Aberdeen Finance is what they
11 want to do, they would then be absolutely free to do it. Now
12 that I've laid that kind of groundwork, as I understand the
13 exemptions from the necessity for registration, that that
14 option issued back to existing beneficial owners of stock,
15 would that be covered by an exemption sufficiently to where
16 Aberdeen Finance could legally offer that to these people?

17 A. Well, I guess legally right now the beneficiaries own
18 these securities and if you take the position that they own
19 these securities currently, then they are already existing
20 security holders and there is an exemption to resell somebody
21 who already holds the security of the same company, and so
22 there would be an exemption to offer them an option to buy
23 those back. The only problem is you have got fractional shares
24 and I don't know how you are ever going to deal with that.

25 Q. Well, I think we would -- you know, in doing that, of

1 course, at a minimum I think we would want to have conditions
2 that prevented the use of the scrip option for the company and
3 certain other things and just compelled them to issue these
4 fractional shares.

5 A. You would have to issue a whole share. I mean, I
6 think the option should be that Aberdeen would give them the
7 right to purchase back -- I can't see where a person can buy a
8 fractional share. You, I think -- I'd have to look it up under
9 corporate law, that's not a securities per se issue, it's a
10 corporate law issue and I can't remember -- I don't know that
11 you can issue a fractional share.

12 Q. That's something we can check. People wind up with
13 fractional shares all the time.

14 A. They wind up with them, but I don't know if you can
15 issue one.

16 Q. That's something maybe we will have to check on that.

17 A. I'm not sure about that. But that would be a question
18 mark there.

19 Q. That's a good question.

20 A. But other than that, I suppose you could do it.

21 MR. SMITH: That's all the questions I have.

22 CHAIRMAN JOHNSON: I will note Mr. Sheppick's
23 suggestion is a fine one. Certainly -- I shouldn't say
24 certainly. I wouldn't see anything wrong with the option being
25 for up to the nearest whole share.

1 MR. SMITH: We can counteroffer anything we want as
2 long as it's lawful.

3 CHAIRMAN JOHNSON: Thanks.

4 A. Yeah, that's what I would do.

5 MS. WIEST: Any more questions for this witness?

6 MR. SMITH: I don't.

7 MS. WIEST: If not, thank you, Mr. Sheppick. You may
8 call your next witness, Mr. Smith.

9 MR. SMITH: Staff calls Heather Forney.

10 MS. WIEST: While she's coming up, I had a question on
11 Exhibits 1 through 384. Are they considered to be
12 confidential?

13 MR. SMITH: Yes, there is highly confidential
14 information and thank you for reminding me.

15 MS. WIEST: That would just be the 1 through 384 and
16 396 would be the only confidential?

17 MR. SMITH: Yes.

18 Thereupon,

19 HEATHER FORNEY,
20 called as a witness, being first duly sworn as hereinafter
21 certified, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SMITH:

24 Q. Would you please state and spell your name for the
25 record?

1 A. Heather Forney, F-O-R-N-E-Y. I am assuming you know
2 how to spell the Heather.

3 Q. And where are you employed?

4 A. I'm employed by the Public Utilities Commission here
5 in Pierre.

6 Q. And what's your position?

7 A. I'm the deputy executive director.

8 Q. And with respect to what we are going to be talking
9 about today, which you know, what duties do you perform on
10 behalf of the executive director and the commission?

11 A. With respect to what we are going to be discussing
12 today, part of my duties involve the receipt of money and
13 disbursement of such.

14 Q. Would you please look at Staff 400. Do you recognize
15 that document?

16 A. Yes, I do.

17 Q. Who prepared that document?

18 A. I prepared that document.

19 Q. Would you please explain to the commissioners what
20 they see and what page one is? Maybe just, Heather, why don't
21 you, in the interests of time, go through the whole thing.

22 Walk us through it and we won't waste a lot of time here.

23 A. What this is is the amount of cash available to
24 disburse from proceeds from S&S from the bonds. We have
25 \$30,000 in a money market account and then we have two CDs, one

1 with a value of \$80,747.19 and a second CD with a value of
2 \$79,559.49, so total cash available to disburse is \$190,306.68.
3 If you go to the second page, that's just a copy of the check
4 that we got for \$30,000 from Nationwide Mutual Insurance
5 Company. That was received on December 13th, 2006. That is
6 the one that's in the money market account and I don't have a
7 recent statement from that one.

8 The page after that is a copy of the most recent
9 statement I have from Wells Fargo on the CD showing that
10 \$80,000 balance. These only come every three months because
11 they are three-month term CDs and they are automatically
12 renewing those for us every three months. So that statement
13 was for the period ending 04-22-07. Then the last sheet is for
14 the final CD, the statement that I have from Wells Fargo
15 showing a balance of just under \$80,000 and that was with the
16 maturity date of March 9th, '07.

17 Q. At this point this time, then, these CDs have all
18 matured.

19 A. They are not -- they are currently in the -- the money
20 is still in the CDs. I didn't want to pull the money out of
21 the CDs because I wasn't sure when the disbursement was going
22 to be made by the commissioners and wanted to earn as much
23 interest as we could for the consumers.

24 Q. At this point in time, is there any restriction in
25 terms of where these funds are invested on when that

1 disbursement could be made?

2 A. There is, if you look at the actual maturity notices
3 for both of those CDs, it does talk about a penalty for early
4 withdrawal, so for example, the one that the maturity date is
5 July 22nd, 2007, there is a penalty for early withdrawal. But
6 it's minimal. I'm thinking it was on that first page.

7 Q. I just don't see anything on there.

8 A. I know it says it. I have the actual CD here, so let
9 me see, maybe it's on the back.

10 Q. My only reason for asking is just to know what the
11 time frame is without a material penalty we might realistically
12 be able to disburse and that will give us an idea, then,
13 planning wise as to how much time we can expend in perhaps
14 further studying this stock business and some of the rest of
15 it.

16 A. The back of the CD does speak about early withdrawals.
17 It says, a fee will be imposed for early withdrawal. If the
18 term is less than three months, the early withdrawal fee is one
19 month's interest on the principal amount withdrawn or a minimum
20 fee of \$25.

21 Q. So we are talking -- are we talking peanuts?

22 A. Yes.

23 Q. So realistically, the disbursement of funds, if the
24 commission accepts our suggestion that it be done with respect
25 to the cash we have now as soon as possible following

1 expiration of the appeal date, that's something that would not
2 be unduly penalizing to claimants to achieve?

3 A. That's correct.

4 MR. SMITH: Thank you, that's all I have.

5 MS. WIEST: Any questions?

6 MR. SMITH: Pardon me. I'd like to offer the exhibit,
7 Exhibit 400.

8 MS. WIEST: Exhibit 400 has been admitted.

9 EXHIBITS:

10 (Staff Exhibit No. 400 received into evidence.)

11 MS. WIEST: Any questions from the commissioners? If
12 not, thank you, Ms. Forney.

13 MS. WIEST: Do you have any other witnesses, Mr.
14 Smith?

15 MR. SMITH: I do not.

16 MS. WIEST: Do you have any closing?

17 MR. SMITH: You know, we have been here an awful long
18 time today. You have heard a lot from me about this. I concur
19 in Mr. Sheppick's characterization that it's just one of those
20 nasty decisions on the stock. My suggestion truthfully would
21 be I'm going to recommend wholeheartedly that we take prompt
22 action to approve, to grant the motion and I actually have a --
23 I prepared a draft motion, in case you want to see it, relative
24 to the money and relative to the claim fraction determinations
25 and the claim amount determinations, and I think we should get

1 that done and get this over with, and the sooner the better.
2 That settles all of the issues with respect to the claimants'
3 relative entitlement to proceeds.

4 I think maybe for a long time we have assumed that we
5 may not have all of the proceeds on the very day that we make
6 the first distribution. I think that's been one of the
7 assumptions we have thought is a clear possibility for a long
8 time. So I don't think I would delay action on that for very
9 long. I think we should move this along, get that appeal time
10 going and get that going and get the funds out.

11 In terms of -- I don't think I can add any more to
12 what we have already covered as to why and whether our
13 recommendations are appropriate. We have beat that to death
14 and I think we have done the best job we can figure out how to
15 do in that regard. We have been just working on this now night
16 and day for the last couple of months and not that there may
17 not still be some kind of an error in there somewhere, but I
18 can tell you that I believe we have done the best that we can
19 to do the right thing.

20 With respect to the stock, you have heard Mr.
21 Sheppick. You have heard a lot of different opinions expressed
22 on this. I don't really have a strong opinion personally, I
23 really don't, except that we do have an obligation under the
24 statute, which is 49-34A-117, to disburse proceeds that we get.
25 And you know, does that mean today, tomorrow? Again, I don't

1 know. And as far as does proceeds mean money or does it mean
2 whatever we get? I'm inclined to think it means at some point
3 we have an obligation to give these people what is theirs, and
4 I don't know, you know, there's some reasonable balancing
5 sometimes against the duty to -- your obligation to look out
6 for the best interests of claimants, but your other obligation
7 to treat them as free American citizens and let them look out
8 for their own interests. I think that's the balancing that
9 needs to be done.

10 I think there's two or three decent options here. I
11 think one is just to accept the offer they have made. I think
12 the other one -- I don't think it's a ridiculous option to just
13 make an out and out distribution of the stock. That is the
14 proceeds we got, it's their property. Lastly, I don't think a
15 ridiculous option would be to pursue a counter proposal that
16 would allow that -- that we would accept the offer but only on
17 the condition that they also offer each claimant an option, and
18 again the precise terms of that option may need to be defined
19 by the commission. If you wanted it to be a minimum of one
20 share, maybe that's what it has to be. Legally I'd have to
21 check that out to see.

22 I did take a look at the corporation law. I don't
23 recall seeing anything in there that specifically prohibited
24 the issuance of a fractional share. It's a huge chapter of the
25 code. There's hundreds of sections and I'm not going to

1 warrant to you today. So on that issue, if you want to explore
2 something like that, I would certainly, along with your general
3 counsel here, want to burrow into that and make sure that what
4 we are doing is lawful. So with that I am going to conclude
5 unless you have any questions of me.

6 CHAIRMAN JOHNSON: Is the hearing done, Ms. Wiest?
7 Have you relinquished your powers or are you still running the
8 show?

9 MS. WIEST: Yes, the hearing is done.

10 CHAIRMAN JOHNSON: Solely for discussion sake, I think
11 I may offer up a straw man here, so you have something to poke
12 holes at. I would -- two-part motion. First I would move that
13 the commission grant the motion by staff to deny, consolidate
14 and accept those claims as marked on I think it's E. Pardon?

15 VICE-CHAIR HANSON: And allow.

16 CHAIRMAN JOHNSON: That's right, not accept, but
17 rather allow. Secondly, I would move that the commission
18 accept the offer of Aberdeen Finance Corporation with two
19 conditions. First, that the \$2500 cash payment be firmed up,
20 and secondly, that a stock option is made available to anyone
21 who wants it to purchase as many shares as they had, rounded up
22 to the nearest whole share. Obviously there's a limit of 35
23 shares and so that would be on a first come first serve basis.
24 I make that as a stocking horse so we can have some discussion.
25 Commissioner Hanson just asked if that would be on the weighted

1 or the straight line allocation, and I would amend my motion to
2 include a straight line allocation method as recommended by
3 staff. Any discussion on the motion?

4 COMMISSIONER KOLBECK: I guess on the stock options
5 there, what would happen if -- are we sure that's a legal
6 option? Gail had mentioned some other things about that.

7 MR. SMITH: I think just looking at it, again I think
8 it is, if one considers that the offer is made as part of a
9 transaction involving existing shareholders, and I think it is,
10 I really do. There is another exemption under the -- on the
11 South Dakota securities law that allows for exemption of an
12 isolated transaction, which I think this clearly is. But I
13 think it is an offer back to existing security holders and to
14 me the director seemed to think there was no problem and so,
15 you know, I think it's just giving them the opportunity to make
16 their own decision as to whether they think that investment is
17 a better option than getting some money.

18 COMMISSIONER KOLBECK: How are we going to determine
19 who is going to be in charge of if we have a stock option, who
20 is going to be in charge of okay, here is your nine dollars?
21 Are we going to give them the nine dollars?

22 MR. SMITH: I thought we would distribute all money,
23 the money is in your pocket, then you have to make an
24 affirmative decision pursuant to the terms of the option, and I
25 guess I'm really -- not to be -- I'm getting tired here today

1 for one thing, but I am terribly sick of this. But on the
2 other hand, it did occur to me that I would probably end up
3 having to draft the option myself in order to make sure that --
4 what I thought I would do is it would be very similar to that
5 claim thing where we would have Keith unload the data right
6 into the document and have it all set up and do it for them,
7 and we would mail it out with the proceeds. That was the way I
8 envisioned doing this.

9 COMMISSIONER KOLBECK: In a sense we are going to
10 accept their deal, we are going to -- the other \$2500 and then
11 work out -- and hopefully AFC will let them buy back.

12 MR. SMITH: Yes.

13 COMMISSIONER KOLBECK: Does it need to be included in
14 the motion that we set a time line? Obviously we don't want
15 this lingering on for years and years and someone coming back
16 at us and saying a year later, hey, I wanted to invest in them,
17 they are great and I never got my chance. Does the motion need
18 to include time?

19 MR. SMITH: I don't think that's an inappropriate
20 thing. I wouldn't make it too short. Aberdeen Finance will of
21 course, I believe, I think in terms of this option business,
22 they are going to have to hold a shareholders meeting in order
23 to approve that. So they are -- they are in the bylaws, but
24 it's sitting over there, but they are going to need at least
25 some time frame. Most of their other deadlines on notices

1 related to shares and that are 15 days, so maybe if you put it
2 out at 30 days or within 30 days, something like that.

3 COMMISSIONER KOLBECK: Thirty days after acceptance or
4 rejection of the option?

5 MR. SMITH: You mean on the option, you mean the
6 people's -- oh, yeah, the terms of the option, yeah. I think
7 Aberdeen Finance, they are not going to want that option
8 hanging out there forever. No, I thought you meant by when we
9 want a response back from Aberdeen Finance to fish or cut bait.
10 I misunderstood. I think that's a good idea.

11 COMMISSIONER KOLBECK: I'm wondering the time line, we
12 want -- we want to make sure that when the deal is done, it's
13 done for the PUC and the customer. I'd like to know how much
14 time they have to buy into AFC after they have their -- does
15 that need to be in our motion?

16 MR. SMITH: Yes, ultimately, either that or bottom
17 line, if you -- one of two ways, put it in there, or if you
18 want to, you can authorize Keith and I to make the basic
19 conceptual offer and we can try to negotiate terms with it's
20 Dennis Maloney, the lawyer up there who we are talking with,
21 and see if we can find terms that they can stand and yet afford
22 the customers the opportunity to take advantage of the stock if
23 they want to. Either way you want to do it, I don't think
24 setting a 90-day option issuance limit or six months or any way
25 you want to do it. But on the other hand, if you want us to

1 discuss that with the company as to what they think is fair, I
2 don't think that's unreasonable either.

3 MS. WIEST: I had a clarifying question for you, Mr.
4 Chairman. In your motion, would you be instructing staff to
5 make the disbursements on the claims immediately or are we
6 waiting to see what happens with this offer, then just have one
7 check?

8 CHAIRMAN JOHNSON: My intention would be to have one
9 check and that there would be some minor delay, and given the
10 line of questioning by Commissioner Kolbeck, which I think is
11 pretty good and the question you just asked, it probably is
12 appropriate to have some time line for the commission, I won't
13 call it a counteroffer, I would call it an acceptance with
14 conditions, and I'm certainly open to an amendment based on
15 whatever time period anyone thinks is appropriate.

16 MR. SMITH: Are we talking the time period for
17 acceptance?

18 CHAIRMAN JOHNSON: AFC's acceptance of our
19 counteroffer essentially.

20 MR. SMITH: Again, what about 30 days? Is that too
21 long of a time?

22 CHAIRMAN JOHNSON: How long is the appeal?

23 MR. SMITH: The appeal is 30 days after the service of
24 notice, the order in other words, the notice of entry.

25 CHAIRMAN JOHNSON: We could certainly do 30 days

1 without slowing down this process at all.

2 MR. SMITH: I think so. Unless we think there's
3 appeal rights. But nobody -- I think everybody has defaulted
4 at this point related to the stock. But it's up to you,
5 Rolayne, if you don't think so. Nobody appeared.

6 MS. WIEST: They didn't appear.

7 MR. SMITH: I don't think there is any appeal right.

8 COMMISSIONER KOLBECK: Does it affect your decision
9 to -- July 22nd is when both of these CDs would be mature, so
10 if we could have -- if we could set in our mind a time line,
11 acceptance, rejection, everything needs to be done and we could
12 cut one check, have everything done by July 22nd. Is that not
13 reasonable?

14 MR. SMITH: Yeah, we might be able to do it -- that's
15 a deadline. We might be able to make it happen sooner than
16 that.

17 CHAIRMAN JOHNSON: I think we have got two potential
18 deadlines. One deadline -- two different time frames. One is
19 the time frame when do we want to get the money out of house
20 here. Then secondly is when do we want an answer from AFC,
21 because once we have an answer, there is -- if they accept,
22 there will be all kinds of activities between claimants, the
23 commission and AFC to determine who wants to get stock and make
24 sure we get our cash, we get the claimants cash.

25 MR. SMITH: Ideally my own belief would be this, if we

1 could do this, partially because it's Keith and I have told you
2 that, and it probably sounds kind of, I don't know, but the
3 claimants are really sick of this, although they will like it a
4 lot better when they get a check, I think. But what I was
5 envisioning, honestly, is that they would get their check and
6 in that check would be this option, a stock option, which would
7 be very simple for them to understand and would require them
8 just to sign this thing, include a check and mail it back, and
9 one of the other terms I think we should have on this is that
10 there be no transactional costs other than the cost of that
11 stamp to any of these people at all.

12 CHAIRMAN JOHNSON: I would amend my motion to include
13 a 30-day time limit on our counteroffer and we will put that on
14 unless anybody has any opposition. Hearing no opposition, the
15 motion will be amended. I'll make a couple of comments about
16 why I think this is probably the right thing for the commission
17 to do.

18 The first is that this ultimately brings some
19 finality. I do think that there is a distinct possibility that
20 four years from now these shares could be worth more than \$100,
21 but to me people really deserve, the claimants deserve an end
22 to this and this has been quite a long experience for everyone.
23 And getting something now is probably better than something
24 more later. The reason that I like the stock option is that it
25 doesn't presume that the commission is right. It doesn't

1 presume that the commission contains all of the knowledge and
2 all of the wisdom about stock valuation. We have received a
3 number of opinions, both written and verbal, and there is great
4 divergence about how much that stock should be valued at and I
5 don't have a clue what the right answer is. So I think we
6 should make available to the people information, the
7 information we have on what the stock is worth and let them
8 decide. That's why I think the motion is a good one. Any
9 other comments on the motion? Commissioner Hanson.

10 VICE-CHAIR HANSON: As you were speaking, I don't
11 recall the word that you used, I was thinking it was an odyssey
12 that we have gone through and the folks have gone through in
13 waiting for whatever recourse of justice that we can extract
14 for them and provide to them. I know that our staff has really
15 put in a lot of work on this and I'm sure all three of us
16 appreciate that tremendously on the professionalism and the
17 amount of reading and research that they have had to do in
18 order to provide this for us.

19 I appreciate very much, Mr. Chairman, your making the
20 motion the way you did and accepting the discourse. I think
21 it's a very fair and sensible resolution. I think it is the
22 best resolution to this challenge. I appreciate Commissioner
23 Kolbeck's suggestions on the time limits, and from the
24 standpoint of the disbursements, I agree 100 percent that we
25 should attempt in every way we can to make it in one check as

1 opposed to trying to send out a second mailing where they might
2 get a nickel or something of that nature.

3 I really have to agree, I really want to continue,
4 believe it or not, to negotiate on this. I just don't feel
5 that we are getting quite the money that we should for the 35
6 shares. At the same time, we could spend another \$3,000 of the
7 taxpayers' money and maybe get another \$200, \$400 or maybe
8 reach a loggerhead where they capitulate to the point where we
9 don't get anything and the folks that have been injured have to
10 wait for five or 10 years before anything happens.

11 So it's just as Mr. Sheppick stated, what we know now
12 and somewhat of a Babe Ruth-ism, Yogi Berra, excuse me, we know
13 what we know and everything else is blind to us, and we have
14 done our due diligence, we have completed it properly, we have
15 a responsibility to the taxpayers as well as to the folks that
16 we have been fighting for here, and I think our staff has done
17 the best job that we could expect of them and that the citizens
18 could expect of them and so I will definitely be supporting the
19 motion.

20 CHAIRMAN JOHNSON: Prior to moving toward a vote,
21 perhaps we will pause and see if our advisors, Mr. Rislov, Ms.
22 Wiest, have anything else we should consider prior to taking
23 action.

24 MS. WIEST: I don't.

25 MR. RISLOV: I don't.

1 CHAIRMAN JOHNSON: Any further discussion by
2 commissioners?

3 COMMISSIONER KOLBECK: No. I wanted to state thank
4 you to staff for their time and Mr. Sheppick's comments made up
5 my mind, the one that -- that we offered it to them and they
6 themselves didn't want to buy their own shares back, and
7 Keith's statement, I put a lot of weight in Keith in saying
8 that it is not our decision to make on what people wanted to
9 invest in. So I think this motion takes care of both those
10 issues.

11 CHAIRMAN JOHNSON: Hearing no further discussion, we
12 will proceed to vote on the motion. Kolbeck.

13 COMMISSIONER KOLBECK: Aye.

14 CHAIRMAN JOHNSON: Hanson.

15 VICE-CHAIR HANSON: Aye.

16 CHAIRMAN JOHNSON: Johnson votes aye. Motion carries
17 three zero. Are there any other issues that we should be
18 dealing with with regard to this docket at this time? Mr.
19 Smith, you worked so hard to type up a motion and I didn't even
20 look at it.

21 MR. SMITH: I think we are fine. I just wanted to
22 have something just in case, so I just typed something up in
23 case it could be useful and it didn't turn out to be needed.
24 Thank you very much. I thought your motion was fine.

25 CHAIRMAN JOHNSON: Do you want a quick moment to

1 review your motion to make sure we haven't forgotten anything?

2 MR. SMITH: I don't think so. I think clearly you
3 stated that you were approving or granting our motion and most
4 of the things that I have in here are some of those details
5 from that initial paragraph, initial section A and then the
6 numbered paragraphs, so I think we are fine.

7 CHAIRMAN JOHNSON: Thank you very much. With that, we
8 will stand adjourned.

9 (Whereupon, the proceedings were concluded at 5:25
10 p.m.)

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C E R T I F I C A T E

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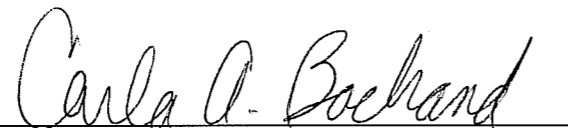
STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF HUGHES)

I, Carla A. Bachand, RMR, CRR, Freelance Court
Reporter for the State of South Dakota, residing in Pierre,
South Dakota, do hereby certify:

That I was duly authorized to and did report the
testimony and evidence in the above-entitled cause;

I further certify that the foregoing pages of this
transcript represents a true and accurate transcription of my
stenotype notes.

IN WITNESS WHEREOF, I have hereunto set my hand on
this the 11th day of May 2007.



Carla A. Bachand, RMR, CRR
Freelance Court Reporter
Notary Public, State of South Dakota
Residing in Pierre, South Dakota.

My commission expires: June 10, 2012.