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1 operating account into the old PFTA were specific transfers that
2 were requested, is that correct?
3 A. That's correct.
4 Q. Now, I take it as you sit there, it's not your testimony
5 that you have any idea how much of the money that went into the
6 old PFTA was spent in order to make up for a deficit in that
7 PFTA.
8 A. No.
9 Q. So you don't have any idea what percentage it might have
10 been of the money that went in.
11 A. No.
12 MR. REIDY: Could I have just one moment, your Honor?
13 THE COURT: Yes.
14 (Pause.)
15 MR. REIDY: That's all I have. Thank you, Judge.
16 THE COURT: Okay. Any inquiry by Near North?
17 MS. WALSH: No, your Honor.
18 THE COURT: Okay, Mr. Hogan, redirect?
19 MR. HOGAN: Very briefly, Judge.
20 REDIRECT EXAMINATION
21 BY MR. HOGAN:
22 Q. Ms. Prescott, what you do know is that business managers at
23 Near North made a determination to transfer those dollar funds
24 into the old PFTA from August 31st through and including the
25 last date on -- can I get the chart back?

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1 MR. REIDY: Sure.
2 BY MR. HOGAN:
3 Q. -- through and including November 30th, right?
4 A. Yes.
5 Q. And those business managers, whoever they were, the
6 accountants and working with and for Mr. Segal, determined to
7 transfer \$30 million into that old PFTA, right?
8 A. That's correct.
9 MR. HOGAN: Thank you.
10 MR. REIDY: Just for a moment, your Honor?
11 THE COURT: Yes.
12 RECROSS-EXAMINATION
13 BY MR. REIDY:
14 Q. And it's also true that you know that in order to find out
15 how much money that went into that account was spent on the old
16 PFTA deficit, you'd have to analyze the disbursements, not the
17 deposits, right?
18 A. Yes.
19 Q. And you could have done that, but nobody asked you to do it,
20 right?
21 A. Yes.
22 MR. REIDY: That's all I have, Judge. Thank you.
23 THE COURT: Okay. You're excused.
24 Government have any other witness in this phase of the
25 trial?

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1 MR. HOGAN: No, Judge.
2 THE COURT: Okay. The government rests?
3 MR. HOGAN: Yes, Judge.
4 THE COURT: The defense, does defendant Michael Segal
5 have a witness?
6 MR. McNULTY: Yes, your Honor.
7 THE COURT: You can call your witness.
8 MR. McNULTY: The defense calls Andrew Lotts, who I
9 believe is coming.
10 THE COURT: Okay. If you would raise your right hand.
11 (Witness sworn.)
12 THE COURT: Please take a seat, sir.
13 You may proceed, Mr. McNulty.
14 MR. McNULTY: Thank you, your Honor.
15 **ANDREW LOTTS, DEFENDANT SEGAL'S WITNESS, DULY SWORN,**
16 **DIRECT EXAMINATION**
17 BY MR. McNULTY:
18 Q. Could you state your name and spell your last name, please,
19 for the record.
20 A. Andrew Lotts, L-O-T-T-S.
21 Q. And Mr. Lotts, what do you do for a living, sir?
22 A. I'm a CPA.
23 Q. And where -- where do you practice, sir?
24 A. I'm a partner in a firm in Deerfield, Fanco Data Systems,
25 Inc.

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1 Q. And when -- first of all, where did you matriculate in
2 school, sir?
3 A. University of Iowa.
4 Q. And when did you graduate?
5 A. I graduated in August 1991.
6 Q. And post-graduate, did you do any -- any further work?
7 A. I did post-graduate work for two semesters leading to a
8 master's in accounting, but I did not complete.
9 Q. Was your undergraduate also in accounting, sir?
10 A. Yes, it was.
11 Q. Have you sat for the CPA exam?
12 A. Yes.
13 Q. When did you sit for the exam, sir?
14 A. I sat for the exam in -- it would have been -- I completed
15 and was licensed in May of 1994.
16 Q. So you sat for the exam in '93 and then --
17 A. Yes.
18 Q. -- you were certified then the following year --
19 A. Yes.
20 Q. -- is that correct?
21 What type of work does your firm do, sir?
22 A. The type of work my firm does is audits, compilations,
23 reviews, forensic work.
24 Q. And what do you mean by forensic work, for the ladies and
25 gentlemen? What do you mean by forensic accounting?

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1 A. We do forensic accounting, going in and examining the books
2 and records of companies to -- to review the books and records
3 and assist where necessary.
4 Q. And have you done so in connection with some work for Near
5 North in the very recent past?
6 A. Yes, we have.
7 Q. What kind of work have you done in connection with the
8 accounts of Near North as it relates to their premium fund
9 trust?
10 A. We came in. We examined cash accounts receivable, insurer
11 payables, and the items related to insurer payables.
12 Q. And do you have an understanding, sir, of how a Premium Fund
13 Trust Account is calculated here under Illinois regulations and
14 the laws that govern insurance brokerage operations in Illinois?
15 A. Very much so, yes.
16 Q. And what is your understanding, sir, real briefly, if you
17 could, as to how that -- those premium fund trusts are to be
18 calculated to determine if they are in good balance?
19 A. In a brief nutshell, to calculate a Premium Fund Trust
20 Account at its very core is to take cash that is held to
21 benefit -- that has come in from clients, from the insureds, and
22 compare that to the cash that you have, and the difference is
23 what your trust position is.
24 So you take a look at what you owe the carriers, and
25 that's based on the cash that's held that's come in on a very

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1 basic core.
2 Q. In connection with your work, sir, for -- for this matter,
3 were you provided with some -- some of the evidence that was
4 submitted to this -- to this Court and for the consideration of
5 the ladies and gentlemen of the jury from the government's
6 exhibits?
7 A. Yes, I was.
8 Q. Were you provided with some exhibits that were produced in
9 their original form by employees of Near North in the accounting
10 department?
11 A. Yes, I was.
12 Q. Are you familiar with the name Don Kendeigh, sir?
13 A. I'm familiar with the name, yes.
14 Q. And are you also familiar with the names of outside firms
15 who came in to do -- outside accounting firms who came in to
16 Near North to do some -- some work and end up making some
17 calculations of the premium fund trust?
18 A. Yes.
19 Q. Are you familiar with the McGladrey & Pullen accounting
20 firm, sir?
21 A. I am. Also RSM McGladrey, which is a consulting arm.
22 Q. And then the Hales Consulting Group as well, Mr. Lotts?
23 A. Yes.
24 Q. All right. Did you do some calculations of the Premium Fund
25 Trust Account in connection with the use of the exhibits that

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1 were submitted into evidence in this case?
2 A. I did.
3 MR. McNULTY: If I may approach, your Honor?
4 THE COURT: Yes, you may.
5 MR. McNULTY: I'm going to show you what I've marked
6 as Defendant's Exhibit -- I'm going to call it 1, your Honor,
7 but if you think we should retile it for the forfeiture
8 portion --
9 THE COURT: No, Defendant's 1 is fine.
10 MR. McNULTY: Thank you, your Honor.
11 BY MR. McNULTY:
12 Q. Do you recognize what I've placed before you as Exhibit 1 --
13 A. Yes.
14 Q. -- Defendant's 1?
15 A. Yes. This is our workpapers, yes.
16 Q. And this is two copies or two pages of workpapers. Can you
17 explain briefly what the -- in a summary fashion what the first
18 page of this calculation provides?
19 A. Yes. The first page, which is a calculation of the alleged
20 deficit in the PFTA using recalculated 10-19-99 numbers, as well
21 as numbers for each year, which are related to various
22 government exhibits, I think Kendeigh primarily, in No. 72, as
23 of December 31st of each year.
24 Q. Okay. And did you do calculations for both the Near North
25 Insurance Brokerage of Illinois, which is the Chicago operation

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1 of Near North, as well as calculations based on the Near North
2 group of companies on a consolidated basis?
3 A. Yes.
4 Q. Okay. And if you'll turn briefly to the second page --
5 A. Okay.
6 Q. -- of this exhibit, can you describe in summary fashion what
7 the calculations are that are reflected on this page?
8 A. What we did is we took the deficit in the PFTA per
9 Government Exhibit 72 as of, in most cases it was dated 12-31,
10 and we took and we calculated the interest on a compounded basis
11 using the prime rate in effect in those years, starting with 1-1
12 of that year with a 12-31 balance. We took and we compounded
13 that interest all the way through.
14 MR. McNULTY: Your Honor, I'd move at this time to
15 introduce Defendant's Exhibit 1.
16 THE COURT: It will be received.
17 (Said exhibit received in evidence.)
18 MR. McNULTY: And if I can publish to the jury as
19 well, your Honor.
20 THE COURT: You may.
21 BY MR. McNULTY:
22 Q. Mr. Lotts, if you take a look at the very first set of
23 numbers that you have for the year 1990, I'd like to maybe take
24 you through this so that the ladies and gentlemen of the jury
25 have an understanding of what you've -- what you've done and

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1 what you've attempted to calculate here.
2 The first, the first line is the year 1990, and under
3 the column Near North Insurance Brokerage, you've included a
4 number of 5,176,000 -- \$5,176,367.
5 What number does that represent?
6 A. The 5,176,367 represents the deficit that was calculated in
7 the PFTA based on Government Exhibit 72 by Don Kendeigh, but we
8 did not agree with the way that it was calculated.
9 Q. Okay. And then for the Near North National Group column,
10 there's a number of a negative \$4,794,144. Is that also from
11 that same Kendeigh exhibit?
12 A. Yes, it is, but on a consolidated basis, which we also
13 didn't agree with.
14 Q. Okay. The -- I noticed that you have the letter A next to
15 the entries on the line for 1990.
16 A. Correct.
17 Q. And does that refer the ladies and gentlemen of the jury to
18 the footnote that you have here, the PFTA deficit taken from
19 Government Exhibit 72 as of December 31st of the particular
20 year?
21 A. Yes. The -- the -- that's exactly what it means is that's
22 the PFTA deficit that I believe was taken from the Kendeigh
23 Government Exhibit as of December 31st, that is correct.
24 Q. All right. I'm going to take you back then to the remaining
25 entries on this first page of your chart. We'll go all the way

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1 down to 1997 because each of these have an explanatory footnote
2 that's small a or lower case a.
3 Are each of those amounts that you have placed on your
4 chart numbers from Mr. Kendeigh's work on the PFTA that was
5 admitted into evidence in the case as Exhibit 72?
6 A. Yes. Those are his numbers.
7 Q. And you have not attempted in your work to try and recreate
8 the numbers for any of the amounts that reflect other premium
9 fund trust calculations for those years, have you?
10 A. No, we've not.
11 Q. And you've taken that as a given in your work, correct?
12 A. Yes.
13 Q. For the year 1998, there's a footnote B. Perhaps we can
14 start with the footnote B as a starting point.
15 A. Right.
16 Q. You've indicated here that the PFTA deficit once again was
17 taken from Government Exhibit 72 as of October 31st of 1998, but
18 no year-end number was available.
19 A. Correct.
20 Q. Do you recall -- you reviewed some of the testimony in the
21 case, too, did you not, sir?
22 A. Yes.
23 Q. And you're familiar with the fact that Mr. Kendeigh
24 testified that there were no good numbers available after
25 October of 1998 because of, among other things, there was a

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1 conversion to a new agency management system in 1998 that
2 affected the integrity of the numbers that were available
3 internally at Near North?
4 A. Yes. I'm familiar with that, and based on what we saw and
5 reviewed, that was an accurate statement.
6 Q. You saw that there was a very substantial lack of integrity
7 of the numbers that you looked at going back to that period of
8 1998?
9 A. There was a complete lack of accuracy to the numbers. I
10 wouldn't use the word integrity.
11 Q. Okay. For the 1998 year, you've indicated for Near North
12 Insurance Brokerage a PFTA calculation of negative 6,980,000.
13 Do you have that reference point?
14 A. Yes.
15 Q. And then the figure that you have for the Near North
16 National Group on a consolidated basis shows that it was
17 actually \$1,597,506, a positive number, correct?
18 A. Correct.
19 Q. And that was taken directly from Mr. Kendeigh's work as
20 well, was it not?
21 A. Yes.
22 Q. For year 1999 -- you understood, first of all, that
23 Mr. Kendeigh left Near North's employment sometime in 1999?
24 A. Yes.
25 Q. And he was terminated from the company at that point?

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1 A. Yes.
2 Q. What numbers have you used for your calculations in 1999?
3 A. In 1999, we began by examining in the current year here
4 McGladrey & Pullen's numbers or, rather, RSM McGladrey's numbers
5 from a Government Exhibit that was used. I don't recall the
6 number offhand of the exhibit, but I recall very plainly the
7 numbers that were presented.
8 Just to recap, and I don't know if it helps to put
9 that exhibit up here, but to recap to the jury what it is we
10 saw --
11 Q. Let me place it up here before you.
12 A. Okay.
13 Q. Then you can talk a little bit about it.
14 A. Okay.
15 Q. Okay. Is this the exhibit you're talking about --
16 A. Yes.
17 Q. -- that the RSM McGladrey firm worked on?
18 A. Yes. We started with this exhibit that was given to us to
19 examine.
20 We went back to the beginning of McGladrey & Pullen's
21 engagement directly to their workpapers that were -- that were
22 submitted, I believe it was submitted under like Exhibit 355.
23 It was about two inches thick. And what it was is it was weekly
24 summaries of their work and where it progressed.
25 And we followed it through to this. And nowhere in

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1 those workpapers at any level, audit, compilation or review, was
 2 there substantiation for the trust position that was calculated
 3 here, nor any of the numbers.
 4 Q. And did you have a particular criticism of any one -- one
 5 particular line item in this -- in this exhibit that's now on
 6 the screen, which was admitted into evidence as a calculation
 7 from October 20th of 1999 by the McGladrey & Pullen firm?
 8 A. If there's any one number here that stood out to us upon our
 9 review of their workpapers, it was the gross carrier payables
 10 number of 77 million as of this date of 10-19-99.
 11 Q. And why was that one that drew your particular attention,
 12 Mr. Lotts?
 13 A. Well, the first --
 14 Q. The insurance payables number.
 15 A. The first thing that drew us, our attention to that number
 16 is the size of that number in comparison to the typical gross
 17 carrier payables each month that the company carried at Near
 18 North Insurance Brokerage.
 19 Q. 77 million was the largest figure that you had seen?
 20 A. Yes, that would be very high. What we did is we went back
 21 and we did a -- I believe it was possibly almost two years'
 22 worth of analysis, where we took each month and we compared what
 23 the carrier payor was in the general ledger to the detail. In
 24 all of those months it was never higher than 58 million, and it
 25 certainly was not 77 million.

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1 When this number came to our attention, the 77
 2 million, I went to the accounting department and asked them if
 3 it was even possible, being skeptical as an auditor that I am,
 4 of how they could print a report mid-month in Sagitta that would
 5 show this number.
 6 And the first thing they said is they said, well, that
 7 would be very difficult, if not impossible, because the computer
 8 system had been down since I believe it was October 12th, and it
 9 didn't go back up, and it was not updated with any of the
 10 financial information and any of the transactions from that date
 11 all the way up till the update took place midnight on 10-19-99.
 12 I noticed in the corner that the McGladrey workpaper
 13 has a date of 10-20-99.
 14 Q. That's down here in the lower left-hand corner?
 15 A. Right. And what we did is we realized that if you came in
 16 with a team, be it one person or 50 people, and you tried to do
 17 this spreadsheet on the 20th in the morning, the first thing
 18 that would happen is you'd have to run reports, general ledger
 19 reports, detail reports, to obtain these numbers.
 20 If I made the assumption that these numbers were
 21 obtained from the general ledger, I would go, you know, I would
 22 go to them and this is how I want to do the calculation, I would
 23 ask them to run the reports.
 24 Running those reports, from our experience of having
 25 been at Near North for two years as their independent

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1 accountants, is it takes in many cases an entire night to run a
 2 report. So unless they came in at midnight to do this work, in
 3 our opinion, they would not have been able to possibly make this
 4 calculation.
 5 Second of all, the numbers, in our objective opinion
 6 of having worked there, are highly subject to error, given the
 7 fact that not only was the computer system down for that week,
 8 the conversion from Sagitta -- from Harte to Sagitta was
 9 completely failed.
 10 And I've looked through and examined that and where
 11 that was, the payables were grossly inflated with old '98 and
 12 '97 payables. We saw in 1998 over six-and-a-half-million
 13 dollars of payables that were still supposedly owed at the end
 14 of '99, which in our opinion was absolutely impossible because
 15 most carrier payables have to be paid within 45 days or, believe
 16 me, the carrier's knocking at your door from our experience of
 17 having worked there and have gone through all of these
 18 workpapers in examining them.
 19 The one thing that we saw that stood out when taking
 20 this number and going back through McGladrey's workpapers to try
 21 to determine objectively how they would have arrived at these
 22 numbers was to go back when they started the engagement to see
 23 what workpapers they might have.
 24 We found nothing to support the 77 million. We found
 25 nothing to support any of these numbers, but I was very focused

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1 on the 77 million because of the magnitude and the impact that
 2 it had on this calculation in coming down to a net trust
 3 position of 23.8 million.
 4 Q. Did you then make some additional calculations of your own
 5 to try and determine whether you could come up with a better
 6 figure for at least this one line item, the gross carrier
 7 payables?
 8 A. We did, yes.
 9 Q. And what -- what -- tell the ladies and gentlemen of the
 10 jury what steps you took to try and come up with that type of
 11 number for the gross carrier payables?
 12 A. Well, as I said before, what we did is we looked through the
 13 McGladrey workpapers to find anything related to that month that
 14 they might have left in their workpapers to give us a trail as
 15 to how they calculated.
 16 We never were able to find that trail. What we were
 17 able to find in the workpapers, and I believe it was not
 18 admitted into evidence, is we found a 10-31 McGladrey workpaper
 19 stating the accounts receivable and the insurer payables
 20 balance. The insurer payables balance at 10-31, per the
 21 McGladrey workpaper, was approximately 62-and-a-half-million
 22 dollars.
 23 MR. McNULTY: If I may, your Honor, I'd like to
 24 approach the witness with Defendant's Exhibit 2?
 25 THE COURT: That's fine.

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1 THE WITNESS: Thank you.
2 BY MR. McNULTY:
3 Q. Can you identify for the record what I've placed before you
4 as Defendant's Exhibit 2?
5 A. Yes.
6 Q. Go ahead.
7 A. Okay.
8 Q. What is it?
9 A. What we have is -- yeah, this is our exhibit. Am I supposed
10 to --
11 Q. Just, if you will, summarize it.
12 A. Okay.
13 Q. And tell the ladies and gentlemen of the jury what you've
14 done to come up with these numbers.
15 A. Okay.
16 Q. Not -- just in summary, then we'll ask for its admission.
17 A. Okay. What we did was is we took the McGladrey number of
18 the insurer payable at 10-31-99. We then also ran general
19 ledger reports, looking for that same number, assuming that they
20 would have run the general ledger as of that time.
21 We ran it currently today telling it we want the date
22 10-31-99, give us the insurer payables. So what it does is it
23 prints out over 15,000 transactions from October that totaled
24 out 62 million 796, \$50,000 approximately different than the
25 number that McGladrey & Pullen had.

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1 MR. McNULTY: All right. Your Honor, I'd ask that --
2 we'd move into evidence Defendant Exhibit 2.
3 THE COURT: It will be received.
4 (Said exhibit received in evidence.)
5 BY MR. McNULTY:
6 Q. Place this on the screen. I'm going to ask you quickly go
7 through these numbers, if you would, Mr. Lotts, for the benefit
8 of the ladies and gentlemen of the jury.
9 A. As I said, we took the insurer payable number per our
10 general ledger. We compared it to the McGladrey & Pullen number
11 per their workpaper, and we came up with 62,796,980.
12 We then took and ran general ledger printouts to
13 define the payments from the period to back into the 10-19
14 number because we're going to go from 10-31 back to 10-19. We
15 ran the general ledger and pulled out the payments into Excel
16 from Sagitta from 10-20 to 10-31 that were made, which was
17 seven-and-a-half-million dollars, applied that to both the
18 McGladrey side and our side to try to reconcile their number.
19 Q. Can I stop you for a minute, Mr. Lotts --
20 A. Sure.
21 Q. -- just so that the ladies and gentlemen of the jury can
22 follow this.
23 This very first number that you have, that is on the
24 first line IP, that's an abbreviation for insurer payables?
25 A. Insurer payables, correct.

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1 Q. And this is as of October 31st, 1999, correct?
2 A. Correct.
3 Q. And the column you have listed M&P numbers, that's McGladrey
4 & Pullen or RSM McGladrey?
5 A. RSM McGladrey, correct.
6 Q. And then the column you have for NNIB numbers is from Near
7 North's general ledger?
8 A. Correct.
9 Q. All right. The number that you have for insurance payables
10 per McGladrey & Pullen workpapers of October 31st, 1999, the
11 \$62 million number compares to the \$77 million number that was
12 on the previous exhibit that we looked at, correct?
13 A. Correct.
14 Q. And you have taken then the steps that you talked about with
15 the jury about looking at the payments that were made from
16 October 20th through the month-end October 31st of 1999,
17 correct?
18 A. Yes.
19 Q. And the workpapers that McGladrey & Pullen had had it about
20 seven-and-a-half million?
21 A. Correct.
22 Q. And that's the same number that was from the general ledger
23 of Near North, correct?
24 A. Correct. We applied the payments per the general ledger to
25 both sides of the equation. That number seven-and-a-half

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1 million was not available in the McGladrey Pullen workpapers.
2 Q. Okay. And in the -- what did you do with the billing
3 number?
4 A. The billings, same thing. We took the billings from 10-20
5 to 10-31 that would have been made, and we subtracted those in
6 the equation here to back into the recalculated number.
7 Q. Okay. And then you came up, you had also some adjustments?
8 A. IP adjustments per the general ledger, correct.
9 Q. Okay. And those numbers were the same for both McGladrey &
10 Pullen and for NNIB, correct?
11 A. Yes.
12 Q. Then you made calculations or recalculations of the
13 insurance payables for that period from, what, of October 19th,
14 correct?
15 A. What we did is we took the 10-31 back down to the 10-19.
16 This is simply a footing of those numbers above to come up with
17 a recalculated insurer payable number as of 10-19, 1999, of
18 63,000 -- \$63,216,051, or in the case of our number, \$50,000
19 different.
20 Q. Okay. That's over here on this right-hand side?
21 A. Correct.
22 Q. All right. And then you took the 77 million number that was
23 reflected on the previous exhibit --
24 A. Yes.
25 Q. -- and calculated the difference for both McGladrey &

<p style="text-align: right;">Page 5934</p> <p>1 Pullen's number and for the Near North Insurance general ledger 2 number, correct? 3 A. Yes. 4 Q. And you came up with a difference of 13,783,000 for 5 McGladrey & Pullen. 13,733,000 -- 6 A. Yes. 7 Q. -- for the other Near North records, correct? 8 A. Right, correct. 9 Q. I want to draw your attention, if I can, to the very last 10 calculation that you've included on this page -- 11 A. Okay. 12 Q. -- at the bottom, and there's some other footnotes that 13 explain your work. 14 The deficit that McGladrey & Pullen calculated in that 15 previous exhibit was 23,800,000, correct? 16 A. Correct. 17 Q. And you subtracted the difference that you had calculated up 18 above of 13 million 780 -- excuse me -- \$783,000 -- 19 A. Yes. 20 Q. -- from that amount, correct? 21 A. Yes. 22 Q. And you came up with a recalculated net trust position based 23 on your calculations, is that right? 24 A. Yes, yes. 25 Q. And do you believe that number to more fairly represent what</p>	<p style="text-align: right;">Page 5936</p> <p>1 Q. Did you have any other numbers that were produced internally 2 at Near North or otherwise that gave you a number at year-end 3 '99 for their net trust position? 4 A. Not at year-end, no, but we did have one for November. 5 Q. Okay. And you used the McGladrey & Pullen number on a 6 recalculated basis on your work, correct? 7 A. Correct. And there's another McGladrey workpaper that comes 8 very close to that number dated November 4th, which gave us 9 higher confidence in our number. 10 Q. And did that include -- the McGladrey & Pullen calculations 11 include some but not all of the Near North companies? 12 A. Yes, it did. 13 Q. And was that a deficit number of approximately 12 million, 14 something along those lines -- 15 A. Yes. 16 Q. -- as of November 4th? 17 A. Yes. 18 Q. But that calculation McGladrey -- that was in McGladrey's 19 workpapers did not include Near North Title, is that correct? 20 A. That is correct. And then we examined Near North Title 21 briefly, and we noted that typically they had a \$3 million 22 surplus at any given time. 23 Q. Okay. Let's take you now to the year 2000. What numbers 24 did you use as the basis for year 2000? 25 A. In 2000, I used the deficit number taken from Exhibit 108B.</p>
<p style="text-align: right;">Page 5935</p> <p>1 was the deficit position, the net trust position based on the 2 numbers that McGladrey & Pullen had available to them at that 3 time period? 4 A. Yes. 5 Q. Now, I want to take you back to Defendant's Exhibit 1 and 6 the very first page. And that's the number that you have 7 included here in 1999 for Near North Insurance Brokerage alone, 8 correct? 9 A. Correct. 10 Q. Ten million -- a deficit of \$10,016,051, correct? 11 A. Yes. 12 Q. Did McGladrey & Pullen ever calculate a number on a 13 consolidated basis for Near North as a consolidated entity? 14 A. As of that date or any date, not to my knowledge, no. 15 Q. Okay. You never saw a number where they calculated all of 16 the Near North operations, including Near North New York, Near 17 North California, THB Intermediaries, Near North Title and other 18 entities, correct? 19 A. Not as of that date, no. 20 Q. All right. I want to take you briefly then to the year 21 2000. 22 And by the way, for 1999, you used that as if that 23 number that McGladrey & Pullen calculated was a number at year 24 end, correct? 25 A. Yes. We --</p>	<p style="text-align: right;">Page 5937</p> <p>1 Q. Did you understand that to be an exhibit that was prepared 2 by Mr. McNichols who was a former CFO at Near North? 3 A. Yes. 4 Q. And did he calculate a deficit for Near North Insurance 5 Brokerage as a stand-alone business of 6,918,000? 6 A. I believe so, yes. 7 Q. And did he also calculate that the company as a whole on a 8 consolidated basis was not in deficit and, in fact, had surplus 9 of \$633,350 at that point in time? 10 A. Yes, that is correct. 11 Q. Let's take you forward then to 2001. 12 The number that you've used here is a number from the 13 Hales & Company consulting report, is that correct? 14 A. Yes, correct. 15 Q. And you're familiar with the work that Hales did and the 16 testimony that was introduced in the case from Mr. Poggenburg 17 and several other witnesses from Hales, correct? 18 A. Yes. 19 Q. Did Hales calculate a deficit as of 2001, I believe 20 July 30th of 2001 -- excuse me -- June 30th. 21 A. June 30th, I believe, yes. 22 Q. June 30th, 2001 of 24 million for Near North Insurance 23 Brokerage? 24 A. Correct. 25 Q. And then on a consolidated basis, did they have Near North</p>

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1 as a consolidated set of companies in deficit in the amount of
 2 approximately 19,297,000?
 3 A. Yes.
 4 Q. I'm going to take you now, if I could, to page 2 of your
 5 work that's in Exhibit 1.
 6 MR. POLALES: Your Honor --
 7 THE COURT: May I have a side bar?
 8 THE COURT: Sure.
 9 (Proceedings heard at side bar:)
 10 MR. POLALES: I don't understand the relevance of page
 11 2, and I want to move to strike it unless there's some showing
 12 of relevance.
 13 THE COURT: Let's see it.
 14 MR. POLALES: It has nothing to do with the
 15 forfeiture. It seems to me they're trying a damage case that
 16 doesn't comport with the law.
 17 MR. McNULTY: This reflects the interest on the
 18 deficits are reflected on page 1 at a prime rate, carrying it
 19 forward and compounding it all the way through the time --
 20 THE COURT: What's the relevance of that to the
 21 forfeiture?
 22 MR. McNULTY: I believe their argument is that the
 23 deficit as of 2001 was \$35 million, and our position on
 24 forfeiture is the amount of the harm or the gravity of the harm
 25 should be measured by -- if any, by the use of the funds by Near

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1 North.
 2 MR. POLALES: We want -- we want to forfeit the money
 3 that he took out of the trust improperly, not the opportunity
 4 cost that it would have cost him to go out and borrow the money.
 5 That's not a fair measure of forfeiture. That's not
 6 in accordance with the law. They want to try and mitigate the
 7 damages in a civil case, that's fine, but we're entitled to --
 8 THE COURT: Let me take a look at that.
 9 MR. POLALES: -- deficit money.
 10 THE COURT: I'm going to give the jury a chance to get
 11 some refreshments, so you can take them into the jury room,
 12 please.
 13 MR. POLALES: They're just calculating opportunity
 14 costs.
 15 (Jury exits courtroom.)
 16 THE COURT: Here you go.
 17 MS. KENDALL: The jury's determination is just to
 18 determine whether it's subject to forfeiture, and any harm would
 19 be a legal question for you to determine, not for the jury to
 20 make a determination.
 21 THE COURT: Okay. I'm going to sustain the
 22 government's objection to page 2. We'll stand in recess for
 23 about five minutes.
 24 (Recess from 3:15 to 3:25 p.m.)
 25 MS. WALSH: Your Honor --

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1 THE COURT: Hold on one second.
 2 Okay. You can be seated.
 3 MS. WALSH: Since Near North was not named as a
 4 defendant in the forfeiture count, I don't anticipate that we
 5 have any -- that we'll be participating in this part of the
 6 proceeding.
 7 THE COURT: Okay. That's fine.
 8 I just had the bailiff ask the jury what their intent
 9 is, if they were planning to go at the usual 4:30 time or if
 10 they have some other intent. So if they intend to keep going,
 11 we'll keep going as long as they want to go.
 12 How many other witnesses are there after this witness?
 13 MR. McNULTY: One, your Honor.
 14 THE COURT: Okay. And the other thing I noticed, all
 15 of a sudden, the defendant has a different verdict form than the
 16 one previously tendered on forfeiture.
 17 MR. McNULTY: That's correct, your Honor. We took a
 18 hard look over the weekend at the issues particularly raised by
 19 the Sarbello case and the scope of the government's indictment
 20 here with respect to the enterprise.
 21 THE COURT: Okay.
 22 MR. McNULTY: And think it's more appropriate to sort
 23 of company-by-company valuation --
 24 THE COURT: I just want the record to be complete on
 25 this. When I said I would use the defendant's verdict form, I

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1 was talking about the one that had been previously tendered, as
 2 opposed to one that was just tendered to me without any word
 3 whatsoever that it had been altered.
 4 MS. KENDALL: Judge, we object to the new verdict
 5 form, as well as the jury instructions, but the new verdict form
 6 is not in compliance with the law.
 7 THE COURT: We might get a chance to talk about it.
 8 MS. KENDALL: All right.
 9 (Pause.)
 10 THE COURT: What about clean copies?
 11 MR. McNULTY: Are they here yet? Yes, we have those,
 12 your Honor.
 13 Your Honor, subject to an offer of proof, which might
 14 be a good time to make it now, we're going to pass the witness.
 15 THE COURT: Okay.
 16 MR. McNULTY: And the offer of proof would be the
 17 second page of Exhibit -- Defendant's Exhibit 1, that the
 18 reduced -- the numbers that reflect interest on a compounded
 19 basis on the deficit amounts, and that would be our proof on
 20 that.
 21 THE COURT: Okay. Page 2 of Exhibit 2 will stand as
 22 an offer of proof.
 23 MR. McNULTY: Thank you, your Honor.
 24 MR. POLALES: May I ask before the jury comes back
 25 some preliminary questions?

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1 THE COURT: Well, hold on.
 2 (Pause.)
 3 THE COURT: You want some voir dire on this witness,
 4 is that what you're asking for?
 5 MR. POLALES: A little bit.
 6 THE COURT: Okay. Go ahead.
 7 MR. McNULTY: May I tender the jury instructions?
 8 THE COURT: Sure. Let me just tell you, the jury will
 9 leave at 4:30 and come back tomorrow at 9:15.
 10 MR. POLALES: Okay.
 11 VOIR DIRE EXAMINATION
 12 BY MR. POLALES:
 13 Q. Hello, Mr. Lotts. I'm Dean Polales.
 14 A. Hello.
 15 Q. Mr. Lotts, did you prepare any written documentation for
 16 your calculations other than Defendant's Exhibit 1?
 17 A. If you're referring to the calculation --
 18 Q. First page. Yeah, of the first page.
 19 A. -- of the recalculated amounts?
 20 Q. Correct.
 21 A. Yes. There's -- there is T value amortization schedules
 22 similar to when you buy a car. It's a canned program. Yes, we
 23 have that support.
 24 Q. Is that for page 2?
 25 A. That is for page 2 on the interest due, correct. And on

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1 page 1, those amounts were taken off of an Exhibit No. 72
 2 primarily and then also 108B.
 3 Q. Do you have -- did you prepare any report?
 4 Do you have any written documents, notes, typewritten
 5 material or anything else that you've prepared in connection
 6 with your engagement with Mr. Segal?
 7 A. Related to this specifically, no, we used the Kendeigh
 8 document.
 9 Q. You produced no other written material.
 10 A. In relation to these particular years, '90 through 2001 for
 11 purposes of doing this document, in light of a forfeiture
 12 hearing and producing these interests, this is what I know it to
 13 be. I have not seen any other myself.
 14 Q. Did you produce any alternative calculations at any other
 15 time with respect to any other dates or any other amounts in
 16 calculating the Premium Fund Trust Account deficit with any
 17 other methodology?
 18 A. We produced a separate PFTA calculation for 1999 in
 19 comparison to the McGladrey one.
 20 Q. Where is it?
 21 A. Well, that's -- that's the one that we -- that I was just
 22 talking about before we recessed for five minutes, which is the
 23 calculation taking the 10-31 balance and going back to 10-19.
 24 Q. Is that reflected on this exhibit?
 25 A. That's -- that's the number in 1999 that says 10,016,051.

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1 Q. And where are your workpapers for that? Do you have any?
 2 A. The one workpaper that I have is this one, and I do have
 3 some other ones for that ten million. Yes, I do have other
 4 ones.
 5 Q. Where are they?
 6 A. I have other workpapers because we also calculated it back
 7 to 10-11, from 10-11 to 10-19, which was the point in the cash
 8 in the system; and, yes, we do have workpapers for that.
 9 Q. What do you have for 10-11?
 10 A. I would have to take a look at my workpapers to refresh my
 11 memory on that.
 12 Q. Where are they?
 13 A. Well, they're not here in this room, but I have them in my
 14 briefcase.
 15 Q. Where is your briefcase?
 16 A. My briefcase is in the adjoining room.
 17 MR. POLALES: With the Court's permission, I'd ask him
 18 to get it.
 19 THE COURT: Okay. Let me just stop because we have a
 20 jury waiting.
 21 MR. POLALES: I know.
 22 THE COURT: And the jury has been surprised. Where
 23 are we headed with this?
 24 MR. POLALES: I want to know whether there's any other
 25 material, written material, that reflect on the methodology.

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1 This is the first time we've seen this calculation. We were
 2 unaware of what it would be.
 3 I think he's being tendered as some kind of expert,
 4 and we have no reports or any other workpapers or information
 5 with respect to how he got to where he is.
 6 THE COURT: He's indicated that there is no report.
 7 The defense didn't have any indication they'd be in a forfeiture
 8 proceeding but, nevertheless we are. So with that, we're going
 9 to conclude this.
 10 Bring out the jury, Michael.
 11 (Jury enters courtroom.)
 12 THE COURT: Please come in and be seated, ladies and
 13 gentlemen.
 14 Let me again apologize for this unexpected development
 15 that you're in these proceedings. We will recess at 4:30. Once
 16 we conclude this witness, I think there's one other witness, and
 17 then we will take very brief arguments on this issue, and I need
 18 to instruct you again, which follows the norm that I will read
 19 the instructions to you. We will get that all done tomorrow for
 20 sure.
 21 Let me just say right now, before you rush out of here
 22 at 4:30, it's going to be vitally important that you continue to
 23 follow my admonitions tonight. I do expect there's going to be
 24 a lot of publicity about your verdict. Avoid it. Have somebody
 25 else keep these media accounts, but you need to avoid the media

Lotts - cross by Polales

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1 accounts.
2 Don't discuss the case with anyone so as not to taint
3 any verdict that you render on the forfeiture issue, and don't
4 do any independent investigation. I know you have other things
5 to do.
6 So that's all I'm going to say. The defense has
7 tendered the witness, so we're now to the government's
8 cross-examination.
9 The Court recognizes Mr. Polales. You may proceed.
10 MR. POLALES: Thank you, your Honor.
11 CROSS-EXAMINATION
12 BY MR. POLALES:
13 Q. Mr. Lotts, when were you engaged to work with Mr. Segal?
14 A. We were engaged to work with Near North Insurance Brokerage
15 specifically in -- beginning in August of 2002.
16 Q. Had you done any work for Mr. Segal before that?
17 A. No, I did not.
18 Q. What was your initial engagement?
19 A. Our initial engagement, beginning at the end of August 2002
20 when we first came in with our staff, was to go through cash
21 accounts receivable, accounts payable, general ledger
22 reconstruction work, going back through 2001 and 2002, to try to
23 get the books in a reasonable order so the business could have a
24 better understanding of where their financial position was and
25 so proper calculations could be made because when we came in and

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1 took a look at things, it was very clear that for many, many
2 years, upon beginning our reconstruction, that the books and
3 records of Near North Insurance Brokerage were not in good
4 shape.
5 Q. And who hired you?
6 A. Who hired me?
7 Q. Yeah.
8 A. Our engagement letter, if I recall, was signed at our first
9 meeting in late August, around the 17th in that year, by John
10 Harney, who at the time I believe was one of the chief
11 executives there.
12 Q. Did Mr. John Harney ever ask you to run out the PFTA deficit
13 from the old PFTA that was in existence but no longer used as
14 of -- as I understand it, and you tell me if I'm incorrect --
15 September 1st, 2001?
16 A. No, he did not.
17 Q. And did you ever suggest that it be run out so you could
18 find out just how much money had been missing from that PFTA and
19 was needed in order to pay out the carriers' premiums that had
20 been booked to that PFTA prior to September 1st, 2001?
21 A. It was not explained to us that way. Can you rephrase the
22 question, please?
23 Q. Well, I'll ask it again maybe a different way. It seemed
24 pretty clear to me.
25 Did you ever suggest to your employer, Near North

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1 National -- Near North Insurance Brokerage -- by the way, was
2 that your employer, or did Near North National Group employ you?
3 A. Our engagement letter was signed basically by Division 50,
4 which was NNIB.
5 Q. And John Harney was --
6 A. They were not our employer.
7 Q. All right. Did you ever suggest to them that to calculate
8 the deficit that was in existence as of September 1st, 2001, you
9 would want to do some work on that?
10 Did you ever suggest that it be run out, that it be
11 burned off, that you ever calculate a deficit as of
12 September 1st, 2001?
13 A. No, we did not.
14 Q. All right. So you took direction from them. You didn't
15 make any suggestions of your own?
16 A. No. We made suggestions of our own, but that was not one of
17 them.
18 Q. Okay.
19 A. We were -- we were primarily responsible for getting their
20 cash in order. We went back and we found, beginning in as far
21 back as 1999, which was -- we made a schedule, in fact, '98 and
22 '97, we would find the cash off anywhere from 2 and \$4 million,
23 generally in favor of Near North, with a line item on the bank
24 recs that was our main focus that said cash on deposit at bank
25 not recorded in the books, which was where we began was with

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1 cash. We did not go into the PFTA until as of late.
2 Q. Oh, I understood you to say that as of August 2002, you
3 looked at A/Rs and A/Ps, too --
4 A. Right.
5 Q. -- and you went backwards to try and reconstruct these
6 books, right?
7 A. Correct.
8 Q. You're in a forensic accounting firm, aren't you?
9 A. That is not my firm's primary thing. I'm an auditor by
10 trade, not a forensic auditor.
11 Q. What do you spend most of your time doing?
12 A. Public audits of non-public companies.
13 Q. This is forensic accounting what you're doing here.
14 A. Correct.
15 Q. This is for purposes of litigation, right?
16 A. Well, this may be for purposes of litigation, but our sole
17 purpose when we came on board was to take a look at the books
18 and get them in line and get the numbers up to date, find out
19 what differences were, very similar to what McGladrey had
20 purported to do, but they did not.
21 Q. Mr. Lotts, did you understand the question that I asked you?
22 A. I understand you asked me what it is we were doing.
23 Q. I asked you this is forensic accounting work you're doing
24 here, isn't it?
25 A. You could argue it was a form of it. I was doing

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1 reconciliations.
2 Q. Right now, in connection with this exhibit, you're doing
3 forensic accounting, right?
4 A. I'm trying to back into a number of another accounting firm.
5 Q. All right, Mr. Lotts.
6 Mr. Lotts, how much has your firm been paid by Near
7 North over the course of time that you were assisting them since
8 August of 2002?
9 A. I do not know the exact number.
10 Q. How about a ballpark estimate, do you know that?
11 A. A ballpark estimate, as I said, it would just be an
12 estimate, but --
13 Q. No, that's the question I asked you. Give me an estimate,
14 the best you know.
15 A. 1.2 million.
16 Q. How many folks have you had working on it from your firm?
17 A. At the beginning, we had anywhere between three to five
18 people; and then it's pared down for the last year, where it's
19 basically one person besides myself.
20 Q. And who's the other person?
21 A. Another staff member in my office.
22 Q. What's his name or her name?
23 A. Her, Jill Skidmore.
24 Q. And what has she been assigned to do? Working under your
25 supervision?

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1 A. Correct.
2 Q. And what has her assignment been?
3 A. As I discussed, working on cash receivables and payables in
4 how it relates at Near North and getting the books in line.
5 Q. Is she still working for Near North?
6 A. Yes.
7 Q. And is she also working for Mr. Segal?
8 A. She's not working directly for him. She's working and
9 employed -- I mean not employed by Near North, but we're
10 contracted with Near North.
11 Q. And what's her current assignment?
12 A. Her current assignment right now, the last few weeks, has
13 been to go through these calculations here that I've been
14 discussing regarding the problems that we've seen at McGladrey &
15 Pullen.
16 Her assignment also has been to go back to the
17 beginning of McGladrey & Pullen's workpapers and determine
18 whether or not their workpapers support the numbers; and,
19 finally, to determine if the schedules that they have in their
20 workpapers in terms of what they were working on would even
21 allow them to be able to calculate the numbers, which did not
22 happen. They were not there.
23 Q. So I take it in connection with all of your work since
24 August of 2002, you have not sought out Ron Heitzman to
25 interview him in connection with your work.

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1 A. That is correct.
2 Q. And have you sought out Milton Marcotte to interview him in
3 connection with your work?
4 A. No, we did not.
5 Q. And have you sought out anyone else at McGladrey & Pullen to
6 interview them in connection with your work?
7 A. No, we did not.
8 Q. So what you did was you took some of the documents that you
9 had available to you and asked the question whether or not the
10 documentation that was existing at the time you got it was
11 sufficient to back up their numbers, is that right?
12 A. I believe, in recalling how it worked as far as McGladrey &
13 Pullen, the company may have asked them if they have other
14 workpapers. We went through their workpapers, but I did not
15 contact them.
16 Q. So that's a no, you didn't seek out any additional
17 information from McGladrey & Pullen.
18 A. Not from them directly, no.
19 Q. Well, did you ask the company to seek it out directly from
20 them?
21 A. I don't recall that.
22 Q. That's a no, isn't it?
23 A. I'm not sure. I don't believe so. It's been a long time
24 that we've been there working on this.
25 Q. Right. And did you ask -- did the company tell you that

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1 they went to McGladrey & Pullen and said give us the information
2 that they need to attack or evaluate your work?
3 A. I know that there was a couple boxes, or at least three or
4 four boxes of McGladrey & Pullen papers, I wouldn't call them
5 workpapers. I'm not sure how they were obtained. Rumor has it
6 maybe they were under subpoena. I'm not sure of the exact --
7 Q. Right, in connection with this litigation, right?
8 A. I believe so, yes.
9 Q. Sir, in connection with your calculations of McGladrey &
10 Pullen, you went back to 1999 to look at a deficit number that
11 they gave of about \$23.8 million, is that right?
12 A. Yes.
13 Q. And you looked at one side in order to cut that down, didn't
14 you?
15 A. Can you clarify "one side"?
16 Q. Don't you know what I mean?
17 A. I'd like it clarified so I can answer the question
18 appropriately.
19 Q. Well, on your direct-examination, you said you looked at the
20 accounts payable number of \$77 million, didn't you?
21 A. Correct. We focused on that one part of the calculation --
22 Q. You focused on one side, didn't you?
23 A. Yes.
24 MR. McNULTY: Objection, your Honor, if he can
25 complete his testimony.

Lotts - cross by Polales

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1 THE COURT: Okay. Let him answer the question.
2 Go ahead.
3 THE WITNESS: We focused on one part of the
4 calculation, but we did look at other parts, cash and
5 receivables in particular, because that was the way they
6 calculated it, even though it wasn't correct.
7 BY MR. POLALES:
8 Q. Did you understand my question, sir?
9 A. Yes. You asked if we only looked at one part. I'm saying,
10 no, we did not.
11 Q. The last question I asked you was you focused on one side,
12 isn't that right?
13 A. Our primary focus was on one side, but we looked at all
14 sides.
15 Q. And when you testified on direct-examination, you didn't
16 mention anything about A/R, did you, in connection with --
17 A. No, but I'd be happy to.
18 Q. Well, you know, I'm sure Mr. McNulty can ask you on
19 redirect. Right now, I have the opportunity to ask you the
20 questions that I want to ask you.
21 A. Okay.
22 Q. Okay?
23 So when you focused on one side, you cut the McGladrey
24 & Pullen number down to \$10,016,051?
25 A. Correct.

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1 Q. Do I have it right?
2 A. \$10,016,051, correct.
3 Q. Okay. And that includes direct-bill receivables, doesn't
4 it, the way you looked at it?
5 A. I don't believe it includes direct bill and receivables, no.
6 Q. Would you know, or do you believe?
7 A. No, I -- I know that it does not. I know it does not. I
8 am -- I am comfortable that it does not based on the workpapers
9 that I looked at.
10 Q. Which you brought with you today so that we can see the
11 backup for your opinion?
12 A. Yes, I have workpapers with me if you'd like to see them.
13 Q. And they're in some briefcase somewhere, right?
14 A. I believe they're in that room, yes. They may also be out
15 here.
16 Q. The first time we've ever talked is today, is that right?
17 A. That's correct.
18 Q. And we haven't had the opportunity to go through any of your
19 workpapers in connection with your testimony, have we?
20 A. No, you have not.
21 Q. No.
22 A. You did subpoena me, but I was -- I was not asked to
23 testify.
24 Q. And you didn't provide any workpapers, did you?
25 A. I have not provided any workpapers here to you, no.

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1 Q. Now, you don't actually know the basis for McGladrey &
2 Pullen's calculation of \$23.8 million deficit, do you?
3 A. We understand how they calculated it, but we -- when you use
4 the word "basis," if you're getting at the fact that we don't
5 know exactly where they got the numbers from, that is correct.
6 Q. But you say you had access to the GLs, is that right?
7 A. That is correct.
8 Q. And you went back and ran them.
9 A. That's correct, many months.
10 Q. And then you backed into their figure, is that right?
11 A. Because it's the 19th, yes, and because of the computer
12 crash.
13 Q. Now, this \$8 million figure that you have here in one of
14 your calculations --
15 A. Billings, correct.
16 Q. -- billings, were you able to match what those billings were
17 with particular policies that might have been booked earlier?
18 A. I don't believe that that was done in this particular
19 instance.
20 Q. Because the company books weren't really set up to do that,
21 right?
22 A. The company books and the reliability of the information
23 back then, it was not set up to do that, no.
24 Q. Well, sir, everything that you say about reliability depends
25 on something somebody told you and your review of material that

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1 was available to you, what is it now, June of 2004?
2 A. Yes.
3 Q. And you just started working on this two weeks ago?
4 A. We've worked on this for some time.
5 Q. The McGladrey & Pullen number.
6 A. Yes, on this particular worksheet right here, we have worked
7 on it for some time.
8 Q. How much time is some time?
9 A. I believe we started working on this particular calculation
10 since the time that that one piece of evidence, the one sheet
11 that shows the 23.8, since the time that that was motioned as
12 exhibit, we started that weekend on looking at those numbers.
13 Q. So sometime in 2004?
14 A. Yes.
15 Q. Post-April 19th when the trial started --
16 A. Correct.
17 Q. -- right?
18 And you didn't do a thing to criticize McGladrey's
19 numbers or evaluate them prior to that?
20 A. Only in discussions.
21 Q. And McGladrey was there in 1999 all year, is that right?
22 A. They were there beginning, from my knowledge of the exhibits
23 when they started working on the accounting, was in 1999, but I
24 was not able to find an engagement letter that ever said they
25 were to work on the accounting.

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1 Q. Okay. And you mentioned an exhibit number when you were
2 talking about what you actually looked at, right?
3 A. Okay.
4 Q. Did you on direct-examination?
5 A. I looked at many exhibits of theirs.
6 Q. Didn't you mention one in particular?
7 A. I think 355, which was quite voluminous with their
8 disjointed progress reports that don't back these numbers up.
9 Q. You really like their work, don't you?
10 A. I think their work was absolutely horrific, given the
11 situation.
12 Q. Given what situation?
13 A. Given the situation when they came in of the accounting and
14 what they knew based on the fact that the accounting system had
15 crashed in October and what they knew about the failed
16 conversion, their lack to work to make sure that the conversion
17 went smoothly and that the beginning numbers in '99 agreed with
18 the 12-31 numbers in '98, and that before they start doing bank
19 recs and before they start tying out receivables and payables
20 and before they ever do a calculation saying that they're
21 \$24.8 million out of trust at NNIB, that they go through and
22 that they actually look at the payables and they tie things out
23 to carrier statements and they do the kind of reconciliation
24 that is being professional in our industry.
25 Their last document dated November 4th, 2000 -- or

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1 dated November 4th, 1999, identifies that they are only
2 50 percent of the way through on insurer payables from
3 January 1st to May 31st, 1999. They still said they hadn't even
4 posted the 1998 adjustments, which were over \$6 million per
5 their workpapers, which tells me that there's no way that they
6 could have calculated a calculation of 24.8 using cash and
7 receivables minus payables to come up with a net trust position
8 deficit.
9 It was impossible based on the fact that they
10 acknowledge in their workpapers that they were 50 percent
11 completed on their status report.
12 Q. So when I asked you the question you didn't really like
13 McGladrey & Pullen, you could have answered that with a yes,
14 right?
15 A. I have always regarded McGladrey & Pullen as a very fine
16 accounting firm until I saw the quality of the work that was
17 performed on this engagement by them.
18 Q. Okay. So I'll ask you again. When I asked you didn't
19 really like McGladrey & Pullen, you could have answered that
20 with a yes, right?
21 A. It's more detailed than that. It's not a like or a dislike.
22 It's the quality of their work product in this engagement.
23 MR. POLALES: Your Honor, I don't think his last three
24 answers have been responsive, and I'd move to strike them.
25 THE COURT: I'm not going to strike them. I'm also

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1 going to ask you to refrain from argumentative questions.
2 Ask your next question.
3 BY MR. POLALES:
4 Q. Let me show you Government Exhibit 355. Are these the
5 voluminous work papers you're talking about?
6 A. McGladrey & Pullen's workpapers, yes, they are. This is the
7 exhibit.
8 Q. Now, sir, you call those workpapers. Those are weekly
9 agendas, aren't they?
10 A. This is what they had for workpapers. These are weekly
11 agendas, but this is all they had for workpapers to support
12 their positions.
13 Q. That's all you saw.
14 A. That's all that I saw, correct.
15 Q. So you really don't know what they had, do you?
16 A. My understanding was --
17 MR. McNULTY: Your Honor, objection.
18 BY THE WITNESS:
19 A. -- is that we had full access --
20 THE COURT: What's your objection?
21 MR. McNULTY: Argumentative, your Honor.
22 THE COURT: Okay. That's overruled.
23 Go ahead, answer.
24 BY MR. POLALES:
25 Q. I didn't ask you your understanding now, sir.

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1 A. I'll tell you what the fact was --
2 Q. Tell me what you knew.
3 A. Okay. What I knew was is that it was -- and I have to use
4 the word understanding because I don't want to answer this part
5 yes or no --
6 Q. Then I'll withdraw the question.
7 You did not have personal knowledge with your eyes of
8 what McGladrey & Pullen had in 2001, did you?
9 A. 2001, they were not on the engagement, sir.
10 Q. 1999.
11 A. If they had workpapers in '99, I did not have knowledge, nor
12 did I see them. I'm looking at the ones currently available.
13 Q. That's my question.
14 Did you look at Mr. McNichol's spring calculation of
15 the deficit of \$29 million?
16 A. I recall it just vaguely, yes.
17 Q. Did you do any work on that?
18 A. I don't believe so, no.
19 Q. The deficit changes from day-to-day, is that right?
20 A. At any given day, it can be a different number, but it
21 wasn't always a deficit.
22 Q. Right. But I asked you about a deficit.
23 A. And my answer is is that it was not always a deficit, so I
24 wouldn't want to answer it in that broad of terms.
25 Q. The deficit changes from day-to-day when it's in deficit in

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<p style="text-align: right;">Page 5962</p> <p>1 the PFTA, isn't that right? 2 A. If one is in deficit, yes, it does change. 3 MR. POLALES: Can I have that other document, please? 4 BY MR. POLALES: 5 Q. So the way you calculated it was you took the insurance 6 payable side of the M&P numbers at 10-31-99 and found that you 7 were \$50,000 different, is that right? 8 A. 10-31-99, correct. 62,74 versus 62,79. General ledger NNIB 9 run to M&P per an Excel spreadsheet or Lotus 1-2-3 that they 10 had, correct. 11 Q. Did you ever figure out where the 50,000 difference was? 12 A. No. It was not material for purposes of our calculation. 13 Q. Then you took payments that were made of \$7,553,772, and 14 your numbers agreed or NNIB's general ledger agreed with the M&P 15 numbers? 16 A. The 7.5 million on both sides was per the general ledger. 17 M&P was -- that was not available. We put it to the left side 18 underneath the 62 million to come down to a relevant number 19 apples for apples. 20 Q. Why did you do that? 21 A. Well, the only way that we could compare, as I said apples 22 to apples, earlier on a recalculation at 10-19 is to take the 23 payments made between 10-20 and 10-31 and add those back to the 24 10-31 payable number, and so we needed to do that to both sides. 25 Q. Can you explain that a little bit more?</p>	<p style="text-align: right;">Page 5964</p> <p>1 Q. Then you've got billings, 10-20 to 10-31. What does that 2 number reflect or represent? 3 A. That's a quite clearly, I think, just a subtraction, taking 4 the 10-31 number to work backwards. 5 You've got to take the payable at the end of the year 6 and subtract it to simply get back to the 10-19 number, so we 7 applied it to both sides. 8 Q. Well, when you say billings, what do you mean? 9 A. That would have been basically amounts to, the way this 10 works, this calculation and the way we're doing it here, and the 11 amounts that were due to carriers. Money that came in from -- 12 from clients, so we subtract it from the 62.7. 13 Q. Money due to carriers or money that came in from clients? 14 A. Money that came in from clients, I'm sorry. 15 Q. So billings, that's an increase in accounts receivable, is 16 that what you're talking about? 17 A. Let me take a look at it a minute here. 18 The billings are net premiums, and they don't include 19 commissions. 20 Q. Okay. I just don't understand what you mean by billings. 21 Is that bills that you -- what is that number? 22 A. Billings is defined by the general ledger in the IP account. 23 The activity that increased the account from 10-19 to 10-31 has 24 to be subtracted from the insurer payables account to get back 25 to 10-19.</p>
<p style="text-align: right;">Page 5963</p> <p>1 A. The -- 2 Q. You mean the payments out of the PFTA? 3 A. The -- 4 Q. Checks written to carriers, is that what you mean? 5 A. Yes, the payments written to carriers needed to get added 6 back to back into a 10-19 number. Likewise, billings needs to 7 get subtracted. 8 So we took numbers from the general ledger, exported 9 them or, rather, we had the client export them to Excel, and 10 that's where the 7.5 million and the 8.4 million tie out to the 11 general ledger in the period 10-20 to 10-31. 12 Q. So in the 11 days from 10-20 to 10-31, \$7 million went out 13 of the PFTA, is that right? 14 A. Yes. 15 Q. Okay. I take it even though you had the general ledger, you 16 weren't able to match those with particular policies sold. 17 A. We did not. 18 Q. So you don't know what policies were being paid for in that 19 \$7,553,772 figure, right? 20 A. Correct. From reviewing them, they were just, you know, 21 very, very large amounts that were being paid to carriers, as 22 was typical for the client. 23 Q. Because they gross the amount due for a bunch of policies 24 and send a check to AIG or Firemen's, right? 25 A. I believe so, yes.</p>	<p style="text-align: right;">Page 5965</p> <p>1 We're backing into the number using McGladrey & 2 Pullen's number of 62 million at the end of the month, taking 3 the general ledger activity that added to the insurer payables, 4 subtracting it back out to get to the 10-19 number. We're doing 5 it on both sides to be fair to their equation. 6 Q. So it's not an account receivable from a customer. 7 A. No. 8 Q. When you say billings, it means what, a bill received by 9 NNIB from a carrier? 10 A. The billings here that's being subtracted from 10-31 from 11 both NNIB to M&P is the increase in the insurer payables, which 12 is new bookings which was originally the journal entry or the 13 accounting entry, to put it in simple terms, was an increase in 14 the receivable and an increase in the payable between 10-19 and 15 10-31. 16 So that would be new business that was written between 17 10-19 and 10-31. We have to subtract it from the payables. 18 When they -- when they -- when they issue a policy or when a 19 client comes in and a policy is issued, you increase the 20 receivable and you increase the payable at that same time. So 21 this is being subtracted out, so this is -- 22 Q. Did you do -- 23 A. -- the issuance of new policies. 24 Q. Did you do the work yourself? 25 A. It was done by my staff under my guidance.</p>

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1 Q. So did you look at any of the underlying GLs?
2 A. I looked at the general ledgers, yes, at the totals for the
3 62,7 and the detail that made it up.
4 Q. Did you go back over the numbers and assure yourself they
5 were correct before you sponsored the exhibit during this trial?
6 A. Yes.
7 Q. Did you do all the calculations?
8 A. Yes.
9 Q. Are you sure you remember what billings 10-20 to 10-31 is
10 now that you've thought about it?
11 A. I'm sure of what it represents on this schedule, yes.
12 Q. Just not sure how you got there.
13 A. Well, I'd have to -- I'd have to look at my particular
14 ledgers.
15 Q. Okay.
16 A. Or the ledgers --
17 Q. What's an IP adjustment?
18 A. -- of NNIB.
19 Q. What's an IP adjustment?
20 A. The IP adjustment was a number that was both in McGladrey &
21 Pullen's workpapers, as well as part of the general ledger. It
22 was not a number specifically that we studied for purposes of
23 this, but it was needed on both sides to reconcile back to the
24 actual 10-19 number.
25 Q. So did you ever figure out why M&P had a \$77 million 10-19

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1 number and you come up with 63 million?
2 A. The only argument that we could come up with with taking a
3 look at it was that due to the computer crash and the fact that
4 there was relatively a week where activity was not able to get
5 entered, that it may have caused something to happen in their
6 A/P.
7 It also could be that they were not looking at the
8 correct number. We never could determine it. What we do know
9 is what Near North's general ledger showed then at 10-31 and
10 what ours shows today in 2004 for 10-31 when run now.
11 Q. Did you run the numbers for 10-11?
12 A. We did.
13 Q. What was the deficit then?
14 A. I don't recall.
15 Q. Got it written down somewhere?
16 A. I don't here, but I could possibly look at my workpapers and
17 see if I've got that schedule available.
18 Q. Is it bigger or smaller?
19 A. I don't recall.
20 Q. Did you ever ask the question whether or not the 10-11
21 numbers were the numbers that M&P were using? Did you ever ask
22 yourself that question?
23 A. We've asked ourselves just about every iteration of a
24 question that you can imagine as to how they could have come up
25 with the 77 million, but nothing in the general ledger ever

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1 supported it.
2 Q. Didn't ask M&P though.
3 A. We did not ask M&P.
4 Q. No.
5 So when you were asking yourself all those questions,
6 did that include whether their numbers were based on a 10-11
7 run?
8 A. From the work they did and the little documentation that I
9 had from the exhibit that went to court, it was quite clear that
10 on 10-20, they put together the -- the 10-19 numbers. I did not
11 ask myself if they had used the October 11th numbers by chance.
12 I do recall that whatever it was on October 11th was not a
13 23-plus-million-dollar deficit. That I do recall.
14 Q. Close?
15 A. I don't know without looking at my workpapers. I don't
16 believe so.
17 THE COURT: Mr. Polales, do you want this witness to
18 look at his workpapers to get the answer to this question?
19 MR. POLALES: If it's easily done.
20 THE COURT: Well, what we will do is recess for the
21 evening and let him look at his workpapers overnight, and then
22 we'll have the answer.
23 Ladies and gentlemen, I'm going to send you home. I
24 know you thought you were going home some time ago, but tomorrow
25 we will conclude, and I expect to make you a deliberating jury

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1 again before lunch. So get a good night's rest. Don't discuss
2 this case with anyone. Don't let anyone discuss this case in
3 your presence. Let me know if you run into any problems on that
4 score. Avoid media contact.
5 Don't do any independent investigations, and your jury
6 service will be concluded tomorrow. There are no hidden
7 surprises at this point. So have a good evening, and I will
8 give you the usual quiz tomorrow morning.
9 Good night.
10 (Jury exits courtroom.)
11 MR. POLALES: I move for the production of his
12 workpapers.
13 THE COURT: Okay. And that's granted.
14 Take a look at your workpapers, and they're going to
15 ask for a copy of them, and take a look at this issue so that we
16 can get this done tomorrow morning.
17 MR. POLALES: As I understand it, Judge, the witness
18 is ours now and can't consult with defense.
19 THE COURT: That's true. And there's one more witness
20 for the defense, right?
21 MR. REIDY: Correct, Judge.
22 THE COURT: Okay. Something else?
23 MR. REIDY: Judge, I just want to make sure that
24 Mr. Segal is out on bond.
25 THE COURT: Okay. I'm going to come back to that

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1 issue.

2 You're excused. I'm going to recess for at least five

3 to ten minutes. I'll be back out here to talk about any jury

4 instruction issue and the bond issue.

5 (Recess from 4:07 to 4:23 p.m.)

6 THE COURT: Okay. We can talk about the jury

7 instructions or the verdict form. You want to make a record as

8 to any objections on the instructions?

9 MS. KENDALL: We do, Judge.

10 Our primary point is that the defendant's proposed

11 instructions do not list at all the theory of liability under

12 (a)(2), which the government's instructions submitted to the

13 Court do address. It is in the forfeiture allegation in the

14 indictment.

15 THE COURT: Okay.

16 MS. KENDALL: Our instruction --

17 THE COURT: Your instruction would be which one?

18 MS. KENDALL: Our instruction, when I'm referring to

19 Instruction No. 2, if you look to the third page of that, it

20 says, "When a defendant conducts affairs of an enterprise in

21 violation of Section 1962," the --

22 THE COURT: Is it Instruction 3?

23 MS. KENDALL: It is, Judge, thank you.

24 THE COURT: Okay. Go ahead.

25 MS. KENDALL: And their objection to that -- their

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1 proposed one doesn't reference it. "When a defendant conducts

2 the affairs of an enterprise in violation of Section 1962, the

3 defendant's interest in the enterprise is subject to forfeiture

4 even though the enterprise may not be tainted by racketeering

5 activity."

6 And that is critical because their Proposed No. 2 has

7 the jury actually looking to the proportionality of the

8 forfeiture, and that is not a decision for the jury. That's a

9 decision for this Court once they find that the property is

10 subject to forfeiture.

11 And under the statute itself, the defendant's interest

12 in the enterprise is subject to forfeiture under that theory,

13 under the statute itself. So we don't think that's a correct

14 statement of the law.

15 THE COURT: Okay.

16 MR. McNULTY: Your Honor --

17 THE COURT: So you think that the Defendant's 3 is

18 inaccurate, and you would prefer your 3.

19 MS. KENDALL: Well, yes, Defendant's 3 is -- well,

20 Defendant's 3 added the "but for" test, which is from the

21 Seventh Circuit case, and I believe that if you add that to the

22 government's instruction which keeps (a)(2), the subsection of

23 liability (a)(2) in --

24 THE COURT: Right.

25 MS. KENDALL: -- that that would be okay if your

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1 Court's ruling is that the "but for" test needs to be addressed;

2 but what is improper then is to add the proportionality

3 discussion.

4 THE COURT: Well, doesn't the Seventh Circuit indicate

5 that it needs to be included?

6 MS. KENDALL: In the "but for" test?

7 THE COURT: Uh-huh.

8 MS. KENDALL: Well, that is prior to the Supreme

9 Court's decision; and here, when we're looking at just the

10 section of whether the defendant's interest in the enterprise is

11 subject to forfeiture, just under (a)(2), that is not a

12 determination for the jury to have.

13 THE COURT: Okay. Mr. McNulty.

14 MR. McNULTY: Your Honor, we did propose, and it may

15 not have been clear from our proposed instruction, an addition

16 to their Instruction No. 3, which added the language that we're

17 referring to, and so that we were proposing --

18 THE COURT: I see. Okay. So you're proposing to

19 insert into their 3.

20 MR. McNULTY: Yes, your Honor.

21 THE COURT: And, Ms. Kendall, you believe that the

22 insert is not required at this point.

23 MS. KENDALL: That's correct, Judge. And more

24 importantly, the next step to that, which is their next Proposed

25 Instruction No. 2, which talks about proportionality, would go

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1 to that analysis, which is really an Eighth Amendment argument.

2 THE COURT: Why do you think, Mr. McNulty, that the

3 insert is required?

4 MR. McNULTY: Your Honor, it is -- if you look at the

5 insert, and I think the title of this is Defendant's Proposed

6 Addition to Instruction No. 3 --

7 THE COURT: Right.

8 MR. McNULTY: -- it does go to just the "acquired or

9 maintained" portion, if the defendant would not have acquired or

10 maintained his interest but for the racketeering activity, the

11 property is subject to forfeiture.

12 THE COURT: Okay. I will allow the proposed insert,

13 but we will use Government's 3 with the insertion.

14 And is that the way that you tendered the clean

15 instruction, or is it not?

16 MR. McNULTY: I may have lost something in the

17 translation as it was coming over from our office, your Honor.

18 Can I take a look?

19 THE COURT: Okay. You might want to take a look at it

20 because I don't think it is.

21 MS. KENDALL: I don't have a copy of that.

22 THE COURT: Yeah.

23 MR. McNULTY: I think it does not, your Honor. So

24 we'll correct that tonight.

25 THE COURT: Okay. You correct that.

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1 Anything else on the jury instructions?
2 MS. KENDALL: Then we object, Judge, to their proposal
3 for the proportionality test, which is their Defendant's
4 Proposed Instruction No. 2.
5 THE COURT: Right.
6 MS. KENDALL: Which is just not a consideration for
7 the jury.
8 THE COURT: Okay. Mr. McNulty.
9 MR. McNULTY: Your Honor, we believe that that is an
10 appropriate consideration for the jury.
11 As a matter of fact, Rule 32.2 does talk about the
12 extent to which the nexus that the government must prove to the
13 property that they're seeking to have forfeited, with particular
14 reliance, your Honor, on the Sarbello case, Sarbello from --
15 THE COURT: From the Third Circuit.
16 MR. McNULTY: -- from the Third Circuit, and that's a
17 case where it lays out in a lot of ways just like this case, the
18 government has charged an enterprise that's very broad with a
19 lot of companies. The jury in that case was instructed to make
20 a finding as to the percentage or the amount of the taint that
21 touched the entire enterprise, and that that was the appropriate
22 way to preserve the -- defendant to preserve the
23 proportionality.
24 THE COURT: At this point, my view is to hew to my
25 initial ruling and to give Defendant's Proposed 2, but I'll take

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1 another look tonight at the Sarbello case to make sure it stands
2 for the proposition cited.
3 MS. KENDALL: And also just a review, possibly, of
4 Rule 32.2, where we're looking simply to the nexus to the
5 property and the defendant.
6 THE COURT: Okay.
7 MS. KENDALL: Our final objection, Judge, is to the
8 standard of proof. It is the government's position that in the
9 Seventh Circuit, it is not beyond a reasonable doubt. It is by
10 a preponderance of the evidence.
11 They've cited to a Third Circuit ruling for that
12 and --
13 THE COURT: Okay. That's your instruction --
14 MR. McNULTY: No. 1, your Honor.
15 THE COURT: Government's 1? No, your instruction is
16 beyond a reasonable doubt.
17 MR. McNULTY: Yes, your Honor, that's true. It was
18 government's --
19 THE COURT: The government's instruction was which
20 one? Citing the preponderance of the evidence.
21 MR. McNULTY: I think it was the Government's 1, as
22 well.
23 MS. KENDALL: It is No. 2, Government's No. 2.
24 THE COURT: Okay. So it's 2, and you're relying on
25 Libretti from the Supreme Court --

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1 MS. KENDALL: That's right.
2 THE COURT: -- in 1995.
3 MS. KENDALL: Right. And there is case law from other
4 circuits that has relied on the burden of proof being by a
5 preponderance of the evidence, and their opinion that they're
6 citing to is a Third Circuit case for the beyond a reasonable
7 doubt.
8 THE COURT: Your Third Circuit case, Mr. McNulty is --
9 MR. McNULTY: Palulo, your Honor. Actually, it's
10 Palulo and Voigt, as well, your Honor. V-O-I-G-T.
11 THE COURT: What is -- hold on. Palulo and what other
12 case?
13 MR. McNULTY: United States versus Voigt, 89 F.3d
14 1050.
15 THE COURT: Another Third Circuit case.
16 MR. McNULTY: Yes, your Honor.
17 THE COURT: And what does the Seventh Circuit say,
18 preponderance, right?
19 MS. KENDALL: They haven't --
20 MR. McNULTY: They haven't --
21 MS. KENDALL: They haven't ruled.
22 MR. McNULTY: They haven't ruled.
23 MS. KENDALL: Well, we're citing to the Supreme Court
24 decision, which says that forfeiture, of course, is a sentencing
25 provision and is not part of the guilt phase, which would bring

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1 us to the preponderance of the evidence standard.
2 THE COURT: And the Seventh Circuit has never ruled on
3 this precise point.
4 MS. KENDALL: No.
5 THE COURT: Okay. I'll take another look at that
6 issue, that's the one that I'll reserve on, and I'll let you
7 know where I stand first thing in the morning. We will start up
8 at 9:15.
9 Now let's go to the bond issue. Does the government
10 want to say anything more on why Mr. Segal should be taken into
11 custody.
12 MR. POLALES: May I have a moment?
13 THE COURT: Sure.
14 (Pause.)
15 MR. POLALES: Your Honor, I think given the jury
16 verdict and the amount of time that Mr. Segal can reasonably
17 anticipate being exposed to, that is, the potential risk to him,
18 with the forfeiture allegations ongoing, you have to view with a
19 very jaundiced eye, given the evidence you've heard in this
20 case, any my word is my bond argument by Mr. Segal. He has
21 conducted himself in a way that demonstrates that he is not
22 worthy of the Court's trust with respect to the business for
23 many years, and he's now in a much different position than he
24 was before the verdict because obviously before the verdict, he
25 was not going to face what now I think to a reasonable person,

1 including Mr. Segal, would appear to be inevitable incarceration
2 for a considerable period of time.

3 Given his age, given his station in life, and given
4 the many opportunities that he would have to remove himself to a
5 place beyond the jurisdiction of the United States, to a place
6 that would not extradite, to live in a place where his family
7 could visit him not under the strictures of a confinement, given
8 the business interests that Mr. Segal has, one, for example, as
9 I understand it, I may stand corrected, but as I understand it,
10 for example, P.J. Clarke's, a very nice operation that has been
11 transferred to his wife and son generate sufficient income for
12 him to live very comfortably and take an early retirement.

13 And I think the choice between an early retirement
14 outside and an early retirement inside is not one that this
15 Court should bet on Mr. Segal's word on. If we are successful
16 in connection with the forfeiture or if we are not, given the
17 fines and the statements that I understand Mr. Segal to have
18 made either directly or through his spokesman with respect to
19 the purported statements in the press that Near North is a shell
20 of its former self, given the fact that he has significant debt
21 to Firemen's, AIG and LaSalle, the exposure that the secured
22 property has to those creditors, it seems to me that Mr. Segal
23 has very little incentive to surrender, to face what would be a
24 very significant sentence.

25 And, so, Judge, when you consider the fact that the

1 verdict changes the landscape, legally and factually, you've
2 heard the evidence; and while the case was very well tried by
3 the defense and hotly contested by Mr. Segal, I think it's fair
4 to say that the evidence in the case was very, very strong, and
5 the likelihood of any relief that would get him out from under
6 the exposure that he now has, he would have to be hoping for a
7 miracle. And I don't think that's how a very smart, very
8 business-savvy man will look at his odds in this case.

9 So I'd ask the Court to revoke his bond and detain
10 him.

11 THE COURT: Okay, Mr. Reidy?

12 MR. REIDY: Thank you, Judge.

13 Your Honor, I think it's worthwhile to pay attention
14 to Mr. Segal's faithfulness to the Court's orders through the
15 proceeding, and I think -- I think he has every reason to try
16 and manage his way through this within the system, Judge, and I
17 think that's what the Court should expect.

18 He doesn't have a passport. He has no ability to
19 flee. He's never shown any indication of a desire to flee. You
20 know, this -- this possible result has been there for a very
21 long time. And I would say to the Court that the Court would be
22 better off and acting more justly to allow him to have some time
23 to deal with his affairs. And I don't know really what the
24 consequences to be to third parties are of just sweeping him off
25 the street, I'm not sure the Court needs to consider those

1 either.

2 But just in terms of, you know, getting him his
3 medicine and things, there will be all kinds of problems with
4 that, Judge, but I guess what I would ask the Court to consider
5 first is that I don't think there's any indication that this
6 defendant, more than any other defendant in this kind of a
7 circumstance, is a danger to flee; and, second, that the Court
8 consider, if the Court thinks there's any danger whatsoever,
9 some additional conditions of bond, even significant ones which
10 the Court is allowed to do within its discretion, as it knows,
11 with respect to reporting, even if the Court thought it would
12 help, you know, a bracelet or an anklet or whatever is
13 appropriate with respect to doing this.

14 But I don't think, Judge, that it is appropriate under
15 these circumstances, different from other circumstances in other
16 cases, to put Mr. Segal into jail immediately. I think that a
17 more appropriate result within the Court's discretion is to
18 allow him to continue on bond; and if there is some circumstance
19 where the Court thinks that there should be some additional
20 conditions placed on that bond, of course, the Court's free to
21 do that, and we would, of course, cooperate with that in every
22 way.

23 But this man is not going to run, Judge. He's not
24 going to suggest any consciousness of guilt by taking off or any
25 disrespect to the system or anything else by trying to run, and

1 he can't. Practically speaking, he can't run without a
2 passport, and certainly he couldn't run with additional
3 conditions of bond if the Court chose to place those, such as
4 the bracelet or other restrictions on house arrest or whatever
5 additional restrictions the Court thought was appropriate.

6 So we ask the Court to continue Mr. Segal on bond so
7 that we can continue to work on him -- with him through the
8 conclusion of this forfeiture proceeding tomorrow, but also
9 beyond that, until the Court sentences.

10 MR. POLALES: Your Honor, with respect to the
11 suggestion that bracelets and so forth, they're not adequate.
12 And as your Honor knows from long experience, those bracelets
13 are in all -- almost all cases, they are intended and designed
14 to protect one who poses a danger to the community or another
15 person. They are not adequate to ensure that one will not flee.

16 And I think given the circumstances in this case,
17 Mr. Reidy's hard pressed to show by clear and convincing
18 evidence that Mr. Segal will not flee. That is the current
19 situation, and the statute says the judicial officer shall
20 detain him unless he meets that burden. I think it's a very
21 tough burden, and nothing's been suggested that would indicate
22 that he does not pose a risk of flight, given Mr. Segal's very
23 fine-tuned knowledge of the system.

24 MR. REIDY: I would only add, Judge --

25 THE COURT: Go ahead.

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1 MR. REIDY: -- the sort of ties Mr. Segal has to the
2 community and to family here. And, you know, the P.J. Clarke's
3 thing, there's a million-dollar mortgage on that property,
4 Judge. This is not the basis for a flight or some sustaining of
5 wealth in a flight, and I think that the Court should conclude
6 and ask the Court to conclude that he may continue on bond.
7 THE COURT: Okay. There are a lot of factors to
8 consider. I think it's an understatement to say that
9 Mr. Segal's world has dramatically and drastically changed after
10 the jury's verdict, and I have to take that into consideration.
11 But I also have to take into consideration that we're
12 still on trial with regard to this forfeiture, and I am leery to
13 interfere with Mr. Segal's ability to be able to consult and
14 defend the forfeiture.
15 So the Court's ruling today, I want to make it clear,
16 it's only going to apply until we finish this trial, which will
17 be finished tomorrow. I will allow Mr. Segal to remain free on
18 bond, which will be modified as follows:
19 One, there will be electronic monitoring with an
20 electronic bracelet. Mr. Segal's movements will be restricted
21 to travel between the courthouse and his homes in Chicago and
22 Highland Park. Any other movement, including movement toward
23 any of our airports, railways, bus stations, any other, will be
24 an automatic violation of the bond.
25 I think the situation is dramatically changed. I

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1 think there's every incentive for Mr. Segal not to stay here.
2 I'm very familiar, in the course of my other full-time job, with
3 what the Sentencing Guideline implications are. I'm also very
4 familiar that money does buy things, like passports and means to
5 move; and it is a factor what age Mr. Segal is at right now,
6 given the potential sentence he faces, and I'm also very
7 familiar with the statute.
8 And so I will tell you after tomorrow, it's going to
9 take some mighty lawyering to convince me to allow Mr. Segal to
10 remain free for an extended period of time up until his
11 sentencing because I think time is a factor and time allows
12 movement. I'm not as concerned about movement between now and
13 9:15 tomorrow. I think the biggest mistake Mr. Segal could make
14 with this jury trial still underway is not to be here tomorrow
15 at 9:15.
16 But after this trial is over with, I think the statute
17 does speak in terms of mandatory language. I cannot, having
18 conducted this trial since April 19th, think of one valid
19 appellate issue in this record, and I think that is part of the
20 requirement.
21 And I think the fact is Mr. Segal has received a fair
22 trial by his peers and has been fairly convicted after a trial.
23 And so I'm going to take all of that into consideration once we
24 conclude these proceedings.
25 But the bond will be modified as indicated in open

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1 court. Mr. Segal, do you have any questions about this?
2 DEFENDANT SEGAL: Not at this point, your Honor.
3 THE COURT: Do you understand that if you divert from
4 your Lake Shore Drive place or your Highland Park place in any
5 way toward O'Hare or Midway, you will be taken under custody by
6 order of this Court. Do you understand that?
7 DEFENDANT SEGAL: Yes, I do, your Honor. That's the
8 furthest thing from my mind.
9 THE COURT: Okay. I'll leave it at that. See you
10 tomorrow at 9:15.
11 MR. REIDY: Judge, are we going to be able to arrange
12 for the electronic monitoring? How will we --
13 THE COURT: You'll be able to arrange that.
14 MR. REIDY: Okay. Thanks, Judge.
15 THE COURT: Okay. Thank you.
16 MS. WALSH: Your Honor --
17 THE COURT: What?
18 THE CLERK: Does that include his attorney's office?
19 THE COURT: Yes.
20 MS. WALSH: I apologize.
21 THE COURT: Sure.
22 MS. WALSH: Can we renew our Rule 29 motions?
23 THE COURT: Sure. I'll renew both Rule 29 motions for
24 both defendants, and we'll talk about a briefing schedule
25 tomorrow.

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1 MS. WALSH: Thank you.
2 THE COURT: Thank you.
3 (Court adjourned, to reconvene at 9:15 a.m. on 6-22-04.)
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1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF ILLINOIS
 3 EASTERN DIVISION
 4 UNITED STATES OF AMERICA,)
 Plaintiff,) Case No. 02 CR 112
 5 -vs-)
) Chicago, Illinois
 6 MICHAEL SEGAL and NEAR NORTH) June 22, 2004
 INSURANCE BROKERAGE, INC.,) 9:15 a.m.
 7 Defendants.)
 8 VOLUME 32
 TRANSCRIPT OF PROCEEDINGS
 9 BEFORE THE HONORABLE RUBEN CASTILLO, and a jury
 10 APPEARANCES:
 11 For the Government: HON. PATRICK J. FITZGERALD
 UNITED STATES ATTORNEY
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1 I N D E X
 2 ANDREW LOTT'S PAGE
 3 Cross Exam by Mr. Polales 5991
 Redirect Exam by Mr. McNulty 6001
 4
 5 MAGGIE MARTENSEN
 6 Direct Exam by Mr. McNulty 6004
 Cross Exam by Mr. Hogan 6035
 7 Redirect Exam by Mr. McNulty 6062
 8 CLOSING ARGUMENTS
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 11 Jury Charge 6141
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 14 INDEX TO EXHIBITS
 15 DEFENDANT'S EXHIBIT RECEIVED
 16 No. 3 6013
 17 No. 4 6013
 No. 5 6013
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1 (Proceedings heard in open court:)
 2 THE CLERK: 02 CR 112, United States versus Segal and
 3 Near North.
 4 THE COURT: I did receive two new defendant's
 5 instructions. Do you have any reaction to the two new
 6 instructions?
 7 MS. KENDALL: I just got them, Judge, and, yes, we
 8 object.
 9 No. 4, only those proceeds received by the defendant
 10 can be subject to forfeiture. That is only accurate as to
 11 subpart 3, and there's three potential theories of forfeiture in
 12 the statute --
 13 THE COURT: Okay.
 14 MS. KENDALL: -- one of which is simply that his
 15 interest in the enterprise is subject to forfeiture. That's the
 16 part that they left out yesterday, and then the part of him
 17 maintaining the enterprise is also subject to forfeiture. So
 18 that is highlighting one subsection of the statute, and so we
 19 object to that.
 20 THE COURT: Okay. And 3?
 21 MR. HOGAN: With regard to 3, your Honor will recall
 22 in Genova, I think the context of this holding by the Seventh
 23 Circuit was with regard to Mr. Genova purchasing certain
 24 supplies for his home and his office --
 25 THE COURT: Right.

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1 MR. HOGAN: -- that were then utilized by contractors.
2 I don't think that the context is at all relevant to this
3 proceeding.
4 THE COURT: Okay. I'll take a look at those two.
5 Do we have our witness?
6 MR. COLE: Yes.
7 MR. POLALES: I saw him in the hall.
8 THE COURT: Do we have our jury? Okay. We'll
9 proceed.
10 (Jury enters courtroom.)
11 THE COURT: Good morning, ladies and gentlemen.
12 Please come in and be seated. So used to seeing more people.
13 So let me, once we have everybody seated, let me give you the
14 daily quiz:
15 Has anyone talked to you about this case at all since
16 your verdict? Have you talked to anyone about this case since
17 your verdict other than to say you're a juror in this case? And
18 have you done any independent research or seen any media
19 accounts of this case?
20 Okay, seeing no hands, we'll resume with the
21 forfeiture proceeding.
22 You can retake the witness stand. You realize you're
23 still under oath?
24 THE WITNESS: Yes.
25 THE COURT: Okay. Mr. Polales, you may proceed.

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1 MR. POLALES: Thank you, your Honor.
2 ANDREW LOTTS, DEFENDANT SEGAL'S WITNESS, PREVIOUSLY SWORN,
3 CROSS-EXAMINATION (RESUMED)
4 BY MR. POLALES:
5 Q. Mr. Lotts, as I understand your calculation on the McGladrey
6 & Pullen number, you went back to 10-19, 1999 to try to figure
7 out how McGladrey & Pullen came up with their trust deficit
8 calculation, is that right?
9 A. Working back from 10-31, correct.
10 Q. Okay. In connection with that, you reviewed Government
11 Exhibit 355?
12 A. 355, as well as a Government Exhibit that showed a deficit.
13 Q. And that was -- 355 consisted of the workpapers, is that
14 right?
15 A. Yes.
16 Q. Okay. And that's what your shorthand for those weekly
17 executive summaries are, you call them workpapers in your
18 testimony, right?
19 A. Yes.
20 Q. Okay. Did you look at the rest of the McGladrey
21 documentation?
22 A. Yes, everything that was provided. My understanding was is
23 that it had been subpoenaed and was provided, everything was
24 provided to us that they had. And yes, I did, I went through
25 all of it.

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1 Q. How much was there?
2 A. Several boxes, maybe three, four boxes.
3 Q. And what you considered pertinent to your underlying
4 calculation was the McGladrey Government Exhibit 355?
5 A. Government Exhibit 355, as well as there were some McGladrey
6 workpapers that I'm not sure if they were admitted or not
7 admitted when I took a look at them, but they -- even as of last
8 night, when I took a look at them to refresh myself, there are a
9 few McGladrey workpapers, MP and then a number at the bottom.
10 They don't have a Government Exhibit number.
11 They may or may not have been part -- full part of the
12 355, but I also looked at those.
13 Q. Now, you said that you looked at the October 31st, 1999
14 McGladrey analysis, is that correct?
15 A. That's correct.
16 Q. And that analysis showed a trust deficit about
17 \$19,341,970.95.
18 A. Yes, it did.
19 Q. Did you do the same kind of analysis with respect to that
20 document as you did with respect to the October 19th?
21 A. No, we did not. We went back to calculate the 19th.
22 Q. So when you include on your chart an info not available for
23 Near North National Group and a \$10 million deficit, I think
24 that's the one -- on Defendant's Exhibit 1, a \$10 million
25 deficit under Near North Insurance Brokerage, that's a

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1 calculation that's based on the October 19th number?
2 A. On our recalculation, that ten-million-plus-some-odd
3 dollars, yes.
4 Q. Okay, so the October 31st number, which was month-end as of
5 McGladrey's workpapers, you did not dig into that.
6 A. You could -- you could argue that we didn't dig into it to
7 that level. They did not actually do a full calculation of the
8 10-31.
9 Their exhibit or their documents or workpapers was
10 not -- not for recalculating the deficit at the end of the
11 month. It was to obtain balances in the different divisions.
12 That was our belief.
13 Q. Okay. Well, you didn't really understand their workpaper,
14 did you?
15 A. Yes, I did understand it.
16 Q. All right. So you have answers to certain questions. Let
17 me show you Government Exhibit Lotts 1.
18 A. Okay.
19 Q. Is this the document that you and I are discussing?
20 A. Yes.
21 Q. Trust position on the last line and that 19 million and
22 change number, \$19,347,000 number, is that right?
23 A. 19 thousand, yes -- 19 million, yes.
24 Q. 19 million.
25 A. Yes.

Lotts - cross by Polales

<p style="text-align: right;">Page 5994</p> <p>1 Q. And are these handwritten notations yours? 2 A. No, they're not. 3 Q. They're not? Okay. So when you took the 10-31 number for 4 insurance payables, your number, according to the GL that the 5 company ran you -- 6 A. Yes. 7 Q. -- and gave you a print date of June 4th on -- 8 A. Yes. 9 Q. -- was about \$50,000 off, is that right? 10 A. Correct. When you include the -- I think it was three 11 divisions that McGladrey & Pullen included. 12 Q. Right. 13 So by the end of the month -- you weren't asked to 14 come up with a number for month-end. 15 A. No. 16 Q. And you weren't asked to come up with a number for year-end. 17 A. No. 18 Q. And you weren't asked to go back and recalculate any of the 19 other numbers that were in the case that you included on your 20 chart. 21 A. What you see is the work that we performed. 22 Q. Yeah, and you said yesterday you took that off of the 23 Kendeigh document, is that right? 24 Prior to the M&P number in 1999, your numbers are 25 year-end off of one of the Kendeigh exhibits, right?</p>	<p style="text-align: right;">Page 5996</p> <p>1 A. We did not analyze that. 2 Q. Okay. So having not heard the evidence on that, you don't 3 know one way or the other? You weren't informed of that? 4 A. Yeah, I can't speak on that. 5 Q. Okay. And with respect to all of these numbers, for 6 purposes of your testimony here today, you considered the key 7 number to discredit the \$77 million, is that right? 8 A. I considered the 62 million a key number because it was 9 available in 1998. 10 Q. All right. Well -- 11 A. Or 1999, I'm sorry. 12 Q. Let me show you Lotts 2, Government Exhibit Lotts 2, which 13 is Bates stamped -- it's not Bates stamped. 14 (Counsel conferring.) 15 BY MR. POLALES: 16 Q. Are these your handwritten notes? 17 A. Yes, they are. 18 Q. Do they reflect some of your thoughts while preparing for 19 your testimony in this case? 20 A. Not for preparing for my testimony. That was not 21 contemplated when I prepared that. 22 Q. When did you prepare it? 23 A. I prepared that probably two or three weeks ago. 24 Q. Oh. And so at that time you said "10-19, \$77 million, 25 disprove this \$ - key." That's what you wrote in this, right?</p>
<p style="text-align: right;">Page 5995</p> <p>1 A. For purposes of calculation -- calculating the interest on 2 that forfeiture document, yes. 3 Q. Okay. Well, we're not -- we're not talking about that. I'm 4 talking about page 1 of Defendant's Exhibit 1, where you charted 5 out the Near North Insurance Brokerage deficit. 6 A. Deficits, correct. 7 Q. Right. 8 And with respect to the 2001 figure, you used the 9 June 30th, 2001 Hales & Company calculation. You didn't do 10 any -- you didn't try and attack any of those calculations. 11 A. I went through it on a -- on a sight basis, not on a 12 documented basis. I went through and we ran various reports off 13 the general ledger, various balance sheets and financial 14 statements, both balance sheet and income statement for various 15 periods around the time that Hales was there. 16 And I took a look, and I had massive differences 17 generally; in fact, in all cases, the receivables was higher and 18 the payables was lower than Hales, but we did not attack their 19 calculation to that extent, no. 20 Q. Okay. So on Defendant's Exhibit 1, you used their 21 calculation of \$24,043,551? 22 A. Correct. 23 Q. And that, you understand from the evidence in the case, did 24 not include the \$10 million that Mr. Segal borrowed from 25 LaSalle.</p>	<p style="text-align: right;">Page 5997</p> <p>1 A. Correct. 2 Q. In connection with your work on this, you also wanted to 3 look at some of the other Government Exhibits in the case, is 4 that right? 5 A. Correct. I have various other ones. I think I provided 6 them to you actually. 7 Q. Right. Last night, 10:00. 8 A. Yes. 9 Q. Thanks. 10 AL 332 is the Bates stamp number. 11 MR. McNULTY: Pardon me? 12 MR. POLALES: AL 332, Lotts 3. 13 BY MR. POLALES: 14 Q. Is this another page of your handwritten notes? 15 A. No, that's okay. 16 Yes, those are my notes, same time. 17 Q. Okay. You've got the same packet I've got? 18 A. Correct. 19 Q. Okay. You examined the bar graph, according to these notes, 20 is that right? 21 A. We took a look at it. I didn't do any work on it. 22 Q. Okay. Is that Government Exhibit 342 is this the one you're 23 talking about? 24 A. Yes. 25 Q. Okay. And that's the one that McGladrey put together that</p>

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1 says average monthly invested balance.
2 A. Correct. All that -- all that I did on that was go back and
3 take a look at their -- at the general ledger, at the cash
4 accounts. I took a look at the LaSalle statements to look to
5 see what the average balances were, but we didn't work up
6 anything on it.
7 Q. Okay. And one of the questions you were asking yourself as
8 you were contemplating looking at the bar graph was whether or
9 not you could beat up the number and see if it could be
10 discredited, right?
11 A. Correct. That was -- that was one of the things that was
12 contemplated as a strategy.
13 Q. But you didn't do it on this.
14 A. I did not.
15 Q. Okay. I asked you yesterday whether or not -- what does
16 Fanco stand for?
17 A. Fanco? It's just a name. I've asked all my partners.
18 Nobody knows.
19 Q. Nobody knows?
20 A. It predates them.
21 Q. The calculations that you were asked to do, they never asked
22 you; that is, Near North or anybody associated with Near North,
23 Mr. Segal, to calculate an actual trust deficit from your point
24 of view.
25 A. I was not asked personally to calculate a deficit, and I'm

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1 not aware that my staff did any work on calculating deficits.
2 Q. Okay. With respect to the work that you were asked to do,
3 you took the position, or I take it that your work was to bring
4 a critical eye to the evidence that the government submitted
5 with respect to the size of the trust deficit.
6 A. A portion of our work this past year has been focused
7 heavily on taking a critical eye at the books in general in
8 terms of within the scope of what we were doing with cash
9 receivables and payables in light of what the government had as
10 evidence.
11 Q. Okay.
12 A. And what -- what we found was is the problems in the
13 McGladrey, with the inconsistencies.
14 Q. And you didn't really try and dig into or present any
15 alternative numbers with respect to the Hales calculation.
16 A. We did not.
17 Q. Did you look at Government Exhibit 83, which is the Near
18 North Insurance Brokerage trust position support by carrier
19 limited to 11 carriers that McGladrey prepared?
20 A. I've seen that document, yes.
21 Q. Did you do any work on this?
22 A. The only work I did on it was just on an analytical basis,
23 looking at it and realizing, and then I talked to Near North
24 staff with inquiry, and they said that they had no knowledge --
25 and I'm talking about the top people in the accounting

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1 department -- that in 1999, that that would have been capable of
2 being printed from Sagitta.
3 And they said that you would have had to hand go
4 through over 10,000 transactions and then break it out in some
5 kind of an Excel spreadsheet to come down to it. It would have
6 been very voluminous.
7 That's what I know about that document.
8 Q. Okay. So what you got was current information from the
9 current accounting staff at Near North, is that right?
10 A. Correct. We have a lot of contact with them.
11 Q. Right.
12 You didn't go out and ask Mr. McNichols, right?
13 A. We did not. I mean anybody that was -- you asked me that
14 about McGladrey yesterday, too, why I didn't call those people;
15 and the answer to all of those people were they were all listed
16 as government witnesses. That was not part of the scope of
17 where we were headed.
18 Q. No bar for you doing that, as far as you know, is that
19 right?
20 A. I don't know one way or another. All I know is that the
21 defense did not ask us to do that.
22 MR. POLALES: All right. The -- may I have a moment?
23 THE COURT: Yes.
24 MR. POLALES: I've been taking one.
25 (Pause.)

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1 MR. POLALES: I have nothing further.
2 THE COURT: Okay. Any redirect?
3 MR. McNULTY: Yes, your Honor.
4 REDIRECT EXAMINATION
5 BY MR. McNULTY:
6 Q. Mr. Lotts, just a couple of points that came up in your
7 cross-examination.
8 You were asked about the materials that you reviewed
9 from the McGladrey & Pullen or RSM McGladrey workpapers.
10 Was it your understanding, sir, that the government
11 had subpoenaed the entire working papers and files of McGladrey
12 & Pullen with respect to their engagement at Near North?
13 A. Yes.
14 Q. And did you review the entire set of materials that were
15 produced to the government pursuant to a grand jury subpoena
16 that were provided by the defense?
17 A. Yes. I had two people on my staff, including myself, go
18 through all that.
19 Q. And were you also aware that the defense had subpoenaed the
20 documents of McGladrey & Pullen, as well, including all the
21 workpapers that supported their work and their engagement at
22 Near North in 1999?
23 A. That's my understanding. That's why we didn't contact them.
24 Q. And did you review all those materials as well?
25 A. Yes.

Page 6002

1 Q. And they were essentially a mirror image of each other, were
2 they not?
3 A. Yes.
4 Q. What the government subpoenaed --
5 A. Yes.
6 Q. -- and what the defense subpoenaed?
7 A. Yes.
8 Q. There were no other workpapers other than -- that you're
9 aware of other than what was produced by McGladrey & Pullen, is
10 that correct?
11 A. Correct.
12 Q. With respect to the Hales calculation in 2001, there were
13 some workpapers that were submitted that you were familiar with
14 from the Hales Company, were you not?
15 A. Yes.
16 Q. And there were some papers that supported and detailed some
17 of the amounts that they had included in their calculations that
18 came off of Near North's general ledgers, is that right?
19 A. It detailed some of them, yes.
20 Q. And you're familiar, at least in part, with some of the
21 testimony of the personnel from Hales who testified both in the
22 grand jury and in this proceeding, this trial proceeding.
23 A. I'm only vaguely familiar with it. I didn't read the
24 transcripts.
25 Q. All right. Were you familiar with the level of confidence

Page 6003

1 that Hales had in the calculations or, rather, the books and
2 records at Near North in connection with the calculations that
3 they did?
4 A. I'm -- I'm more familiar with the Hales document that they
5 prepared of some kind of a marketing study or whatever, and --
6 and my understanding was is that, you know, that they had a
7 significant amount of disclosures, in fact, you know, extreme
8 disclosures that there are certain things that in the Near North
9 books in the general ledger that could not be relied on and it
10 was very difficult to make a cash receivables/payables-type
11 formulation to get to the premium trust number because there was
12 a lot of problems, you know, in the general ledger.
13 Q. And the extreme disclosures, those are also sometimes
14 referred to as disclaimers?
15 A. Yes. In our industry that would be true, yes.
16 Q. All right. And those -- those disclaimers that were made by
17 the Hales Company, those were made in connection with the
18 document that was submitted in evidence here that went to
19 lenders, prospective lenders and prospective equity investors in
20 Near North in 2001, is that right?
21 A. That's my understanding, yes.
22 MR. McNULTY: Nothing further, your Honor.
23 MR. POLALES: Nothing further.
24 THE COURT: Okay, you're excused.
25 THE WITNESS: Thank you.

Page 6004

1 THE COURT: The defense can call their next witness.
2 MR. McNULTY: The defense calls Maggie Martensen.
3 THE COURT: Okay. You're going to be seated all the
4 way up here. Just watch your step when you step up. Once you
5 step up, if you'd raise your right hand.
6 (Witness sworn.)
7 THE COURT: Please be seated.
8 You may proceed, Mr. McNulty.
9 MR. McNULTY: Thank you, your Honor.
10 MAGGIE MARTENSEN, DEFENDANT SEGAL'S WITNESS, DULY SWORN,
11 DIRECT EXAMINATION
12 BY MR. McNULTY:
13 Q. Good morning. Could you state your name and spell your last
14 name for the record, please.
15 A. Maggie Martensen, M-A R-T-E-N-S-E-N.
16 Q. And Ms. Martensen, what do you do for a living?
17 A. I am employed by Near North Insurance Brokerage. I'm an
18 accountant.
19 Q. And what are your duties as an accountant at Near North?
20 A. I am currently the acting CFO for Near North.
21 Q. When did you start your employment at Near North?
22 A. My employment at the brokerage started in July of 2002.
23 Q. And prior to July of 2002, did you have a position with
24 another affiliated entity at Near North?
25 A. Yes. In January of 2000, I was employed at Sentry

Page 6005

1 Protection Systems.
2 Q. And that was here in Chicago, ma'am?
3 A. Yes.
4 Q. Can you describe for the ladies and gentlemen of the jury
5 your educational background, please?
6 A. I have a bachelor of science degree in business
7 administration, and I'm also a licensed CPA.
8 Q. And where did you obtain your undergraduate degree?
9 A. Olivet Nazarene University.
10 Q. When were you licensed as a CPA, Ms. Martensen?
11 A. I -- 2000. I took the exam in November of '99.
12 Q. And then you had to wait a year and do some --
13 A. Right.
14 Q. -- some --
15 A. Some work.
16 Q. -- additional work --
17 A. Correct.
18 Q. -- in order to obtain your license. And your license is in
19 good standing, correct?
20 A. Yes, it is.
21 Q. I want to direct your attention, if I could, Ms. Martensen,
22 to the period of September 1st of '01, of 2001, and I'd like to
23 ask you first have you had an opportunity in connection with
24 your work to review records of the accounting department at Near
25 North with respect to that time period?