

EXCERPT TRANSCRIPT OF RECORDED CROSS EXAMINATION
OF MR. CLAUS IN ARBITRATION PROCEEDINGS
IN THE MATTER OF CLAUS VS. STERLING

4-11-07

ORIGINAL

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2 (Cross examination of Mr. Claus beginning on
3 Tape 4 halfway through Side A as follows:)

4 CROSS EXAMINATION

5 BY MR. BISSINGER:

6 Q. Mr. Claus, -- and is it Claus or Claus?

7 A. Either way.

8 Q. Well, how does your family say it?

9 A. Claus.

10 Q. Claus?

11 A. Like Santa Claus.

12 Q. Fair enough. Mr. Claus, I'm David Bissinger
13 and I'm here for ICM and Beau Ritz. You understand that?

14 A. Yes.

15 Q. Okay. Mr. Claus, you testified yesterday, you
16 told us yesterday that you received a call from Mr. Short
17 the morning of January 28th sometime around eleven
18 o'clock, right?

19 A. Yes.

20 Q. You said that you placed an order for Mr. Short
21 sometime around eleven o'clock, right?

22 A. No.

23 Q. Okay. You told us, did you not, that you
24 executed a trade for Mr. Short in which you bought bonds
25 after talking to Mr. Short?

1 A. I filled an order for Mr. Short, yes.

2 Q. Okay. And that happened, you told us, before
3 you talked to anyone at Sterling, correct?

4 A. Yes.

5 Q. Okay. Could you tell us how you placed an
6 order for a position in bonds like this?

7 A. Mr. Short gave me an order to fill and I filled
8 that order by executing the order that he gave me. In
9 other words, I provided the bond, the quantity at the
10 price for the settlement that he wanted.

11 Q. Okay. And when you did that, you told us
12 yesterday that you actually bought the bonds, correct?

13 A. To fill his order, yes.

14 Q. Okay. And you told us that you bought the
15 bonds before you talked to anyone at Sterling, right?

16 A. Correct.

17 Q. Okay. And so when you fill on order, you
18 execute an order, Mr. Claus, what do you do?

19 A. I execute the order.

20 Q. Okay. Do you call anyone?

21 A. Are you asking -- I don't understand what the
22 question is.

23 Q. Well, you have to do some conduct, some act to
24 buy bonds, correct?

25 A. When somebody gives me an order to buy or an

1 order to sell, then I will execute their instructions.

2 Q. Okay. And by executing it, you call another
3 dealer and buy bonds from that other dealer, right?

4 A. Or it may be bonds that I'm long.

5 Q. Okay. In this case, your firm was not long on
6 the 3.2 million 2761SVs, correct?

7 A. Correct.

8 Q. In this case, your firm didn't hold a position
9 in 2761SVs at all, correct?

10 A. At that time, no.

11 Q. Okay. And so to execute this order, Mr. Claus,
12 you went ahead and contacted another dealer, correct?

13 A. Yes, I called the dealer to make the buy.

14 Q. Okay. And you told us yesterday that you
15 called the dealer and you actually filled that order,
16 correct?

17 A. Yes.

18 Q. Okay. Where is the trade ticket for that
19 order?

20 A. Again, that's where the deal gets squirrely.
21 The trade ticket is the trade ticket with Sterling
22 Financial was taking delivery of these bonds for Jerry
23 Short.

24 Q. All right. You told us yesterday that you
25 executed the order for Short, correct?

1 A. Yes.

2 Q. And you told us that you bought the bonds for
3 Short, correct?

4 A. Correct.

5 Q. And that you filled the order for Short, right?

6 A. That's right.

7 Q. You even told us that before you talked to
8 anyone at Sterling, you called Short and told Short that
9 Short owned the bonds, right?

10 A. Yes.

11 Q. Okay. So in that process to complete that or
12 as part of that execution, isn't it true that you would
13 have to have a trade ticket reflecting an order to the
14 dealer from whom you bought the bonds; isn't that
15 correct?

16 A. A trade ticket -- I don't understand.

17 Q. Well, you said you executed the order for Jerry
18 Short, correct?

19 A. I filled his order, right.

20 Q. Okay. And when you do that, you've got to go
21 to a dealer, fill out a trade ticket and identify those
22 bonds, correct?

23 A. We're a dealer. Are you saying that we have
24 to --

25 Q. No, sir. You as a registered representative

1 have to fill out a trade ticket to execute that order for
2 Mr. Short; is that not correct?

3 A. The trade ticket is after the order is filled.

4 Q. The trade ticket, sir, is part of making the
5 order, is it not?

6 A. Yes, after the trade is completed.

7 Q. Okay. So you're saying that you don't fill out
8 a trade ticket until after a trade is completed?

9 A. Yes.

10 Q. Okay. What is it that makes the trade
11 complete? Is there any writing that goes into making the
12 trade complete?

13 A. Yes.

14 Q. Okay. What writing do you create to make that
15 trade complete?

16 A. A trade ticket.

17 Q. Okay. But you're saying you don't do the trade
18 ticket until after the trade is complete?

19 A. Yes, that's correct.

20 Q. Okay. But then you just said that you don't do
21 the ticket -- the trade isn't complete until you do the
22 trade ticket?

23 A. That's correct.

24 Q. Okay. So which is it, sir, do you do the trade
25 ticket first or is the trade completed first?

1 A. You can't do a trade ticket until you do the
2 trade.

3 Q. Okay. So how do you do the trade?

4 MR. FALICK: Objection, asked and answered.

5 PANEL CHAIRPERSON: Overruled.

6 THE WITNESS: How do I do the trade?

7 BY MR. BISSINGER:

8 Q. How do you do the trade?

9 A. I get an order from a person either to buy or
10 sell. I would then fill, execute their order.

11 Q. Okay. And in executing that order, isn't it
12 true, sir, that you have to complete a trade ticket?

13 A. Yes.

14 Q. Okay. And you don't have a trade ticket for
15 Mr. Short, do you?

16 A. No, because he had this arrangement with
17 Sterling Financial that I didn't know about.

18 Q. Sir, sir, you'll have an opportunity to have
19 your lawyer ask questions. My question is this, you do
20 not have a trade ticket for Jerry Short, do you, sir?

21 MR. FALICK: I'm going to object to this whole
22 line of questioning. The reality is Mr. Claus gave
23 a complete answer to the question which Mr.
24 Bissinger didn't like the answer. I'd ask that Mr.
25 Claus be allowed to answer the question before Mr.

1 Bessinger interrupts him.

2 PANEL CHAIRPERSON: (Inaudible).

3 BY MR. BISSINGER:

4 Q. All right. Mr. Claus, yes or no, you don't
5 have a trade ticket for Jerry Short for these bonds, do
6 you, sir?

7 A. No.

8 Q. Mr. Claus, you don't have a contract for Jerry
9 Short for these bonds, do you, sir?

10 A. No.

11 Q. Okay. You never canceled any trade with Mr.
12 Claus, right, or with Mr. Short; isn't that right?

13 A. No.

14 Q. And you gave nothing, no confirm to Jerry Short
15 that would allow him to cancel the trade; isn't that
16 correct?

17 A. Yes.

18 Q. You gave Sterling a confirmation; isn't that
19 correct?

20 A. Yes.

21 Q. And Sterling had the opportunity to, in the
22 phrase of the industry, I think DK the trade, correct?

23 A. Yes.

24 Q. Now you dispute that DKing of the trade,
25 correct?

1 A. Well, no, they did DK the trade.

2 Q. Okay. But let me put it this way, you allege
3 the DKing of the trade was not proper and not correct?

4 A. Yes.

5 Q. Okay. And that's a process that we're here to
6 resolve and that this panel is here to help decide,
7 correct, is whether that DKing is proper, right?

8 A. Yes.

9 Q. Okay. With ICM, there is no confirmation or
10 that ICM ever had the opportunity to cancel or DK; isn't
11 that true, sir?

12 A. Yes.

13 Q. Mr. Claus, you told us that -- well, let me ask
14 you this, when did you actually buy -- let me start over.
15 Mr. Short, you testified that Mr. Short placed his order
16 with you. You say you called Mr. Short. You told Mr.
17 Short that Mr. Short owned the bonds, correct?

18 MR. FALICK: Asked and answered.

19 PANEL CHAIRPERSON: You can answer it.

20 THE WITNESS: Yes.

21 BY MR. BISSINGER:

22 Q. Okay. And then Short, you told us yesterday,
23 told you, Mr. Claus, you got to call Sterling? You got
24 to call Pepe, right? That's what you told us yesterday?

25 A. That's -- no.

1 Q. Okay. You didn't tell us yesterday that Mr.
2 Claus or that Mr. Short told you, Len Claus, you got to
3 call Sterling and this trade is really going to go
4 through Sterling; isn't that what you told us?

5 A. That summary is not entirely correct.

6 Q. Okay. What's not correct about it?

7 A. Mr. Short told me that he had an arrangement
8 with Sterling already in place which he didn't tell me
9 before he gave me the order; that he already this
10 arrangement set up with Sterling and that they were
11 expecting my call. All I had to do was call them. He
12 had already told them about me, gave them my wiring
13 instructions, my name and said they were expecting my
14 call.

15 Q. Okay. And that's what Mr. Short told you,
16 right?

17 A. Yes.

18 Q. And Mr. Short told you this before you talked
19 to anyone at Sterling is what you are telling us?

20 A. Yes.

21 Q. Okay. You heard the tapes in this case,
22 correct?

23 A. Yes.

24 Q. I'm going to play a couple of excerpts. The
25 first is from JP23616, 1237 are the last numbers. And

1 before I get started, Mr. Claus, you understand that when
2 these tapes have these numbers at the end like 1237 that
3 that's a time indicator?

4 MR. FALICK: Objection, improper evidence.

5 There's no foundation for whether those are accurate
6 or not. Mr. Claus (inaudible) whether Sterling's
7 time stamp on their phone is accurate (inaudible).
8 It's not proper foundation.

9 BY MR. BISSINGER:

10 Q. Mr. Claus, you've seen the CD or digital
11 recordings of these tapes, have you not?

12 A. Yes.

13 Q. Okay. And you've seen that these little
14 digital recordings, which I think are JPG files, have
15 little numbers on them, correct?

16 A. Yes, they're identified by some numbers, yes,
17 JP whatever. Some of them just have four digits. Some
18 have seven or eight digits, but yes, I know exactly what
19 you're talking about.

20 Q. Okay. And you understand that your lawyer gave
21 us this summary yesterday that attempts to put some of
22 the recordings in time order, correct?

23 A. Yes.

24 Q. And you've seen we've prepared a similar chart
25 that tries to outline some of the recordings in time

1 order, correct?

2 A. No.

3 Q. Okay. Your lawyer hasn't shown you that?

4 A. No.

5 Q. Okay. And without getting into detail, your
6 lawyer hasn't shown you this document that we've made as
7 part of our exhibit list?

8 MR. FALICK: You've asked the question three
9 times.

10 THE WITNESS: I've seen it floating around
11 the room. I don't have a copy of it.

12 BY MR. BISSINGER:

13 Q. Okay. In any event, you have seen this
14 document?

15 A. Yes.

16 Q. And it's effort to organize these tapes by
17 time, correct?

18 A. An effort to show the events of the day.

19 Q. And an order of the events of the day in time
20 order, correct?

21 A. Yes.

22 Q. And that's important in this case, right?

23 A. It shows the events of the day. I don't know
24 if they're important.

25 Q. The timing of the events of the day is

1 important, isn't it, to get the order, correct?

2 A. All I can tell you is what happened with me on
3 that particular day.

4 Q. Okay. So you haven't made any effort yourself
5 to look at this and satisfy yourself that the order of
6 the recordings is correct? You haven't done that?

7 A. Yes, I have.

8 Q. You have done that?

9 A. The order of the recordings, yes.

10 Q. And you think the order of the recordings is
11 correct?

12 A. Yes.

13 Q. Okay. And to do that, isn't true, that to help
14 try to figure out the order of the recordings, you look
15 at the little numbers on these files to see what the time
16 stamp is at least as one reference point?

17 A. Those recordings, the numbers on the recordings
18 aren't consistent. Some of them are only four digits so
19 I don't know how you can determine a time stamp.

20 Q. Okay. But you just told us that you thought
21 that you satisfied yourself that you've gotten the
22 recordings at least as your lawyer put in order in the
23 appropriate order in which the calls happened, right?

24 A. Well, the way -- it was complex process because
25 I personally took the transcripts that Sterling provided

1 and played recordings and compared them to the transcript
2 because the transcripts had times on them, but it was a
3 difficult process because there would be two or three
4 transcripts for the same telephone conversation that each
5 transcript was different and did not -- and none of those
6 matched the recordings. So I mean, I was working with
7 some altered data, but you know, we've tried to put
8 things in order based on whoever transcribed this
9 information and compared it to the recording and tried to
10 get them in some kind of order. Again, there are so many
11 events that happened that I wasn't aware of. I know what
12 I was aware of. If you're asking me if I executed a
13 trade, if I have a trade ticket, I can tell you those.

14 Q. Okay.

15 A. But as far as, you know, the conversation
16 before that we haven't discussed (inaudible).

17 Q. Mr. Claus, let's do this, let's just listen to
18 a recording. And tell you for your counselor's benefit
19 it is a recording stamped 1237.

20 (At this time, there was argument concerning
21 playing the whole tape or an excerpt and the whole
22 recording was played for the panel.)

23 BY MR. BISSINGER:

24 Q. Okay. Mr. Claus, you've heard this
25 conversation, correct?

1 A. Yes, sir.

2 Q. That's your voice, correct?

3 A. Yes.

4 Q. And you're talking to Mr. Jerry Pepe, correct?

5 A. Yes.

6 Q. Okay. Now it is your testimony today, I
7 believe you told us today that this was not your first
8 conversation with Mr. Pepe?

9 A. Correct.

10 Q. You told us yesterday that you had a prior
11 conversation, an earlier conversation with Mr. Pepe,
12 right?

13 A. Yes.

14 Q. There is no tape recording of that
15 conversation, correct?

16 A. I don't know.

17 Q. You are not aware of any tape recording of that
18 conversation, are you?

19 A. No.

20 Q. Okay. In this conversation, you had some
21 introductory remarks about the weather and your fax
22 numbers and some other information, right?

23 A. Yes.

24 Q. But you say that you still had met or talked to
25 Mr. Pepe before that conversation, right?

1 A. Yes.

2 Q. Okay. Now in that earlier conversation, you
3 testified or in your earlier conversation according to
4 you, you told us that Mr. Pepe had agreed to buy the
5 bonds, correct?

6 A. Yes.

7 Q. Okay. And in that earlier conversation --
8 again, there is no tape of that conversation, right?

9 A. I don't know.

10 Q. Okay. You're not aware of any tape of the
11 conversation, right?

12 A. I'm not aware.

13 Q. Okay. And --

14 (Side B of tape 4.)

15 BY MR. BISSINGER:

16 Q. And Mr. Claus, you told us that Mr. Pepe had
17 agreed -- Oh, Mr. Claus, in the conversation we just
18 listened to, Mr. Pepe tells you, I've got to do one thing
19 before we can just get this deal done. I've got to get
20 your clearing and stuff because I've got to get it
21 approved through Fortis. He says that, right?

22 A. And I said, I just e-mailed it to you.

23 Q. Sir, I need a question -- I need an answer to
24 my question.

25 A. Yes.

1 Q. And I'm going to ask the question again because
2 it's a very important question in this case. In that
3 recording, in that conversation, Mr. Jerry Pepe tells
4 you, I've got to get -- I've got to do one thing before
5 we can just get this deal done. I've got to get your
6 clearing and stuff and I've got to get it approved
7 through Fortis, right?

8 A. Yes.

9 Q. Okay. Now you made reference or you mentioned
10 in that conversation that you had sent to Mr. Pepe an
11 e-mail?

12 A. Yes.

13 Q. A bloomie as you put it?

14 A. Yes.

15 Q. That's a Bloomberg e-mail, right?

16 A. Yes, sir.

17 Q. All right. And I believe that is Exhibit 40 in
18 your book of exhibits so that the panel can have it
19 handy. Oh, I'm sorry.

20 A. Yes, it is Exhibit 40.

21 MR. BISSINGER: Oh, that's right. Okay. Does
22 the panel have a copy of that?

23 PANEL CHAIRPERSON: Number 40?

24 BY MR. BISSINGER:

25 Q. So Mr. Pepe or Mr. Claus, this is a Bloomberg

1 e-mail. It's from you to Jerry Pepe, correct?

2 A. Yes, sir.

3 Q. And --

4 MR. FALICK: I'm sorry. I don't mean to
5 interrupt. Would it be easier if I shared with Mr.
6 Claus and you can have this other copy?

7 PANEL CHAIRPERSON: We have a second set back
8 there, anyway.

9 BY MR. BISSINGER:

10 Q. Mr. Claus, in this e-mail, it's an e-mail from
11 you to Jerry Pepe, right?

12 A. Yes, sir.

13 Q. There's no cc, no copy to Jerry Short, correct?

14 A. Correct.

15 Q. And in that e-mail, you say to Mr. Jerry Pepe,
16 I sell you, Jerry Pepe, 3.2 million FHR2761SV at 90-4 for
17 January 31, 2005 settlement, right?

18 A. Correct.

19 Q. And you say that we clear through Southwest
20 Securities DTCAWST. Can you send me your fax number and
21 I can fax the clearing instructions?

22 A. Correct.

23 Q. Okay. Is it your testimony -- did you send
24 this e-mail before or after you talked to Mr. Pepe for
25 the first time according to you?

1 A. After I talked to him for the first time.

2 Q. Okay. But that's the one we can't -- there's
3 no known recording of it, correct?

4 A. I don't know if there's a recording.

5 Q. Okay. And this e-mail is dated 11:29 in the
6 morning, correct?

7 A. Yes.

8 Q. That e-mail does not include any Focus report,
9 right?

10 A. This e-mail did not.

11 Q. Okay. And ultimately, Sterling asks for a
12 Focus report, right?

13 A. Later, yes.

14 Q. Okay. And could you tell the panel what a
15 Focus report is?

16 A. Honestly, I don't know.

17 Q. Do you have any idea what a Focus report is?

18 A. I know that it's something a broker/dealer has
19 to fill out for NASD. That's about the scope of my
20 knowledge on the Focus report.

21 Q. Okay. Mr. Claus, you told us yesterday that
22 you had been a trader, correct?

23 A. Yes.

24 Q. And that's different than a salesman, right?

25 A. Yes.

1 Q. Are you a trader now?

2 A. I do trading and I'm also a salesman. I have
3 my own broker business.

4 Q. But your principle work is really as a broker
5 to customers, correct?

6 A. I would say 75 percent customers, 25 percent
7 trading.

8 Q. Could you describe what you mean by trading in
9 terms of this 25 percent of your current work?

10 A. I execute orders for other brokers in our
11 office.

12 Q. And how do you execute those orders?

13 A. When they get a buy or sell order from one of
14 their clients, they come to me and I execute that order.

15 Q. Okay. Let's talk before that execution. We're
16 going round and round about. But I want to direct your
17 attention to Claus Exhibit No. 5. This was again, an
18 exhibit that you and your lawyer discussed yesterday.
19 You see that, sir?

20 A. Yes.

21 Q. That's an order ticket, correct?

22 A. No.

23 Q. And what is that document, sir?

24 A. It's a trade ticket.

25 Q. Okay. And that's a trade ticket that you fill

1 out when you execute an order, right?

2 A. Correct.

3 Q. And you don't have a trade ticket like -- you
4 don't have any trade ticket like this for Jerry Short or
5 ICM for the bonds that are at issue in this arbitration,
6 right?

7 A. No.

8 Q. I want to take you to another exhibit and I'm
9 going to hand this out. This is ICM Exhibit No. 3.

10 *****

11 BY MR. BISSINGER:

12 Q. Mr. Claus, the trade ticket in this case or at
13 least a trade ticket in this case, if you go to Tab 1 of
14 this big bound set of tapes and if you go to the second
15 page under Tab 1, you see that?

16 A. Yes.

17 Q. And it's a document I believe you produced
18 because it's got a number at the bottom CL0015. You see
19 that?

20 A. Yes.

21 Q. Okay. Mr. Claus, you see in that trade ticket
22 marked CL0015, that's a trade ticket with your name in
23 the trader column, correct?

24 A. Yes.

25 Q. Okay. And you see that it says Bloomberg trade

1 ticket, right?

2 A. Yes.

3 Q. But it's really not a trade ticket, is it?

4 A. It is.

5 Q. Sir, you have a trade ticket that you showed
6 the panel as Exhibit 5 which is a different form than the
7 document that we're looking at right now. Aren't those
8 two different types of documents?

9 A. Yes.

10 Q. Okay. And to do a trade at your firm at INS,
11 you need to do it on a ticket that looks like Exhibit 5,
12 right?

13 A. No.

14 Q. The trade ticket here that's got this Bloomberg
15 stuff on it, that's really an informational tool that
16 Bloomberg provides in the industry, isn't it not? Isn't
17 it, sir?

18 A. What's your question?

19 Q. Isn't the trade ticket form here on Tab 1,
20 CL0015 produced by you, --

21 A. Uh-huh.

22 Q. -- isn't this really a form used in the
23 industry provided by Bloomberg for preliminary workup and
24 drafted of a trade that would be later executed on a firm
25 trade ticket? Isn't that the case?

1 A. No.

2 Q. You're saying that firm relies, that INS
3 Securities routinely used a Bloomberg trade ticket
4 instead of the trade ticket that you showed us yesterday
5 as Claus Exhibit 5?

6 A. Yes, sir.

7 Q. Okay. And so it's you're-- you're telling us
8 that your firm, if the NASD were to come and do an audit
9 of your firm for any trades, the NASD would see these
10 Bloomberg trade tickets used with significant regularity
11 in place of the trade ticket you showed us as Exhibit 5
12 yesterday? That's what you're telling us?

13 A. Yes, sir.

14 Q. All right. Now in this trade ticket, of
15 course, the trade down at the bottom says Sterling, Bob
16 Harvey/Jerry Pepe?

17 A. Yes, sir.

18 Q. Now at this very bottom of this page, sir,
19 there is a legend with some small little print. And at
20 the very bottom, it says 04, April-06. You see that?

21 A. Yes, sir.

22 Q. All right. Now does that tell us that this
23 trade ticket was not created at the time of the trade?

24 A. That means that on April 4 of '06, I printed
25 this document.

1 Q. All right. But to do a proper entry on a trade
2 ticket in a brokerage firm, sir, isn't it the case that
3 you have to have a printout at the time of the trade?

4 A. Yes, sir.

5 Q. Okay. This is not a printout from the time of
6 the trade, is it?

7 A. No.

8 Q. This a printout that you made after this
9 lawsuit was filed; isn't that right?

10 A. Yes, sir.

11 PANEL CHAIRPERSON: When you say made, what do
12 you mean by that?

13 BY MR. BISSINGER:

14 Q. Well, Mr. Claus, you don't have a time stamped
15 trade ticket from January 28, 2005 reflecting this trade;
16 is that not correct?

17 A. Do I have it here physically here today, no.

18 Q. Does one exist?

19 A. I'm reasonably certain one does, yes.

20 Q. Okay. Have you satisfied yourself before
21 coming to this arbitration and asking this panel for
22 money that you have a time stamped trade ticket made
23 contemporaneously with this trade?

24 A. Yes.

25 Q. Okay. Where is that trade ticket, do you know?

1 A. Right at this moment, no, I do not.

2 *****

3 BY MR. BISSINGER:

4 Q. Okay. Mr. Claus, I'd like you to show me or
5 pull out Exhibit No. 38.

6 A. Yes, sir.

7 Q. You see that?

8 A. Yes, sir.

9 Q. All right. And could you show us where the
10 time stamp is on that, sir?

11 A. The time stamp is in the lower right corner,
12 January 28, '05 at 11:31:18 seconds.

13 Q. Isn't it the case in the brokerage industry,
14 sir, that when you have a trade ticket you are supposed
15 to put it in a time stamping device and get it time
16 stamped from the firm printed on the ticket?

17 A. A time and date of execution have to be on the
18 trade ticket, yes.

19 Q. Okay. And isn't that done, sir, in the
20 brokerage industry by getting a stamp on the ticket?

21 A. There are different procedures at different
22 firms.

23 Q. Are you saying that your firm does not follow
24 procedure of getting a stamp on the trade ticket?

25 A. We have the time and date stamp on this ticket.

1 Q. Okay. And by that, you're saying that it was
2 just the time and date that came out on the printout,
3 right?

4 A. Yes.

5 Q. That's different than a time stamp the old
6 fashioned way where you stick it under a machine and it
7 stamps it, right?

8 A. We used to do it that way.

9 Q. Okay. You don't do it that way anymore? Is
10 that what you're telling us?

11 A. Again, that's the wire operators option. I
12 don't know. I execute trades. I don't do order entry
13 trade tickets.

14 Q. All right. But when you do a trade ticket,
15 aren't you supposed to get a stamp on it?

16 A. You have to have the date and time on it, yes.

17 Q. But you're saying you don't get a stamp on it?

18 A. I have a stamp on it.

19 Q. This is not a stamp. It's just on the
20 printout, isn't it?

21 MR. FALICK: It's argumentative.

22 BY MR. BISSINGER:

23 Q. Okay. Mr. Claus, I'd like to direct your
24 attention to -- oh, yeah, that's a good point. Back on
25 38, there is a notation that you made on the right-hand

1 side, correct?

2 A. Yes, sir.

3 Q. Okay. And this is your handwriting, LC, right,
4 LHC, maybe?

5 A. Yes, sir.

6 Q. Okay. And right above that, there's a number,
7 correct?

8 A. Yes.

9 Q. That number is 15,838, right?

10 A. Yes.

11 Q. That number, sir, is your commission, isn't it?

12 A. Yes.

13 Q. That was the amount of money you got paid to do
14 this trade?

15 A. No.

16 Q. That was the amount of money you were trying to
17 get paid to do this trade?

18 A. No.

19 Q. That was the amount of money the firm was going
20 to get paid to do this trade?

21 A. Yes.

22 Q. Now at the bottom, you also have some notations
23 about Bob Harvey. Is that your writing, sir?

24 A. Bob Harvey and the telephone number following
25 his name is my writing. The other -- the numbers above

1 and below and cap plus net something is not my writing.

2 Q. That's not your writing, okay. Do you know
3 whose writing it is? Do you recognize that writing?

4 A. No.

5 Q. All right. I want to move on and I would ask
6 again to play the excerpt of a tape. Let's play 1240LEN.

7 MR. BISSINGER: Fair let's play 1240

8 (A recording was played for the panel.)

9 BY MR. BISSINGER:

10 Q. Mr. Claus, Mr. Harvey was asking you, was he
11 not, for financial information about INS before Sterling
12 did the trade, right?

13 (Objection and argument was heard.)

14 BY MR. BISSINGER:

15 Q. Mr. Claus, isn't the case that Mr. Harvey was
16 asking you about financial data of your firm before the
17 trade actually was done; isn't that right?

18 (Objection and argument was heard.)

19 BY MR. BISSINGER:

20 Q. The conversations with Harvey, it happened
21 after the trade?

22 A. Yes, sir.

23 Q. Okay. That's what you're telling us here?

24 A. Yes, sir.

25 Q. Okay. And so you went ahead and bought bonds

1 for Harvey without talking or you bought bonds for
2 Sterling without ever talking to Sterling? Is that what
3 you're telling us?

4 A. No, I'm saying that they called me, it was
5 after the trade.

6 Q. All right. Now you're telling us that if they
7 called you, it was after you bought the bonds?

8 A. After they bought the bonds.

9 Q. Well, what about you, when did you buy the
10 bonds, before or after this phone call?

11 A. It would have been before.

12 Q. Okay. Now in both of those phone calls, one
13 with Mr. Pepe and the next with Mr. Harvey, you never
14 mentioned to either of them that you had already bought
15 the bonds, did you?

16 (Objection and argument was heard.)

17 BY MR. BISSINGER:

18 Q. We just listened to two phone conversations,
19 right?

20 A. Where --

21 Q. Sir, I apologize, but just let me ask the
22 questions. We listened to two phone conversations, one
23 with Pepe and one Harvey, right?

24 A. Yes.

25 Q. And in neither of those conversations do you

1 say to Mr. Pepe or to Mr. Harvey, Gee, I've already
2 bought these bonds, guys, do you?

3 A. No.

4 Q. And so at that point, Mr. Claus, while you're
5 talking to Mr. Pepe and to Mr. Harvey, you, at INS are
6 sitting on 3.2 million face value bonds. That's what
7 you're telling us, right?

8 A. No.

9 Q. You just bought the bonds, right?

10 A. I was not long on the bonds. Sterling was long
11 in that position at that point.

12 Q. Sterling, Mr. Pepe, didn't know --

13 MR. FALICK: Mr. Claus.

14 BY MR. BISSINGER:

15 Q. Or Mr. Claus, Sterling didn't know that you
16 had bought the bonds, right?

17 A. Wrong.

18 Q. Okay. You're saying that you had told Sterling
19 that they had bought the bonds?

20 A. Yes.

21 Q. Okay. And that's -- but you don't mention it
22 to Mr. Pepe in this phone call or to Mr. Harvey in this
23 phone call, right?

24 A. Not in this phone call.

25 Q. Mr. Claus, it was your testimony yesterday that

1 this trade was highly unusual, correct?

2 A. Yes.

3 Q. You're a careful man, right?

4 A. Extremely.

5 Q. You believe in following firm procedures,
6 correct?

7 A. Yes.

8 Q. And up until this point, you had always
9 followed your firm's procedures, right?

10 A. Yes.

11 Q. Okay. You had actually been a friend of Mr.
12 Short, correct? A business acquaintance?

13 A. Define friend. A business acquaintance, yes.

14 Q. Sir, I'm not sure how you define friend.

15 A. A business acquaintance, yes.

16 Q. Okay. And in fact, Jerry Short taught you how
17 to deal with clients, right?

18 A. Yes.

19 Q. Mr. Short, according to you, ran the trading
20 desk when you were just starting out, right?

21 A. Yes.

22 Q. Isn't it fair to say he was kind of a mentor?

23 A. No.

24 Q. All right. But you remained friends, you
25 remained business acquaintances, right?

1 A. Business, yes.

2 Q. You continued to trade with Mr. Short, isn't
3 that right, Mr. Claus?

4 A. Occasionally.

5 Q. All right. And all your other trades with Mr.
6 Claus were problem-free, right -- all the other trades,
7 Mr. Claus, with Mr. Short were problem-free, correct?

8 A. Yes.

9 Q. Okay. And that's because in part because you
10 were careful and you would do the correct thing in
11 filling trades and executing trades, right?

12 A. Yes.

13 Q. Okay. Now at this point, at the time of these
14 conversations with Mr. Pepe and Mr. Harvey, you have not
15 sent any confirmation to anyone at ICM, Capnet, Jerry
16 Short or anyone on that side, right?

17 A. Right.

18 Q. No confirmation had been sent?

19 A. No.

20 Q. Okay. And second, you haven't sent a
21 confirmation to anyone at Sterling yet, have you?

22 A. Yes, I have.

23 Q. All right. And okay, is what you're saying a
24 confirmation the Bloomberg e-mail?

25 A. Yes, sir.

1 Q. Okay. Tell us about these Bloomberg e-mails.

2 Is this the way that you ordinarily confirm trades?

3 (A short break was had and start Tape 6. Tape

4 5 was blank.)

5 BY MR. BISSINGER:

6 Q. Didn't you just told us that INS can be neither

7 long nor short in position, right?

8 A. (Inaudible).

9 Q. And it's fair to say that that's because INS is

10 really a brokerage firm, not an investment house that

11 holds investments for its own account, right?

12 A. Right.

13 Q. And the brokerage industry makes its money in

14 the commissions in the buys and sells, not on the

15 appreciation of investments, right?

16 A. I don't know.

17 Q. INS makes its money through commissions,

18 spreads, markups, other forms of trading costs, right?

19 A. If you're asking me how INS makes all their

20 money, I don't own the company.

21 Q. How does Len Claus make his money?

22 A. Trading profits.

23 Q. Trading profits or trading costs, trading

24 expenses?

25 A. Trading profits and then pay out expenses.

1 Q. Okay. And let me just be clear. When you talk
2 about trading profits, you're not talking about the
3 appreciation of an investment over time. You're talking
4 about commissions, markups, markdowns, spreads, things of
5 that nature, right?

6 A. Commissions.

7 Q. Commissions. Mr. Claus, back on this concept
8 of the errors, isn't it fair to say that a DK is another
9 type of error procedure in this buying and selling of
10 bonds?

11 A. I can't say that a DK is an error.

12 Q. It might be if a buyer, for example, DKs a
13 trade, that might reflect an error, is that fair?

14 A. It might.

15 Q. Okay. What are other reasons for a DK?

16 A. (Inaudible).

17 Q. So it would be an error or maybe other change
18 in circumstance, is that fair?

19 A. (No verbal response).

20 Q. And by DK, that's just a shorthand version for
21 don't know, right?

22 A. Yes.

23 Q. And when somebody says I don't know this trade,
24 that means I'm disavowing this trade, right?

25 A. The trade didn't clear. It doesn't mean

1 they're disavowing. It didn't clear because of some
2 issue with it.

3 Q. Okay. So it's not necessarily subjected to a
4 termination. It's just that counter-party saying the
5 trade can't clear. I DK the trade?

6 A. For one reason, the delivering (inaudible) is
7 DK'ed for one reason or another.

8 Q. Okay. And it can be for a variety of reasons?

9 A. Yes.

10 Q. With all of that education in mind, I'd like to
11 go back to this big chunk of paper here, ICM number 3
12 with the 29 tabs. Are you with this us? ICM 3, just the
13 whole document. I just want to work on the first page.
14 Yeah, you got it. The first cover page yes, sir, that's
15 it. Okay. Now we're going to try to work through this
16 process, this case, these trades. First of all, the
17 title on this page is, I believe, trade runs, trade runs
18 for the purchase and sell of the 2761 series bond for the
19 period 1-1-05 through 3-31-05. Do you see that?

20 A. Yes.

21 Q. Oh, just this page. I apologize. I might go
22 to the tabs. Okay. Okay. And this is a blotter, the
23 data on this blotter -- yeah, this is the trade runs,
24 right, for this series bond, right? Yes?

25 A. Yes.

1 Q. Okay. And as a general matter, the 3.2 million
2 bonds that are at issue in this case are the only bonds
3 in this -- in these trade runs. I mean, there's no other
4 trading in other 2761SVs; isn't that right?

5 A. Yes.

6 Q. And starting with the first trade is a sell,
7 1-28-05 is the trade date and the settle date is 1-31 and
8 it's a transaction type sell. Do you see that?

9 A. Yes.

10 Q. And that's the sale to Fortis, right?

11 A. Yes.

12 Q. And Fortis really means to Sterling, right?

13 A. Sterling through Fortis.

14 Q. And so and the price is 90 1/8, right?

15 A. Yes.

16 Q. And that's the sell that we're all here in this
17 case fighting about, right?

18 A. Yes.

19 Q. Okay. Now there's also underneath that -- Oh,
20 let's do it this way. That's the first line. I'm going
21 to skip down to the fifth line, which is looking under
22 executor, you see where it says FTIS for Fortis, right?

23 A. Yes.

24 Q. That's where Fortis cancels the trade, right?

25 A. That's where --

1 Q. Or Sterling cancels it?

2 A. That's where Southwest Securities canceled the
3 sell ticket.

4 Q. Okay. And you understand, you know from your
5 knowledge of the underlying events from what happened in
6 this case that that's because Sterling and Bob Harvey
7 said we DK this trade? You know that, right?

8 A. Yes.

9 Q. Okay. Okay. So we know what those are. I'm
10 just going to cross those out. And you know Mr. Harvey
11 DK'ed this trade that same afternoon, the afternoon of
12 the 28th of January, right? You've listened to the
13 tapes. You see the documents, right?

14 A. Yes.

15 Q. Okay. Okay. Now skipping back to line two of
16 this trade run, you see that there is a buy order dated
17 January 28th for the trade settle date of January 31st,
18 3.2 bonds 2761SVs at 88 1/2. You see that?

19 A. Yes.

20 Q. And that is you buying those bonds from Jenks
21 Company, right, or trying to buy those bonds from Jenks
22 Company, right?

23 A. No.

24 Q. Okay. Well, we talked about this before one of
25 the breaks. You never bought the bonds at 88 1/2, right?

1 A. Right.

2 Q. And so you can just look on the next line to
3 see that that buy order at 88 1/2 got canceled, right?

4 A. Right.

5 Q. So those next two trades are accounted for and
6 they cancel each other out, right?

7 A. Yes.

8 Q. Okay. Then do you recall what time the
9 cancellation occurred?

10 A. No.

11 Q. Okay. You know that a cancellation occurred?

12 A. Which trade are you referring to?

13 Q. The cancel on the buy of the bonds at 88 1/2 on
14 line three?

15 A. I don't know what time.

16 Q. Okay. And just so the panel knows, each line
17 of this exhibit has a corresponding tab that has some
18 backup to that line. And just going through the stuff in
19 Tab 3, if you take a look at that, it's a couple of
20 confirms that say cancel trade. Do you see that, the
21 first confirm, that's a cancel trade 3-31-05?

22 A. Yes.

23 Q. Oh, this is Tab 3 of these materials, the first
24 page of Tab 3. Mr. Claus, why was this trade canceled?

25 A. Because we had entered the price incorrect.

1 Q. Okay. That's all it reflects is just a typo?

2 A. Yes, sir.

3 Q. Okay. In fact, if you go to page -- go back to
4 Tab 2 to the second page. We looked at this document
5 before lunch. But this is a trade ticket for the 88 1/2
6 purchase price to Jenks, right?

7 A. Right.

8 Q. And down at the bottom, the time on that is
9 11:32, right?

10 A. Yes.

11 Q. How soon afterwards, after 11:32 was it
12 discovered that there was a mistake in the price?

13 A. I have no idea.

14 Q. Okay. Well, would it help and to refresh your
15 recollection to go back and look at Tab 1 on the second
16 page? I'm sorry.

17 A. No, it doesn't help.

18 Q. Okay. I apologize. Go back to Tab 4 to the
19 second or to the third page of the blotter. And it's the
20 third page, number 425. You see that?

21 A. Yes.

22 Q. It looks like by 11:42 in the afternoon the
23 price had been corrected to say 89 1/2 instead of 88 1/2,
24 right?

25 A. Yes.

1 Q. By 11:42 that morning?

2 A. Yeah.

3 Q. Okay. So the correction took about 10 minutes,
4 right, from 11:32 to 11:42?

5 A. No.

6 Q. Okay.

7 A. Page 425 is dated January 31st.

8 Q. Okay.

9 A. That was on settlement day. The prior question
10 that you asked me is something that happened days
11 earlier.

12 Q. Okay. Are you saying you didn't fill out a
13 trade ticket on January 28th at the correct price?

14 A. I don't know.

15 Q. You don't know, okay. Well, I'll represent to
16 you we've looked for it and this is the only one we can
17 find, but I could be wrong. There's a lot of paper. You
18 don't know?

19 MR. FALICK: Can we proceed with question and
20 answer without sidebar comments, please.

21 BY MR. BISSINGER:

22 Q. All right. So we have the purchase on line
23 four at 89 1/2, right?

24 A. Yes.

25 Q. Okay. Just going back to the cover sheet,

1 right?

2 A. Yes.

3 Q. Okay. Now by this point, we've got this trade
4 on the next line dealt with, that that's canceled sell,
5 right? We talked about that. That's the sell that you
6 were going to make to Sterling that was canceled because
7 Harvey canceled it on the 28th, right? He DK'ed it on
8 the 28th?

9 A. I'm confused. What was the question?

10 Q. Well, I just want to go. Basically, we've got
11 lines one through five accounted for. We've talked about
12 all of that. And we just finished line four, which was a
13 buy for 89 1/2 that is for whatever reason dated January
14 31st, but the line after that is the sell cancel on line
15 five that we've already talked about. And that was
16 reflecting -- that line reflects Len Claus, you said, I
17 DK'ed this trade and that caused this cancel confirm to
18 be sent.

19 (Objection and argument was heard.)

20 BY MR. BISSINGER:

21 Q. Mr. Harvey DK'ed --

22 (Objection and argument was heard.)

23 BY MR. BISSINGER:

24 Q. Line five, Mr. Claus, reflects a cancellation
25 of the trade, right?

1 A. Yes.

2 Q. And it was Bob Harvey at Sterling who canceled
3 that trade, right?

4 A. No.

5 Q. Bob Harvey of Sterling DK'ed that trade, didn't
6 he?

7 A. I don't know.

8 Q. You received an e-mail from Bob Harvey in which
9 he DK'ed the trade, right?

10 A. No.

11 Q. You didn't receive an e-mail from Mr. Harvey on
12 January 28th in which he DK'ed the trade?

13 A. Are you talking about a DK on the DTC system or
14 are you talking about a dispute in corresponds because --

15 Q. Mr. Claus, I don't want to quibble. We'll just
16 look at the e-mail.

17 THE COURT: Is that a question?

18 MR. BISSINGER: No, it's an introduction to a
19 question. I don't want to quibble. I'm going to
20 pull an e-mail. Okay?

21 (Objection and argument heard.)

22 BY MR. BISSINGER:

23 Q. I guess, Mr. Claus, what you're saying is that
24 there's an e-mail from Bob Harvey on a Bloomberg DKing
25 this trade saying he DK'ed the trade. You're drawing a

1 distinction between that and a DK formally entered onto a
2 system you call DTC?

3 A. Correct.

4 Q. Okay. Those are two different things?

5 A. Yes.

6 Q. Okay. But you don't question the fact that the
7 trade on line five was, in fact, canceled, right?

8 A. That's correct.

9 Q. And it was a cancellation process that Sterling
10 put in motion, right?

11 A. This is data from Southwest Securities. I
12 can't say that Sterling had anything to do with the data
13 that was entered into Southwest Securities. So when you
14 ask me if Sterling or one of them had something to do
15 with this entry, I have to say no, they did not.

16 Q. Okay. Well, in your lawsuit you've made a big
17 deal about the, you know, refusal by Sterling to honor
18 this trade, right?

19 A. Yes.

20 Q. And that refusal by Sterling to honor this
21 trade occurred on January 28th, right?

22 A. In the afternoon, yes.

23 Q. Okay. And it continued and Sterling didn't
24 change its mind, right?

25 A. Obviously not.

1 Q. Okay. And you're saying that despite your
2 knowledge of all of that, that you don't know whether the
3 cancelled trade reflected here on this blotter that you
4 produced in this lawsuit has anything to do with
5 Sterling's refusal to honor the trade? That's the
6 distinction you're drawing?

7 A. Worded that way, that's right.

8 Q. Okay. For all you know, there was another
9 reason this says canceled? That's your point, right?

10 A. No, the way you just worded the question is
11 correct.

12 Q. Okay. So you're saying you don't for sure that
13 all the stuff Sterling said has any reason for the
14 cancellation of this trade? Is that what you're saying?

15 A. Say it again.

16 Q. You're telling us that you deny having any
17 knowledge or any awareness that the events of the
18 afternoon of the 28th when Mr. Sterling or Mr. Harvey or
19 Sterling refused to honor the trade had anything to do
20 with the entry of the words cancel on line five of this
21 blotter of these trade runs?

22 A. You're right, their actions caused this trade
23 to be canceled.

24 Q. Okay. And so that all happened that afternoon
25 of the 28th, right? Those actions by Sterling happened

1 on the afternoon of the 28th, right?

2 A. Yes.

3 Q. Okay. At that moment, that's where your duty
4 to mitigate kicked in, right?

5 A. No.

6 Q. You're saying you didn't have a duty to
7 mitigate at that point?

8 A. No.

9 Q. Your firm was long the position of 3.2 million
10 bonds, right?

11 A. No, Sterling was long. Settlement date was
12 three days later. I didn't know if they were going to
13 pick them up or not.

14 Q. Well, sir, they had told you that they were
15 DKing the trade, right?

16 A. Yeah, but that was days before settlement date.

17 Q. Okay. So in other words, you were hoping that
18 sometime between the 28th and I think the next settlement
19 date is February 2nd, that this would -- the problem
20 would resolve itself? Is that what you're saying?

21 A. Yes.

22 Q. And settlement date was the 2nd, correct?

23 A. I believe so.

24 Q. All right. And --

25 THE SPEAKER: Excuse me. The settlement date I

1 see recorded here is January 31st. Do you want to
2 clarify that issue, please.

3 THE WITNESS: Yes, it's the 31st.

4 BY MR. BISSINGER:

5 Q. Okay. Now I don't know if I've got all of the
6 documents here, but I believe there were e-mails that
7 indicated maybe the settlement was a little bit later.
8 Were you trying to say that or is the settlement date the
9 31st?

10 A. No, the settlement date is the 31st.

11 Q. Okay. And on the 31st, Sterling didn't change
12 its mind, right?

13 A. Obviously not.

14 Q. They hadn't changed their mind?

15 A. Right.

16 Q. And so on the 31st, your firm was long 3.2
17 million, right?

18 A. Sterling failed to take delivery, yes.

19 Q. On the 31st, your firm is long 3.2 million of
20 the 2761SVs, yes or no?

21 A. The 31st is settlement date.

22 Q. On the 31st, your firm was long those bonds,
23 right?

24 A. Technically, it was fail to deliver. It was a
25 failure, a good fail.

1 Q. Sir, my question is --

2 THE COURT: You asked him a bunch of times.

3 THE WITNESS: It was a good fail.

4 BY MR. BISSINGER:

5 Q. Okay. What is a good fail?

6 A. It means a trade didn't settle.

7 Q. A trade that didn't settle? That's yes?

8 A. Yes.

9 Q. Okay. And so that's a trade that your firm
10 ended up holding those bonds on, right?

11 A. No, it's a good fail, so they're --

12 Q. Okay.

13 MR. FALICK: You have a question pending that
14 he hasn't answered yet.

15 THE WITNESS: It's a good fail. The bonds are
16 on the DTC system on the fed wire.

17 BY MR. BISSINGER:

18 Q. Okay. So technically, your firm hasn't taken
19 possession of those bonds? That's what you're saying a
20 good fail is?

21 A. Correct.

22 Q. Okay. And that's on the 31st of January,
23 right?

24 A. Right.


25 Q. Okay. Now you can't keep it in this good fail

1 status forever, right?

2 A. Typically, they'll redeliver. Several attempts
3 are made to redeliver the bonds.

4 Q. Okay. But you can't -- my question is you
5 can't keep the bonds in a good fail status forever,
6 correct?

7 A. Correct.

8 Q. So your firm has to figure out something to do
9 with those bonds, correct? 

10 A. We're directed by the clearing firm as to how
11 to proceed.

12 Q. Okay. But your firm cannot be long the 3.2
13 million bonds, correct?

14 A. Correct.

15 Q. And so your firm has to do something with the
16 bonds, right?

17 A. Right.

18 Q. And that something is to find someone else to
19 take those bonds, right?

20 A. Yes.

21 Q. That's another buyer to take Sterling's place,
22 right?

23 A. Yes.

24 Q. And that's when you entered into what you
25 described yesterday as an aggressive marketing campaign


1 for these bonds, right?

2 A. Correct.

3 Q. And, in fact, in the next line here, isn't it
4 true that the aggressive marketing campaign was
5 successful?

6 A. No.

7 Q. Isn't it true on this next line on February 3
8 there was a sell of 3.2 million bonds at 89 1/2 to
9 Deskcap Securities?

10 A. Yes. 


11 Q. That's the total amount of the bonds, right?

12 A. Uh-huh.

13 Q. That's a yes?

14 A. Yes.

15 Q. And so that means that your firm had covered
16 its position, right?

17 A. That trade was made because Sterling failed to
18 take delivery. Deskcap took the bonds and we had an
19 agreement where -- I didn't have the obligation, but I
20 gave them my word that I would get these bonds sold by
21 the end of February. I didn't have to, but I called in a
22 favor from a friend at Deskcap Securities and they put
23 them in their inventory and I did my best to work out
24 them. 

25 Q. You parked the bonds, didn't you, sir?

1 A. No, sir, that's not right. I have no
2 obligation, no commitment to take them back.

3 Q. Okay. And so since you had no obligation to
4 take them back, it was your freely chosen decision and
5 your free act to start taking those bonds back, which is
6 what happens as you go down through these trade runs?

7 A. Yes, sir.

8 Q. That was your free choice?

9 A. Yes, sir.

10 Q. You didn't have to make those trades if you
11 wanted, right?

12 A. No, I could have dumped the bonds on the street
13 and lost 500,000, I guess.

14 Q. Sir, you had just gotten back 3.2 million --
15 you had gotten Deskcap to take the entire position of 3.2
16 million dollars; isn't that right?

17 A. Yes.

18 Q. And your friend agreed to keep those bonds,
19 period, end of story, right?

20 A. Yes.

21 Q. That was -- you're telling us that that was a
22 legitimate trade?

23 A. Yes.

24 Q. All right. And so once that trade is made,
25 there is no obligation by ICM, Sterling, Beau Ritz, Jerry

1 Short or anyone else to cover that position, is there,
2 sir?

3 A. Yes.

4 Q. Sir, you had a legitimate trade with Deskcap
5 Securities. They took the position?

6 A. Yes.

7 Q. You mitigated it, end of story, end of case; is
8 that not true?


9 A. No, it's not a mitigation. I gave him my word
10 that he would hold these until I could clear it with the
11 dealer.

12 Q. Okay. I want to go back to the manual, number
13 17. Oh, I'm sorry. It's page CL330, Page 121. Are you
14 there, sir?

15 A. Yes.

16 Q. 15.6, parking, you see that?

17 A. Yes.

18 Q. Your manual, your rules of the road say
19 parking, which refers to a scheme to conceal beneficiary
20 ownership of securities by transferring securities to
21 another person with the understanding that they will be
22 re-acquired by the original owner in the future with no
23 loss to the person accommodating the part of the scheme
24 is strictly forbidden? 

25 A. Yes.

1 Q. That's exactly what you did with your friend at
2 Deskcap Securities, is it not?

3 A. No, Deskcap suffered a loss.

4 Q. Sir, Deskcap, you just told us, made a
5 legitimate purchase of the 3.2 million bonds, right?

6 A. Yes.

7 Q. And they bought them for exactly the same price
8 that you had paid for them from Jenks Company, right?

9 A. Yes.

10 Q. 89 1/2, right?

11 A. Yes, less than Sterling (inaudible).

12 Q. Sir, you had a legitimate trade with Deskcap at
13 the same exact price that you paid Jenks Company, right?

14 A. Yes.

15 Q. You had full mitigation, right?

16 A. No.

17 Q. Are you saying that the trade with Deskcap was
18 less than legitimate?

19 A. No.

20 Q. Okay. Well, if it was a legitimate trade, you
21 could wash your hands of it and walk away with no
22 obligation to Deskcap, correct?

23 A. So what's your question?

24 Q. You had full legal rights after Deskcap took
25 the bonds on February 3rd of 2005 to walk away having


1 fully covered the obligation that you had incurred from
2 Jenks Company, right? Right?

3 A. Did I have the right to walk away, is that what
4 you're asking?

5 Q. Well, that's what you told us before is that
6 you said it was a legitimate trade?

7 A. It was a legitimate trade.

8 Q. That's a legitimate trade means you don't owe
9 anything to Deskcap, right?

10 A. So Sterling gets to walk away?  So you're
11 asking me what, did I sell them to Deskcap Securities,
12 yes.

13 Q. And it was a legitimate sell, right?

14 A. Yes.

15 Q. So there was no reason to go after Sterling for
16 this lawsuit, was there?

17 A. Certainly there was.

18 Q. You had no harm, sir. You bought at 89 1/2 and
19 you sold at 89 1/2?

20 A. Because of the failure, I had to mitigate my
21 damages.

22 Q. But you had no damages, sir. You bought at 89
23 1/2 and you sold at 89 1/2, didn't you, sir?

24 A. I guess you can say that, yes.

25 MR. BISSINGER: Pass the witness.

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CERTIFICATE

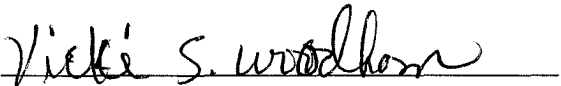
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The State of Florida,)

County of Palm Beach.)

I, Vicki S. Woodham, Notary Public, do hereby
certify that I was authorized to and did listen to and
stenographically transcribe the foregoing tape-recorded
proceedings and that the transcript is a true record to
the best of my ability.

Dated this 11th day of January, 2008.



Vicki S. Woodham
My Commission Expires:
December 08, 2010
Commission No.: DD617559

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