

18-3546(L)

Consolidated with 19-497

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

RAHEEM BRENNERMAN
AKA Jeferson R. Brennerman, AKA Ayodeji Soetan,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX
Volume III of IX

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HBSKBRE9

Hagemeier - Redirect

1 REDIRECT EXAMINATION

2 BY MS. SASSOON:

3 Q. Do you remember Ms. Fritz asked you about discussions
4 related to the Ivory Coast?

5 A. Yes, ma'am.

6 Q. As far as you know, did Mr. Brennerman ever purchase any
7 oil assets in the Ivory Coast?

8 A. Not to my knowledge.

9 Q. Displaying again Government Exhibit 67B --

10 THE COURT: 1-67B, correct?

11 MS. SASSOON: Yes, 1-67B. Your Honor, may I hand the
12 witness a hard copy so it's easier?

13 THE COURT: Yes.

14 Q. Please take a moment and flip through this, and let me know
15 if you can find any mention of Black Elk in this document.

16 A. I don't see it anywhere.

17 Q. Looking at the first page of 1-67B, on this front page of
18 the Blacksands Pacific presentation, where it mentions the
19 project, the asset details and the proposal, is there any
20 mention of Black Elk there?

21 A. No, ma'am.

22 Q. Turning to page 3, which mentions T.A. Hubble, are you
23 still in touch with Todd Hubble?

24 A. Not Todd Hubble, no.

25 Q. Were you in touch with him in 2012?

HBSKBRE9

Hagemeier - Redirect

1 A. Yes, ma'am.

2 Q. And 2014?

3 A. Yes.

4 Q. Did he ever mention, during those time frames, whether he
5 worked for Blacksands or at Blacksands?

6 A. He did not.

7 Q. Did he ever mention to you whether he was on the technical
8 and project management team at Blacksands?

9 A. He was not.

10 Q. Turning to page 8, this is Farlyn Bowen, are you still in
11 touch with him?

12 A. Yes, ma'am.

13 Q. Has he ever mentioned going to work nor Blacksands?

14 A. He has not. He has not gone to work for Blacksands.

15 Q. Turning to page 11, this is Keith Hubbard. Can you remind
16 us how you know who Keith Hubbard is?

17 A. Keith Hubbard ran one of the areas of operation for Black
18 Elk.

19 Q. Can you find any mention of Black Elk on this resume for
20 Keith Hubbard in this document?

21 A. It doesn't appear to be, no, ma'am.

22 Q. As far as you know, did he ever go work for Blacksands?

23 A. He did not.

24 Q. Let's turn to Government Exhibit 1-52C. Looking at the
25 front page, is there any mention of purchasing Black Elk on

HBSKBRE9

Hagemeier - Redirect

1 this first page of this proposal?

2 A. No, ma'am.

3 Q. If you look on the front page, there is mention of assets
4 in Louisiana. Did Black Elk have assets in Louisiana?

5 A. Technically, yes. In the state waters of Louisiana, but we
6 had no onshore assets.

7 Q. There is also mention of assets in Oklahoma. Did Black Elk
8 have assets in Oklahoma?

9 A. No, ma'am.

10 Q. There's mention here of Cat Canyon and Casmalia Fields,
11 California. Did Black Elk own either of those?

12 A. No, ma'am.

13 Q. Turning to page 6 of this document, where it says
14 "Security: Black Elk Energy, first lien and pledge of Black
15 Elk Energy Offshore's Operations LLC," as far as you know, did
16 Black Elk ever authorize Blacksands to pledge Black Elk as
17 security?

18 A. They did not.

19 Q. Turning to the selected executive officers of Blacksands
20 profiles, starting with your own on page 15, is there any
21 mention here of the fact that you worked at Black Elk?

22 A. No, ma'am.

23 Q. Looking at page 17, do you recognize the names on this
24 page?

25 A. Yes, ma'am. All three worked at Black Elk.

HBSKBRE9

Hagemeier - Redirect

1 Q. Is there any mention here of these people working at
2 Black --

3 A. No, ma'am.

4 Q. As far as you know, did any of these people go to work at
5 Blacksands?

6 A. They did not.

7 Q. Turning to page 18, do you recognize these names?

8 A. They both worked at Black Elk.

9 Q. Do you see any mention here of them having worked at Black
10 Elk?

11 A. No, ma'am.

12 Q. Are you aware of them ever having worked at Blacksands?

13 A. They did not.

14 Q. Turning to page 19, do you recognize these names?

15 A. Yes, ma'am. They all three worked at Black Elk.

16 Q. Do you see any mention here of them having worked at Black
17 Elk?

18 A. No, ma'am.

19 Q. As far as you know, did they ever go to work at Blacksands?

20 A. They did not.

21 Q. Turning to page 20, do you recognize these names?

22 A. Yes, ma'am. They all worked at Black Elk.

23 Q. Is there any mention here of them having worked at Black
24 Elk?

25 A. No, ma'am.

HBSKBRE9

Hagemeier - Redirect

1 Q. As far as you know, did any of these people go to work at
2 Blacksands?

3 A. They did not.

4 Q. I'd like to turn back to Exhibit 1-19. This is the email
5 with the attached confidentiality agreement. If we could turn
6 to the first page of the confidentiality agreement, which I
7 believe is page 5.

8 MS. FRITZ: Objection; beyond the scope.

9 MS. SASSOON: May I respond?

10 THE COURT: No. I'll allow the question. I know
11 where you're going. Go ahead.

12 Q. Zooming in on paragraph 2, first, is it your understanding
13 that the resumes of Black Elk employees and their biographies
14 provided to Blacksands -- would that be covered by the
15 definition of confidential information?

16 A. Yes, ma'am.

17 Q. Paragraph 2, says, "All confidential information shall be
18 used solely for the purpose of the evaluation." What's your
19 understanding of what "the evaluation" means? And if you would
20 like to reference the entire agreement for the definition --

21 A. It's the evaluation of the Black Elk acquisition.

22 Q. "All confidential information shall be used solely for the
23 purpose of the evaluation. Except as expressly provided in
24 Section 3 hereof, recipient shall not, without the prior
25 written consent of Black Elk, disclose any confidential

HBSKBRE9

Hagemeier - Redirect

1 information to any third party, as hereinafter defined, in any
2 manner whatsoever and except as reasonably necessary to
3 complete the evaluation. As used in this agreement, 'third
4 party' shall mean any natural person, corporation, partnership,
5 limited liability company, trust, association, joint venture,
6 pool, syndicate, unincorporated organization, joint stock
7 company or similar organization other than Black Elk."

8 What's your understanding of whether a bank, for
9 example, would fall under this definition of third party?

10 A. They would need our express consent to be able to use it.

11 Q. Would a bank be a third party?

12 A. Definitely.

13 Q. And so when you say they would need your permission to use
14 it, who is "they"?

15 A. Blacksands would have needed our permission.

16 Q. Did Blacksands ever seek your permission to provide
17 information of -- did Blacksands ever seek your permission to
18 provide information about Black Elk to third parties?

19 A. I don't -- I don't recall they did.

20 Q. Do you recall Blacksands ever asking your permission to
21 provide information about Black Elk to ICBC?

22 A. I don't recall that.

23 Q. Turning to paragraph 3, this is the section 3 hereof, which
24 is the exception for using confidential information. And it
25 says, "It may be provided or disclosed by recipient only to the

HBSKBRE9

Hagemeier- Redirect

1 following persons: Recipient's counsel, recipient's directors,
2 officers and employees, experts, and such other persons to whom
3 recipient is required by law to disclose such information."

4 Are banks listed here in the exception?

5 A. No, ma'am.

6 MS. SASSOON: No further questions.

7 THE COURT: Okay. Any recross?

8 MS. FRITZ: I'm going to try one follow-up question.

9 THE COURT: Okay.

10 RECROSS EXAMINATION

11 BY MS. FRITZ:

12 Q. In connection with any financing, whether it was already
13 arranged or whether it was still being negotiated, that was
14 going to provide funds for the purchase of Black Elk, would you
15 agree that the information regarding the Black Elk entity would
16 have had to be provided?

17 A. Yes, I would think so.

18 MS. FRITZ: Okay. Thank you.

19 THE COURT: Okay. Anything else?

20 REDIRECT EXAMINATION

21 BY MS. SASSOON:

22 Q. When you say "had to be provided," do you mean subject to
23 Black Elk's permission?

24 A. Yes, ma'am. It would have needed our permission.

25 MS. SASSOON: No further questions.

HBSKBRE9

Hagemeier- Redirect

1 THE COURT: Okay, all right. So let's stop here.
2 It's about 5:30.

3 So we'll pick up again tomorrow at 9:30. You know the
4 drill: So be here, ready to go, at 9:30. Don't discuss the
5 case. Keep an open mind. Take your books with you, and leave
6 them in the jury room. Help yourself to whatever is in there,
7 and you can take it with you if you'd like.

8 Have a good evening. Thanks very much. All rise for
9 the jury.

10 (Continued on next page)

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HBSKBRE9

1 (Jury not present)

2 THE COURT: Have a seat.

3 You can step down. Thank you, Mr. Hagemeyer.

4 (Witness excused)

5 THE COURT: Who do we have on tap tomorrow?

6 MR. LANDSMAN-ROOS: We'll start with Julian Madgett,
7 who's a banker from ICBC. Then we have two witnesses from
8 Morgan Stanley. After that, on-deck we'll have some witnesses
9 from ERG, although depending --

10 THE COURT: From where? ERG?

11 MR. LANDSMAN-ROOS: But there were a few, few law
12 enforcement type witnesses that we skipped over today to get
13 Mr. Hagemeyer off the stand. So we may try to layer them after
14 the Morgan Stanley witnesses, if there's time.

15 THE COURT: Okay. Do you think that's going to take
16 us the whole day?

17 MR. LANDSMAN-ROOS: Mr. Madgett's testimony, my guess,
18 based upon the number of defense exhibits related to him and
19 the government's direct, will be multiple hours.

20 THE COURT: All right. So just let defense counsel
21 know what's coming.

22 Anything we need to discuss today?

23 MR. LANDSMAN-ROOS: No.

24 THE COURT: So if there's something that comes up,
25 send me an email or a letter that I can look at so we're ready

HBSKBRE9

1 to go tomorrow. Otherwise, I guess we'll be ready to go at
2 9:30, when the jury is ready.

3 MR. LANDSMAN-ROOS: Your Honor, there's one issue
4 which is related to the number of exhibits that defense counsel
5 has marked concerning -- that has Mr. Madgett on it. Many of
6 them appear to be hearsay, the defendant's own statements, it
7 appears, that he offered for the truth. For instance, we're
8 doing a deal with Sinochem. I just want to flag the issue for
9 the Court now because I think it's likely there will be
10 numerous objections during the cross-examination, and there may
11 also be some relevancy or scope objections related to those.

12 THE COURT: All right. It's hard for me to deal with
13 that now. I guess I'll be on my toes.

14 Great, all right. Have a good night. Thanks.

15 (Adjourned to November 29, 2017 at 9:30 a.m.)
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HBT5bre1

1 UNITED STATES DISTRICT COURT
 2 SOUTHERN DISTRICT OF NEW YORK
 -----x

3 UNITED STATES OF AMERICA,

4 v.

17 CR 337 (RJS)

5 RAHEEM J. BRENNERMAN,

6 Defendant.

7 -----x

8 New York, N.Y.
 9 November 29, 2017
 9:30 a.m.

10 Before:

11 HON. RICHARD J. SULLIVAN,

12 District Judge
 13 and a Jury

14 APPEARANCES

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 16 Southern District of New York
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 17 EMIL BOVE, III
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 18 ROBERT SOBELMAN
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 20 Attorneys for Defendant
 MARANDA FRITZ
 21 BRIAN WALLER
 22 BRIAN STEINWASCHER
 23
 24
 25

HBT5bre1

1 (Trial resumed; jury not present)

2 THE COURT: All right. We got over 300 pages of
3 transcript yesterday. That's pretty good.

4 The jury is ready. Witnesses ready?

5 MS. SASSOON: Yes, your Honor.

6 THE COURT: Lawyers are ready? Let's do this thing
7 then.

8 MS. SASSOON: So we are calling a different witness
9 than we indicated we would be starting with.

10 THE COURT: Who is that?

11 MS. SASSOON: Kevin Bonebrake.

12 THE COURT: Kevin Bonebrake is the witness you are
13 calling?

14 MS. SASSOON: Yes.

15 THE COURT: That's like -- it is a great name, isn't
16 it? A professional wrestler's name. All right. Let's get him
17 up here and we will get the jury at the same time.

18 How long a witness is Mr. Bonebrake?

19 MS. SASSOON: Excuse me?

20 THE COURT: How long a witness?

21 MS. SASSOON: An hour, maybe less.

22 (Continued on next page)

23

24

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HBT5bre1

Bonebrake - direct

1 (Jury present)

2 THE COURT: Have a seat.

3 Thanks, ladies and gentlemen, for being on time. I
4 really appreciate it. What I said at the beginning of trial,
5 if there are snacks or drinks that you would like that you
6 don't see, within reason, we want to accommodate you. My view
7 is that this is a sacrifice that you are making, at the very
8 least we need to make sure you are hydrated and well fed. So,
9 if you don't like the cookies or you like the chocolate chips
10 but not oatmeal raisins, let us know. I think that's fair.

11 So, we are now going to start with a new witness and
12 that witness is who?

13 MS. SASSOON: Kevin Bonebrake.

14 THE COURT: So, would you please stand and raise your
15 right hand?

16 KEVIN BONEBRAKE,

17 called as a witness by the Government,

18 having been duly sworn, testified as follows:

19 THE COURT: Mr. Bonebrake, keep your voice nice and
20 loud, stay close to the mic, and don't talk too fast and we
21 will be fine.

22 You may proceed, Ms. Sassoon.

23 DIRECT EXAMINATION

24 BY MS. SASSOON:

25 Q. Good morning, Mr. Bonebrake.

HBT5bre1

Bonebrake - direct

1 A. Good morning.

2 Q. What kind of work do you do?

3 A. I'm a financial advisor to companies in the oil and gas
4 industry.

5 Q. Where do you work?

6 A. I'm based in Houston, Texas.

7 Q. And at what company do you work?

8 A. I'm a managing director for Lazard Frères.

9 Q. At this point, how long have you been working in energy
10 investing?

11 A. For a little over 13 years.

12 Q. Where did you work immediately prior to Lazard?

13 A. Morgan Stanley.

14 Q. And during what time period did you work there?

15 A. I was with Morgan Stanley from September 2009 through the
16 end of 2016.

17 Q. What roles did you have while you worked at Morgan Stanley?

18 A. I worked on financing transactions and mergers and
19 acquisitions transactions for oil and gas companies.

20 Q. Can you describe what that means?

21 A. Sure.

22 So, on the financing side, we would help companies to
23 raise equity in debt in order to fund the development of their
24 operations. On the mergers and acquisitions side, we would
25 advise companies on how to run a sales process. If they were

HBT5bre1

Bonebrake - direct

1 looking to sell an asset or their company, we would advise them
2 on the acquisition process if they were looking to acquire an
3 asset or a company.

4 Q. What kinds of companies were you working with?

5 A. I was primarily working with exploration production
6 companies.

7 Q. That's in the oil industry?

8 A. Yes.

9 Q. What was the approximate size of the deals that you helped
10 finance while you were at Morgan Stanley?

11 A. I would say that, on average, the deals were in the \$250
12 million to \$1 billion range; perhaps \$50 million on the small
13 end and little over \$1 billion on the high end.

14 Q. When we are talking about financing, would it be Morgan
15 Stanley that was providing the money?

16 A. In most cases we were an intermediary where we were selling
17 securities in a company to third-party investors, so we were
18 not providing the money directly in most cases.

19 Q. In your experience, about how many banks provide the type
20 of oil and gas financing in the amounts that you were just
21 talking about?

22 A. There are probably a dozen or so banks that Morgan Stanley
23 would consider to be primary competitors in that space for
24 financings of that size.

25 Q. During your time at Morgan Stanley, did you focus on a

HBT5bre1

Bonebrake - direct

1 particular geographic area?

2 A. I was primarily focused on the United States.

3 Q. Did your experience expand at all beyond the United States?

4 A. At times, yes. Oil is a very global industry so I did have
5 experience in working with companies outside the United States
6 and assets outside the United States as well.

7 Q. While you were at Morgan Stanley, where were you based?

8 A. In Houston.

9 Q. Why Houston?

10 A. Houston is generally considered to be the global center for
11 energy. There is a high concentration of oil and gas clients
12 located in Texas and Oklahoma so it is advantageous to have
13 bankers based there.

14 Q. Did there come a time when you were introduced to Raheem
15 Brennerman?

16 A. Yes.

17 Q. Approximately when was that?

18 A. January of 2013.

19 Q. Please, describe how that introduction was made.

20 A. So, Morgan Stanley, broadly, has two business lines, one is
21 private wealth management which is advising high net worth
22 individuals on how to manage their assets, the other line is
23 the part that I was a part of which is the institutional
24 securities division which includes the financing and M&A
25 advisory that I was explaining earlier. This particular

HBT5bre1

Bonebrake - direct

1 introduction was made by one of the private wealth management
2 individuals who had met Mr. Brennerman and he believed that
3 there was a business opportunity for my side of the business to
4 help Mr. Brennerman with financing.

5 Q. Do you remember that financial advisor's name?

6 A. Scott Stoudt.

7 Q. Typically, when would a private wealth management client
8 get referred over to you?

9 A. So, there are a large number of private wealth financial
10 advisors, I believe in excess of 10,000. So, when they had an
11 opportunity that they thought was a corporate financing or M&A
12 opportunity, they would reach out to an intermediary group
13 within Morgan Stanley whose job was to basically refer those
14 business opportunities to the appropriate person within my side
15 of the company. The company has 60,000 employees or 50,000 to
16 60,000 employees, so we needed sort of an air traffic control
17 function, if you will, in order to direct those business
18 opportunities.

19 Q. When Mr. Brennerman was referred to you, were you given an
20 understanding of what business opportunity it involved?

21 A. I was told that there was a potential opportunity to raise
22 financing, I believe in the neighborhood of \$500 million for an
23 energy company in the oil and gas space.

24 Q. When you received a referral like that, what was your
25 practice in handling it?

HBT5bre1

Bonebrake - direct

1 A. The practice usually would be to have a phone call with the
2 financial advisor to better understand the opportunity and/or
3 have a phone call with the financial advisor's client to better
4 understand the opportunity.

5 Q. On these calls you mentioned with the potential client,
6 what would you be hoping to learn?

7 A. I would be hoping to learn more details about the client
8 itself in terms of the management team or the board or who the
9 individual was if it was a privately held asset and trying to
10 learn more details about the asset itself in order to
11 understand whether it was something that I think there would be
12 market demand for and whether it is an asset that would fit
13 within the range that Morgan Stanley would typically help
14 finance.

15 Q. When you talked about understanding a client's asset, what
16 kind of assets are you talking about?

17 A. So my specific speciality, as I mentioned, was oil and gas,
18 and within oil and gas exploration production. So, this would
19 be oil and gas reserves.

20 Q. And what, exactly, would you want to learn about those
21 assets on an introductory call?

22 A. I would be interested in learning the location of the
23 assets, the size of the assets in terms of how much reserves
24 and production they had, and I would be interested in learning
25 how much financing my client would think they would need.

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1 Q. What would be the purpose of this information gathering?

2 A. The purpose of it is to figure out whether or not Morgan
3 Stanley could be helpful to them and to determine whether or
4 not it is a transaction that would potentially be interesting
5 to the markets in terms of investors willing to investor their
6 capital in an asset like this.

7 Q. When you mention being of interest to the market, are those
8 the people you would be raising money from?

9 A. Yes.

10 Q. Did there come a time when you in fact did have a call with
11 Mr. Brennerman?

12 A. Yes.

13 Q. When, roughly, was that?

14 A. January 2013.

15 Q. Did you do any research on Mr. Brennerman prior to the
16 call?

17 A. I believe I Googled the name of his company and there was a
18 website that I reviewed.

19 Q. What was the name of the company?

20 A. Black Sands Pacific.

21 Q. Do you remember anything about the website?

22 A. I remember that it described the company as a multinational
23 energy company that was founded by Mr. Brennerman. I don't
24 recall there was much detail beyond that.

25 Q. On this call with Mr. Brennerman, did he tell you anything

HBT5bre1

Bonebrake - direct

1 about his plans for his business, Black Sands?

2 A. I don't recollect the specific details of the conversation
3 other than that the purpose of the call was to raise financing
4 for an oil and gas asset.

5 Q. What do you remember him saying about financing?

6 A. I recollect that the purpose of the call was to discuss
7 raising financing to develop an oil and gas asset. I don't
8 have recollection beyond that.

9 Q. Do you have recollection of the amount of financing,
10 roughly, that he was looking for?

11 A. At the time leading to the introductory phone call I
12 believe it was \$500 million was what was relayed to me.

13 Q. What were some of the things Mr. Brennerman told you about
14 his business -- Black Sands -- during that call, if anything?

15 A. I believe that they had somewhere in the neighborhood of
16 10,000 barrels a day of production and that their oil and gas
17 assets were located in, among other areas, California and North
18 Dakota which were two areas that I was focused on because, as I
19 indicated, the United States was an area of focus for me.

20 Q. When you mentioned thousands of barrels a day, barrels of
21 what?

22 A. Barrels of oil equivalents which would be barrels of oil
23 and volumes of natural gas and natural gas liquids.

24 Q. Did that understanding come from what he told you on the
25 call?

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Bonebrake - direct

1 A. I don't recollect whether he specifically stated that on
2 the call but as part of our conversations I recall that I had
3 been informed that they had 10,000 barrels a day of production
4 or more.

5 Q. When you say informed, would that have been by
6 Mr. Brennerman?

7 A. By Mr. Brennerman; and at some point either on the website
8 or other information that was provided to me later on.

9 Q. At that point, what did you know about the oil companies
10 operating in North Dakota?

11 A. I knew a fair amount because I had been the lead banker on
12 the initial public offering of a company called Oasis Petroleum
13 whose assets were entirely focused in North Dakota. So, as
14 part of that process, I became very familiar with that
15 particular geography and the companies operating there.

16 Q. At that point, what was your familiarity with the oil
17 companies operating in California?

18 A. I was also fairly familiar with oil companies operating in
19 California. California does not have very many oil companies
20 operating there because industry participants -- I believe that
21 it is more difficult from a regulatory and an environmental
22 perspective to operate there so it's not a lot of change in
23 terms of how many companies come into or out of that state.

24 Q. You mentioned learning that Black Sands was producing
25 roughly 10,000 barrels per day. What, if anything, did you

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Bonebrake - direct

1 infer from that about the value of Brennerman's business
2 Black Sands?

3 MR. STEINWASCHER: Objection. Form.

4 THE COURT: Overruled.

5 You can answer.

6 THE WITNESS: Well, at that time in their oil price
7 environment a rough measure evaluation would be \$100,000 per
8 flowing barrel per day, so a company with 10,000 barrels a day
9 production would be something like in excess of a billion
10 dollars of value.

11 THE COURT: A billion dollars of value?

12 THE WITNESS: Yes.

13 THE COURT: For a company that moved that kind of --

14 THE WITNESS: For an asset that produced over 10,000
15 barrels a day.

16 BY MS. SASSOON:

17 Q. Had you worked with oil and gas businesses of that
18 valuation before?

19 A. Yes. Frequently.

20 Q. Based on your knowledge of the oil and gas industry, do you
21 have a rough sense of how many oil and gas companies of that
22 valuation exist in the United States?

23 A. In terms of companies that are publicly traded, they're in
24 excess of 50 that are producing that much, and then in terms of
25 private companies the data is not as good so it is more

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1 difficult to estimate, but I would say there is at least in
2 excess of 20.

3 Q. Prior to speaking to Mr. Brennerman, had you ever heard of
4 Black Sands?

5 A. No.

6 Q. What was your reaction to that?

7 MR. STEINWASCHER: Objection.

8 THE COURT: Overruled.

9 You can answer.

10 A. I was intrigued and surprised that there was a company with
11 that much production in these geographies that I wasn't aware
12 of.

13 Q. Why is that?

14 A. Because my job as a energy investment banker in Houston is
15 to find companies like this and I generally think I have a
16 pretty good idea of who they are and where they are.

17 Q. On that call with Mr. Brennerman, did you ask him for
18 anything?

19 A. I believe I asked for more specific information about the
20 asset and the company which would be a preliminary step in
21 order to advancing dialogue on whether or not we could help
22 him.

23 Q. What kind of information --

24 THE COURT: Did you say that you wanted to get
25 information about the asset? Is that what you said?

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1 THE WITNESS: Yes.

2 So, the asset would be the oil and gas reserves and
3 production as opposed to an entire corporation that might span
4 multiple business lines. But we would also be interested in
5 understanding where the asset is housed with the corporation.

6 THE COURT: So, when you are referring to the asset
7 you mean the oil fields themselves?

8 THE WITNESS: Yes. Uh-huh.

9 THE COURT: Okay.

10 BY MS. SASSOON:

11 Q. What kind of information, specifically, would you be
12 interested in?

13 A. So, typically I would be interested in understanding the
14 management team's background in terms of their experience and
15 what they've done in the past because that helps me understand
16 their credentials. I would be interested in understanding if
17 it is a company I haven't heard of before what their source of
18 financing is. And then, in terms of the asset in particular, I
19 would be interested in understanding where it is located, how
20 large it is, what the reserve potential is, how much production
21 it has, how much cash flow it is generating, etc.

22 Q. Why would you be interested in all of those things?

23 A. Well, these are pieces of information that I would need to
24 understand in order to make a preliminary assessment of whether
25 we would want to invest the time and the resources in

HBT5bre1

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1 attempting to help a company like this raise financing.

2 Q. Was it always your practice to pursue these types of next
3 steps after a referral call?

4 A. That would be my practice in a situation where I had not
5 received that information on the referral call itself on the
6 first call.

7 Q. Are there circumstances in which you would not pursue those
8 steps?

9 A. Yes. If I had either had a call with a financial advisor
10 or the private wealth management financial advisor or their
11 client that led me to the conclusion that it would not be a
12 company of the type that we could raise financing for, there
13 would be no point in continuing the discussion.

14 Q. When you say a company of the type?

15 A. Of the size and of the quality that I think would be a
16 company that would be in the range that Morgan Stanley would
17 typically help and would be attractive to third-party investors
18 to invest in.

19 Q. What kind of size and quality, specifically, would you be
20 looking for?

21 A. So, in terms of Morgan Stanley's platform and in terms of
22 my particular role within that large firm we typically would be
23 looking for, it depends on the specific deal, but typically it
24 would be financings in the kind of \$250 million to \$1 billion
25 range would be the size. And then, in terms of quality, that's

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1 more difficult to be specific about but third-party investors
2 are more interested in certain asset than others so it has to
3 be an asset, obviously, that people would be interested in
4 investing in or there wouldn't be a point to proceeding.

5 Q. Did Mr. Brennerman then provide you with any materials?

6 A. I believe he provided Scott Stoudt with some follow up
7 materials which were then forwarded to me.

8 THE COURT: Why do you believe that? I mean, do you
9 remember getting something from Scott Stoudt?

10 THE WITNESS: I recall reviewing incremental materials
11 and then, upon seeing an old e-mail, I was able to reconstruct
12 when that was sent to me.

13 THE COURT: Okay. Go ahead.

14 BY MS. SASSOON:

15 Q. I would like to display Government Exhibit 1-59A, please.

16 THE COURT: 1-59A, this is already in evidence?

17 MS. SASSOON: Yes.

18 THE COURT: Is it on the jury's screen as well?

19 Are your screens working, folks? If not, always let
20 me know.

21 Go ahead.

22 Q. This is a 10-page document, if we can scroll through the
23 pages. Do you recognize this?

24 A. Yes.

25 Q. What is it?

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Bonebrake - direct

1 A. This is a document that was provided after our introductory
2 phone call I believe in response to me asking for incremental
3 detail on the business and the specific assets that he was
4 looking to finance.

5 Q. Just to be clear, based on the first page, this is a
6 brochure for Black Sands Pacific?

7 A. Yes.

8 Q. In the course of your work at Morgan Stanley, did you have
9 an opportunity to review marketing material provided by
10 prospective clients?

11 A. Yes.

12 Q. What are some of the types of information you would have
13 expected to be included in those documents?

14 A. Typically there would be a page or pages on the background
15 of the management team, potentially on the background of their
16 board members. If the source of financing was not from a
17 well-known private equity entity or a well-known corporation,
18 there would probably be a page explaining where the source of
19 financing for the business came from. And then there would be
20 detail on the specific assets that would provide information
21 like I described earlier in terms of where exactly the assets
22 are located, the magnitude of the reserves, and the production
23 and the cash flow, etc., such that a potential investor would
24 be able to make a high-level determination of whether it was
25 worth their time to spend more time doing due diligence on the

HBT5bre1

Bonebrake - direct

1 company.

2 Q. What was your impression of this document?

3 A. I thought that it was light on detail, detail in terms of
4 the items I just mentioned.

5 Q. Let's go to page 7, please?

6 You will see here, particularly on the left-hand side
7 in orange, some numbers about the company including at the top
8 12,500 BOEPD of production expected by Q3 2012.

9 Can you please explain what BOEPD is?

10 A. Yes. That's an acronym for barrels of oil equivalent per
11 day, and so that would be how much production each day the
12 underlying oil and gas fields are producing. And the
13 equivalent is an energy equivalence, so basically you have what
14 comes out of the ground is a mixture of oil, natural gas --
15 which is essentially methane -- and natural gas liquids. And
16 so, an industry standard is to convert the gas to barrels of
17 oil equivalent by dividing by 6, essentially.

18 Q. Was this information helpful to your ability to evaluate a
19 potential deal with Black Sands?

20 A. It was not very helpful because it was not very specific.

21 Q. What kind of specificity would you have expected?

22 A. So, it would be helpful to understand exactly where the
23 production is located and where it is coming from which gives
24 me a better idea of how profitable the production would be and
25 what jurisdiction it is located in. It would also, in terms of

HBT5bre1

Bonebrake - direct

1 the acreage, acreage is something that we are very interested
2 in but the value of acreage is very specific to the geographic
3 location. So, it is not helpful to have an aggregate acreage
4 number, it is much more helpful to understand specifically in
5 what state and County or what country and jurisdiction acreage
6 is located in.

7 Q. Was there anything else in this brochure that provided you
8 with that additional specificity?

9 A. I don't believe so. No.

10 Q. Turning to the next page, page 8, looking at the bottom
11 where it says: Legal advisors and CPA tax advisors. What is
12 listed under legal advisors?

13 A. White & Case, LLP.

14 Q. Did you make any effort to speak to anyone from White &
15 Case about Brennerman?

16 A. No.

17 Q. Did you ask Mr. Brennerman for a contact at White & Case?

18 A. I believe I did, yes.

19 Q. And did he provide it to you?

20 A. No.

21 Q. It lists Ernst & Young here as the CPA and tax advisors.
22 Did you ever talk to anyone from Ernst & Young about
23 Mr. Brennerman?

24 A. No.

25 Q. Why not?

HBT5bre1

Bonebrake - direct

1 A. For two reasons; one, I wouldn't typically reach out to a
2 third-party without a potential client's permission; two, I
3 didn't know who to reach out to. These are very large
4 organizations so, you know, I would have asked Mr. Brennerman
5 for the name of a partner and reached out to that person
6 specifically if I was going to reach out to a company.

7 Q. Did he provide that information to you?

8 A. Not that I recollect.

9 Q. Did this document satisfy the questions you had about
10 Black Sands?

11 A. No.

12 Q. Did you ask Mr. Brennerman for more information?

13 A. I believe I did. At some point in our correspondence I had
14 asked for more specific detail which I don't believe I received
15 to the degree that I would be looking for typically.

16 Q. Did Mr. Brennerman provide a reason for not giving you the
17 information that you asked for?

18 A. Yes. I believe he was concerned about confidentiality.

19 Q. Did he explain how his concerns would be addressed?

20 A. He requested that we enter into a non-disclosure agreement
21 with Black Sands Pacific.

22 Q. What is the purpose of a non-disclosure agreement?

23 MR. STEINWASCHER: Objection.

24 A. It is to provide --

25 THE COURT: Wait.

HBT5bre1

Bonebrake - direct

1 MR. STEINWASCHER: Foundation.

2 THE COURT: Overruled.

3 You can answer.

4 A. The purpose of a non-disclosure agreement is typically to
5 provide the person disclosing information with comfort that the
6 entity that the information is being disclosed to will not
7 repeat that information to third-party entities without the
8 originator's permission. If that makes sense.

9 Q. Around this time did your group at Morgan Stanley have any
10 particular practices with respect to when you would enter a
11 non-disclosure agreement?

12 A. Yes. We were required to pass an internal conflicts check
13 and compliance registration prior to signing a non-disclosure
14 agreement.

15 Q. What was required to pass that compliance check?

16 A. There were a variety of requirements but one was a
17 know-your-customer requirement which was basically to have
18 confidence that you understood the entity with which Morgan
19 Stanley was entering into that non-disclosure agreement with.

20 (Continued on next page)

21

22

23

24

25

HBTKBRE2

Bonebrake - Direct

1 BY MS. SASSOON:

2 Q. Do you have an understanding of the reason for that?

3 MR. STEINWASCHER: Objection.

4 THE COURT: Well, it's a yes or no. Do you have any
5 understanding of the reason for that? Yes or no.

6 THE WITNESS: Yes.

7 BY MS. SASSOON:

8 Q. What was that understanding?

9 A. Morgan Stanley is a U.S.-regulated bank, and
10 know-your-customer regulations are a part of the regulations
11 they're subject to.

12 Q. In your experience, was it common for a potential client
13 not to provide the information that would have been necessary
14 to pass compliance in a conflicts check?

15 A. It's not common because the information threshold is fairly
16 low for that particular hurdle.

17 Q. What, if anything, happened when Mr. Brennerman failed to
18 provide you with contact names or documents?

19 A. Well, nothing happened, really, in terms of us being able
20 to proceed, because that's a first step that I would have to
21 clear before I'd be able to sign a nondisclosure agreement or
22 receive incremental information that I requested.

23 THE COURT: Just keep your voice up nice and loud.

24 THE WITNESS: Certainly.

25 THE COURT: Thanks.

HBTKBRE2

Bonebrake - Direct

1 BY MS. SASSOON:

2 Q. Did there come a time when Mr. Brennerman presented you
3 with a specific financing proposal?

4 A. Yes.

5 MS. SASSOON: Ms. Fetman, can you please display
6 Government Exhibit 1-61, which is already in evidence.

7 Q. Zooming in on the top of this email thread, that's an email
8 sent on May 12th, 2013, to you from a Michael Sloanes, cc'ing
9 Michael Kelly and Michael Sloanes.

10 A. Yes.

11 Q. But I'd actually like to turn to a later page in this
12 document, and that's page 6, which is an earlier email in this
13 thread. This is an email sent on May 8, 2013, from
14 Mr. Brennerman to you --

15 A. Yes.

16 Q. -- "Subject: Blacksands Pacific Second Lien High-Yield
17 Finance Proposal - Morgan Stanley."

18 Can you please read the first paragraph of that email?

19 MS. SASSOON: And let's zoom in on it.

20 A. "Dear Mr. Kevin Bonebrake: As advised yesterday, below is
21 the overview summary of our proposal for the second lien
22 high-yield finance. If the proposal is of interest, then we
23 will forward additional information for your review."

24 Q. Can you explain what a "second lien high-yield finance" is,
25 please?

HBTKBRE2

Bonebrake - Direct

1 A. Sure. It's a form of debt, and in terms of its priority in
2 the capital structure, in case the company were to go to
3 bankrupt, it would be repaid after a first lien had been paid,
4 but before equity shareholders recovered anything.

5 Q. So, in simple terms, what is --

6 MS. SASSOON: And we can zoom out now.

7 Q. -- what is Mr. Brennerman, on your understanding, asking of
8 Morgan Stanley?

9 A. Based on this email and my role within Morgan Stanley, he
10 would be asking us to help him raise \$219 million of second
11 lien financing in order to finance an oil development program.

12 Q. This email mentions, under security, "Second lien ranking
13 behind a 600 million senior secured first lien finance from
14 ICBC." What would the first lien finance be?

15 A. This would also be debt. It would be in the form of a loan
16 from a bank in this case, ICBC.

17 Q. Of how much money?

18 A. \$600 million.

19 Q. Did you have an understanding, from this email, of what
20 Mr. Brennerman planned to use the \$219 million for?

21 A. The stated purpose in the email is for the development of
22 the asset from a current level of production of 2,250 barrels
23 per day to 53,000 barrels per day over the next three to five
24 years.

25 MS. SASSOON: Let's zoom in on where it says "Asset."

HBTKBRE2

Bonebrake - Direct

1 BY MS. SASSOON:

2 Q. Can you read what follows the colon after "Asset," please?

3 A. Yes. "Blacksands Pacific - 50 percent legal and beneficial
4 working interest in the lease and mineral rights in the Cat
5 Canyon asset of California (see details below)."

6 Q. Looking at the next paragraph, it says here, "The
7 \$219 million second lean high-yield finance will be drawn up
8 front." What does it mean for the lien to be drawn up front?

9 A. That would indicate it will be drawn first.

10 Q. When you say "first," is that before something else?

11 A. Before the first lien term loan.

12 Sorry, first lien loan, I should say. It doesn't
13 specify exactly that it's a term loan.

14 Q. We saw under "Asset" that it said "Cat Canyon asset in
15 California (see details below)."

16 Looking at the bottom of this page into the next
17 page --

18 MS. SASSOON: If we could go to page 7.

19 Q. -- what kind of details are these?

20 A. These are details describing the magnitude of the reserves
21 and the anticipated EBITDA, which is a measure of cash flow and
22 capital investment required over the time frame from 2013 to
23 2020, as well as the pricing assumptions that they're
24 utilizing, which is \$100 per barrel for the benchmark price,
25 which would be something like -- well, it's more detail than

HBTKBRE2

Bonebrake - Direct

1 you probably -- \$85 for the realized price.

2 MS. SASSOON: Let's zoom in on the blue text in the
3 middle of the page.

4 Q. There's an asterisk, it says, "50 percent working interest
5 owned by Blacksands Pacific Alpha Blue LLC."

6 Based on this email, what is your understanding of
7 what was owned by Blacksands Pacific Alpha Blue LLC?

8 MR. STEINWASCHER: Objection.

9 THE COURT: Overruled.

10 You can answer.

11 THE WITNESS: A working interest is industry
12 terminology for what percent of an asset is owned. So
13 50 percent working interest owned by Blacksands Pacific Alpha
14 Blue, I would interpret that to mean that likely a subsidiary
15 of Blacksands Pacific owns 50 percent of this asset.

16 Q. When you say "this asset," what are you referring to?

17 A. The Cat Canyon, California asset that is referred to in
18 this email throughout the email.

19 THE COURT: This is an email that was sent to you,
20 correct?

21 THE WITNESS: Yes.

22 BY MS. SASSOON:

23 Q. Zooming back out, if the statements in this email were
24 true, would the kind of deal being presented here have been of
25 interest to you?

HBTKBRE2

Bonebrake - Direct

1 A. Yes.

2 Q. Would it have been a deal you would have been interested in
3 at least exploring further?

4 A. Yes.

5 Q. Why is that?

6 A. Because it fits the parameter of the type of transactions
7 that my group was set up to pursue and had been engaged in at
8 that time, and if I were still there, still engaged in.

9 Q. When you say parameters, can you elaborate on what those
10 parameters would have been?

11 A. Sure. The size and the type of asset. So, a financing of
12 \$220 million is in the range of a financing that we would
13 consider, and an asset in California is a geographic location
14 of a type of asset, especially with this degree of growth
15 associated with the asset, that I think that we would
16 potentially find interested investors to invest in.

17 Q. Let's take a look at page 5.

18 MS. SASSOON: And let's zoom in on your email,
19 starting with, "We'd need a bit more information."

20 Q. I know it's long, but can you please read your email
21 response?

22 A. Certainly. "We'd need a bit more information from a
23 preliminary due diligence perspective in order to ascertain
24 whether we could help out both in regards to the asset and in
25 regards to Blacksands, given it is a private entity, and Morgan

HBTKBRE2

Bonebrake - Direct

1 Stanley is subject to U.S. regulatory supervision and
2 procedures for working with new clients. If you can provide
3 the information below, it would be helpful for me to further
4 vet this internally: One, list and biographies of Blacksands
5 executive officers and board members; two, Blacksands
6 organizational structure, including business lines and
7 geographies of operation and incorporation; three, source of
8 Blacksands funding and capital structure; four, name and
9 contact information for your corporate securities firm,
10 financial auditors, and reserve engineers; five, financial
11 model for the business plan of this particular asset; six,
12 third-party reserve report for the asset, i.e., from NSA;
13 seven, any presentations you have on the asset; i.e., whatever
14 you have used for diligence with your attorneys or with ICBC in
15 order to obtain the 600 million first lien line.

16 "Additionally, it would be helpful if you could
17 provide the name and contact information for the investment
18 banker, Credit Suisse, that you're working with, as it would
19 greatly facilitate my organization getting involved, as
20 presumably Credit Suisse has already gotten comfortable with a
21 lot of this information to get to" this "point in the
22 financing" -- sorry, "to get to the point of financing. Many
23 thanks. Kevin."

24 Q. Why did you request all of this information set out in your
25 email?

HBTKBRE2

Bonebrake - Direct

1 A. Because this is the sort of root set of documents and
2 information that I would typically need from a business due
3 diligence perspective to make the determination on, again, who
4 the company was, what their background was, whether investors
5 would be interested in investing in this company, and what the
6 asset characteristics were, such that I could understand the
7 range of financing options for the company.

8 Q. Did Mr. Brennerman answer any of these questions?

9 A. Well, he said that they were working with Credit Suisse,
10 which is my question number 4, about the name of the corporate
11 securities firm. And he had also indicated who their financial
12 auditors and reserve engineers were from a firm level, but he
13 didn't tell me, again, the particular partner names, which is
14 what I was really interested in because I was trying to get
15 some sort of third-party confirmation as to who Blacksands
16 Pacific was and who Mr. Brennerman was.

17 Q. Focusing on number 4 still, you said he didn't give you
18 specific names. Did he give you contact information beyond
19 just the name of the company?

20 A. No.

21 Q. And apart from number 4, did he respond to any of your
22 other questions?

23 A. No.

24 Q. Let's go back a page, to page 4, and the very bottom of
25 this page, you can see this is an email from Mr. Brennerman on

HBTKBRE2

Bonebrake - Direct

1 May 9th, 2013, that begins, "Kevin," and it continues into the
2 next page.

3 Let's go back to page 5. Can you please read his
4 response?

5 A. "All the information requested below can be provided.
6 However, we would need to execute an NDA as some of the
7 information are confidential. Perhaps if you have a minute, we
8 could discuss so that we are of the same understanding. Best
9 regards."

10 Q. In your experience, is any of the information you requested
11 on this list, focusing on one through seven, the type of
12 information that a potential client would typically provide
13 prior to an NDA?

14 MR. STEINWASCHER: Objection.

15 THE COURT: Let me just read the question.

16 Do you have experience with these types of NDAs?

17 THE WITNESS: Quite a bit, yes.

18 THE COURT: Quite a bit? All right.

19 THE WITNESS: It's a standard operating procedure.

20 THE COURT: Okay. You can speak from your experience.

21 Go ahead.

22 THE WITNESS: Can you repeat the question, please?

23 THE COURT: Overruled.

24 In your experience, is any of the information you
25 requested on this list, focusing on one through seven, the type

HBTKBRE2

Bonebrake - Direct

1 of information that a potential client would typically provide
2 prior to an NDA?

3 THE WITNESS: I would say that's not necessarily a
4 yes-or-no answer because prior to signing an NDA, we're usually
5 just trying, as I indicated, to ascertain who the client is,
6 and with most clients, that's not an issue because they're a
7 publicly traded company or they're funded by a well-known
8 source. I can understand that a client, though, might -- a
9 potential client might believe that some information is
10 confidential, and some of the information on this list is
11 confidential, and they would not want to provide it without an
12 NDA.

13 There are some items on this list that I would think
14 they would be willing to provide without an NDA. For instance,
15 the biographies of Blacksands' executive officers and board
16 members, I don't see how that would typically be considered a
17 competitive advantage.

18 Also at a high level, talking about the company's
19 business lines and areas of operation, such that it would be
20 verified by me, I don't understand why that would be a source
21 of competitive information.

22 Number 3, the funding and capital structure, I can
23 understand they would want an NDA for that.

24 Name and contact information for your corporate
25 securities firm, financial auditors, and reserve engineers,

HBTKBRE2

Bonebrake - Direct

1 number 4, I don't think that's competitive information.

2 The financial model, I could understand they would
3 want an NDA. The reserve report, I could understand they would
4 want an NDA. And the presentation, I could understand they
5 would want an NDA.

6 THE COURT: Again, NDA is a nondisclosure agreement,
7 right?

8 THE WITNESS: Correct.

9 BY MS. SASSOON:

10 Q. Let's take a look at page 3. Actually, just to see the
11 full header of the email, it's at the bottom of page -- it
12 starts at the bottom of page 2, from
13 michaelSloanes@blacksandspacific.com on May 11th, 2013, to you,
14 cc'ing M. Kelly, Michael Sloanes. Did you ever meet Mike Kelly
15 or Michael Sloanes in person?

16 A. No.

17 Q. Now, looking at the email, can you please read the top
18 paragraph of this email?

19 A. "Further to the correspondence with Mr. Brennerman this
20 week, please delete the correspondences, including the proposal
21 for high-yield finance, as we do not need to include Morgan
22 Stanley as part of the considered options for this proposal at
23 this time."

24 Q. Did you ever move forward with providing Blacksands with
25 any financing?

HBTKBRE2

Bonebrake - Cross

1 A. Not to my knowledge. I did not personally, no.

2 Q. Are you still working in the oil and gas industry?

3 A. Yes.

4 Q. In your subsequent experience in oil and gas, have you come
5 across any deals involving Blacksands?

6 A. No.

7 Q. Have you come across any assets owned by Blacksands?

8 A. No.

9 MS. SASSOON: No further questions.

10 THE COURT: Okay. Cross-examination?

11 CROSS-EXAMINATION

12 BY MR. STEINWASCHER:

13 Q. Good morning, Mr. Bonebrake.

14 A. Good morning.

15 Q. I'm Mr. Steinwascher. I represent -- and my cocounsel --
16 Mr. Brennerman. I have a few questions for you this morning.
17 Can you hear me okay?

18 A. Yes.

19 Q. Okay. First, I just want to clear up: I believe you told
20 Ms. Sassoon you were a financial advisor?

21 A. Yes.

22 Q. And what exactly does a financial advisor do?

23 A. So it's a broad-based term. My particular function is to
24 advise corporations, and sometimes governments, on how to raise
25 capital and also to advise them on mergers and acquisitions.

HBTKBRE2

Bonebrake - Cross

1 Q. Is that the same title you had or position you had while
2 you were at Morgan Stanley?

3 A. My title -- my specific job title at Morgan Stanley varied
4 as I was promoted from vice president, to director, to managing
5 director, and I worked within what they called the
6 institutional securities division. My current title is
7 managing director at Lazard within what they call the financial
8 advisory division, but I'm doing substantially the same job,
9 except I'm more solely focused on mergers and acquisitions now
10 and not so much on financings, if that makes sense.

11 Q. Staying with Morgan Stanley, you mentioned that Morgan
12 Stanley has two business lines?

13 A. Broadly, if you look at their financials, that's how they
14 characterize it, yes.

15 Q. And can you just explain, to the extent you understand,
16 what you mean by "business lines"?

17 A. Certainly. So, Morgan Stanley has a private wealth
18 management business, which is one of the aforementioned two
19 business lines. That business is composed of individuals who
20 somewhat confusingly are also called financial advisors, who
21 work with high net worth individuals to help them manage their
22 money.

23 And then the other business line that I was referring
24 to, which I was a part of, is called the institutional
25 securities division. And within that division is housed what

HBTKBRE2

Bonebrake - Cross

1 is the traditional investment banking activities, which is
2 capital markets, underwriting, so think about initial public
3 offerings, helping companies with that. Mergers and
4 acquisitions, when two companies merge, and then aside from
5 that, there's sales and trading, which is basically making
6 markets in various securities around the world, and also asset
7 management.

8 Q. You said business lines, but they're really separate
9 entities; is that correct?

10 A. They're all a part of the Morgan Stanley & Company LLC,
11 which is listed on the New York Stock Exchange, but we report
12 up through different superiors.

13 Q. You say "part of." Are they the same company? Are they a
14 separate entity?

15 A. They're wholly-owned subsidiaries of Morgan Stanley &
16 Company LLC.

17 Q. And you called it, I believe, wealth management. Is it
18 also referred to as the private bank?

19 A. I don't believe I have the expertise to answer that.

20 Q. I understand.

21 A. I could speculate, but...

22 Q. So you're not really familiar with anything that's handled
23 on the wealth management side, other than sometimes you have
24 clients referred?

25 A. I've never worked on the wealth management side, so I don't

HBTKBRE2

Bonebrake - Cross

1 think I'm qualified to talk about their protocols and
2 procedures.

3 Q. Sure.

4 Now, Mr. Bonebrake, before you came here today, had
5 you previously met with the government in preparation?

6 A. Yes.

7 Q. How many times?

8 A. I'm just thinking. I believe it was two face-to-face
9 meetings and two phone calls.

10 Q. Was that over the past month or so?

11 A. Yes.

12 Q. Prior to meeting with the -- strike that.

13 When you met with the government, did they show you
14 several documents, including the exhibits that we saw today?

15 A. Yes.

16 Q. Prior to meeting with the government and seeing those
17 documents, did you have an independent recollection of your
18 meetings with Mr. Brennerman?

19 A. Yes.

20 Q. Did you have a specific recollection of discussions with
21 him, or was your memory refreshed by looking at the documents?

22 MS. SASSOON: Objection.

23 THE COURT: I'm not sure that those are an either/or
24 proposition.

25 MR. STEINWASCHER: Strike that.

HBTKBRE2

Bonebrake - Cross

1 BY MR. STEINWASCHER:

2 Q. Did you have specific recollection as to your
3 conversations -- specific details of your conversations with
4 Mr. Brennerman prior to looking at the documents when meeting
5 with the government?

6 A. I had recollections of conversations with Mr. Brennerman
7 that were enhanced by looking at the documents. I did recall
8 the conversations before seeing the documents, but the
9 documents were very helpful.

10 Q. So, it's safe to say that for some specific details, your
11 memory was refreshed by the documents and not something that
12 you just remembered independently prior?

13 A. That's a broad statement. I'm not sure I could agree or
14 disagree with that, but...

15 Q. That's fine. That's fine.

16 On the topic of financing, you said that for these
17 types of deals, the ones that you have handled primarily, and
18 specifically the one involving Mr. Brennerman, Morgan Stanley
19 would not provide the money that it would seek financing from
20 outside investors; is that correct?

21 A. They would not typically provide the money. There are some
22 cases where Morgan Stanley -- let me rephrase that. I can only
23 speak for my particular division. So, Morgan Stanley is a
24 \$700 billion company operating across the globe with over
25 50,000 employees. So my particular division would typically

HBTKBRE2

Bonebrake - Cross

1 not be providing the financing directly, but we might backstop
2 an offering where we commit that if we can't find third-party
3 investors to purchase these securities, then we would provide
4 the money. But that was not the majority of the cases.

5 Q. And in the particular case of the proposal from
6 Mr. Brennerman, I believe you said that it was something that
7 you understood he was looking for Morgan Stanley to find
8 financing from investors for?

9 A. My recollection was that it was unclear. We didn't get
10 very far in our discussions. And then, after reviewing the
11 emails, I think it's still unclear.

12 Q. You mentioned several times, I believe, a distinction
13 between dealing with public companies and private companies?

14 A. Yes.

15 Q. At one point I believe you said your knowledge of the
16 number of private companies that are involved in this type of
17 business that you do, the oil and gas business, you're a little
18 less certain of the specific number because the information is
19 not publicly available; is that correct?

20 A. Correct.

21 Q. So, for a private company like Blacklands Pacific, it
22 wouldn't be unusual that you hadn't heard of them, given that
23 they're a private company, and you're not familiar with every
24 single private company out there?

25 A. It would be unusual that a company -- that I had not heard

HBTKBRE2

Bonebrake - Cross

1 of a company with 10,000 barrels a day of production.

2 Q. Do you think you know every single company that has
3 10,000 barrels of production that's a private company?

4 A. I do not.

5 MR. STEINWASCHER: Can we go to 1-59A.

6 Q. Now, we looked at this document earlier, I believe.

7 THE COURT: Do you want it up on the screen?

8 MR. STEINWASCHER: Yes.

9 THE COURT: Put it on everybody's screen. Thank you.

10 Q. You called this a marketing document, or actually,
11 Ms. Sassoon might have called it a marketing document; is that
12 correct?

13 A. I believe Ms. Sassoon called it that, yes.

14 THE COURT: What would you call it?

15 THE WITNESS: It was a marketing document, a pamphlet,
16 an overview document.

17 Q. Certainly you would not call it a financial statement or
18 audited financials?

19 A. I agree, I would not call it an audited financial
20 statement. That has a very specific meeting and form.

21 Q. Do you recall how many times you spoke with Mr. Brennerman
22 on the phone?

23 A. I don't recall exactly. I think that it was probably
24 twice, but I could be wrong about that.

25 Q. Did you ever meet with him in person?

HBTKBRE2

Bonebrake - Cross

1 A. I don't believe I did. I don't remember meeting him in
2 person.

3 Q. Staying with this document for a second, I think you
4 mentioned that it was light on detail, in your opinion; is that
5 correct?

6 A. Yes.

7 Q. And, again, going back to the fact Blacksands is a
8 privately held company, would you expect a privately held
9 company to disclose everything in a document like this that
10 would be important to your decision?

11 A. I believe I received this document after we had an
12 introductory phone call where I outlined the types of
13 information I was looking for. So, it's not so much that I
14 expect a document like this to have that type of information,
15 so much as this was what was provided in response to me asking
16 for that type of information. So, it didn't really answer the
17 questions that I was asking.

18 MR. STEINWASCHER: Can we go to Exhibit 61.

19 To page 4, I believe. Page 5, I'm sorry.

20 Q. Now, I know this is not after your initial conversation
21 with Mr. Brennerman, but we talked about -- I'm sorry, you
22 talked about these seven points as something that you found --
23 that you needed to go further with considering the proposal; is
24 that correct?

25 A. Correct.

HBTKBRE2

Bonebrake - Cross

1 Q. Of these seven items -- well, let me strike that.

2 Are these list of questions here, these seven items,
3 are they similar to some of the things you posed to
4 Mr. Brennerman after your first phone call or during that first
5 phone call, the types of information you'd like to receive from
6 him?

7 A. I don't recollect exactly what we discussed on our first
8 phone call, but this is how I continue to think about these
9 types of interactions. These are the pieces of information
10 that I would mentally tick off and look for in an introductory
11 dialogue.

12 Q. So it's safe to say that even though you might not recall
13 specifically, it was your practice to request this type of
14 information after the first introductory call or during the
15 first introductory call with a potential new client?

16 A. I would request this type of information in order to
17 evaluate whether it was a business opportunity that was worth
18 us spending time and resources on, yes.

19 Q. In this email -- we don't have to go to it, but in this
20 email, I believe the follow-up email from Mr. Brennerman or
21 from Blacksands, was that he said he would be willing to
22 exchange this information provided there was an NDA, correct?

23 A. Yes.

24 Q. And in these seven topics you walked through with
25 Ms. Sassoon, I believe you only identified two of the seven

HBTKBRE2

Bonebrake - Cross

1 that, in your opinion, you think a company would be able to
2 provide without an NDA; is that correct? I think it was number
3 1 and number 4.

4 A. Number 1, and number 4, and possibly number 2, yes.

5 Q. Now, that's your opinion, but the company might have a
6 different opinion of what it believes is confidential, correct?

7 A. Absolutely.

8 Q. And for private companies, again, it wouldn't be uncommon
9 that they might want to safeguard all their information, in
10 your experience?

11 A. I think that's too definitive of a statement.

12 MR. STEINWASCHER: Strike that.

13 Q. Private companies, in your experience, tend to be more
14 sensitive of the information they disclose, even information
15 that you might consider as something that wouldn't be
16 confidential?

17 MS. SASSOON: Objection; form.

18 THE COURT: Well, overruled.

19 Do you agree with that, in your experience?

20 THE WITNESS: Public companies, by their definition,
21 are transparent with their information. So, private companies,
22 by definition, usually disclose less information.

23 BY MR. STEINWASCHER:

24 Q. So, even though you believe there's a couple of items on
25 your list that maybe Blacksands could have disclosed without an

HBTKBRE2

Bonebrake - Cross

1 NDA, even if they disclosed that information, there are five
2 other points on your list you couldn't proceed anyways; is that
3 correct, if they didn't disclose that as well?

4 A. What I was trying to do at this point in our interaction
5 was satisfy the know-your-customer requirements, so that I
6 could add our internal compliance and conflicts checks, at
7 which point I would be able to sign the NDA, and then we would
8 be able to have a free exchange of information. So, I didn't
9 need all seven of these pieces of information in order to
10 proceed. I really just needed some sort of third-party
11 verification that Mr. Brennerman and his company were who they
12 said they were.

13 Q. Well, that's not what you wrote in your email, is it? I
14 don't see a mention about know your client or that's what you
15 need it for, only a few items for compliance purposes, it seems
16 that you need every single item.

17 MS. SASSOON: Objection.

18 THE COURT: Yes, I don't think that's a question.

19 MR. STEINWASCHER: Strike that.

20 Can you go to page 3 of this document, please,
21 Mr. Lunde. I'm sorry, page 2. And the bottom of the page, the
22 email, can you please highlight that. I'm sorry, the email
23 itself, the text, from Michael to Kevin.

24 BY MR. STEINWASCHER:

25 Q. Now, this is an email you wrote back, I guess, to Michael

HBTKBRE2

Bonebrake - Cross

1 Sloanes at Blacksands Pacific following in the chain with your
2 email from previously. On that second full paragraph there,
3 can you please read that for me?

4 A. "We'd need to do a fair amount of diligence in any case
5 before we'd be able to underwrite an offering. So, if this is
6 a short time fuse, you may be better off with one of the other
7 banks as you propose."

8 Q. I believe you said earlier you did not sign an NDA with
9 Blacksands Pacific; is that correct?

10 A. I believe that's correct.

11 Q. And you never did any -- to your knowledge, any deal or
12 transaction with Blacksands Pacific?

13 A. My group or me personally -- my group in Houston or me
14 personally, I don't believe we did, no.

15 Q. Mr. Bonebrake, are you familiar with the term asset-based
16 financing or asset-based lending?

17 A. Yes.

18 Q. Is that something you have experience with?

19 A. Yes.

20 Q. Is that something that would describe the transaction
21 proposed by Mr. Brennerman, to the extent that you were aware
22 of what the transaction was being proposed?

23 A. It was ambiguous. I couldn't definitively say. That's one
24 form that it could have taken.

25 Q. Can you describe briefly what you understand asset-based

HBTKBRE2

Bonebrake - Cross

1 financing to be?

2 A. Asset-based financing is when an institution makes a loan
3 against a particular set of assets, and those assets are --
4 it's a broad term that can mean a number of things, but it
5 essentially means that if the borrower defaults on the loan,
6 the lender is able to seize that asset as collateral backing
7 the loan.

8 Q. So, it's fair to say for asset-based financing, the lender
9 is primarily concerned with the value of the asset?

10 A. That's not the only thing they're concerned about, but
11 that's probably of higher concern than anything else.

12 MR. STEINWASCHER: Can we go back to page 6. Sorry,
13 page 5. I'm one page off every time.

14 Q. Mr. Bonebrake, can I direct your attention to -- it's your
15 point or question 7.

16 A. Uh-huh.

17 Q. Do you know -- there's an acronym here ICBC?

18 A. Uh-huh.

19 Q. What does that acronym pertain to?

20 A. I presume it's the Industrial and Commercial Bank of China,
21 but I'm not a specialist in Asia, so...

22 Q. Are you familiar with the Industrial and Commercial Bank of
23 China?

24 A. Not other than they're a large bank in China. I've heard
25 of them, though.

HBTKBRE2

Bonebrake - Cross

1 Q. Is there a reason that you did not ask Mr. Brennerman for a
2 contact at the international -- ICBC?

3 A. It would have been duplicative with asking for a contact at
4 Credit Suisse, and White & Case, and Ernst & Young. And, also,
5 I'm familiar with most of the partners that are engaged in oil
6 and gas transactions at those three firms and not familiar with
7 people at ICBC, so it didn't serve my purpose of trying to
8 determine who this company was.

9 Q. So, you felt more comfortable with the entities you knew
10 than a bank that you weren't familiar with in --

11 A. It's not a matter of comfort, it just wouldn't be
12 productive because I don't have any contacts at ICBC. I was
13 primarily focused on the United States, so banks that are
14 active in the United States would be more easy for me to talk
15 to people at those institutions.

16 Q. Now, I believe you said earlier that Mr. Brennerman did not
17 answer these questions -- did not provide the information that
18 pertains to these questions to you?

19 A. Not in the format and level of detail that I'm accustomed
20 to.

21 Q. And you didn't sign the NDA that he requested?

22 A. I don't recall signing one.

23 Q. Did he say he would provide -- strike that.

24 Mr. Bonebrake, did you have any further discussions
25 with Mr. Brennerman about financing after this point in time in

HBTKBRE2

Bonebrake - Cross

1 May 2013?

2 A. I don't believe so.

3 Q. About how much time do you recall spending -- strike that.

4 About how much time and energy did you put into
5 working with Mr. Brennerman on trying to figure out if this was
6 a proposal you could pursue?

7 A. Do you want me to quantify that in terms of hours or low,
8 medium, high?

9 Q. Let's go with low, medium, high.

10 A. I'd say low to medium.

11 Q. About how many proposals would you say -- an estimate is
12 fine -- you receive from the private bank, the wealth
13 management side, on a monthly basis?

14 A. I'm thinking, you know, that was five years ago, it's a
15 different market, a different level of activity, but if I had
16 to quantify that, I would say something in the neighborhood of
17 one to two or one to three proposals per month.

18 Q. And then that's --

19 A. And, actually, I'd like to strike the word "proposal,"
20 because that's -- it's more like we have conversations.

21 Q. Okay.

22 A. There aren't, you know -- proposal is specific to this
23 particular situation, but I'll have one to three referral calls
24 per month to see if we can help somebody with what they're
25 trying to do.

HBTKBRE2

Bonebrake - Cross

1 THE COURT: Okay. Next question.

2 MR. STEINWASCHER: Yes, your Honor.

3 Can we go back to Exhibit 61, please. And, sorry, to
4 page 6. Can we go to that first paragraph.

5 BY MR. STEINWASCHER:

6 Q. Could you read that first sentence there, please,
7 Mr. Bonebrake?

8 A. Certainly.

9 "As advised yesterday, below is the overview summary
10 of our proposal for the second lien high-yield financing."

11 Q. Do you understand, then, that what follows this email is an
12 overview summary of Blacksands Pacific's proposal?

13 A. That's what the email states, yeah. I mean, it doesn't
14 necessarily have the information in a format or detail that I'd
15 want, but, yes, that's what the email states.

16 Q. I guess my question is that this email is a proposal to
17 acquire certain assets, correct? To finance and acquire
18 certain assets?

19 A. Can I carefully read the email? Is that acceptable?

20 Q. Yes.

21 I'm sorry, strike that.

22 It's for development of an asset?

23 A. I would agree with that, yes. It was unclear to me --
24 yeah, I'd agree with that. That's what the stated purpose is,
25 for the development of an asset.

HBTKBRE2

Bonebrake - Cross

1 Q. And the information that follows, is that -- is the
2 information that follows, about the asset reserves, is that
3 forward -- is that information that pertains to what is being
4 proposed -- the development of that asset?

5 MS. SASSOON: Objection; form.

6 THE COURT: I'm not sure I understand the question.
7 Could you restate it?

8 MR. STEINWASCHER: Sure.

9 BY MR. STEINWASCHER:

10 Q. This email sets forth an overview summary of a proposal for
11 financing to develop an asset. Is it correct that the
12 information that follows -- is it your understanding that the
13 information that follows details that development?

14 MS. SASSOON: Objection.

15 THE COURT: Do you understand the question?

16 THE WITNESS: I think what he's saying is, does the
17 remainder of the email pertain to the beginning of the email,
18 and that would be my assumption, because it's all in the same
19 email. There is an asset described in the email. The email
20 starts by saying, "We'd like to raise financing. The purpose
21 is to develop an asset. The asset is the Cat Canyon asset in
22 California."

23 And then immediately below that, there's a subject
24 header, "Asset," and it says "California," so I assume that
25 that's the subject of -- I'm sorry, I guess I don't understand

HBTKBRE2

Bonebrake - Cross

1 the question.

2 BY MR. STEINWASCHER:

3 Q. Yes, I understand. I'm probably making this overly
4 complicated.

5 I guess my point is that the numbers that follow --

6 MS. SASSOON: Objection.

7 Q. I guess my --

8 THE COURT: Let me hear the question.

9 Q. My question is: The numbers that follow, they're what
10 Blacksands hopes to accomplish if it receives the financing
11 being proposed here?

12 MS. SASSOON: Objection.

13 THE COURT: Is that your understanding?

14 THE WITNESS: Could I see the next page of the email?

15 BY MR. STEINWASCHER:

16 Q. Sure.

17 A. It's hard to interpret this email. The formatting is not
18 in the form that I'm accustomed to, the detail is not in a form
19 that I am accustomed to, so I don't know that I can answer that
20 question with a yes-or-no answer. You'd have to ask
21 Mr. Brennerman that. The email shows projections into the
22 future, so, I mean, the implication --

23 Q. I guess that's the point I'm trying --

24 A. Yeah, the implication would be -- the assumption would be
25 that this is what the financing is being used for, if you

HBTKBRE2

Bonebrake - Cross

1 wanted to make that leap, but, yeah, I mean, it doesn't
2 literally say that, and it's not the format I'm accustomed to
3 seeing, so...

4 MR. STEINWASCHER: Can we go back to page 6.

5 Q. And you understand that, going back to this first page of
6 the proposal, overview summary of the proposal, that this
7 pertains to an asset called Cat Canyon in California?

8 A. Yes, that's what the email says.

9 Q. Do you understand, from this proposal, that the
10 \$600 million from ICBC referenced as the first lien loan was to
11 be used to acquire that asset?

12 A. I don't believe the email says anything about an
13 acquisition, correct me if I am wrong, so it's unclear to me
14 whether this is to acquire an asset or develop an asset that is
15 currently owned.

16 Q. Isn't that what the financing from Credit Suisse was also
17 for?

18 A. Are you referring to a specific part of the email chain?
19 Sorry.

20 Q. I guess if you go back to page 5, you mention contact
21 information -- this is after your seven points -- contact
22 information with investment banker, Credit Suisse -- I'm
23 skipping ahead a few -- but Credit Suisse has already gotten
24 comfortable with the information to get to the point of
25 financing. What do you understand that?

HBTKBRE2

Bonebrake - Cross

1 A. Yeah, so at some point, Mr. Brennerman had either verbally
2 represented to me or in one of these emails represented to me
3 that Credit Suisse was prepared to assist them with this
4 financing, and that he was interested in understanding at --
5 under which terms Morgan Stanley would help them with this
6 financing. And, again, I was quite simply trying to get some
7 outside verification of who Mr. Brennerman was and what the
8 company was, and if Credit Suisse had committed to him that
9 they were going to help him with the financing, presumably they
10 had already done that. So simply all I needed to do was talk
11 to one of the directors or managing directors at Credit Suisse
12 for them to say -- they didn't need to tell me anything about
13 the company, they just needed to tell me, yes, this is a
14 company that we've done diligence on, and we're comfortable
15 with, and then by analogy, our organization, because we're a
16 very similar organization to Credit Suisse, that would help us
17 to get comfortable with the know-your-customer requirements.

18 That was why I was asking for the Credit Suisse
19 contact information, but I didn't have any authoritative
20 information or documentation from Credit Suisse as to, you
21 know, financing, so I don't know that I can answer that
22 question specifically.

23 Q. Understood.

24 Now, I believe I asked you, and you said you did not
25 have any -- that after this May 2013 exchange, you did not have

HBTKBRE2

Bonebrake - Cross

1 further interaction with Mr. Brennerman. Is that correct?

2 A. To the best of my recollection, right. We had this
3 exchange, we were unable to get over the hurdle of signing an
4 NDA, and so from my perspective, you know, that was sort of the
5 end of the road. We were not able to continue to -- it was
6 sort of a chicken and egg issue.

7 Q. Does Morgan Stanley have a Hong Kong office?

8 A. Yes.

9 MS. SASSOON: Objection; relevance.

10 THE COURT: Well, I'll allow a little bit on that.

11 THE WITNESS: So, yes, they have a Hong Kong office.
12 Okay.

13 BY MR. STEINWASCHER:

14 Q. Were you contacted at some point toward the end of 2013 by
15 some --

16 MS. SASSOON: Objection.

17 THE COURT: Well, let me hear the question.

18 Q. Were you contacted by someone in the Morgan Stanley office
19 toward the end of 2013 about Blacksands Pacific?

20 MS. SASSOON: Objection.

21 THE COURT: Overruled.

22 You can answer.

23 THE WITNESS: Yes.

24 Q. Were you told that Morgan Stanley Hong Kong --

25 MS. SASSOON: Objection.

HBTKBRE2

Bonebrake - Cross

1 THE COURT: Well --

2 MR. STEINWASCHER: Strike that.

3 THE COURT: I'm going to sustain that one.

4 Did that have anything to do with the emails that we
5 have been looking at?

6 THE WITNESS: You want -- Morgan's Hong Kong office,
7 you want a yes or no to that?

8 THE COURT: Yes.

9 THE WITNESS: It had to do with Blacksands Pacific, so
10 it depends on how broadly you define did it have anything to do
11 with the emails.

12 THE COURT: Okay.

13 All right. Next question.

14 BY MR. STEINWASCHER:

15 Q. Were you aware that Morgan Stanley Hong Kong was working
16 with a Chinese bank on a financing deal with Blacksands
17 Pacific?

18 MS. SASSOON: Objection.

19 THE COURT: Sustained.

20 MR. STEINWASCHER: Thank you, sir.

21 THE COURT: Okay. Any redirect?

22 MS. SASSOON: Very brief, your Honor.

23 THE COURT: All right.

24

25

HBTKBRE2

Bonebrake - Redirect

1 REDIRECT EXAMINATION

2 BY MS. SASSOON:

3 Q. Mr. Bonebrake, do you recall that on cross-examination, you
4 were asked a few questions about something called asset-based
5 funding?

6 A. Yes.

7 Q. And do you remember you said that a lender in that context
8 would primarily be concerned about the asset?

9 A. More so than other pieces of information.

10 Q. What are the other pieces of information a lender might be
11 interested in when doing asset-based lending?

12 MR. STEINWASCHER: Objection.

13 THE COURT: Overruled. I think you opened the door to
14 this.

15 Go ahead.

16 THE WITNESS: Well, it's not sufficient to just
17 understand the asset characteristics. The asset
18 characteristics are important in terms of understanding a
19 prudent amount of debt that can be lent against the asset, but,
20 more broadly than that, again going back to U.S. regulations,
21 you have to understand who the owner of the asset is and how
22 the asset is being used, because you have an obligation, as a
23 regulated financial entity in the United States, to make sure
24 you understand that for various reasons.

HBTKBRE2

Bonebrake - Redirect

1 BY MS. SASSOON:

2 Q. Would a lender be interested in whether the potential
3 purchaser of the asset had financing to buy it?

4 MR. STEINWASCHER: Objection.

5 THE COURT: Overruled.

6 THE WITNESS: I'm going to have to ask you to clarify
7 that one.

8 Q. Yes.

9 Would a potential lender be interested in knowing
10 whether the company looking to purchase the asset actually had
11 the capabilities to do so?

12 MR. STEINWASCHER: Objection.

13 THE COURT: Do you understand the question?

14 THE WITNESS: Yeah, I think so.

15 THE COURT: Okay. Overruled.

16 You can answer.

17 THE WITNESS: Well, it's a little bit of a confusing
18 question because the lender is part of providing the money to
19 the person to acquire an asset, but a lender typically would be
20 looking for comfort that the entity buying the asset is well
21 capitalized in that they have other reserves they can draw on
22 from a cash perspective, and they're not just financing the
23 acquisition of the asset all with debt. Sometimes that
24 happens. But usually -- and when we're talking about a second
25 lien financing, that means you're lower in priority than the

HBTKBRE2

Bonebrake - Redirect

1 first lien, you'd be looking for some sort of equity cushion or
2 some sort of incremental capital underneath your position.

3 So, yes, I think the second lien -- the person
4 providing the second lien financing would like to understand
5 the total capital structure and the source of the funds for the
6 company that's going to operate the asset, but they are part of
7 the source of the funds. So it's confusing.

8 Q. Would a lender be interested in whether the buying entity
9 had the operational capacity to develop or operate the asset?

10 MR. STEINWASCHER: Objection.

11 THE COURT: A lender. Morgan Stanley was going to be
12 functioning as a lender in this process or was going to be
13 facilitating other lenders participating in this process,
14 right?

15 THE WITNESS: I can't speak for Morgan Stanley. I can
16 say that, you know, I was in a very preliminary stage of
17 conversations with Mr. Brennerman, so it was unclear to me what
18 they were looking for us to do, but, typically, my particular
19 unit in Houston would not have been lending here so much as we
20 would have been finding third parties to invest, but I can't
21 speak for the rest of Morgan Stanley.

22 THE COURT: Okay. But in finding third parties to
23 invest, what information do you think would be relevant to
24 deciding whether to go forward?

25 THE WITNESS: Well, in my interactions with

HBTKBRE2

Bonebrake - Redirect

1 Mr. Brennerman, I was just trying to figure out if we could
2 sign a nondisclosure agreement. There would have been a lot
3 more work done if we had actually moved forward with actually
4 trying to raise financing, and that wasn't really the topic of
5 our interactions because we just didn't get to that stage.

6 (Continued on next page)

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HBT5bre3

Bonebrake - recross

1 BY MS. SASSOON:

2 Q. Just to clarify, turning back to Exhibit 1-61, page 6, is
3 it clear to you one way or the other from looking at this
4 e-mail whether this is an asset-based lending proposal?

5 A. It's not clear to me, it would be speculation.

6 Q. Looking at page 7, going back to the part in blue with the
7 asterisk, can you read that, please?

8 A. 50 percent working interest owned by Black Sands Pacific
9 Alpha Blue, LLC.

10 MS. SASSOON: No further questions.

11 THE COURT: Okay. Any recross?

12 MR. STEINWASCHER: Very briefly, your Honor.

13 RECROSS EXAMINATION

14 BY MR. STEINWASCHER:

15 Q. Can we go back to that same exhibit, same page?

16 Very briefly, Mr. Bonebrake. Did this proposal
17 provide you -- I say proposal, overview summary proposal, did
18 it provide you with really any information on which Morgan
19 Stanley could make a decision about financing?

20 A. To get to the point of actually, quote, making a decision
21 on financing, there would have been a lot more work and
22 information needed than this. Again, this was very preliminary
23 stage of our conversation.

24 MR. STEINWASCHER: Thank you.

25 THE COURT: Okay. You can step down. Thanks very

HBT5bre3

1 much.

2 THE WITNESS: Thank you.

3 THE COURT: Take the water with you.

4 THE WITNESS: Okay.

5 (Witness excused)

6 THE COURT: Next witness.

7 MR. ROOS: Your Honor, at this point the government
8 would play three video clips that are in evidence.

9 THE COURT: Will you just play them without a witness?

10 MR. ROOS: That is our intention.

11 THE COURT: No. No. If you have a witness you can
12 ask them questions about it, that's fine. Otherwise, the jury
13 can look at that later in the jury room.

14 So, who is your next witness?

15 MR. ROOS: Okay. We will call Julian Madgett.

16 JULIAN MADGETT,

17 called as a witness by the Government,

18 having been duly sworn, testified as follows:

19 THE COURT: State your name and spell your name for
20 the record.

21 THE WITNESS: My name is Julian Madgett.

22 THE COURT: How long do you we expect this direct to
23 last?

24 MR. ROOS: A few hours.

25 THE COURT: A few hours. He deserves a glass of

HBT5bre3

Madgett - Direct

1 water. We will probably break around 11:30.

2 You may proceed, Mr. Roos.

3 MR. ROOS: Thank you, your Honor.

4 DIRECT EXAMINATION

5 BY MR. ROOS:

6 Q. Mr. Madgett, where do you work?

7 A. I work at Industrial Commercial Bank of China, which is
8 also known as ICBC, in their London branch.

9 Q. How long have you worked at ICBC?

10 A. I have worked there since 2009.

11 Q. And, in 2013, what was your title?

12 A. Head of Commodity and Structured Finance.

13 Q. What's your current title?

14 A. The same.

15 Q. Generally, what are your duties and responsibilities as
16 Director of Commodity and Structured Finance?

17 A. I look after a team of several people and our job is to
18 lend money into corporates which operate in the natural
19 resource space. So, for example, oil companies or metal
20 production companies or agricultural production companies.

21 Q. Did there come a time you met an individual named Raheem
22 Brennerman?

23 A. Yes.

24 Q. When, approximately, was that?

25 A. Early 2011.

HBT5bre3

Madgett - Direct

1 Q. How did that come about?

2 A. He introduced himself to the bank, visited us, and advised
3 that he was the CEO, president of a company called Black Sands
4 Pacific, and that company was interested in raising debt for
5 its activities in the oil space.

6 Q. What did he say his title was at Black Sands Pacific?

7 A. President and CEO.

8 Q. What were some of the things that Mr. Brennerman told you
9 about Black Sands during your meetings in 2011?

10 A. That the company was a relatively young company which had
11 two operations in two broad areas in North America and emerging
12 markets principally in Africa, and the company was mainly a
13 production and exploration company -- which means it is an
14 upstream company we call it in the industry. That means it is
15 a company which concentrates on exploration, finding oil, and
16 producing oil, and that the company had several interests in a
17 number of different fields, mainly in north Africa, but also
18 some in Canada and also Africa.

19 Q. Did Mr. Brennerman say whether he had any assets in the
20 United States?

21 A. Yes, extensive assets in the United States in terms of
22 interests with joint venture partners in various oil operation
23 licenses.

24 Q. Did Mr. Brennerman indicate whether he had any offices?

25 A. Yes. He referred to Houston as the main offices. There

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Madgett - Direct

1 were some other places which he also referred to at different
2 times including New York and plans to open a headquarters at
3 some stage in Trump Tower as well.

4 Q. Did he indicate whether his company had any employees?

5 A. Yes. There was a range of discussions on this. Whilst the
6 company did not provide precise accounts which would be a very
7 precise way of understanding the number of employees, the
8 general discussions was in the range of 80 to 130 employees.

9 Q. In general terms, what were some of the topics that you
10 discussed with Mr. Brennerman?

11 MR. WALLER: Objection.

12 THE COURT: Is this at the first meeting we are
13 talking about? Or are we talking over a series of meetings?

14 MR. ROOS: I will rephrase it.

15 BY MR. ROOS:

16 Q. In 2011, over the series of meetings, what were the topics
17 you discussed with Mr. Brennerman?

18 A. His interest in ICBC was to raise debt financing to support
19 his share of investments in various oil fields that he claimed
20 to be negotiating or already had an ownership interest in. So,
21 to develop those assets, you need to expend a significant
22 amount of money and a company will borrow a significant amount
23 of what needs to be spent so that it can make the investments
24 to develop its share of such oil fields. Specifically, the
25 first main transaction he brought to us was a transaction in

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Madgett - Direct

1 Nigeria and this transaction proposed a new exploration block
2 in Nigeria where we would be working with joint venture
3 parties. And to enable that license to be awarded from the
4 Nigerian government, it required payments of license fees.
5 That, in itself, is how the industry works, so that's fine.
6 And he then approached us to suggest that we provide a
7 financing, as I recall, around \$50 million, to be repaid over a
8 series of years through the oil production which would result
9 from that license being awarded and then oil being produced and
10 being exported.

11 Q. What happened with that proposed Nigerian financing deal,
12 to your knowledge?

13 A. To my knowledge the proposal, specifically the license, was
14 OPL 2012.

15 THE COURT: The license was what?

16 THE WITNESS: OPLU 2012.

17 THE COURT: What is that?

18 THE WITNESS: This merely refers to the way that
19 licenses are classified in Nigeria.

20 So, the way to think about an oil producing area,
21 whether it be in the United States or in the North Sea or in
22 Nigeria, is that you have a significant land mass area and the
23 allocation of a license refers to a certain land mass which can
24 measure in acreage, if you like. And each of those acreages
25 are then subject to a license. So, the country which has

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Madgett - Direct

1 control over that jurisdiction will award licenses to companies
2 for a period of time to be able to develop and exploit the oil
3 resources which are expected to be below that area. So, in
4 this particular case, there was a new licensed area proposed
5 which would have been this OPLU 2012 and Mr. Brennerman was
6 asking on behalf of Black Sands if ICBC would provide loan
7 funding to help establish the setup of that license area paying
8 license fees to the Nigerian government, and then we would be
9 repaid through the development of that oil and the delivery of
10 the oil for export over a number of years.

11 Q. Did ICBC become involved in that deal?

12 A. ICBC did not become involved in the deal because we were
13 told that the deal did not go ahead. However, we were quite
14 supportive in the dialogue and actually were prepared to issue
15 a \$22.5 million standby letter of credit which would have been
16 evidence to the Nigerian government of the availability of the
17 funds to pay that license fee. As it was, it was explained to
18 us that the license did not go ahead for other reasons which
19 was to do with changes in the Nigerian government at that time
20 and change in personnel in the Nigerian state oil company and,
21 consequently, there was no need for that deal to happen.

22 I would stress that we would have only provided that
23 standby letter of credit based upon confirmation of the license
24 being awarded and, indeed, a final credit approval if we were
25 happy with all of the terms and conditions on the subsequent

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Madgett - Direct

1 financing which would be secured on the oil to be produced and
2 delivered.

3 Q. Let me ask about your -- I'm sorry.

4 Did you, around this time, in 2011, introduce
5 Mr. Brennerman to anyone else at ICBC?

6 A. Mr. Brennerman visited our London office on three or four
7 occasions and, as normal, I would circulate meeting notes and,
8 consequently, he did go on to visit ICBC in head office -- ICBC
9 is China's largest bank, so obviously the main activity of the
10 bank is in China -- to discuss possible transactions also in
11 Nigeria, and he also had a meeting with our investment bank.
12 The investment bank is the part of the bank which concentrates
13 on business like listing shares and evaluating investments and
14 finding strategic investors and so forth. So, that was a
15 discussion around potentially the company doing a share
16 listing -- what you call an initial listing, IPO -- at some
17 time in the future which might be of interest to ICBC to
18 support as well.

19 Q. I would like to show you a document that is in evidence, it
20 is marked as Government Exhibit 1-1. It is multi-paged so I
21 will give you a copy as well.

22 A. Thank you.

23 THE COURT: Can everybody see? Can everybody hear?
24 You are able to hear okay? If you have having difficulty, let
25 me know.

HBT5bre3

Madgett - Direct

1 Q. Mr. Madgett, let's run through a few preliminaries. So
2 looking at the top of the email.

3 Ms. Fetman, can you zoom in on the top so the jury can
4 see?

5 Who is this from?

6 A. From Mr. Brennerman.

7 Q. Who is it to?

8 A. To myself.

9 Q. What is the date on it?

10 A. 20th of June, 2011.

11 Q. Is there anyone copied on the e-mail?

12 A. Yes; Michael Sloane.

13 Q. Did you ever meet this person?

14 A. I did not meet this person.

15 Q. What is your understanding of what his title was?

16 A. He was not the CFO but he was --

17 MR. WALLER: Objection.

18 THE WITNESS: I'm sorry.

19 THE COURT: Overruled.

20 What is your understanding based on?

21 THE WITNESS: Other documents where Michael Sloane's
22 role had been related. This is three or four years ago so I
23 don't readily recall it.

24 THE COURT: What do you recall his role being?

25 THE WITNESS: His role would be a senior position

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Madgett - Direct

1 around acquisition and finance in the group.

2 BY MR. ROOS:

3 Q. I don't want you to comment on them, but do you see any
4 attachments on the e-mail? Just look at the top of the page.

5 A. Oh, my apologies. Right. Of course.

6 Yes, there is a corporate profile document overview
7 and also corporate structure and organogram.

8 Q. I would like to direct your attention to what is the second
9 e-mail on this first page, it is about halfway down.

10 Ms. Fetman, can you zoom in on it -- and we will look
11 at the whole e-mail there.

12 Who sent this message?

13 A. This is initially from myself to Mr. Brennerman.

14 Q. And some of the text in the body of the e-mail is in all
15 capital letters; who wrote those words?

16 A. Those would be Mr. Brennerman's reply to the points which I
17 am raising as part of the ongoing negotiation process.

18 Q. Now, Ms. Fetman, let's turn to the second page of the
19 exhibit which is the continuation of this e-mail.

20 MR. WALLER: Your Honor?

21 THE COURT: Yes.

22 MR. WALLER: May we have a side bar for a moment?

23 THE COURT: No, I don't have any side bars, so. If
24 you make an objection you make an objection but I don't -- at
25 this point I don't want to have a side bar.

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Madgett - Direct

1 MR. WALLER: Your Honor, my objection is that there is
2 someone that is on the witness list, the government's witness
3 list that's in the courtroom currently.

4 THE COURT: All right.

5 MR. WALLER: I wanted to bring it to the Court's
6 attention before we go too far.

7 THE COURT: Is this true?

8 MR. ROOS: Yes, but we are not going to call him.

9 THE COURT: Okay.

10 MR. WALLER: Okay.

11 THE COURT: All right.

12 BY MR. ROOS:

13 Q. Okay. We are on the second page?

14 A. Yes.

15 Q. Do you see a section, a portion that is in bold and it
16 says, Group Financials?

17 A. Yes, indeed.

18 Q. What were you requesting here?

19 A. I am requesting the financial results of Black Sands
20 Pacific Holding, Limited and Black Sands Pacific Nigerian
21 Production, Limited. Now, Holding Limited is represented as
22 the Black Sands parent company, if you would like, which would
23 be the consolidated results of the total company, and then
24 Black Sands Pacific Nigeria would be the subsidiary which would
25 be involved in this particular investment in Nigeria. So, you

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Madgett - Direct

1 are basically asking for what, in financial terms, you would
2 call the profit and loss account and also the balance sheet,
3 which tells you the assets and the liabilities of the company.

4 THE COURT: You said, "so you are basically asking for
5 what." Who is as asking?

6 THE WITNESS: I am asking.

7 THE COURT: You are asking?

8 THE WITNESS: I am asking. See the small print?

9 THE COURT: Small print is you?

10 THE WITNESS: Small print is me.

11 BY MR. ROOS:

12 Q. Why are you asking for that information?

13 A. Because the group financials are fundamental to the
14 assessment of any corporate client in terms of their
15 creditworthiness, their assets, liabilities, and any decision
16 to make a loan.

17 Q. And, do you see the bolded text underneath there; what is
18 your understanding who that is from?

19 A. That is from Mr. Brennerman.

20 Q. He wrote, "The financials of the companies are not
21 finalized yet."

22 What do you understand that to mean?

23 A. It would mean that the balance sheet and the P&L of the
24 company, both at the parent holding level and specifically for
25 this Nigerian subsidiary proposed, do not yet exist. There is

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1 a suggestion there that they are a work in progress.

2 Q. I will take a look at one of the attachments of this
3 e-mail, it is marked separately as Government Exhibit 1-1B.

4 A. Thank you.

5 Q. Mr. Madgett, just generally, what does this document appear
6 to be?

7 A. This document would be an overview of the company which a
8 company would give to potential lenders to give them a sense of
9 what the company is, what its achievements have been, what its
10 assets are, and what its prospects are.

11 Q. And you said "a company would give." Was it sent to you?

12 A. Yes, this came to me.

13 Q. All right. Turn to page 3, please? Do you see in the
14 second paragraph it says: Our operations include the trading
15 and marketing of petroleum and petroleum products, in addition
16 to our core exploration and production operations.

17 What does trading and marketing of petroleum mean to
18 you?

19 A. Right. There are two activities being communicated in this
20 sentence. First of all, trading and marketing of petroleum and
21 petroleum products. By petroleum you are referring to crude
22 oil. That's the oil that comes out of the ground when you have
23 a well and you are exploiting, taking oil from the ground,
24 that's crude oil. Crude oil then goes into a refinery, and in
25 a refinery it is then turned into what is called petroleum

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Madgett - Direct

1 products. Those are the things you are familiar with, gasoline
2 for your car, diesel for trucks, jet fuel for planes, etc.

3 So, the first aspect he is saying is that the company
4 includes trading and marketing of crude oil and refined
5 products. Just to give you a sense of that, this is not
6 trading at your local petrol station, this is trading of
7 wholesale quantities, so this is a sector of the market where
8 you are basically talking about if you are trading a crude oil
9 shipment, the crude oil shipment would be up to a million
10 barrels. So, this is a vast amount of oil for each shipment.
11 Refined products may be a bit smaller, but in terms of value
12 terms, you may be talking each cargo might be \$10 million to
13 over \$100 million in value, depending on what the specification
14 is. So, it is implying a very large trading activity as part
15 of what the company does.

16 Q. What does exploration and production operations mean to
17 you?

18 A. Exploration and production operations, which is sometimes
19 referred to as E&P companies refers to companies which are
20 involved in the production of oil and the exploration of oil.
21 So, for example, this would be why you would invest and buy a
22 license, so that you can explore for oil in that particular
23 concession, and your job would be to make relevant investments
24 to put in the wells and the pipeline so that you could actually
25 produce the oil, and then that oil could be sold and traded by

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Madgett - Direct

1 that other function and traded by the petroleum trading
2 activity.

3 Q. Look at the third paragraph, the fourth paragraph here, can
4 you please zoom in on that?

5 Mr. Madgett, will you read the first sentence of this
6 paragraph?

7 A. The Black Sands Pacific Group, Incorporated, has its Global
8 headquarters in Houston, Texas, United States; with operations
9 centers in Houston, Texas; Torrance, California; White Pine,
10 Nevada; and core interests in the U.S. gulf coast, California,
11 Nevada, Texas, and the Rocky Mountains and Canada.

12 Then it goes on to say: Our international subsidiary,
13 incorporated in Hong Kong, focuses on our offshore
14 international operations with core focus or interests in the
15 sub-Saharan, West and East Africa, Indian Ocean, and with future
16 plans to expand throughout the African continent and Indian
17 ocean. Our geographic regions are United States, Canada,
18 Africa, and the Indian ocean.

19 Q. Did you visit the headquarters at any time?

20 A. No, I did not. I'm based in London so it is not really
21 convenient.

22 Q. What about any of these other operations that are listed
23 here?

24 A. No, I did not visit any of those.

25 Q. How, if at all, was this information about Black Sands'

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Madgett - Direct

1 operations and headquarters relevant to ICBC?

2 A. As I said, this is an introduction to the company, so this
3 is a narrative description of its activities and assets. This
4 is a very extensive list implying that they are -- well, it is
5 stating that there are assets in each of these territories and
6 therefore it is very relevant because it is painting a picture
7 of a large international oil company and, therefore, one with
8 significant resources, significant solvency, and ability to
9 borrow and repay money.

10 Q. Let's turn to page 4 of this document. Do you see the
11 paragraph titled our history?

12 A. Uh-huh.

13 Q. It says: In the summer of 1999, Newman Enterprises, Corp,
14 began trading with its main focus in crude and petroleum
15 products, however, following the de-merger of the partnership
16 in which the company had operated, one of the partner
17 operations was transferred to Black Sands Group Corp which
18 continued with the energy trading business while expanding its
19 client base and strategic alliance.

20 Now, how, if at all, was this history relevant to
21 ICBC?

22 MR. WALLER: Objection.

23 THE COURT: *How, if at all, was this history relevant*
24 *to ICBC?* Overruled. I am going to allow the question.

25 You can answer.

HBT5bre3

Madgett - Direct

1 THE WITNESS: Thank you.

2 It is relevant because it is part of the credit
3 assessment process. You will always ask, well, where a company
4 get its original capital to invest and create the company,
5 where has it built its expertise. So, the story that this is
6 communicating is that Mr. Brennerman had an interest in a
7 trading enterprise for 10 years before the creation of
8 Black Sands which would have been around three years before we
9 met him, so 1999 through 2009. And we, of course, also asked
10 him about where his money came from. This was part of the
11 exploration explanation. He also mentioned prior to that that
12 his family wealth had been generated by his father and himself
13 mainly through property investments both in the UK and in the
14 U.S.

15 So, it portrayed a history of at least over two
16 generations and also investment in a trading company which
17 would have given, apparently, enough resources to start
18 Black Sands as a credible player in the oil exploration
19 production and trading space.

20 A second reason why --

21 THE COURT: Let's space this with a question or two.

22 THE WITNESS: Fine.

23 A second reason --

24 THE COURT: No.

25 BY MR. ROOS:

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Madgett - Direct

1 Q. I will ask another question.

2 A. Sorry.

3 Q. By the way, what country did Mr. Brennerman say he is a
4 citizen?

5 A. A U.S. citizen.

6 Q. Let's turn to page 5 of this document. Mr. Madgett, can
7 you read the text on the page?

8 A. We are headquartered in Houston, Texas, United States.

9 Presence or interest in over nine countries spanning three
10 continents. 39-plus licenses.

11 Q. Let me stop you right there. What is the relevance of
12 licenses?

13 A. Licenses is what I was referring to earlier which are these
14 concession areas where you have rights to explore and develop
15 oil and gas assets over defined periods of time, say, 10, 20
16 years. Those licenses are expensive to buy and also are the
17 fundamental asset that an exploration production company must
18 have if it is going to produce oil and generate income profit.

19 Q. Was there any significance to the number of licenses?

20 A. 39 is a good number of licenses so it's, again, it implies
21 quite a substantial company.

22 Q. Okay. Please, continue reading.

23 A. In excess of 5 million acres of combined proven and
24 prospective acreage. 189.15 million barrels of oil equivalent
25 of proven reserve, and in excess of 2,092.5 million barrels of

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1 oil equivalent of prospective reserves.

2 Q. Did you attach any significance to that line right there
3 about proven reserves and prospective reserves?

4 A. Yes.

5 Reserves, essentially, refer to commercially
6 recoverable oil. This oil is estimated in the grounds through
7 geographic seismic processes and, indeed, the oil can be
8 measured and audited by independent companies which specialize
9 in this role. So, therefore, even though the oil is not yet
10 produced, it can be measured underground and you get an idea of
11 how much oil is there.

12 The difference really, between terms prospective and
13 proven, there is actually quite a complex matrix of measuring
14 oil in the ground but those represent two ends of the spectrum.
15 So, prospective is something which might have a chance of
16 producing oil if you drill for it. Proven, on the other hand,
17 is the highest level of confidence in the reserves.

18 Q. Let me ask you to get to the punch line on this one. So,
19 what if any significance, do you subscribe to the number of
20 MMBOEs listed on that line?

21 A. So, the proven reserves in general term, are 90 percent
22 expected to be produced from the lowest estimate of researches
23 available. In simple terms, that is highly probable to be
24 produced. So, if you take 190 million barrels of oil and you,
25 say, multiply it by today's oil price which you can see on the

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Madgett - Direct

1 screen anywhere -- on the TV -- that would be, say, \$60 a
2 barrel. Then, \$60 times 190 million barrels is \$11 billion to
3 get a sense of the size.

4 Now, \$60 is the total value of the oil. It doesn't
5 take into account how much it costs to produce that oil, what
6 you have to invest and what you have to pay to get the oil out
7 of the ground. In very broad brush terms you might use a
8 number of, say, \$15 a barrel after you have taken into account
9 what it actually costs you to produce it. But, even at \$15 a
10 barrel, that is suggesting 190 million barrels of proven
11 reserves is \$3 billion of net surplus profit in the
12 organization waiting to be exploited.

13 Q. What was your impression of Black Sands -- your overall
14 impression of Black Sands in 2011 based on these materials?

15 MR. WALLER: Objection.

16 THE COURT: Overruled.

17 A. The overall impression was that this was a potentially
18 interesting company with a diversified range of resources with
19 clear value in them and able to look to ways to develop those
20 resources. I would also say this was not inconsistent with the
21 development of some other companies in this space which we have
22 seen which had moved on after successful discoveries and got
23 other strategic investors done listings. So, potentially the
24 company was interesting to learn more about.

25 Q. Did these statements about Black Sands' operations affect

HBT5bre3

Madgett - Direct

1 how ICBC dealt with Brennerman?

2 A. Certainly. It was an initial statement asserting that
3 there were significant resources already captured by the
4 company and significant profit in the company, and the company
5 then went on to talk about how it was arranging finance to
6 develop those opportunities.

7 Q. Please bring up page 6 of Government Exhibit 1-1B.

8 Mr. Madgett, can you familiarize yourself with this
9 page and let me know when you have read it.

10 THE COURT: Why don't we take a break now. How long
11 do you have on this?

12 MR. ROOS: On this point? Just really a few minutes
13 on this slide but it is also probably an appropriate time to
14 take a break.

15 THE COURT: A few minutes, let's finish this up.

16 Q. Mr. Madgett, are you familiar with it?

17 A. Yes.

18 Q. Do you see the words "existing asset" on the second line?

19 A. Yes.

20 Q. What do you understand that to mean?

21 A. I understand that to mean that the company already has
22 existing oil operations, production interests, and it is
23 emphasizing the statement that its new investments will be
24 complementary to those existing assets. For example, it is
25 developing similar assets which use the same kind of technology

HBT5bre3

Madgett - Direct

1 or which are adjacent geographically, and also goes on to refer
2 to "in our core producing regions." Now, core producing
3 regions, again, is telling you that they're currently producing
4 oil already.

5 Q. Now, did Mr. Brennerman ever provide verification of
6 Black Sands' claimed existing assets?

7 A. Only verification insofar as these sorts of presentations
8 would refer to these independent audited accounts which I have
9 mentioned before on the actual assets. But, of course, those
10 audited accounts on the assets are telling you what the oil is
11 in the ground and what it could produce only tells you about
12 the assets, it doesn't tell you about the ownership of those
13 assets.

14 MR. ROOS: Your Honor, I am going to go to another
15 page now.

16 THE COURT: Let's take our morning break; use the rest
17 rooms, stretch your legs a bit, drink the coffee if it is still
18 warm. Don't discuss the case, take your notebooks with you and
19 we will see you in 10 minutes sore so.

20 Thanks. All rise for the jury.

21 (Continued on next page)

HBT5bre3

Madgett - Direct

1 (Jury not present)

2 THE COURT: Okay. Have a seat.

3 So, your direct will go through the lunch hour?

4 MR. ROOS: Certainly. I'm about one sixth of the way.

5 THE COURT: One sixth of the way. All right. You
6 folks can get a drink of water or use the rest room and we will
7 pick up in 10 minutes. Thanks.

8 You can do as well.

9 THE WITNESS: Thank you.

10 (Recess)

11 (Continued on next page)

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HBT5bre3

Madgett - Direct

1 (Jury present)

2 THE COURT: Okay, have a seat. Thank you. So, I am
3 going to resume the direct examination of Mr. Madgett by
4 Mr. Roos.

5 MR. ROOS: Thank you, your Honor.

6 BY MR. ROOS:

7 Q. Ms. Fetman, can we put the exhibit back on which is 1-1B
8 and let's go to page 8.

9 Mr. Madgett, you said Mr. Brennerman told you he was
10 the CEO; is that right?

11 A. Yes. That is correct.

12 Q. Did you ever meet face to face with anyone else from
13 Black Sands?

14 A. We did not, no.

15 Q. What are the names of the employees you communicated with
16 at Black Sands?

17 A. Mike Kelly would be the principal other name which I had
18 some e-mail traffic with although did not speak with him. And
19 then, as we saw, Mr. Sloane who appeared to be in a deputy
20 capacity to Mr. Brennerman was also involved in a number of
21 correspondence, and also Mr. Brennerman's senior PA would
22 occasionally write, apparently on behalf of him, e-mail
23 traffic.

24 Q. Did Mr. Brennerman ever mention any associate named Peter
25 Aderinwale?

HBT5bre3

Madgett - Direct

1 A. No.

2 Q. Did you ever meet that person?

3 A. No, I did not.

4 Q. Mr. Madgett, please review pages 10 to 26 of this exhibit.
5 Do you still have the exhibit in front of you?

6 A. Yes, I do. Could I just comment on the executive structure
7 which is in front of me?

8 MR. WALLER: Objection.

9 THE COURT: You have to wait for questions.

10 THE WITNESS: Oh, sorry.

11 THE COURT: That's all right.

12 Q. What, if anything significant, stands out to you about the
13 executive structure?

14 MR. WALLER: Objection.

15 THE COURT: Well, I will allow it. Go ahead.

16 MR. ROOS: He was dying to.

17 A. I apologize.

18 In terms of reading such a presentation, when you are
19 looking at several named board directors and then a senior
20 management team for both the international business and the
21 offshore business as well, the North American business, you are
22 looking here at over 20 senior managers, all of which I am sure
23 we assumed were on appropriate high levels of pay.

24 Q. When you say we --

25 A. The bank. The bank. And, therefore, the bank would look

HBT5bre3

Madgett - Direct

1 at this kind of management structure and map it onto a really
2 quite substantial organization because these people must, in
3 turn, be managing many people.

4 Q. All right. Now let's go to the pages I mentioned, 10
5 through 26 of this exhibit.

6 A. Yes.

7 Q. Please review them.

8 Ms. Fetman, can you go through the pages on the screen
9 also? We are going to 26.

10 A. Okay.

11 Q. You are done reviewing?

12 A. Yes.

13 Q. Generally, Mr. Madgett, what is contained in these pages?

14 A. What is contained in these pages is a representation from
15 Black Sands of certain interests it has in certain oil
16 exploration production assets so it's referring to its interest
17 in certain fields, working interest. So, what that would
18 imply, for example, Torrance Field, California, would be that
19 the company has a 50 percent interest in that license. So, in
20 other words, whatever benefits come out of that license, 50
21 percent will belong to Black Sands.

22 Q. You are looking at page 11?

23 A. I was looking at page 11, yes, as an example.

24 Q. Did these statements about Black Sands assets affect how
25 ICBC dealt with Mr. Brennerman?

HBT5bre3

Madgett - Direct

1 A. Certainly.

2 MR. WALLER: Objection.

3 THE COURT: Overruled.

4 A. Certainly.

5 THE COURT: ICBC; who besides you was working with
6 Mr. Brennerman at ICBC?

7 THE WITNESS: The bank's credit assessment of
8 Brennerman would be carried out by one of the credit analysts
9 in the bank who would work on my team who did attend some
10 meetings and also my director, deputy managing director Mr. Bo
11 Jiang, Chinese expatriate, who is my boss met with
12 Mr. Brennerman on a number of occasions and is also informed in
13 coming to a view as to how we should look at Black Sands and
14 what kind of prospect and risk he represented.

15 BY MR. ROOS:

16 Q. Besides Mr. Jiang and yourself, did anyone deal directly
17 with Mr. Brennerman at this time?

18 A. At this time, no.

19 Q. So, let me reask the question.

20 Did these statements about Black Sands assets affect
21 how you, in your capacity as an employee of ICBC, dealt with
22 Mr. Brennerman?

23 A. Yes. It communicated to us that this was a company with
24 real asset interests which are of significant value and an
25 organization with many such assets and many such interests, and

HBT5bre3

Madgett - Direct

1 in conjunction with a list of managers that they had
2 communicated, this suggested a large firm to us which had
3 experience, which had track record, and which therefore you
4 could understand is generating wealth and is a credible
5 counterparty.

6 Q. Ms. Fetman, please publish what is in evidence as
7 Government Exhibit 1-11.

8 This is a multi-page e-mail, I am handing you a copy
9 Mr. Madgett. Would you turn to the third page? That is where
10 I would like to start. Mr. Madgett, do you see an e-mail on
11 this page?

12 A. Yes.

13 Q. And let's just go through what is on the top of it. Who is
14 it from?

15 A. It is from myself to Mr. Brennerman.

16 Q. And what is the date?

17 A. The date is July 2011.

18 Q. Are you familiar with the e-mail?

19 A. Yes.

20 Q. Let's zoom in on the text there and it says for unlisted
21 co. What is an unlisted co?

22 A. It is a company which does not have placing on the stock
23 exchange so therefore shares in that company are not listed and
24 you, as a member of the public, can't buy and sell shares in
25 that company. So, it is a privately-owned company.

HBT5bre3

Madgett - Direct

1 Q. So, for unlisted co, the typical KYC. What is KYC?

2 A. KYC is what is shorthand for "know your customer."

3 Q. Typical KYC for any bank is, and then there are a list of
4 items and it says: One, the memo and articles of association;
5 two, an audited financial report dated 2009 or later.

6 What did you mean by the second item on that list?

7 A. "Financial reports," we come back to talking about the
8 balance sheet and the profit and loss account for the company
9 to reflect its financial situation; and "audited" means that
10 the accounts have been audited by an independent accounting
11 company to check their validity and truthfulness.

12 Q. Were you generally familiar with ICBC's know-your-customer
13 policy between 2011 and 2013?

14 A. Generally, yes.

15 Q. Were these items part of that know-your-customer policy?

16 A. Yes, it was.

17 Q. What is your understanding of why ICBC required financial
18 statements as part of its know-your-customer policy?

19 A. As for the know-your-customer policy, this is a separate
20 reason to having the accounts for credit assessment. Know your
21 customer is to meet requirements upon the bank which partly are
22 regulatory but also it's the bank's own rules to understand
23 where the wealth a company has has come from. In today's world
24 with money laundering, terrorist financing and so forth --

25 MR. WALLER: Objection, your Honor. Not responsive.

HBT5bre3

Madgett - Direct

1 THE COURT: Wait. Overruled.

2 I don't want you to go on for paragraphs?

3 THE WITNESS: No.

4 THE COURT: So, finish the thought.

5 THE WITNESS: Absolutely.

6 So, the thought is simply every client has to go
7 through a know-your-customer process which is an independent
8 part of the bank which assesses the company's legitimate
9 existence, the identification of major directors and
10 shareholders in the bank, and gives a sense of where that
11 company's wealth has come from so that the bank is not
12 inadvertently involved in inappropriate financing.

13 (Continued on next page)

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HBTKBRE4

Madgett - Direct

1 BY MR. LANDSMAN-ROOS:

2 Q. At the bottom of this email, it says, "2 is the difficult
3 one," and then you write, "Can you clarify if you have
4 half-year figures of BSP?" Let me stop there.

5 BSP, what's that a reference to?

6 A. That's just an acronym for Blacksands Pacific, so his
7 company.

8 Q. "And would it be feasible to audit these if only MGMT
9 accounts?"

10 What does MGMT mean?

11 A. MGMT is just shorthand for management accounts. Management
12 accounts are the accounts we talked about, which is a P&L and
13 the balance sheet, but it's prepared by the company itself.
14 Both the accounts which then would be checked by an independent
15 auditor to turn them into audited accounts, which are,
16 therefore, more reliable, like you would see in a normal annual
17 report of a company.

18 Q. So what's a half-year management account?

19 A. A company which is prudently run will be producing its
20 financial accounts, P&L, profit and loss, and the balance
21 sheet, probably on a monthly basis. These are the tools
22 management need to run a complex company.

23 So a company will also produce half-year statements
24 for a six-year period as well as for a normal full-year
25 statement because the standard is for 12 months. So, if you

HBTKBRE4

Madgett - Direct

1 deal with a large company -- and we had the impression
2 Blacksands was a large company -- we would be expecting that
3 company to have half-year accounts on a management basis at a
4 very minimum, which is used by the management of the company to
5 effectively control and manage the company.

6 Q. Now, let's turn back to page 1 of this email, so the front
7 email on the exhibit. Do you see the email that begins about
8 halfway down?

9 A. Yes.

10 Q. Who is that from?

11 A. This is from myself.

12 Q. Who is it to?

13 A. Mr. Brennerman.

14 Q. What is the date?

15 A. The date is July 13th.

16 Q. Do you recall the email?

17 A. Yes.

18 Q. And what did you write?

19 A. "Have I seen the half-year management accounts yet of
20 Blacksands Pacific?"

21 Q. What did you mean by that?

22 A. I am simply asking the company, I don't think I've received
23 the half-year accounts, which we had discussed, and I was
24 expecting to receive.

25 Q. Let's look at the top email now. And, again, let's begin

HBTKBRE4

Madgett - Direct

1 with the from, to, and the date. Who is it from?

2 A. Mr. Brennerman.

3 Q. Who is it to?

4 A. Myself.

5 Q. And the date?

6 A. The date is 30th July. A little later, 6:30.

7 Q. And flip back to the prior page. Your initial email was
8 July 11th; is that right?

9 A. Yes.

10 Q. What is the response you get here?

11 A. The response I get from Ms. Rodriguez in her apparent
12 capacity as senior executive assistant to Mr. Brennerman, "I'm
13 not sure if you have received the half-year management account
14 yet. However, I will speak with Mr. Brennerman in the morning
15 to advise him of your email. I was meant to have forwarded the
16 earlier email since yesterday."

17 Q. Let's go back to page 3. That lists the know-your-customer
18 points.

19 MR. LANDSMAN-ROOS: Can we put that to the left of the
20 page or the left of the screen.

21 THE WITNESS: Yes.

22 MR. LANDSMAN-ROOS: On the right side of the screen,
23 let's put what's in evidence as Government Exhibit 130.

24 THE COURT: 1-30, right?

25 MR. LANDSMAN-ROOS: Yes, yes. My apologies.

HBTKBRE4

Madgett - Direct

1 BY MR. LANDSMAN-ROOS:

2 Q. The top of the email, 1-30, says it's from Brennerman,
3 R.J., to Aderinwale, Peter, which is whollyabbey@yahoo.com,
4 "Subject: ICBC Accounts." It's dated July 11, 2011.

5 Mr. Madgett, is that the same date as your initial
6 email here?

7 A. Yes, it is.

8 Q. Are you on this email?

9 A. No, I'm not.

10 Q. I'm going to read it. "Dear Peter: I want to send the
11 enclosed below to ICBC as the management accounts. Please can
12 you confirm that it will be okay?"

13 Did you ever receive this email that said "Dear
14 Peter"?

15 A. No, I did not.

16 Q. Did you ever receive information about Blacksands'
17 management accounts?

18 A. Some limited numbers in the teaser documents which were
19 provided.

20 Q. Mr. Madgett, in 2011 and 2012 --

21 MR. LANDSMAN-ROOS: And, Ms. Fetman, you can take
22 these off the screen.

23 Q. In 2011 and 2012, did Mr. Brennerman talk with you about
24 potentially using ICBC in any other deal besides that Nigeria
25 deal you mentioned?

HBTKBRE4

Madgett - Direct

1 A. Yes. After the Nigerian deal did not work, he -- after
2 some months, he approached ICBC again and discussed a possible
3 financing of various of the assets in the U.S. Gulf, and this
4 was a discussion which lasted for a few months. Eventually,
5 though, he advised that an alternative financing solution had
6 been found. He advised that this had been through high-yield
7 bond issuers -- bond issuance by Blacksands. So, in other
8 words, this would be hedge companies, investment funds, who had
9 made the loan available to the company instead, and, therefore,
10 it was not required to come to the bank for the financing.

11 Q. How do you know what you just said?

12 A. Only from what he asserted to us.

13 Q. Were you ever able to verify the facts of that deal?

14 MR. WALLER: Objection.

15 THE COURT: Overruled.

16 THE WITNESS: We could not verify the facts of them
17 really for two reasons: Number one, Blacksands is not a listed
18 company, so, therefore, its activities are not subject to
19 regulatory requirements or disclosure in the way that a listed
20 company is, and as the company, as you saw, was not producing
21 audited accounts, there was little opportunity to see that
22 information being presented that way.

23 Secondly, loans from hedge funds and investment funds
24 are not easily visible to banks. So, when other banks do
25 loans, there are databases for the loans which banks have done,

HBTKBRE4

Madgett - Direct

1 so you can go and interrogate those and see, well, who else has
2 borrowed from what banks, but when they are borrowing from
3 hedge funds using what we call the high-yield debt bond market,
4 this data is not easily accessible. So we did not have the
5 capability to independently verify that.

6 Q. Okay. I now want to talk about the year 2013. Did you
7 talk to Mr. Brennerman about having ICBC finance any Blacksands
8 projects during the year 2013?

9 A. Yes. There was -- as the Gulf of Mexico opportunity fell
10 away, he did mention that he was looking to assist another
11 Nigerian company called Oando --

12 THE COURT: Called what?

13 THE WITNESS: Oando, O-a-n-d-o.

14 A. -- which was a company which you could see from the public
15 domain within the process of purchasing substantial assets in
16 Nigeria from ConocoPhillips, a major company you would have
17 heard of, and that company, Oando, was having difficulty
18 raising over the billion dollars which was required for that
19 purchase. So, Mr. Brennerman represented to us he was trying
20 to assist in raising finance for part of that. So there was
21 discussion on that transaction.

22 Q. Let me stop you there. Do you know whether or not that
23 transaction ultimately happened and included Blacksands?

24 A. It did happen, but it did not include Blacksands.

25 Q. Were there any other projects you discussed in 2013?

HBTKBRE4

Madgett - Direct

1 A. The second project he brought to us in 2013, he represented
2 as an easier transaction because it was in the United States.
3 And that was referred to as Cat Canyon.

4 Q. Sorry. What's Cat Canyon?

5 A. Cat Canyon is a licensed concession in Santa Barbara region
6 in California. Again, from the independent audit results, you
7 can see that this was originally --

8 MR. WALLER: Objection. It's not responsive.

9 THE COURT: Well, it's a broad question, but let's ask
10 for some follow-up questions.

11 MR. LANDSMAN-ROOS: Okay.

12 BY MR. LANDSMAN-ROOS:

13 Q. Specifically, because I think you used maybe a term of art,
14 what is Cat Canyon?

15 A. It is simply the name of the licensed concessionary.

16 Q. What's a "licensed concessionary"?

17 A. The licensed concessionary, as I mentioned before, whether
18 it is in Nigeria or the United States, it is an acreage of land
19 under which it is presumed or known that oil and gas resources
20 exist, and the company which is awarded the license, the
21 acreage concession, has a period of time in which it can
22 develop those oil and gas resources under that land.

23 Q. So we're basically talking about an oil field?

24 A. That's right, an oil field.

25 Q. What was the company that had ownership or a license to the

HBTKBRE4

Madgett - Direct

1 Cat Canyon oil field?

2 A. The Cat Canyon license had been purchased by a private U.S.
3 company, ERG, and they had purchased it, we understood,
4 originally from Chevron because the asset had been developed
5 back in the 1960s, '70s, but when oil prices fell in the 1990s,
6 it was not deemed to be an attractive oil field, so production
7 was shut in.

8 Q. Okay. I want to show you a document, it's in evidence,
9 it's marked as Government Exhibit 1-65.

10 MR. LANDSMAN-ROOS: And, Ms. Fetman, can you take us
11 to the second page of the document.

12 Q. Mr. Madgett, do you see an email that's dated April 4th,
13 2013, 3:59 a.m.?

14 A. Yes.

15 Q. Did you receive this email?

16 A. Yes.

17 Q. Whose it from?

18 A. It's from Mr. Brennerman to myself and to my boss, Bo
19 Jiang.

20 Q. It says, "Thank you for meeting with me yesterday."

21 Had you met with Mr. Brennerman?

22 A. Yes. In our offices in ICBC.

23 Q. It continues and references "proposed combined financing
24 with ICBC." What did you understand that to refer to?

25 A. The combined financing was, at that stage, a discussion

HBTKBRE4

Madgett - Direct

1 which would be covering both the Oando financing, if it
2 happened, but, more importantly, the Cat Canyon financing.

3 Q. And what, in very general terms, was the proposal for
4 financing Cat Canyon?

5 A. The proposal initially was to -- that Brennerman advised us
6 that he was in negotiations with ERG to purchase 50 percent of
7 the Cat Canyon working interest from ERG. So, therefore, the
8 concession would still become, instead of ERG 100 percent, it
9 would be shared 50/50 between ERG and Blacksands.

10 Q. The next paragraph, I'm going to read portions of it, and
11 stop, and ask you some questions. The paragraph "as advised,"
12 do you see it?

13 A. Yes.

14 Q. "As advised, time is of the essence on the California
15 asset."

16 First, what's "the California asset"?

17 A. Cat Canyon.

18 Q. And what did you understand "time is of the essence" to
19 mean?

20 A. It would mean, as he advised us, that --

21 MR. WALLER: Objection.

22 THE COURT: What did you understand it to mean?

23 THE WITNESS: What we understood it to mean was what
24 he had told us.

25 MR. WALLER: Objection to "we" and "us."

HBTKBRE4

Madgett - Direct

1 THE WITNESS: I'm sorry.

2 THE COURT: Well, when you say he had told us, you're
3 referring to a particular meeting?

4 THE WITNESS: Yes, the meeting which was referenced
5 just now when he had come to visit us.

6 THE COURT: Okay. Go ahead.

7 THE WITNESS: All right. Thank you. Okay.

8 So, at that meeting, he had told us the negotiations
9 were progressing very positively, and, therefore, there was an
10 advanced stage of negotiating the purchase of 50 percent
11 interest from ERG, and that timing was very important because
12 of the potential of the competition, and also that ERG wished
13 to expose of that asset at this particular time.

14 BY MR. LANDSMAN-ROOS:

15 Q. Do you see where it says, "Scheduled to close the interest
16 acquisition and progress the proposed development program on
17 that asset by mid-next month"? What did you understand that to
18 mean?

19 MR. WALLER: Objection.

20 THE COURT: Overruled.

21 THE WITNESS: It would mean that -- the interest
22 acquisition is a reference to the interest in the field, so
23 buying that interest in the field. And "progress the proposed
24 development program" would be that if you are coming into a
25 field, and you will now earn 50 percent of it, you clearly need

HBTKBRE4

Madgett - Direct

1 to agree with the existing owner of the other 50 percent what
2 you are going to do with that asset or what speed are you going
3 to continue to invest in new oil wells, what amount of
4 production are you going to produce, what new investments might
5 you be making, whose responsibility, starting from your company
6 or the other company, will be performing that role. So, all of
7 that is rolled into this general term "development program."

8 So, we would typically look at that and think of a
9 development program over the next six, twelve months or longer,
10 which the two parties are agreeing once Blacksands joins that
11 license.

12 Q. So, from this email, dated April 4, 2013, what was your
13 general understanding from Brennerman -- what was your general
14 understanding of what Mr. Brennerman was communicating about
15 the status of the acquisition of Cat Canyon?

16 A. It was at an advanced stage, and both parties wished to
17 close the transaction in a very rapid and timely manner, in a
18 matter of a few weeks.

19 MR. LANDSMAN-ROOS: Ms. Fetman, can we please go to
20 the first page of this document, of the exhibit.

21 Q. And, Mr. Madgett, do you recognize this as another email?

22 A. Yes.

23 Q. And who is it to?

24 A. It's from Mr. Brennerman to, again, my director and myself.

25 Q. And the date?

HBTKBRE4

Madgett - Direct

1 A. The date is April 2013.

2 Q. So, this is two days later, right?

3 A. Yes.

4 Q. Take a look at just the first paragraph. "Further to our
5 discussions, we really need to receive the finance terms as
6 soon as" -- what do you understand "finance terms" to mean?

7 A. The finance terms would be think of it as heads of
8 agreement. So, when you have a loan, you have a term sheet
9 which summarizes the main terms of the loan. So, "heads of
10 agreement," the finance terms would be making it clear what,
11 for example, the loan amount is, what the interest cost is,
12 when the loan has to be repaid, how it has to be repaid,
13 et cetera.

14 Q. And then after that comment, Mr. Brennerman writes, "We
15 have now confirmed a closing date of May 17, 2013, to conclude
16 the California asset transaction."

17 What was your understanding of that?

18 A. The understanding, very clearly, is that both parties on
19 the acquisition of the interest and the sale of the interest by
20 ERG had reached an agreement and had resolved issues, so that
21 they were now setting a closing date to finalize the purchase
22 of the 50 percent by Blacksands in about a month time from that
23 email date.

24 Q. Was that statement relevant to ICBC's dealings with
25 Blacksands?

HBTKBRE4

Madgett - Direct

1 A. Certainly, because it is communicating to us that there is
2 a very real transaction, which is very time sensitive, and
3 that, therefore, it is relevant for us to dedicate resources to
4 try and put in place that financing within the time zone -- the
5 timeline that the client has requested.

6 MR. LANDSMAN-ROOS: May we please publish to the jury
7 what's in evidence as 1-66.

8 Q. To save a trip, I'm going to give you two documents. Just
9 look at the first one.

10 A. Thank you.

11 Q. The second one is 1-66A.

12 MR. SOBELMAN: Now, Ms. Fetman, can you take us to the
13 third page.

14 Q. Mr. Madgett, do you see an email here?

15 A. Yes.

16 Q. Who sent it?

17 A. It's from myself to Mr. Brennerman, with a copy to
18 Mr. Kelly.

19 Q. What's the date on it?

20 A. The date on it is April 16th.

21 Q. And the first sentence of this email says, "Attached please
22 find the indicative term sheet discussed."

23 What's an "indicative term sheet"?

24 A. Right. A term sheet, as I said earlier, is the heads of
25 agreement, which is different to the actual loan agreement. It

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1 summarizes what the main terms are.

2 And "indicative" is an indication basis. An
3 indication basis, just as in normal language, is an indication,
4 it is not an offer. And if you look at the term sheet, you
5 will find a disclaimer on the term sheet which makes it very
6 clear that this is an indication.

7 Q. So, is an indicative term sheet binding on ICBC?

8 A. No. It's an indication of what terms we consider may be of
9 interest to the bank, and the typical conditionality to turn
10 indication into a firm offer is that it needs to go to final
11 credit committee because only credit committee in the bank has
12 the approval to commit the bank to making a loan.

13 Q. Besides the indicative term sheet discussed here, did you
14 previously have experience dealing with indicative term sheets?

15 A. It's an everyday occurrence in banking. It's totally
16 understood what an indicated term sheet is in the banking world
17 with corporate.

18 Q. In your experience, how, generally, is that conditionality
19 expressed?

20 A. How generally is it expressed? It's normally expressed as
21 a disclaimer in the term sheet, which makes it very clear,
22 either at the top of the term sheet or the bottom of the term
23 sheet, that this is an indication, it is not an offer.

24 Q. And I used your term, "conditionality," but what did you
25 mean by that?

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1 A. Well, the conditionality will be explained in the term
2 sheet, but the main conditionality you're talking about is that
3 the term sheet only becomes an offer once it has gone through
4 the credit committee approval process. Credit committee is the
5 function in any bank setup which has the delegated approval to
6 make credit decisions to decide to put the bank's money at risk
7 and lend to a particular company.

8 MR. LANDSMAN-ROOS: So let's put up on the screen
9 what's in evidence as 1-66A.

10 Q. What do you recognize this to be?

11 A. This, I think, is the term sheet in question.

12 Q. Do you see the top italicized portion?

13 A. Yes.

14 Q. You don't have to read it, but can you describe, generally,
15 what this is?

16 A. This is exactly the disclaimer conditionality, if you like,
17 which we are talking about. So the first thing a client reads
18 when they receive it is that this is for discussion purposes
19 only, it is not a binding obligation on parties; i.e., both the
20 bank and the client, it does not specify all the terms and
21 conditions of the final loan document, and these terms and
22 conditions may be subject to modification to reflect
23 requirements of MLAs.

24 MLAs is a defined term that means mandated loan
25 arrangers. It simply means the arranging banks.

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1 Q. Now I'd like us to go back to the email this was attached
2 to, that's 1-66. And let's look at the front page of this
3 exhibit, so that's the last email on page 1. Do you see it?

4 A. Yes.

5 Q. And it says "Our meeting" at the top here -- well, let me
6 first ask: Who is it from?

7 A. It's from Mr. Brennerman to myself.

8 Q. And the date?

9 A. The date is April 16th.

10 Q. And you recall this email?

11 A. Yes.

12 Q. So the first paragraph says, "Dear Mr. Julian Madgett: Our
13 meeting with ERG went well, and we have agreed to meet again at
14 the White & Case office to review the finance confirmations,
15 vice versa, and then agree to the other points on the field
16 operation."

17 What did you understand this sentence to mean?

18 A. If you recall, ERG is the current owner of the Cat Canyon
19 concession and would be selling 50 percent interest to
20 Blacksands. They're referring here to a legal company, White &
21 Case, a major legal company, which we would infer from this is
22 representing ERG.

23 THE COURT: The legal company, you mean law firm?

24 THE WITNESS: Law firm, yes, White & Case.

25 And they would be acting for one of the parties,

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1 probably ERG. And that meeting would be to review the finance
2 confirmations.

3 Now, the finance confirmations for the buy-in to a
4 field would really be about, well, we've already agreed to
5 price, we've already agreed the operating plan, how the two
6 parties will work together. So, how does the finance
7 confirmation work. So, well, when will the payment be made, by
8 who, how --

9 MR. WALLER: Objection. It's not responsive, and
10 there's no foundation for this.

11 THE COURT: I just want to look at -- it's a
12 narrative, so I guess I will stop you short and just say let's
13 make sure we ask precise questions that then have limited
14 answers, not narrative answers. Okay?

15 BY MR. LANDSMAN-ROOS:

16 Q. Okay. Let me ask you a question about the last few emails
17 we've been looking at and your meetings in this time period,
18 and so that's April 2013.

19 Based on your email communications and the meeting
20 or -- was there more than one meeting?

21 A. Yes, there would be more than one meeting.

22 Q. So, based on the email communications and the meetings you
23 had in this time period, April 2013, what was your
24 understanding of the status of Blacksands' deal with ERG?

25 A. It was about --

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1 MR. WALLER: Objection.

2 THE COURT: Overruled.

3 THE WITNESS: It was about to close. This is what was
4 communicated to us. And that, therefore, they were requesting
5 financing support from ICBC.

6 MR. LANDSMAN-ROOS: Remove 1-66 from the screen. Can
7 we put up 1-67. It has three attachments to it.

8 BY MR. LANDSMAN-ROOS:

9 Q. Don't peek.

10 Please turn to the third page of 1-67. And,
11 Mr. Madgett, this is an email, it says from you. It's dated
12 May 16, 2013. And I am going to ask about the subject line,
13 but, first, generally, do you recall this email?

14 A. Yes.

15 Q. So, the subject line says, "Forward ICBC arranger Sinochem
16 offtaker California - Blacksands Pacific - Syndicated best
17 efforts reserve-based financing."

18 A. Yes.

19 Q. What is "Sinochem offtaker" a reference to?

20 A. Sinochem is one of the biggest oil companies in China.

21 Q. What does "offtaker" mean?

22 A. "Offtaker," in this context, means the buyer of the oil.

23 Q. Did Mr. Brennerman ever provide you with documentation
24 concerning Sinochem buying the oil for Cat Canyon?

25 A. Yes. There was a letter of interest, which was a very

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1 short, one-side statement from Sinochem expressing some
2 interest in purchasing the oil if it was available.

3 Q. How firm is a letter of interest, in your experience?

4 A. It's a very loose document. It's simply stating the
5 obvious, that a major oil company would be interested in buying
6 oil if a particular supplier had that oil available, and it's a
7 way of indicating an initial high level of interest that we can
8 talk about this further.

9 Q. Had you seen letters of interest from offtakers prior to
10 this one?

11 A. Yes, many times. They are quite frequently produced by
12 major oil companies where they're trading on interest in buying
13 oil from a small producer and many other situations.

14 Q. In your experience, is a letter of intent or interest
15 difficult to obtain from an offtaker?

16 MR. WALLER: Objection.

17 THE COURT: Overruled.

18 THE WITNESS: No, it is not generally difficult to
19 obtain, provided that the potential supplier is pointing to a
20 credible source of oil it has. You're simply establishing
21 whether or not you or someone potentially interested in buying
22 oil from me, and then you would have a further negotiation
23 discussion about what an oil contract would look like, what
24 price that would be, what quantity it would be. So the devil
25 is in the detail. This is just a very early stage of

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1 expressing some interest, I might be interested to buy some oil
2 from you.

3 Q. So does a letter of interest have a binding effect on the
4 offtaker?

5 A. Certainly not.

6 Q. Now, turn to page 2 of this document, so a page earlier.
7 Do you see at the bottom, an email from you to Mr. Brennerman?

8 A. Yes.

9 Q. You write, "Self-explanatory: Are you okay with the
10 general tone of message here? It's a bit of a dry run for the
11 teaser."

12 And this is a forward from the email below. So, what
13 did you mean by this?

14 A. What I meant by this was that at this time, after the term
15 sheet we provided, the intention from Mr. Brennerman was that
16 he was going to offer to mandate ICBC to arrange for financing
17 for Cat Canyon.

18 Q. And, to be clear, the text in the email that you're
19 forwarding, are those facts that you knew firsthand, or did you
20 learn them from someone else?

21 A. No, I learned them entirely from Mr. Brennerman's
22 representations and material which he provided. So part of
23 ICBC's job, if we were going to arrange the loan, would be to
24 find other banks who would be interested to join the loan, and,
25 therefore, our role, if we became the mandated arranger, which

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1 was envisaged under the term sheet under discussion, would be
2 that we would explain the company and explain the transaction
3 to the other banks. Of course, the bank --

4 Q. Let me stop you right there.

5 A. Okay.

6 Q. So, let's now look at the first page of this document.

7 A. Uh-huh.

8 Q. Who is this email from?

9 A. This email is from Mr. Brennerman.

10 Q. And who is it to?

11 A. To myself.

12 Q. And the date?

13 A. The date is May 16, 2013.

14 Q. Do you see three attachments there that are listed on the
15 cover email?

16 A. Yes, indeed.

17 Q. You don't have to read them. Let's, instead, look at the
18 text of the email. And the email describes three attachments;
19 is that right?

20 A. Yes.

21 Q. It says, "Enclosed is the corporate presentation teaser,
22 which includes additional background information, as well as
23 provide additional information on the headings listed below:
24 Corporate financials, share holdings and ownership, key asset
25 prospects, debt findings and equity investment, financing

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Madgett - Direct

1 strategy in the immediate term, Asia/China relationship."

2 The second paragraph says, "Attached is the corporate
3 presentation for the 2011 financials," it continues.

4 And the third paragraph says, "Attached is the
5 overview of the technical team for the Cat Canyon, California
6 oil field project."

7 What was your understanding of why these attachments
8 were sent to you?

9 A. I had prepared a first description of the company and
10 proposed Cat Canyon transaction, and this was additional
11 material being provided to confirm how to describe the overall
12 company, Blacksands, to potential investors and lenders, some
13 high-level management finances, financial reports we were
14 talking about earlier -- not audited, just the management
15 reports, high level -- and, finally, an indication of what kind
16 of qualified technical staff will be employed by the two
17 companies to successfully develop the oil fields and make the
18 investment a success.

19 Q. So let's get into the attachments. I want you to first
20 look at the attachment that's marked 1-67C. And you have it in
21 front of you, also, if that's helpful. It's multiple pages.

22 Well, let's just start: Do you recognize this
23 document?

24 A. Yes.

25 Q. Do you recall when you saw it?

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1 A. It would have been around this time.

2 Q. By "this time," you mean the underwriting email is --

3 A. 2011.

4 Q. I'm sorry, the email that's attached to it, I believe it's
5 May 2013. Is that your recollection?

6 A. I'm sorry. I'm sorry. Yes, indeed.

7 Q. And what is this document?

8 A. This is the teaser document, the high-level description of
9 the company.

10 Q. Turn to page 2. Can you read the text?

11 A. "Blacksands Pacific asset portfolio reaches from the United
12 States, where its operations are focused on the Gulf Coast,
13 Southern United States, Pacific United States, the Plains
14 states region, and the Rocky Mountain region to Alberta and
15 Saskatchewan region of Canada, Gulf of Guinea in West Africa,
16 East Africa and the Indian Ocean."

17 Q. Turn to page 6 now of the document. Without reading or
18 summarizing all of this for the jury, what, generally, is
19 described on this page?

20 A. What's generally described on this page would be the asset
21 operations across these different geographies. There's a
22 reference here to in excess of 600 million barrels of oil
23 equivalent proved reserves.

24 Q. Well, let me ask you about that. What, if any, relevance
25 is "in excess of 600-barrels of oil equivalent proved reserves"

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1 to ICBC?

2 A. It is telling us that the company has already got interests
3 in a very significant quantity and value of oil across its
4 operations.

5 Q. Let's turn to page 3 now of this document. Do you see
6 where it says "corporate financials" at the top?

7 A. Yes.

8 MR. LANDSMAN-ROOS: Can we zoom in on the first
9 paragraph of this.

10 Q. Does this document state how much growth in revenues
11 Blacksands experienced between 2011 and 2012?

12 A. Yes. A very spectacular growth, over 100 percent.

13 Q. What, if any, relevance to ICBC was Blacksands'
14 descriptions of its financials?

15 A. It is describing a company group which is successfully
16 developing its oil reserves and turning them from proven oil in
17 the ground into production flows, which is then generating a
18 larger cash flow and a larger profit.

19 Q. Was that relevant to ICBC's decision to lend money to
20 Blacksands?

21 A. Very relevant.

22 Q. How?

23 A. Because it tells you that this is a company which has the
24 resources and the generation of cash flow and profit to be able
25 to repay its loans.

HBTKBRE4

Madgett - Direct

1 MR. LANDSMAN-ROOS: Turn to page 5. Now, can we zoom
2 in on the second paragraph here.

3 BY MR. LANDSMAN-ROOS:

4 Q. Mr. Madgett, would you read until the end of the second
5 sentence. That's the sentence ending in "after we finance."

6 A. "Mr. Raheem Brennerman is a native of New York and a United
7 States and United Kingdom dual national. Attended London
8 School of Economics, University of London. Won a merit award
9 and graduated Bachelor's with honors in economics with business
10 administration. Prior to returning to New York to attend
11 Columbia University in New York to study for Master's in
12 finance."

13 Q. What is your understanding of why this type of information
14 is contained in this document?

15 A. It's communicating to potential lenders and investors that
16 the beneficial owner of this company, and the CEO, and
17 president is generally well qualified and specifically has
18 economics and finance qualifications which enable him to run
19 such a large company confidently.

20 Q. How, if at all, was this relevant to ICBC's decision to
21 lend money to Blacksands?

22 A. Suitable postgraduate qualification of senior management in
23 such companies would be a precondition for such a loan.

24 Q. If some of this information were not true, would that
25 matter to ICBC?

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1 A. That would matter very much.

2 Q. Why?

3 A. It would matter, first of all, because it puts a question
4 mark over the individual's actual ability to run such a complex
5 organization. Secondly, it would put a question mark over his
6 trustworthiness because if something as simple as your
7 qualifications, you are not being truthful, then, clearly, the
8 organization on a much larger level and the obligations a
9 company has, how can you actually trust any representation
10 which is made in that regard.

11 Q. Well, let's look at the attachment that's marked as
12 Government Exhibit 1-67B. Mr. Madgett, do you recognize this
13 document?

14 A. Yes.

15 Q. And what, generally, is it?

16 A. It is a document provided giving an indication around that
17 work program idea, which we mentioned earlier, which would
18 indicate the senior staff which would be dedicated to the Cat
19 Canyon asset management and development going forward between
20 ERG and Blacksands.

21 Q. Did you receive it in 2013?

22 A. Yes, I did. At the bank, we also noted that Blacksands
23 Pacific here is --

24 MR. WALLER: Objection. Is there a question?

25 THE COURT: The question was: Did you receive it in

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1 2013? So, "Yes, I did" is really the answer. Next question.

2 BY MR. LANDSMAN-ROOS:

3 Q. Do you see where it says, "ERG operator - Blacksands
4 Pacific joint operator"?

5 A. Yes, I do.

6 Q. What, if any, relevance is the word "operator" or "joint
7 operator" to ICBC?

8 A. This, I was going to comment on as it jumped out at us at
9 the bank when we saw it. "Operator" means the managing party.
10 So, in a license, you may actually have three or four different
11 shareholders who each have a share or the benefit of that
12 licensing and the oil produced, but there's normally one
13 company, or maybe two, which are the operators. So, in
14 reality, they're managing the asset. They are the company you
15 are relying on to provide the engineering expertise, the
16 technical expertise, the operational expertise, the finance
17 expertise, to fulfill that work program you're talking about.

18 Q. When ICBC learned that a company was an operator of an
19 asset --

20 A. This added considerable additional credibility because what
21 it's saying is that the other partners also trusted this
22 company to be given the management control in terms of finance,
23 setting plans, technical ability to invest, operate, and
24 develop the asset.

25 Q. What about from the perspective of due diligence, did the

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Madgett - Direct

1 fact that a company was going to be an operator change
2 anything?

3 A. I would say it's communicating that the company has the
4 expertise.

5 MR. WALLER: Objection.

6 THE WITNESS: It changes it insofar as --

7 THE COURT: Wait, wait. There's an objection.

8 THE WITNESS: Sorry.

9 THE COURT: The question was: Did the fact that the
10 company was going to be an operator change anything?

11 Do you understand the question?

12 THE WITNESS: I understand the question.

13 It enhanced ICBC's confidence and willingness to
14 extend a loan to Blacksands.

15 BY MR. LANDSMAN-ROOS:

16 Q. Did you request information about the technical team that
17 would be used by Blacksands at Cat Canyon?

18 A. Yes, we did.

19 Q. Why?

20 A. Because if it was going to perform an operator role, we
21 needed to understand that the staff which would be put into Cat
22 Canyon were competent to ensure the continuity of the
23 production from that asset and the development of, if I recall,
24 over 200 wells, to bring the total capacity of that asset back
25 into operation and realization.

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1 MR. LANDSMAN-ROOS: Ms. Fetman, can we go to the
2 second page of this document?

3 BY MR. LANDSMAN-ROOS:

4 Q. The top of this page, Mr. Madgett, says, "ERG operator
5 technical and managerial team." Then it says, "ERG operating
6 company headquartered in Bakersfield, California. Company has
7 assembled a managerial and technical team with extensive
8 experience in California thermal production operations and
9 regulatory compliance."

10 And below, do you see a number of names?

11 A. Uh-huh.

12 Q. What did you understand this page to be describing?

13 A. This would describe the management team at a technical
14 level, which ERG, the existing operator, who would now be
15 moving to a 50/50 ownership with Blacksands, would continue to
16 commit to the operation of Cat Canyon.

17 MR. LANDSMAN-ROOS: Let's go to the next page.

18 Q. This, at the top, says, "Blacksands Pacific joint operator
19 technical and project management team." The first name on here
20 is TA Hubble.

21 MR. LANDSMAN-ROOS: And, Ms. Fetman, can we go
22 through, it looks like it continues. Can we go through the
23 next few pages. All right, we can stop there. Actually, let's
24 continue on until page 13.

25 Q. Mr. Madgett, who did you understand these people to be?

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1 A. We understood them to be staff of Blacksands.

2 Q. What was your understanding of why Mr. Brennerman included
3 these people's names?

4 A. He was communicating to us, as we requested, which staff
5 Blacksands would be allocating to this new investment and the
6 subsidiary, which would hold 50 percent of Cat Canyon asset.

7 Q. Were you ever told that these were just hypothetical
8 employees?

9 A. No.

10 Q. What was the relevance of having these people attached to
11 Blacksands -- to ICBC? I'm sorry, I'll withdraw the question.

12 What was the relevance to ICBC of having these
13 individuals and their resumes listed below involved with
14 Blacksands?

15 A. Both ICBC and any other banks, or insurance companies, or
16 other lenders we would involve in the transaction would
17 undertake a due diligence process themselves, and part of that
18 would be to understand the competence of the staff and the
19 expertise of the staff which would be operating the asset. If
20 the asset doesn't operate, there's no income. If there's no
21 income, the bank doesn't get repaid. So it is really rather
22 fundamental.

23 Q. Mr. Madgett, I'm handing you what's been marked as
24 Government Exhibit 1-2, and it's in evidence, and there is an
25 attachment that's 1-2A. Let's look at 1-2 first.

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Madgett - Direct

1 I just want to first focus you on the email that
2 begins at the bottom of the page.

3 MR. LANDSMAN-ROOS: Actually, let's just highlight the
4 beginning where it says "Dear Julian" to the bottom of the
5 page, 1-2.

6 Q. And looking at the header to this email and to this email,
7 is this the email that we were just discussing? That's
8 Exhibit 1-67 in front of you.

9 A. Yeah.

10 Q. Yes?

11 A. Yeah.

12 Q. And so the email above it is an email from Mr. Brennerman
13 to you, it's dated roughly a week later, May 23rd, 2013. Do
14 you recall receiving this email?

15 A. Yes.

16 Q. It says, "Dear Julian: In addition to the email below,
17 attached is the group financial statement for 2012." Do you
18 remember receiving a financial statement for 2012?

19 A. Yes, a high-level one.

20 Q. So, take a look now at Government Exhibit 1-2A. Is this
21 the financial statement?

22 A. Yes, it is.

23 MR. LANDSMAN-ROOS: Let's look side by side at
24 Government Exhibit 1-67A and 1-2A, both of which are in
25 evidence.

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1 Q. Mr. Madgett, the 2011 statement, was that attached to the
2 prior email that we were discussing?

3 A. As I recall, yes.

4 Q. So, you received both of these?

5 A. Both of these were received.

6 Q. What, generally, are these documents?

7 A. They are a short high-level summary of the financial
8 performance of Blacksands Group that Mr. Brennerman
9 represented. It's not audited accounts, just highlights from
10 internal management accounts.

11 Q. Did you have an understanding of why Mr. Brennerman sent
12 these to you?

13 MR. WALLER: Objection.

14 THE COURT: You can answer, if you have an
15 understanding. Yes or no.

16 THE WITNESS: I do have an understanding. One of the
17 reasons would be because I asked for them.

18 BY MR. LANDSMAN-ROOS:

19 Q. Let's turn to the third page of both of these documents.
20 Without drilling in on the specific information, do these pages
21 generally reflect similar types of information?

22 A. Yes. They reflect the other teaser information which had
23 been provided and the kinds of highlight -- high-level
24 observations that a production exploration oil company might
25 give.

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1 Q. So the exhibit on the left side of your screen, as you're
2 facing it, that's the 2012 --

3 A. Uh-huh.

4 Q. -- and the other one is the 2011.

5 I'm going to ask you to make some comparisons between
6 the two documents, okay?

7 A. Okay.

8 Q. First, before I do that, let me ask you: When you received
9 these documents in 2013, did you compare the information?

10 A. Yes, we did.

11 Q. And look at the category -- the top line here where it
12 says, "BOEPD of production." Do you see that?

13 A. Yes.

14 Q. And what did you understand that to mean?

15 A. Well, it's an industry term. The acronym stands for
16 barrels of oil equivalent production per day.

17 Q. So, does that basically mean the barrels of oil that a
18 company is producing each day?

19 A. That's correct, yes.

20 Q. I'd like you to compare the figure for 2011, which is on
21 the right side, to the figure for 2012, which is on the left
22 side. Let me know once you've done that.

23 A. Well, you're looking at --

24 Q. I'll ask you a question about it. You're there, you're
25 with me, okay.

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1 When you received these documents in 2013, what, if
2 any, conclusions did you draw from comparing these two pieces
3 of information?

4 A. The conclusions would be that the production story for
5 Blacksands continued to be positive, the productions from the
6 assets it claimed to own was indeed rising, the increase is
7 roughly 50 percent from these two sets of accounts, and, also,
8 the proven reserves -- you remember the 90 percent certain oil
9 to get out of the ground -- had also significantly increased
10 from 122 million to 156 million barrels of oil equivalent.

11 Q. So, how was this change in these numbers relevant, if at
12 all, to ICBC in the context of this approached Cat Canyon deal?

13 A. It is, again, telling you that this is a company which has
14 a growing cash flow being generated by the oil production it
15 claims to have. And, also, it has an increased market value of
16 proved reserves in the ground, so increasing the asset value of
17 the company.

18 So, both in terms of asset value profit and cash flow,
19 the company is becoming stronger, and, therefore, the company
20 is better able to support any boring it does on Cat Canyon or
21 any other situation.

22 Q. Let me pause here and ask you a definitional question.
23 Have you ever heard of the term "asset-based lending"?

24 A. Yes.

25 Q. What does that mean?

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1 A. It means when you lend, and your primary security is asset
2 which is given to you as security, one or a variety of assets.
3 A very simple example would be a property mortgage, so you do a
4 mortgage loan, and the security you have is the house, the
5 asset.

6 Q. Was the proposed Cat Canyon deal a form of asset-based
7 lending?

8 A. The full proposal was a form of asset-based lending, so
9 that we would have an interest in the Cat Canyon field. The
10 primary right to the benefit of Cat Canyon field, that's what's
11 called a first lien in banking language, and, also, the loan
12 required that the oil production from the field came to ICBC as
13 the means of repayment. So, as the oil was produced and sold
14 to a counterparty, such as, for example, Sinochem, then those
15 oil payments would come to an account of ICBC, and that would
16 be the primary way in which the loan was repaid. The loan
17 would still be due to be repaid by the company as an
18 obligation, just as any loan is an obligation on the company,
19 but you're basically building in a mechanism for the loan to
20 naturally repay through the production of the oil which comes
21 from the development of the asset.

22 Q. Now, if the loan is based on the asset -- so here the Cat
23 Canyon oil field -- would these financial statements be
24 relevant to assessing the proposed deal?

25 A. They would still be relevant because, as I said, your

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1 primary source of repayment is the asset, but not your only
2 source of repayment. If the asset isn't working, the
3 underlying company has borrowed the money and has to repay the
4 money. And --

5 Q. Let me stop you there. So, how, if at all, is the accuracy
6 of this information relevant?

7 A. It's critical, because it's telling you that even if the
8 Cat Canyon investment doesn't work, the Blacksands Group has
9 substantial cash flow and profit generation where the company
10 can still honor the obligations its subsidiary has entered, the
11 subsidiary here being the Blacksands Alpha Blue subsidiary,
12 which would hold the Cat Canyon asset.

13 Q. What about the company's statement of revenue and profit,
14 would that be relevant?

15 A. Extremely, yes.

16 Q. How so?

17 A. Because the revenue and profit is telling you how much the
18 company is generating and how much profit it's making, and,
19 therefore, if it needs to make a repayment, it has the
20 resources available. And, indeed, if repayment to an expected
21 source, for example, the Cat Canyon investment, doesn't work as
22 you expected, then the company still has other resources and
23 profit it can use to repay you.

24 MR. LANDSMAN-ROOS: Ms. Fetman, can we please turn to
25 page 6 of both of these documents.

HBTKBRE4

Madgett - Direct

1 Q. And, Mr. Madgett, what do you understand to be conveyed on
2 these pages?

3 A. This is very high-level management accounts, not audited
4 summary of the performance of Blacksands. So this is part of
5 what you would look at as the profit and loss account revenue
6 account is another phrase for it.

7 Q. When you first received these documents in May 2013, did
8 you compare the information of the two documents?

9 A. Yes, we did.

10 Q. Do you see where it says "net income revenue"?

11 A. Uh-huh.

12 Q. What do you understand that to mean?

13 A. Net income revenue is a form of gross profit. We
14 understood it to mean that it is not the total revenues. It
15 says "net income revenue," so something has been taken off
16 that. And then there are additional items, which will then be
17 taken off as operating expenses, which moves you from a gross
18 profit idea, through an operating profit, to a net profit.

19 Q. Do you see where it says "pretax profits" at the bottom?

20 A. Yes.

21 Q. What did you understand that to mean?

22 A. That is telling you that in 2011, the pretax profits were
23 \$7.1 million, and in 2012, the pretax profits were 26.9, that's
24 rounded up to \$27 million.

25 Q. Now, let's look at the 2011 one. On my screen, it looks

HBTKBRE4

Madgett - Direct

1 like it says pretax Profit, 7,121. Why do you read that as
2 millions as opposed to thousands?

3 A. At the top of the column, you see dollars naught naught
4 naught -- I'm sorry, dollars zero zero zero apostrophe S, so
5 that is just telling you the scale on which the numbers are
6 being reported. So, it's very normal in accounts.

7 Q. You add three zeros to every number?

8 A. You add three zeros to every number.

9 Q. So in 2011, what does the statement say were the Blacksands
10 Pacific's net income revenues?

11 A. \$40.2 million.

12 Q. And how about in 2012?

13 A. \$87 million.

14 Q. What, if any, conclusions did you draw from comparing that
15 information?

16 A. That production was increasing. I think elsewhere in the
17 various documents which have been presented, Blacksands has
18 indicated at this time oil production in the region of 3, 4, 5
19 thousand barrels of day of oil equivalent. It's very easy to
20 make the calculation. If, for example, 5,000 barrels a day of
21 oil, you simply multiply by 365 days, to tell you how many oil
22 barrels in the year, and you can multiply it by whatever oil
23 price is currently the market.

24 Q. All right. So, let me cut you off there. What was the
25 relevance to ICBC of the change in the net income revenue

HBTKBRE4

Madgett - Direct

1 numbers in assessing the proposed Cat Canyon loan transaction?

2 A. What it was telling you was that it was suggesting that the
3 oil production was rising from, say, four or five thousand
4 barrels a day to several thousand barrels a day, and this was
5 consistent with the idea that Blacksands had told us that their
6 production was increasing.

7 Q. Do you see where it says, under "operating expenses,"
8 "employee costs"?

9 A. Yes.

10 Q. It's on both of the financial statements.

11 A. Uh-huh.

12 Q. And what were the employee costs from 2010 to 2011?

13 A. So they were 15.9, say \$16 million.

14 Q. How about in 2012?

15 A. It had risen substantially to almost \$32 million.

16 Q. Earlier you testified that Mr. Brennerman had said in 2011
17 that his company had somewhere between 80 and 130 employees.

18 A. Uh-huh.

19 Q. Are these figures consistent with those numbers?

20 A. Broadly consistent. Clearly, the remuneration for
21 management would be at one level, but if you think of normal
22 technical staff perhaps being at \$100,000 a year, if you divide
23 that into that number, then something around 100 staff would be
24 broadly consistent.

25 Q. Was the number of people employed by Blacksands relevant to

HBTKBRE4

Madgett - Direct

1 ICBC's loan decisions concerning Cat Canyon?

2 A. For the reasons discussed, yes. The whole characterization
3 of Blacksands was that it was a focused, high-quality
4 exploration production company employing technically competent
5 and experienced staff, and, therefore, that's a critical part
6 of the credit assessment. Without that staff, the assets it
7 had could not be operated and developed successfully, and,
8 therefore, any bank lending would be put at risk if that did
9 not happen.

10 Q. If ICBC had known that Blacksands had substantially less
11 staff, would it have changed its lending decisions?

12 MR. WALLER: Objection.

13 THE WITNESS: It certainly would have had --

14 THE COURT: Overruled.

15 You can answer.

16 THE WITNESS: Yes, it certainly would have had that
17 effect.

18 BY MR. LANDSMAN-ROOS:

19 Q. Why is that?

20 A. For the reasons I just mentioned, which is that without
21 that pool of qualified experienced staff, then the ability of
22 Blacksands to operate oil fields and borrow based on its
23 ability to operate those oil fields and those assets would be
24 put at serious risk and jeopardy.

25 Q. Turn to page 7.

HBTKBRE4

Madgett - Direct

1 THE COURT: Well, it's 1:00 o'clock. Can we --

2 MR. LANDSMAN-ROOS: This is a good place to stop.

3 THE COURT: So let's stop here. We'll pick up at
4 2:00. Have a nice lunch. Don't bring your books out, leave
5 those in the jury room. Don't discuss the case. Continue to
6 keep an open mind. And we'll see you at 2:00 o'clock ready to
7 go. Thanks very much.

8 All rise for the jury.

9 (Continued on next page)

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HBTKBRE4

Madgett - Direct

1 (Jury not present)

2 THE COURT: Okay. Have a seat.

3 How much more do we have with Mr. Madgett?

4 MR. LANDSMAN-ROOS: I'm about 60 percent through.

5 THE COURT: 60 percent? Okay. And the witness after
6 him is who?

7 MR. LANDSMAN-ROOS: The witness after him is Scott
8 Stoudt from Morgan Stanley.

9 THE COURT: All right. I'll see you guys a little
10 before 2:00 o'clock. Have a good lunch. Thank you.

11 And, Mr. Madgett, just be back here a little before
12 2:00. Okay? Thanks.

13 (Luncheon recess)

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HBT5bre5

Madgett - direct

A F T E R N O O N S E S S I O N

2:00 p.m.

(Trial resumed; jury present)

THE COURT: Okay. Have a seat. I hope you had a good lunch. We will now resume the direct examination of Mr. Madgett by Mr. Roos.

MR. ROOS: Thank you, your Honor.

JULIAN MADGETT,

DIRECT EXAMINATION (Cont'd)

BY MR. ROOS:

Q. So, Mr. Madgett, we were looking at what are Government's Exhibits 1-67A and 1-2A. Those are the financial statements. Are you with me?

A. Yes.

Q. And Ms. Fetman will get them back up on the screen and we will give her a second so the jury can see what we are looking at. We will go to page 7 of both of those documents once they are up.

It looks like they're somewhat sort of smushed. So, I think you have copies in front of you. If you can't make out the pages, take a look at the copies.

I will ask the question. So, do you see on page 7, on these pages, page 7 of each of them. Do you see where it says fixed assets and investments?

A. Yes.

HBT5bre5

Madgett - direct

1 Q. And, in general terms for the jury, what's a fixed asset
2 and investment?

3 A. A fixed asset refers to an item which the company owns
4 which is permanent and fixed in nature. So, for example, a
5 building or, indeed, oil fields assets, drilling equipment.
6 This kind of thin.

7 Q. What about an investment?

8 A. Current. Long term. Say that again, please.

9 Q. It says fixed assets and investments. Is that all part of
10 one?

11 A. Yes, it is all part of one. So, it's the investment in
12 those assets, yes.

13 Q. And, do you see lower on each of these pages it says
14 current assets?

15 A. Uh-huh.

16 Q. What is that?

17 A. Current assets refers to assets which are shorter term and
18 less permanent in nature. These, for example, include
19 inventory which you are holding, for example oil, which you
20 then sell. It would also include cash and something which is
21 temporary and which can easily be disposed of.

22 Q. And it lists cash right below it, right?

23 A. That's correct.

24 Q. So, I'm going to ask you just about figures for each of
25 these years. 2011, according to the document for 2011 what

HBT5bre5

Madgett - direct

1 were Black Sands' fixed assets and investments?

2 A. Fixed assets and investments were \$2.6 billion.

3 Q. And what about in 2012?

4 A. In 2012 they were \$2.4 billion.

5 Q. And how about for current assets in 2011, what were they,
6 according to this document?

7 A. Current assets were \$161 million, moving to \$244 million.

8 Q. And that's in 2012?

9 A. That's correct.

10 Q. Now, were these claimed asset amounts relevant to ICBC's
11 decision regarding the Cat Canyon requested loan?

12 MR. WALLER: Objection. Foundation.

13 THE COURT: Overruled.

14 You can answer. Did you consider them relevant?

15 THE WITNESS: I, as the account manager and who
16 presented to credit committee, regarded them as very relevant
17 to the credit committee.

18 MR. WALLER: Objection. Foundation. He didn't say
19 that. He was the decision-maker.

20 THE COURT: Overruled.

21 Go ahead.

22 BY MR. ROOS:

23 Q. I will ask you a few questions about that.

24 A. Okay.

25 Q. So, what is your role in the loan process?

HBT5bre5

Madgett - direct

1 A. Front office in the bank, which is the teams which are
2 responsible for sourcing and negotiating loans, are regarded as
3 a first line of defense. So, in other words, transactions
4 which we recommend then go forward to credit committee to
5 decide if we lend or we won't lend. Similarly, we are first
6 line defense on the know-your-customer principles as well.

7 Q. Let me ask you about going to the credit committee. If you
8 don't take a proposed loan to the credit committee, can the
9 loan happen?

10 A. No.

11 Q. So, looking at these two, one said consolidated balance
12 sheet and the other one says balance sheet. Looking at these
13 documents what, if any conclusions, did you draw about
14 Black Sands' financials?

15 A. On the asset side, the fixed assets, which are the
16 long-term investments in the oil fields and other fixed assets
17 they have is relatively static, it has actually gone down a
18 little bit. That, in itself, is not a major cause of concern
19 but it's a large number consistent with what they've said about
20 all the various assets they apparently own in different oil
21 licenses around the world.

22 The current assets rose quite considerably and this is
23 mainly due to an apparent increase in cash and cash equivalents
24 and the debtor undrawn facilities. This is basically
25 suggesting that the company has drawn down on some other debt

HBT5bre5

Madgett - direct

1 facilities but has not yet deployed the cash -- spent it -- for
2 investments or other purposes. So, the cash is sitting on the
3 balance sheet as current assets.

4 Q. If some of these financial figures were inaccurate and you
5 found that out, would that affect ICBC's loan decision on the
6 Cat Canyon?

7 A. It would certainly be the case because, for example, if the
8 fixed assets were far, far smaller you could not reconcile
9 those values with the representations which were made in the
10 teaser about all their assets which they have.

11 So, these numbers broadly made sense. There is a
12 absence of inventory in the current assets which doesn't
13 support some of the statements about the product trading they
14 do, but broadly speaking the accounts on the asset side looked
15 reasonable.

16 Q. So, if you knew that some of these financials were false,
17 would it affect your decision on the proposed loan?

18 A. Yes; both my decision to forward it to credit committee and
19 the credit analyst --

20 MR. WALLER: Objection.

21 THE COURT: Overruled.

22 Go ahead.

23 A. Yes. The answer is yes.

24 Q. Let me ask the next question.

25 A. Yes.

HBT5bre5

Madgett - direct

1 Q. Now, these aren't audited financials, right?

2 A. No, they're not.

3 Q. They're prepared by Black Sands; is that right?

4 A. That's correct.

5 Q. Now, is it possible as -- well, let me withdraw that.

6 Because these are not audited financials, would it
7 still be relevant to the loan decision if Black Sands made some
8 misstatements but as part of a negotiating tactic?

9 MR. WALLER: Objection.

10 THE COURT: I'm not sure I understand the question.
11 Do you understand the question?

12 THE WITNESS: I think I understand the question.

13 THE COURT: Rephrase. I don't understand.

14 BY MR. ROOS:

15 Q. If, as part of a negotiating tactic, Black Sands made some
16 misstatements about the financials, would that be a relevant
17 consideration for ICBC in assessing the loan?

18 A. Yes. It would make them inaccessible, ineligible as a
19 borrower. This goes back to the fundamental issue of trust.
20 If you are dealing with a corporate who is borrowing money from
21 you who is then deliberately withholding or misstating
22 information then, clearly, your trustworthiness of anything you
23 are dealing with with the company is put into massive doubt.

24 Q. I want to show you what's in evidence as Government Exhibit
25 1-3.

HBT5bre5

Madgett - direct

1 Ms. Fetman, can we pop up that on the screen?

2 Mr. Madgett, do you recognize this e-mail?

3 A. Yes.

4 Q. And flip through the paper document I gave you, it is
5 double-sided, it is about 40 pages, right?

6 A. Uh-huh.

7 Q. Let's start towards the back, so the beginning of page 37,
8 beginning of the e-mail. So, Mr. Madgett, do you see about
9 halfway down the e-mail begins?

10 A. Yes.

11 Q. And who is the e-mail from?

12 A. From Mr. Brennerman.

13 Q. And who is it to?

14 A. To myself.

15 Q. And the date?

16 A. The date is August 2013, 18th.

17 Q. And do you recall this e-mail?

18 A. Yes.

19 Q. The first sentence of this e-mail says: Glad that ICBC is
20 now on board with our California financing.

21 What did you understand that to mean?

22 A. I understand it to mean that we had provided a term sheet
23 and that was a basis for further negotiations to move towards a
24 final financing arrangement.

25 Q. Let's be clear about something here. At this point had

HBT5bre5

Madgett - direct

1 ICBC -- this is August 18, 2013 --

2 A. Uh-huh.

3 Q. Had ICBC agreed to make a loan to Black Sands?

4 A. No final credit committee's decision had been made.

5 Q. So what, if anything, was ICBC on board with at that point?

6 A. We were on board with an ongoing discussion and had
7 crystallized our thoughts on what the main heads of agreement
8 for a loan should look like, subject to further negotiations.

9 Q. I want to look later in this e-mail. Do you see at the
10 bottom there it says, in a bolded field: Sinochem offtake
11 contract.

12 It says: We will now finalize the crude oil sale
13 (offtake contract) with Sinochem, which will be executed
14 concurrent with the execution of the financial facilities.

15 Did you ever see an offtake contract with Sinochem?

16 A. No. And because Sinochem is a client of the bank, we also
17 spoke with Sinochem in London; they also confirmed that there
18 was no finalized crude oil sales contract.

19 Q. Now, turn to the next page. Do you see there it says, in
20 bold next to little Roman numeral IV, Confirmation Letter?

21 A. Uh-huh.

22 Q. It says: We request for a finance confirmation letter
23 addressed to Black Sands Pacific regarding the California
24 financing that we may present to China Development Bank, CDB,
25 and ERG, to confirm that ICBC is on board with finance so that

HBT5bre5

Madgett - direct

1 we may progress discussions with CDB to participate in the
2 syndication.

3 What was your understanding of what Mr. Brennerman
4 meant by a finance confirmation letter?

5 A. It would be a statement from ICBC saying that we have
6 committed to take part in the loan facility and that therefore
7 would be of great relevance to China Development Bank, which is
8 a sister bank of ICBC, majority state-owned by the Chinese
9 government, in making a decision to, yes, we should also join
10 this transaction.

11 Q. And you mentioned a term earlier, indicative term sheet.
12 What's the difference between an indicative term sheet and what
13 we have got here, finance confirmation letter?

14 A. A finance confirmation letter is highly suggestive that the
15 kind of letter you want is a confirmation that our credit
16 approval is complete and that we are committed to making the
17 loan. That was not the state of affairs at this time and
18 therefore it was inappropriate to issue such a letter.

19 Q. Let's take a look at your response to this request, so
20 please turn to page 36. This is the next e-mail. Do you see
21 where there is an e-mail that is dated August 19th, 2013, it is
22 9:08 a.m.?

23 A. Yes.

24 Q. And who is it from?

25 A. From myself.

HBT5bre5

Madgett - direct

1 Q. And who is it to?

2 A. To Mr. Brennerman.

3 Q. And let's zoom in on the text there, and then can we go to
4 the next page, page 37, this is the remainder of the e-mail.

5 And you wrote: We also suggest you load all your KYC
6 (know your customer) on debt domain for group and holding and
7 cos -- is "cos" company?

8 A. Yes.

9 Q. -- (beneficial owners) with similar restricted access and
10 the upstream raw data you have.

11 So, what did you mean by this?

12 A. What I mean by this is that at this stage, Mr. Brennerman
13 was working on the basis that ICBC would be mandated to lead
14 the financing and we would arrange a syndication involving
15 other banks.

16 What happens when are you syndicating a loan, the
17 people involved with the banks and the other banks need the
18 information. Therefore, there are Internet platforms which
19 have restricted Internet access where you can load that
20 information. It saves sending individual e-mails. So, you
21 have a pool of data and then individual banks can sign on and
22 see all the data which is relevant to making a loan decision;
23 what the assets are, the know-your-customer information, etc.
24 And all banks have similar loan approval systems.

25 Q. So, was their information uploaded by Black Sands to one of

HBT5bre5

Madgett - direct

1 these websites?

2 A. No such information was uploaded.

3 Q. Was there ever a time where Black Sands provided
4 information in what might be called a data room?

5 A. Not to my knowledge.

6 Q. Now, I want to turn to page 32 of this e-mail so it is a
7 e-mail dated August 31, 2013. Do you see it?

8 A. Yes.

9 Q. Who is it from?

10 A. It is from Mr. Brennerman.

11 Q. And who is it to?

12 A. Myself.

13 Q. What is the date on the e-mail?

14 A. The date is August.

15

16 Q. Before we do this I want to ask you one more question about
17 providing information that we were just talking about. Did
18 Black Sands provide the information about the asset that is the
19 Cat Canyon deal?

20 A. Yes. This information comes in the form of a independent
21 report which, as I mentioned earlier, is information about the
22 asset, not information about the ownership.

23 Q. And so when you were saying you didn't get information
24 uploaded, you were talking about information of the company?

25 A. Yes. The company information, KYC and so forth, that you

HBT5bre5

Madgett - direct

1 are asking about.

2 Q. Page 32; and this e-mail is from Mr. Brennerman to you, it
3 is dated August 31st. Do you recall this e-mail?

4 A. Yes.

5 Q. And do you see where it says -- we will zoom in on this --
6 to update ERG and the appropriate authorities on our
7 accelerated plans, timeline, and accelerated schedule.

8 THE COURT: Is there a question?

9 THE WITNESS: Yes.

10 Q. Do you see it?

11 A. Yes, I do see it.

12 Q. Actually, it is not what is up on the screen here, it is
13 the next page, page 33. Okay. So, the language is: We have
14 to update ERG and the appropriate authorities on our plans,
15 timeline, and accelerated schedule.

16 What did you understand that to mean?

17 A. I understand that there is an agreement between Black Sands
18 and ERG concerning finalizing of the acquisition, and the plans
19 regarding the acquisition need to be laid out and agreed
20 between the two parties. "Appropriate authorities" is rather a
21 vague term. It might suggest the licensing authorities in
22 California, not entirely clear from that e-mail.

23 Q. Let's turn to page 29, Ms. Fetman.

24 And, Mr. Madgett, do you see there is a little, just a
25 fragment of an e-mail at the bottom of the page there? Who is

HBT5bre5

Madgett - direct

1 that from?

2 A. From Mr. Brennerman to myself.

3 Q. And we are on September 4th, 2013, so this is later than
4 the prior e-mails we were discussing, right?

5 A. Correct.

6 Q. And did you receive this e-mail?

7 A. Yes.

8 Q. So, let's turn to the first page of this e-mail which is on
9 the following page. Generally, what do you understand this
10 information that's being provided here to be?

11 A. We will go through these points.

12 Q. We don't have to go through the points. Just generally, is
13 he providing you an update on the status of the deal?

14 A. He is providing some update, yes.

15 Q. Let's go to the first page of this e-mail chain so we are
16 on page 1 of 40, and let's look at the top of the e-mail. Who
17 is it from?

18 A. From Mr. Brennerman to myself.

19 Q. Let's look at the individuals that are copied here. Who
20 are they? So, we have got Benny Zacharia, who is that?

21 A. Benny -- Mr. Zacharia -- is our head of syndications
22 department. So, as this loan was potentially going to move
23 forward on the basis of a mandated arranging, we would be
24 looking to involve other banks and therefore there is another
25 department and in front office which specializes in selling

HBT5bre5

Madgett - direct

1 down loans to other banks.

2 Q. And further on that line we see the next address is

3 Mr. Brennerman's copy to himself?

4 A. That's correct.

5 Q. And how about the address after that?

6 A. Mike Kelly, who I think is the senior vice president of
7 acquisitions or something along those lines.

8 Q. And you received this e-mail?

9 A. Yes.

10 Q. Okay. Let's look at the text of it and let's look at just
11 the first Dear Julian and the first text right before the
12 whole.

13 So, it says: Dear Julian: As advised, Black Sands
14 Pacific Alpha Blue, LLC -- so, what is that entity right there?

15 A. That is the subsidiary, hundred percent subsidiary of
16 Black Sands Group which has been designated to hold the Cat
17 Canyon asset.

18 Q. And how do you know it is the subsidiary?

19 A. Only through the teasers which we saw earlier which show
20 Black Sands Pacific Alpha Blue as one of the subsidiaries and
21 separately advised by Black Sands. That would be the
22 subsidiary which they will use for holding the asset.

23 Q. Did you have any understanding of whether Black Sands
24 Pacific Alpha Blue, LLC, was involved in any sort of business?

25 MR. WALLER: Objection.

HBT5bre5

Madgett - direct

1 THE COURT: *Did you have any understanding as to*
2 *whether Black Sands Pacific Alpha Blue was involved in any sort*
3 *of business?*

4 You can answer.

5 A. Our understanding would have been that this was either an
6 unused passive subsidiary or newly set up subsidiary with the
7 sole role to hold and operate Black Sands' interest in Cat
8 Canyon.

9 Q. So I am going to continue reading here and ask you a few
10 more questions. It says: Black Sands Pacific Alpha Blue, LLC,
11 is now acquiring 100 percent interest in the Cat Canyon oil
12 field and assuming all the 49 employees of ERG on the Cat
13 Canyon project. Black Sands Pacific is acquiring 100 percent
14 interest in the ERG Operating Company, LLC.

15 What did you understand this paragraph to mean at this
16 time, October 2013?

17 A. At this time we were being advised that rather than the
18 earlier dialogue where Black Sands said they were acquiring a
19 50 percent interest in Cat Canyon so it would be a joint
20 venture with ERG, has now moved on to a hundred percent
21 purchase of the total ERG interests in the Cat Canyon
22 operation.

23 Q. And, what was your understanding of how firm of an
24 agreement existed?

25 A. This is a very strong statement.

HBT5bre5

Madgett - direct

1 Q. Why do you say that?

2 A. A very direct statement: Is now acquiring. And: Assuming
3 all the employees.

4 When you consider earlier statements that Black Sands
5 had between 80 and 130 employees, taking another 50 employees
6 is a material increase in the size of the company. This is a
7 very strong statement.

8 THE COURT: Well, it says as advised. Do you recall
9 being advised?

10 THE WITNESS: I have think there could have been a
11 telephone call. He would have called me just before this, this
12 email.

13 BY MR. ROOS:

14 Q. You say would have called. Is that your recollection?

15 A. That's my recollection. We are talking quite a while ago
16 but I certainly also remember talking to him about this, so.

17 Q. Now, let's remove the zoom here.

18 Do you see the next portion of this it says: Below is
19 an overview of the revised finance proposal from ICBC; and
20 there is the segment here that says: RBL revolving facility
21 and let's capture everything before "bridge finance."

22 There is a lot of technical language here so just give
23 us a summary of what were the general terms of financing that
24 you understood Black Sands to be seeking.

25 A. They're seeking a total financing to acquire the hundred

HBT5bre5

Madgett - direct

1 percent value of ERG. This comprises at least two parts you
2 can see here, one is a proposed RBL revolving facility --

3 Q. Can I stop you right there? What is RBL revolving
4 facility?

5 A. Right. RBL, that stands for reserve-based lending. To go
6 back to when I spoke about oil in the ground, reserves could be
7 audited, commercially recoverable oil. So, reserve-based
8 lending is simply a way of stating that the loan is secured on
9 reserves, in part.

10 Q. Let me then ask you, reserve-based lending, are a company's
11 financials relevant to reserve-based lending?

12 MR. WALLER: Objection.

13 A. We have done many reserved-based --

14 THE COURT: Overruled.

15 A. We have done --

16 THE COURT: If he objects, you have to stop.

17 THE WITNESS: Sorry.

18 THE COURT: That's fine.

19 So, overruled. I am going to allow the question.

20 You can answer.

21 THE WITNESS: Thank you.

22 Reserve-based lending is a recognized class of
23 lending. Many examples exist. All reserve-based loans have
24 costs to the underlying borrower so it is a loan which is also
25 secured on the balance sheet but it is an enhanced risk because

HBT5bre5

Madgett - direct

1 you also have security over the reserve.

2 BY MR. ROOS:

3 Q. Were you familiar with other instances of reserve-based
4 lending that ICBC had done?

5 A. Yes. Not least have I done them myself.

6 Q. And so, briefly, why are you familiar with prior instances?

7 A. Yes, indeed.

8 So, other companies in the North Sea, in Africa, and
9 there you are looking at their financial capability and you
10 have recourse to their balance sheet but then the loan risk is
11 improved because you also have recourse to the oil reserve they
12 own in the ground.

13 Q. So, based on that experience, was it your practice to audit
14 a company's financials?

15 MR. WALLER: Objection.

16 THE COURT: Overruled. You can answer.

17 THE WITNESS: It would be our practice to expect
18 audited financials. In the case of Black Sands, it had been
19 explained to us in the context the company was very young,
20 because it had raised financing apparently in the high-yield
21 hedge fund market it hadn't required to issue audited accounts
22 so, therefore, we were prepared to discuss some arrangement
23 where the audited accounts could be provided as quickly as
24 possible but perhaps not immediately.

25 BY MR. ROOS:

HBT5bre5

Madgett - direct

1 Q. While we are on this page, the first page of this exhibit,
2 there is a heading that says: "Bridge Finance." Do you see
3 that?

4 A. Yes.

5 Q. Are you familiar with the term "bridge finance?"

6 A. Yes.

7 Q. What does that mean?

8 A. It's a bridging arrangement to a main arrangement.

9 So, a bridge loan typically comes before a main loan
10 and it is for a smaller amount because there are some immediate
11 expense requirements but the requirements of the total loan
12 cannot be met immediately. Therefore, the bridging loan is to
13 address the immediate requirements recognizing that the full
14 loan facility can't yet be put in place.

15 Q. Had you been involved in bridge financing prior to October
16 8, 2013?

17 A. Yes.

18 Q. And what are some of the reasons bridge financing is
19 typically sought?

20 MR. WALLER: Objection.

21 THE COURT: Overruled.

22 You can answer.

23 A. It would be, for example, in the case of an acquisition, to
24 try and keep the concept relevant. A company is going to be
25 taking over another company's assets and the existing company

HBT5bre5

Madgett - direct

1 is therefore wanting to ensure that that is a smooth handover
2 and the company buying wants it to be a smooth handover.
3 Therefore, there will be expenses in setting up new offices,
4 employing the appropriate people, redirecting the appropriate
5 people. And similarly, the company which is selling may say,
6 well, we have decided the value for my side of this particular
7 date, so after that particular date I don't want to be paying
8 the expenses of the company, you will be paying the expenses of
9 the company. But, the actual transfer of the company will
10 occur at a later date because it is more complicated to
11 complete that. So, in the meantime, the company -- the
12 borrower -- needs money to pay those expenses.

13 Q. So, Mr. Madgett let's talk about this particular request
14 for bridge financing. Can you read the first paragraph under
15 "in the interim?" Everything before the next paragraph.

16 A. All right.

17 In the interim, we require a bridge finance of \$20
18 million with \$15 million on deposit and \$5 million to \$10
19 million utilized as part of the funds for our mobilization and
20 associated costs related to the Cat Canyon oil field.

21 Q. Do you want to finish that?

22 A. This is required immediately.

23 Q. What did this mean? \$20 million with \$15 million on
24 deposit and \$5 million to \$10 million utilized?

25 A. What it means is it is recognizing what I just said which

HBT5bre5

Madgett - direct

1 is that there is a period of finance costs which are going to
2 be incurred and that money is not spent immediately but it is
3 going to be spent over a period of time, maybe a few months,
4 until the full deal is completed because it is now the
5 responsibility of the buyer -- Black Sands in this case -- to
6 meet many of the costs of the existing operation of the Cat
7 Canyon oil field.

8 Q. So the next part of the sentence says: Utilized as part of
9 the funds for our mobilization and associated costs related to
10 the Cat Canyon oil field.

11 What did you understand that to mean?

12 A. I understand that meaning that as they reached an agreement
13 to purchase the Cat Canyon oil field, then they will be
14 mobilizing resources, dedicating staff, other assets, and
15 meeting associated costs of the ongoing operation of Cat Canyon
16 of whilst the full agreement is negotiated and put in place.

17 Q. Were Brennerman's statements regarding the intended use of
18 the bridge financing relevant to ICBC?

19 A. Certainly.

20 MR. WALLER: Objection.

21 THE COURT: Overruled.

22 Q. How so?

23 A. Because the bridge loans -- loans will have a purpose
24 clause, and the purpose in this case was the bridge finance to
25 meet the specified request of the client,

HBT5bre5

Madgett - direct

1 mobilization-associated costs related to them taking over the
2 Cat Canyon oil field a hundred percent. If the money is used
3 for any other process then it is violating the terms of the
4 loan and it would have been material to the credit decision on
5 the loan.

6 Q. Below this paragraph is a paragraph that begins: As an
7 alternative option, ERG has agreed for Black Sands Pacific to
8 assume the bank deal facility which is currently at \$350
9 million with option for additional \$150 million, as well as the
10 \$215 million high-yield note from Global Hunters Securities.

11 So, what did you understand this sentence to mean?

12 A. This sentence is saying that another way to meet the cost
13 of the facility is to utilize the existing bank which is
14 supporting Cat Canyon -- ERG -- which they are stating is Bank
15 BEAL is which is a Houston-based US bank which they currently
16 have a \$350 million lending facility, so this is funds that can
17 be used to operate the Cat Canyon facility and with an option
18 to top it off by a further \$150 million.

19 Over and above that, Black Sands would have to raise a
20 \$215 million high-yield note. We were talking about that
21 earlier, going to the hedge funds and investment funds to raise
22 higher yield, higher cost debt. And here they're actually
23 mentioning one of the potential investors but it looks like it
24 is obviously quite a firm arrangement as they've managed to
25 state who they are is Global Hunters Security.

HBT5bre5

Madgett - direct

1 Q. Did you understand from this that ERG had agreed to turn
2 over the Bank BEAL loan or facility?

3 A. That is what it states ERG has agreed.

4 Q. You can take down this document. Ms. Fetman, can you
5 publish for the jury what is in evidence Government Exhibit
6 2-11?

7 Mr. Madgett, you are not on this e-mail, I am going to
8 ask you in a moment to compare it to something else but I am
9 just going to begin by reading the top just to give context.

10 So, this is an e-mail from
11 BrennermanRJ@theexecutiveoffice to Abiodun, Peter At
12 whollyabby@yahoo.com cc'ing BrennermanRJ@theexecutiveoffice,
13 the subject is Re. Date: Thursday October 10, 2013, 12:36:29
14 p.m., and importance is high.

15 Ms. Fetman, if we can zoom in on the, say, about the
16 top half of this document? And it says: Peter, what do you
17 think? And below that: Dear Julian, and the e-mail begins:
18 As discussed today, below is the overview of the terms for
19 growth the RB revolver facility and bridge (90 days) finance.

20 Ms. Fetman, can you please publish next what is in
21 evidence as Government Exhibit 1-7?

22 Mr. Madgett, looking at the top of 1-7, who is it
23 from?

24 A. It is from Mr. Brennerman.

25 Q. And who is it to?

HBT5bre5

Madgett - direct

1 A. To myself.

2 Q. What's the date on it?

3 A. The date on it is 10th of October, 2013.

4 Q. Now, if we can zoom out from that exhibit? And,
5 Mr. Madgett, can you compare the first page of Government
6 Exhibit 211 to the first page which you are not on to the first
7 page of Government Exhibit 1-7 which are you on?

8 A. Well, they are identical with the exception of the "Peter,
9 what do you think" at the top of the page, as far as I can see.

10 Q. And how about the to/from information? Is that the same or
11 different?

12 A. Well, it's to Mr. Abiodun, Peter, from Mr. Brennerman.

13 Q. We will take these two down. Can we please publish
14 Government Exhibit 2-12 which is in evidence?

15 And again, going through the same drill, Mr. Madgett,
16 this one you are not on so I will read the top of it. It is
17 from BrennermanRJ@theexecutiveoffice to Abiodun, Peter,
18 whollyabby@yahoo.com, BrennermanRJ@theexecutiveoffice, subject
19 is Re, date, Thursday, October 17, 2013, 9:55:39 p.m. and the
20 importance is High.

21 And if you zoom out, Ms. Fetman.

22 The e-mail begins: Dear Peter, see the e-mail below
23 which I want to send from Mike to Julian and his colleagues.
24 What do you think?

25 And then it is addressed: Mr. Madgett, we were

HBT5bre5

Madgett - direct

1 expecting to hear from you today, Thursday October 17th
2 following your credit meeting.

3 And at the bottom of the e-mail, can you highlight
4 that? It is signed: Mr. M. Kelly, senior VP acquisitions
5 business/business operations group.

6 Ms. Fetman, will you put up next to it what is in
7 evidence Government Exhibit 1-10 and would you zoom in on the
8 top of Government Exhibit 1-10?

9 Mr. Madgett, are you on this e-mail?

10 A. Yes.

11 Q. Who is it from?

12 A. Apparently from Mr. Kelly.

13 Q. And it is to you?

14 A. Yes. That's correct.

15 Q. It is fair to see these are a number of your associates at
16 ICBC copied?

17 A. Yes, indeed.

18 Q. The subject is re: ICBC reserve-based revolver facility
19 Cat Canyon, California assets. The date is October 17th, 2013,
20 there are some attachments, and the importance is high. Okay.

21 Will you zoom out?

22 And, Mr. Madgett, can you compare the first two pages
23 of these documents?

24 A. Again, they appear to be identical with the exception of
25 the starting sentence: Dear Peter.

HBT5bre5

Madgett - direct

1 Q. Now, the e-mail that you are not on, Government Exhibit
2 2-12 says "see the e-mail below which I want to send from Mike
3 to Julian." Look at the e-mail you are on, who is that sent
4 by?

5 A. This was sent by Mr. Kelly.

6 Q. And the e-mail that you are not on, who is that sent by?

7 A. Mr. Brennerman.

8 Q. We can remove these both from the screen.

9 How did ICBC respond to Mr. Brennerman's request for
10 bridge financing?

11 A. We were wishing to maintain a constructive dialogue and
12 assist the company as far as possible, so based upon a need for
13 mobilizing resources for them to take a hundred percent of Cat
14 Canyon, we considered the request favorably and continued to
15 negotiate, eventually taking this proposal to credit committee.

16 Q. And in connection with those negotiations, did Black Sands
17 send ICBC any more financial documents?

18 A. There were no additional financial performance documents
19 from them.

20 Q. Let me show you what's been marked as Government Exhibit
21 1-4 and 1-4A.

22 A. Thank you.

23 Q. These are in evidence.

24 A. My apologies, yes.

25 Q. Do you recall --

HBT5bre5

Madgett - direct

1 A. Yes, I do.

2 Q. -- this e-mail?

3 A. Yes.

4 Q. What is it, the front e-mail, 1-4?

5 A. 1-4, it is some consolidated financial statements for
6 Black Sands Pacific through September 30th, 2013.

7 Q. And when did you receive it?

8 A. This was received October the 23rd.

9 Q. And, let's put Government Exhibit 1-4A up.

10 Did you review this financial statement around the
11 time it was sent, October 23rd, 2013?

12 A. Yes, I did.

13 Can I clarify my previous response? This was not a
14 full-year financial statement so that's why I was unclear what
15 you were referring to.

16 Q. Was this financial statement consistent with prior years of
17 financial statements? Recognizing this is not a full year, but
18 was it otherwise consistent with the other financial statements
19 you have looked at today?

20 A. Broadly, yes; and the same trend of increasing net income
21 revenue at the top seemed to be maintained.

22 Q. Was that a relevant consideration to ICBC in making its
23 bridge financing decisions?

24 A. Certainly. Up until going to credit committee, we had no
25 idea of how Black Sands were performing during 2013. So,

HBT5bre5

Madgett - direct

1 therefore, them providing apparently nine-month management
2 accounts up until September a mere month before the credit
3 committee, this was very relevant.

4 Q. Turn to page 3 of the 2013 financial statement and this is
5 literally microscopic text so, Ms. Fetman, if you will zoom in
6 and I will try to read it since I have glasses on.

7 Can you zoom into the part where it says Notes? Do
8 you see that? The high-yield notes are secured through
9 specific assets as detailed below. And then do you see where
10 it names assets in Nevada, Torrance and Wilson Basin.

11 What was your understanding of whether or not
12 Black Sands owned these assets?

13 A. Our understanding would be that, yes, they do, and that is
14 why these high-yield notes had been possible to raise.

15 THE COURT: When you say your understanding would be,
16 what do you mean? Do you mean that it was your understanding.

17 THE WITNESS: It was our understanding, yes.

18 Q. Ms. Fetman, can we zoom into the text that is right below
19 forward-looking statement? It is a little further down and I
20 will read this again for you, Mr. Madgett.

21 So it says: BSPAB -- Black Sands Pacific Alpha Blue,
22 LLC, the E&P subsidiary of Black Sands Pacific Group, Inc. So,
23 what's E and P subsidiary?

24 A. Exploration and production, as you remember, the upstream
25 side of the company.

HBT5bre5

Madgett - direct

1 Q. Has negotiated to acquire 100 percent surface and
2 subsurface mineral rights interest in the Cat Canyon oil field,
3 California. The acquisition will include 100 percent interest
4 in the assets including all inventories, operations, and all
5 technical and management team of the seller's operating
6 company.

7 What did you understand that to mean regarding the
8 status of the acquisition of Cat Canyon?

9 A. That the acquisition agreement had been finalized and that
10 Black Sands would be taking a hundred percent interest of all
11 of what ERG had previously owned and operated on the Cat Canyon
12 oil field concession.

13 Q. And, did that statement affect your decision on the bridge
14 financing?

15 A. Yes, it did.

16 Q. How so?

17 A. Because the bridge financing is a bridge to a facility
18 intended to be secured on the Cat Canyon facility and the value
19 in the Cat Canyon oil fields. Therefore, the bridge would be
20 positively affected in terms of its repayment risk by
21 Black Sands owning the Cat Canyon oil fields' asset in the
22 future generating profit and cash flow from it. And also, if
23 this wasn't the situation, there would be no need for the
24 bridge loan, i.e. the purpose of the bridge loan would not be
25 met.

HBT5bre5

Madgett - direct

1 Q. So, previously I asked you about asset-based lending or
2 reserve-based lending. Is a bridge loan a form of an asset or
3 reserve-based lending?

4 A. As I said earlier, the bridge loan is there because the
5 asset has not yet been acquired. It is a bridge to enable
6 certain expenses to be met before the asset is acquired. So,
7 by definition, it can't be asset-based, it is a bridge loan
8 based upon the financials of the company.

9 Q. Did there come a time that ICBC asked Mr. Brennerman for
10 his company to contribute to the deal to acquire Cat Canyon?

11 A. Yes, indeed.

12 The approach that Mr. Brennerman had told us that
13 Black Sands had used on all its previous financing was
14 asset-based, was secured borrowing, and each of those
15 operations or each of those oil fields in a different part of
16 the world acted as security for the loans which the company had
17 got and never did the parent company, the Black Sands Group,
18 provide a guarantee to any of the borrowers.

19 In this situation, because there was no asset
20 supporting the bridge loan, we insisted that Black Sands'
21 parent provides a guarantee. And, it is not just the
22 subsidiary -- the Black Sands alpha -- which will hold the Cat
23 Canyon asset that is the borrower, but also the group is the
24 guarantor as well.

25 Q. So, let me ask you about that. Why did ICBC require

HBT5bre5

Madgett - direct

1 Black Sands' parent to make a contribution?

2 A. Because the borrower, on its own, had no assets, had no
3 ability to repay that money and therefore it required the group
4 to support that loan repayment.

5 THE COURT: Can you just move a little bit away from
6 the mic?

7 THE WITNESS: Is that me?

8 THE COURT: Yes. You are popping.

9 THE WITNESS: Sorry.

10 THE COURT: Go ahead.

11 BY MR. ROOS:

12 Q. And what are the reasons why it is necessary to have a
13 parent have an interest?

14 A. First of all, there is the issue of the creditworthiness so
15 the parent has the benefit of all of the earnings from the
16 total group, and it is where the total earnings will be pooled
17 so the parent is the strongest part of the borrowing group.
18 So, that's the first point.

19 The second point is a way of also ensuring that the
20 total group is committed to a particular loan obligation. So,
21 in other words, Black Sands could not walk away from the ICBC
22 loan if Cat Canyon failed because Black Sands Group has also
23 guaranteed the repayment of the loan.

24 Q. So, what sort of contribution was ICBC looking for?

25 A. In the case of the bridging loan, it was a contribution

HBT5bre5

Madgett - direct

1 that would be a proportion of the total financing, and with
2 respect to the bridge loan we were looking for something
3 equivalent of around \$20 million.

4 Q. And what about in the case of the larger loan?

5 A. In the case of the larger loan, as had been discussed the
6 larger loan, to put it in perspective, we are talking about a
7 total purchase cost of something around \$800 million and the
8 initial discussions had been for something like \$215 million to
9 be provided by Black Sands Group as the equity contribution.
10 If you like skin in the game. So, the company is risking some
11 of its own money and is not just using other people's money.

12 THE COURT: You said 215 or 250?

13 THE WITNESS: 215, as I recall.

14 THE COURT: 15.

15 THE WITNESS: Yes.

16 BY MR. ROOS:

17 Q. I will show you what is marked in he was as Government
18 Exhibit 1-5.

19 A. Thank you.

20 Q. Do you recognize that document?

21 A. Yes.

22 Q. What is it?

23 A. This is a loan agreement between the Black Sands Group and
24 Black Sands Alpha which is the Cat Canyon holding subsidiary.

25 Q. And had you seen this before, before I showed it to you

HBT5bre5

Madgett - direct

1 today?

2 A. It may --

3 Q. Let must ask you this. Was this a relevant document to you
4 in 2013?

5 A. It would be a relevant document, yes, because it would be
6 evidencing the equity support.

7 Q. And why was it provided to ICBC?

8 A. It would be provided to ICBC as part of the conditions
9 which had to be met to confirm that the parent --

10 Black Sands -- was supporting this particular borrower.

11 Q. So, let's look at then just the first page of this loan
12 agreement, the date is October 25th, 2013, you indicated the
13 two parties; what is the amount or the commitment on this loan?

14 A. The commitment on this loan is \$11.15 million.

15 Q. And what's turn to the signature page on this, page 6. Who
16 was the signer for Black Sands Pacific Group? Do you see? It
17 is up on the screen also.

18 A. Michael Sloanes.

19 Q. And what is his title?

20 A. Deputy general counsel.

21 Q. Who signed for Black Sands Pacific Alpha Blue?

22 A. Mr. Brennerman.

23 Q. And by the way, were you present for Mr. Sloanes'
24 signature?

25 A. I was not.

HBT5bre5

Madgett - direct

1 Q. Now, let's turn to the very last page of this exhibit, it
2 is a check, and it looks like it is from Black Sands Pacific
3 Energy Corp. to Black Sands Pacific Alpha Blue, LLC. What is
4 the dollar amount on it?

5 A. \$11.15 million.

6 Q. Can you read the account number, that is the last number on
7 the bottom of the check?

8 A. 9787540240.

9 Q. Do you see the Bates stamp on this?

10 A. Yes.

11 Q. What was your understanding of why this check was being
12 provided to ICBC?

13 A. Well, a copy of it were being provided to ICBC because it
14 was evidence of the equity contribution by the Black Sands
15 parent to the subsidiary holding Cat Canyon which was part of
16 the conditionality of the bridge loan which we made.

17 Q. Did ICBC ever agree to loan \$600 million to Black Sands?

18 A. No.

19 Q. Did ICBC ever agree to issue any loan to Black Sands?

20 A. Only the bridge loan.

21 Q. Okay. So, let's talk about the bridge loan.

22 Did you participate in making the decision on the
23 bridge loan?

24 A. I prepared the credit paper and submitted it to credit
25 committee.

HBT5bre5

Madgett - direct

1 Q. Had you not prepared that paper would the loan have
2 happened?

3 A. No.

4 Q. I am going to show you what's in evidence as Government
5 Exhibit 1-12, it is a hefty document. It will be up on your
6 screen but here is a piece of paper because we will flip
7 through it a little bit.

8 THE COURT: 1-12?

9 MR. ROOS: That's right.

10 Q. So, it may say it on the front, but what is this document?

11 A. This is the actual bridge loan provided by ICBC to
12 Black Sands Pacific Alpha, as borrower, of the company holding
13 Cat Canyon, with the guarantee of the Black Sands Group.

14 Q. How are you familiar with it?

15 A. Because it was the subject of the credit application I made
16 and I was also involved in negotiating the terms of the
17 agreement.

18 Q. So, let's do a little preliminary here. Who is the
19 borrower on the loan?

20 A. The borrower on the loan is Black Sands Pacific Alpha Blue.

21 Q. And the guarantor?

22 A. Black Sands Pacific Group, Inc.

23 Q. And who is the lender?

24 A. The lender is ICBC London, PLLC.

25 Q. What is a guarantor, by the way?

HBT5bre5

Madgett - direct

1 A. A guarantor is someone who undertakes to pay the
2 obligations of a borrower if the borrower does not pay those
3 obligations.

4 Q. And what is the date on the loan?

5 A. The date on the loan is the 25th of November, 2013.

6 Q. Let's flip back to the signature page where we go to the
7 document. So, take a look at page -- let's start on page 55.
8 Who signed on behalf of the borrower?

9 A. Mr. Brennerman.

10 Q. Let's turn to the next page. Who signed on behalf of the
11 guarantor, Black Sands Pacific Group?

12 A. My immediate manager, deputy managing director but --

13 Q. I think you skipped a page, it is on the screen.

14 A. Say that again.

15 Q. Who signed on behalf of Black Sands Pacific Group, Inc.?

16 A. Mr. Brennerman.

17 Q. And anyone else?

18 A. And Mr. Sloanes.

19 Q. And what is Mr. Sloanes' title?

20 A. Secretary.

21 Q. Were you present when Mr. Sloanes signed?

22 A. No, I was not.

23 Q. Now, I know you were eager to get to this one. What is on
24 page 57?

25 A. The signature page for ICBC.

HBT5bre5

Madgett - direct

1 Q. Who signed there?

2 A. My immediate manager, Deputy Managing Director of ICBC
3 London Bo Jiang, and myself.

4 Q. Turn to page 20 of the document.

5 THE COURT: Well, where is it signed? Were you all
6 together when it was signed? Was is signed separately in
7 different places?

8 THE WITNESS: Signed separately in different places.

9 Q. Do you see where it says Article II, the commitment and
10 loans?

11 A. Yes.

12 Q. So, there is some legalese in here but what, simply, was
13 the commitment being made in the loan?

14 A. The commitment was to make \$20 million available, that \$15
15 million would be deposited in a reserve account at ICBC London
16 for potential use at a later time.

17 Q. And the paragraph that was just up on the screen it
18 mentions two loans; what is that about?

19 A. This discussed the way in which the loan is made available
20 in different tranches.

21 Q. Let's turn to page 27. Do you see at the bottom there it
22 says Article IV. Conditions precedent?

23 A. Yes.

24 Q. What is a conditions precedent?

25 A. When you make a loan you first must meet certain conditions

HBT5bre5

Madgett - direct

1 which are specified by the lender, and those conditions are
2 then a requirement which must be met before the loan can be
3 released. These conditions are generally called condition
4 precedents because it is a precedent to come before the loan
5 can happen.

6 Q. The First Amendment condition precedent here says bridge
7 loan agreement and it says the first condition is the agreement
8 shall have been duly executed; right?

9 A. That's correct.

10 Q. So, that means the first condition is you have to sign the
11 agreement?

12 A. Absolutely.

13 Q. Let's look at the condition that's marked E on the next
14 page. And it says: E. Parent bridge loan; debt and equity
15 contributions. The loan evidenced by the parent loan agreement
16 shall have been fully drawn by the borrower, converted to
17 equity of parent in the borrower.

18 What does that mean?

19 A. What it means is that the parent loan agreement, which we
20 saw earlier --

21 (Continued on next page)

HBTKBREC6

Madgett - Direct

1 BY MR. LANDSMAN-ROOS:

2 Q. Let me just stop you right there. Current loan agreement,
3 is that this Government Exhibit 1-5?

4 A. Yes. Yeah.

5 Q. Okay. Continue.

6 A. Okay.

7 "Will have been fully drawn by the borrower," Alpha,
8 Blacksands Alpha Blue.

9 Q. What does "fully drawn" mean?

10 A. It means the total amount will have been paid over to the
11 borrower.

12 And then it goes on to say it will be converted to
13 equity in the borrower. So, in other words, that amount will
14 now become the shares of the parent in its subsidiary. It will
15 be an equity interest equivalent to that amount of the loan
16 because that was given by the parent to the company.

17 Q. If you had known that Blacksands had not made that parent
18 loan to the borrower, how would that have affected ICBC's
19 decision to make the loan?

20 A. Well, number one, the condition precedent would not have
21 been met, and, therefore, the loan could not have been drawn.

22 Number two, it would have violated the agreement which
23 we had negotiated, so it would have been a very serious breach
24 of trust, which would put the whole nature of the relationship
25 in jeopardy.

HBTKBREC6

Madgett - Direct

1 Q. Let's look at the condition K, which is on page 29. Do you
2 see that?

3 A. Yes.

4 Q. The financial statements?

5 "The lender shall have received a copy of any
6 financial statements reasonably requested by the lender and
7 shall be satisfied with the contents thereof." So what's that
8 asking?

9 A. That's asking for the profit and loss account and also the
10 balance sheet of the -- of any financial statement. So that's
11 referring both to the parent and also the borrower, the
12 guarantee and the borrower, as requested by the lender, ICBC,
13 who needs to be satisfied with the contents of that.

14 Q. So how does that condition -- how had that condition been
15 satisfied?

16 A. We were satisfied that the borrowing company was entirely
17 new, and, therefore, if they had reduced accounts, the only
18 thing which would be in the accounts at that stage would be the
19 equity loan, which had been drawn from the parent paid in as an
20 equity statement. So, that seemed quite pointless to ask for
21 that account because it's so simple.

22 And then the financials for the Blacksands Group were
23 those which had been previously provided, the 2011, the 2012,
24 and the 2013, for the next nine months. I think elsewhere in
25 this loan agreement --

HBTBREC6

Madgett - Direct

1 Q. We're going to go elsewhere, so let me stop you there.

2 Let's turn to page 30, which is -- do you see where it
3 says "Article 5: Representations and Warranties"? What's a
4 representation and warranty?

5 A. It's an undertaking statement, a representation by the
6 borrower that they have made about certain events, certain
7 situations. So, they are making factual statements about
8 conditions which are relevant for lenders.

9 Q. It says, "To induce the lender to enter into this
10 agreement." What does that mean?

11 A. It's basically recognizing that the lender will only be
12 prepared to enter into a lending agreement if the borrower
13 gives certain representations and warranties concerning certain
14 matters which are very important to the credit risk of making
15 this loan.

16 Q. I want to walk through a few of these. Let's look at the
17 fifth representation, which is marked 5.5.

18 A. Uh-huh.

19 Q. Do you see that at the bottom there?

20 A. Yes.

21 Q. It says, "Financial statements, reserves reports, no
22 material adverse effect," and under (a), it begins, "All
23 financial data, including any statements of cash flow, and
24 income, and operating expenses, that have been delivered to the
25 lender" -- who is the lender?

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Madgett - Direct

1 A. The lender is ICBC.

2 Q. -- "by or on behalf of the obligors." Who's that?

3 A. The obligors are both the borrower and also the guarantor.

4 Q. So the financial statements are -- "All financial data is
5 accurate and complete in all material respects," and I will
6 leave it there for a second. So what does this mean?

7 A. What it means is that the data which has been provided on
8 the finances of the company, and its cash flow, and its income
9 and operating expenses, all of these have been delivered, and
10 that they are entirely accurate in all material ways. So, a
11 small mistake, okay, it could happen, but anything significant
12 is not -- there's no error.

13 Q. Well, let's talk about small mistakes. What would be
14 significant?

15 A. It would obviously depend on the size of the loan, the size
16 of the company, but, in this case, with a \$20 million loan,
17 then something relatively small. You know, a little -- a few
18 hundred thousand dollars one way or another could start to
19 become relevant, where if we're talking hundreds of million
20 dollar loans, then a few millions of dollars becomes relevant.
21 So, you know, you have to look at the context.

22 Q. Do you recall looking at the financial statements that were
23 marked as government exhibits as an attachment to 1-67 and 1-2?

24 That's the 2011, the 2012, and also the 2013
25 statements. Do you remember looking at those?

HBTKBREC6

Madgett - Direct

1 A. Yes, indeed, yeah.

2 Q. And so do those qualify as some of the financial data
3 that's here?

4 A. They are the principal part of the financial data which is
5 being referred to, yes.

6 Q. If Brennerman had made inaccurate statements in those about
7 Blacksands' revenues and assets, would that have influenced
8 your view of the advisability of making the bridge loan?

9 A. Profoundly.

10 Q. Why is that?

11 A. Because they're -- at this stage, Blacksands does not own
12 the ERG Cat Canyon asset, so you are entirely dependent upon
13 the financial balance sheet and the financial performance of
14 the Blacksands guarantee for the repayment of the loan. So, if
15 this has been misrepresented, then that is a serious issue,
16 which would undermine the acceptability and the viability of
17 the loan.

18 Q. What about the statements in those documents about asset
19 holdings, would the same hold true for those?

20 A. Yes, for the same reasons stated before. Both the P&L
21 generates income, and the assets are the value of the company
22 which allows it to make repayments.

23 Q. Now, let's look at the representation and warranty 5-6. Do
24 you see it?

25 A. Yes.

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Madgett - Direct

1 Q. It says, "Disclosure: All written information (excluding
2 projections, estimates and pro forma financial information)
3 furnished by or on behalf of each obligor to the lender in
4 connection with this agreement or any other loan document" --
5 and I am going to skip the parens here -- "is accurate and
6 complete in all material respects on the date as of which such
7 information was furnished, and does not contain any untrue
8 statement of material fact or omit to state any material fact
9 necessary to make the statements contained therein not
10 misleading at such time."

11 So, what, generally, is this representation?

12 A. This representation is that there is an obligation on the
13 obligors that they must disclose information which is of
14 material relevance to any reasonable lender making a loan to
15 the obligors.

16 Q. So, let me ask you about some of the information that we
17 have talked about previously. Do you remember that at-a-glance
18 document?

19 I'll show it to you, it's 1-67C. Does this qualify as
20 some of the information that's covered by 5.6?

21 A. Certainly.

22 Q. And why is that?

23 A. Because it is giving an overview of the assets and value
24 within the Blacksands Group.

25 Q. If there were a misstatements in there, would that have

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1 been material?

2 A. These would have been material.

3 MR. WALLER: Objection.

4 THE COURT: Well, it would have been something you
5 would have considered in deciding to go forward with the loan?

6 THE WITNESS: That is correct, your Honor.

7 THE COURT: Okay. Go ahead.

8 BY MR. LANDSMAN-ROOS:

9 Q. What about 1-67B? We talked about previously, this is the
10 technical team.

11 A. Yes, for the same reasons. Because if there are material
12 omissions in this report or misleading information, then
13 qualified personnel, who would ensure the safe continuity of
14 the Cat Canyon operations to continue to produce oil, grow the
15 amount of oil, and, therefore, generate the money to repay the
16 loan, would clearly be put at risk.

17 MR. LANDSMAN-ROOS: Let's put the loan document, 1-12,
18 back up on the screen, and let's go back to 5.6 on page 31.

19 Q. Mr. Brennerman had made some statements to you about
20 Blacksands' offices, the number of offices, where they were.
21 Would that have been information covered by this provision?

22 A. Yes, we would have viewed it as such.

23 Q. Why would you have viewed it as such?

24 MR. WALLER: Objection.

25 THE COURT: Overruled.

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Madgett - Direct

1 You can answer. Explain.

2 THE WITNESS: We would have regarded it as relevant
3 because those offices in different parts of the world are the
4 resourcing bases, and the management, and the holding bases for
5 the various assets which they state are part of the Blacksands
6 Group. If those assets are not locally supported, are not able
7 to operate in the way that is suggested by the teasers, then
8 clearly the income contribution and the value in the Blacksands
9 parent is not as great as we understood it was the case, and,
10 therefore, Blacksands' guarantee of this loan would not be as
11 worthwhile, as valuable, as we would have otherwise have
12 expected.

13 Q. What about a disclosure concerning the number of employees?
14 Would that have been relevant?

15 A. Because it feeds into the same commonsense argument that
16 the employees were clearly needed to sustain the operations
17 which were being described to us as what Blacksands Group held,
18 represented, and was able to deliver. Without sufficient
19 qualified employees, then, clearly, none of that would have
20 been possible.

21 Q. If the information furnished about Mr. Brennerman's
22 background, education, even citizenship, contained any untrue
23 statements or omitted facts necessary to make the statements
24 not misleading, would that have been relevant?

25 A. These would also have been relevant, for the simple reason

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1 that it would then put a question mark over his ability and
2 fitness to hold the position of authority he represented he
3 held in Blacksands. Also, it may bring into play other issues
4 which had been concealed to us. So, for example, if he had
5 nationalities in different countries, there may be issues which
6 our know-your-customer process could not have uncovered at the
7 time.

8 Q. Lastly, if Brennerman had -- let me rephrase that.

9 If the status of the ERG deal was not as represented,
10 would that have been relevant under this provision?

11 A. Well, that's an oxymoron. If we were bridging a loan and
12 to acquire the Cat Canyon asset, so, quite clearly, there
13 wouldn't be any case for a bridge loan if it was not going to
14 result in the acquisition of the Cat Canyon asset.

15 Q. You had said some of this information would be relevant.
16 If you had known any of these things we just went through were
17 untrue, would that have affected ICBC's lending decision?

18 A. In my opinion, it certainly would, and it would
19 certainly --

20 MR. WALLER: Objection. Move to strike.

21 THE COURT: Overruled.

22 Go ahead.

23 THE WITNESS: Okay.

24 I would state that I would not have supported passing
25 the credit application to credit committee. And if only one of

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1 these arose, it would immediately ring alarm bells, well, if
2 that's not what's represented to be the case, we need to go
3 back and relook at the whole of these issues.

4 BY MR. LANDSMAN-ROOS:

5 Q. Let's go to page 32 of this document and look at section
6 5.14. 5.14 says, "Use of Proceeds: Each loan will be used by
7 the borrower" -- what entity is the borrower again?

8 A. The borrower is Blacksands Alpha.

9 Q. -- "and for the purposes described in section 6.10." So,
10 Mr. Madgett, if you flip to 6.10.

11 MR. LANDSMAN-ROOS: And, Ms. Fetman, if you'll take us
12 there. Page 36.

13 Q. It says: "Use of Proceeds: The borrower shall apply the
14 proceeds of the loan to fund a portion of the operating
15 expenditures." What does "operating expenditures" mean?

16 A. The -- to fund a portion of the operating expenditures in
17 connection with the California asset. So that is to finance
18 the operations of the California asset and meet the expenses of
19 operating those assets.

20 Q. It says, after that, "and to pay the fees, costs, and
21 expenses owed by the borrower to the lender in connection with
22 the transaction contemplated by the loan documents." So what
23 does that mean?

24 MR. WALLER: Objection.

25 THE COURT: What do you understand that to mean?

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1 THE WITNESS: I understand this to mean what it means
2 in all loan documents, which is that the fees charged by the
3 bank for making the loan available and other expenses, such as
4 the legal firm's fees for preparing the documentation, are
5 deducted from the proceeds of the loans which were advanced.

6 BY MR. LANDSMAN-ROOS:

7 Q. Did you contemplate that the proceeds of the loan could be
8 used to pay Brennerman's salary?

9 MR. WALLER: Objection.

10 THE COURT: Overruled.

11 THE WITNESS: No, we did not contemplate that.

12 Q. Why not?

13 A. Because that would have not corresponded with the statement
14 that the loan must be used to fund a portion of the operating
15 expenditures of the California asset.

16 Q. Did Mr. Brennerman ever tell you he had used some of the
17 proceeds for his salary?

18 A. He did not, no.

19 Q. Did it ever cross your mind that the bridge loan could be
20 used to pay CEO compensation?

21 A. This would not be consistent with a bridge loan to acquire
22 a specific asset, one of many assets in, apparently, a large
23 diversified company. This would not be an appropriate use.

24 Q. Did Mr. Brennerman ever discuss using the proceeds for
25 international travel?

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1 A. No, he did not.

2 Q. What about using some of the funds to pay someone named
3 Peter Aderinwale, did he mention that?

4 A. I had never heard of the individual, and he certainly never
5 mentioned that to me.

6 Q. Had you known that Mr. Brennerman paid himself with the
7 loan proceeds, would you have recommended making the ICBC loan?

8 A. I would not.

9 Q. Do you have a belief as to whether ICBC would, in fact,
10 have made the bridge loan to cover such expenses or payments?

11 Sorry, let me rephrase the question.

12 Do you have a belief as to whether ICBC would have
13 provided the bridge loan to cover payments to Mr. Brennerman?

14 A. No, I do not believe that to be the case. I would not have
15 advanced the loan, and the credit committee would not have
16 viewed such a request favorably.

17 Q. Let's flip back to the representations section, the one
18 that's marked representation 5.16. It says, "Taxes." Without
19 getting into all of it, what do you understand this section to
20 mean?

21 A. This is a relatively standard undertaking that all of the
22 taxes owed by the obligors are current, true and correct, and
23 completed. So all tax owed is paid and up to date, so this
24 would be covering both the borrower and also the guaranteeing
25 obligor.

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1 Q. Now, please turn to page 37. At the top, it says Article
2 7. It says, "Negative covenants." What's a negative covenant?

3 A. A negative covenant is something which you undertake not to
4 do. So, in that case you're saying I will not do something
5 because of the -- if you like, the negative effect it will
6 have.

7 Q. Let's look at the eighth of these that's marked 7.8. It's
8 on the page 38. It says, "Transactions with affiliates." What
9 does this negative covenant prohibit?

10 A. Well, it prohibits would be that the obligors, and
11 particularly the borrower, could not finance transactions with
12 other parts of the Blacksands company. Now, affiliates
13 typically refers to a company where Blacksands would have an
14 interest of less than 50 percent, so it would be a more distant
15 relationship as opposed to a subsidiary, which would be over
16 50 percent.

17 Q. Why was this provision relevant to ICBC?

18 A. Again, we're going back to the purpose of the loan. The
19 purpose of the loan is to bridge the operation expenses of
20 acquiring the Cat Canyon facility, and, therefore, to be
21 diverting money into other uses, such as transactions with
22 other affiliated companies of the group, would be a violation
23 of the purpose of the loan and not what had been discussed or
24 assumed to be the way that the loan would be used by the bank.

25 MR. LANDSMAN-ROOS: Ms. Fetman, will you take us to

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1 page 63 of this exhibit.

2 Q. And, Mr. Madgett, are you with me?

3 A. Yes.

4 Q. It says "Pledge Agreement" on the top. It looks like some
5 parts of this agreement are not filled in, and if you flip to
6 page 72, it appears to be unsigned.

7 A. Yeah.

8 Q. What did this unsigned agreement concern?

9 A. This concerned a holding which Blacksands stated they
10 had -- I think it referred to elsewhere in the loan
11 agreement -- of \$25 million of notes owed by ERG.

12 Q. So, let me just ask you: What does a note owned by ERG
13 mean?

14 A. Owed by ERG.

15 Q. Oh, owed.

16 A. Yes.

17 So what it means is that if you're a company, you can
18 borrow money from a bank or you can borrow money from capital
19 markets, hedge funds, et cetera, and one of the ways that those
20 loans are evidenced is that you issue a promissory note, and a
21 promissory note simply says I've borrowed this amount of money
22 from you, and I will repay that amount of money at some date in
23 the future. Very simple.

24 ERG issues such promissory notes into the high-yield
25 market to borrow its own monetary needs, and those notes can

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1 then be traded around amongst different investors. So you can
2 buy a share of those notes, and then when the note falls due,
3 you take it to the obligor -- in this case ERG -- and they
4 would have to repay you this amount.

5 Q. Okay. So let me just stop you there and ask you: In this
6 context, was it your understanding that Blacksands had some of
7 these notes owed by ERG?

8 A. It was our understanding. It's reflected in the loan
9 agreement. So, what had happened is that we initially asked if
10 that could also be provided as security, because if Blacksands
11 failed, here was a way of recovering the money from ERG because
12 this was a claim on ERG. Blacksands resisted this. They
13 stated it was not necessary because the amount of money on the
14 bridge loan we were actually releasing was only around
15 \$5 million, before taking off the relevant fees, and since the
16 equity contribution being made into the borrower was over
17 \$11 million, there would be enough money in there under all
18 circumstances.

19 So, therefore, we were reasonable, and we agreed not
20 to insist on the pledge, but it was included in the loan
21 agreement that if Blacksands did not promptly repay the loan,
22 then the pledge on these ERG notes should be activated, and,
23 therefore, that would give the bank an additional security.
24 It's a contingent security.

25 Q. Did you ever see these ERG notes?

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1 A. No, we did not see the ERG notes, but the loan agreement
2 included undertakings that Blacksands had these notes, and,
3 indeed, this pledge agreement -- contingent pledge agreement
4 appendix was also supportive of that.

5 Q. In connection with the signing of the bridge loan
6 agreement, was Blacksands required to produce certain
7 identifications of signers?

8 A. The condition precedence will include confirmation of the
9 identities of the people signing and that they are qualified to
10 sign, and our KYC process would have anyway identified some of
11 those individuals, in particular, Mr. Brennerman. We did not
12 have KYC process on Mr. Sloanes, who was the second signature
13 on the loan.

14 MR. LANDSMAN-ROOS: Let's publish what's in evidence
15 as Government Exhibit 2-8.

16 Q. Mr. Madgett, you're not on this email, but I'm asking you
17 something about it in connection with the other email, but I'll
18 read the top. It's from Brennerman, R.J., at the executive
19 office. It's to abiodunpeterwhollyabbey@yahoo.com, the cc is
20 the same Brennerman address. It says, "Updated overview." The
21 date is August 18, 2013. The importance is high.

22 And now let's look at the email, just the top of it
23 under point 1. Let's capture who it's addressed to, also. It
24 says, "Dear Peter: Below are the lists of issues which we need
25 to work on: 1. Points: (a) Identification to provide to ICBC,

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1 and I will skip (b); (c) advisory agreement between Blacksands
2 Pacific and Peter Aderinwale."

3 Were you ever told about an advisory agreement between
4 Blacksands and Peter Aderinwale?

5 A. No.

6 MR. LANDSMAN-ROOS: Let's put up what's marked, and is
7 in evidence, as Government Exhibit 2-4. And let's start with
8 the to/from, Ms. Fetman.

9 BY MR. LANDSMAN-ROOS:

10 Q. So it's from Brennerman, R.J., at the executive office.
11 It's to abiodunpeter.whollyabbey@yahoo.com. The Brennerman
12 address is happy again. It says, "Re dated November 21st,
13 2013."

14 And, Mr. Madgett, what was the date on the bridge
15 loan?

16 A. The bridge loan, as I recall, was 25th of November, I
17 think.

18 Sorry, I have to check. Yes, 25th of November.

19 Q. So this is four days before, right?

20 A. Yeah.

21 Q. Mr. Madgett, this is four days --

22 A. Indeed, yes.

23 Q. All right. So, going down the email, it says, "Dear Peter:
24 (1) Below are the signatory name - What to know if ID will be
25 required for the signers. The signature block for borrower are

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1 any one of the two. Only one signature is required. Raheem J.
2 Brennerman, John Picard."

3 So, Mr. Madgett, for the borrower on the bridge loan
4 agreement, do you recall how many signatures were necessary?
5 And you can take a look at the document. That's 1-12, if
6 needed.

7 A. Well, two signatures were provided for the group and one
8 signature for the borrower.

9 Q. And the group is the guarantor; is that right?

10 A. The group is the guarantor.

11 Q. I'll keep reading. It says, "The signature block for
12 guarantor are any two of the four. Only two signature is
13 required: Raheem J. Brennerman, Michael Sloanes, Mike Kelly
14 John Picard: (2) Should we do the drawdown from ICBC once or
15 twice?"

16 Do you have any understanding of what that means?

17 A. I'm assuming that that is -- it's a draw in one go or they
18 do two individual drawings, which was flexibility for in the
19 agreement.

20 Q. Okay. And "(3) To evidence the loan from the parent
21 company to the borrower, to ICBC, shall I either: (1) Make one
22 check to the borrower for 11,150,000; (2) Make several checks
23 from the borrower to pay third parties?" Do you have any
24 understanding of what that's a reference to?

25 A. No. I've not seen this document before, so I do not know

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1 what that means. I would only comment that --

2 MR. WALLER: Objection.

3 THE COURT: Nonresponsive or --

4 MR. WALLER: Yes, well, he also said he doesn't know.

5 MR. LANDSMAN-ROOS: Okay.

6 BY MR. LANDSMAN-ROOS:

7 Q. Mr. Madgett, were you --

8 A. It might be a different point.

9 Q. Mr. Madgett, are you familiar with a loan that was made
10 from the Blacksands parent company to the borrower to evidence
11 something to ICBC?

12 A. Are you talking about the equity contribution loan?

13 Q. Would Government Exhibit 1-5, which is the loan agreement,
14 does that fit this criteria?

15 MR. WALLER: Objection.

16 THE COURT: I didn't hear the question. Does that?

17 MR. LANDSMAN-ROOS: I'll rephrase that.

18 Q. So, take a look at Government Exhibit 1-5, which is now up
19 on the screen.

20 A. Thank you.

21 Q. This is the loan agreement between Blacksands Pacific --

22 A. Yes.

23 Q. -- the borrower, and Blacksands Pacific Group, Inc., the
24 lender. Is Blacksands Pacific Group the lender -- or, I'm
25 sorry, the parent company to the borrower?

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1 A. Blacksands Pacific Group, Inc., is the parent company, yes.

2 Q. And is the amount -- do you see the amount on this? Is it
3 11,150,000?

4 A. That is correct, yes.

5 Q. And at the end of this, is there a check?

6 A. Yes, there is.

7 Q. Paid to the borrower for 11,150,000?

8 A. That's correct.

9 Q. Was this provided as evidence to ICBC?

10 MR. WALLER: Objection.

11 A. This was provided as one of the condition precedent
12 requirements for the loan to evidence that the amount of equity
13 to be paid into the borrower had been provided by the parent
14 company, Blacksands.

15 MR. LANDSMAN-ROOS: You can take both these down.

16 Q. Did ICBC make a payment to Blacksands pursuant to the
17 bridge loan agreement?

18 A. Yes, we made a payment as it was drawn. The total amount
19 of payment was 20. 15 million went into the deposit agreement
20 as of the condition of the loan. There were then \$5 million
21 which was released net of the relevant fees. This probably
22 totaled around half a million dollars. I don't have the
23 numbers in front of me.

24 Q. How was the money paid to Blacksands?

25 A. The money would have been paid with a wire transfer to

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1 Blacksands.

2 THE COURT: Wait a minute. Wire transfer where?

3 THE WITNESS: A wire transfer to Blacksands.

4 THE COURT: To Blacksands?

5 THE WITNESS: Yes.

6 THE COURT: So a bank account?

7 THE WITNESS: To a bank account, which it would have
8 provided.

9 THE COURT: And it would have been 4-1/2 million or
10 so?

11 THE WITNESS: Or so, yes.

12 BY MR. LANDSMAN-ROOS:

13 Q. I'm showing you what's in evidence as Government Exhibit
14 1-16. It's from M. Kelly, and it's to you. Did you receive
15 this?

16 A. Yes.

17 Q. And the date on it?

18 A. The date on this is December the 3rd.

19 Q. Can you read the text of the email?

20 A. "Dear All: Confirmed 4.4 million received by Blacksands
21 Pacific Alpha Blue LLC. Very truly yours, Mr. Kelly, Senior
22 Vice President of Acquisitions."

23 Q. What do you understand this to be a reference to?

24 A. This is a reference to receipt of the funds from the loan
25 drawdown into the borrower's account, as would be appropriate

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1 for the receipt of the funds, as that is the name of the
2 borrower.

3 Q. When was Blacksands Pacific Alpha Blue, the borrower,
4 required to repay the bridge loan by?

5 A. The bridge loan was repayable in 90 days.

6 Q. So, approximately, when was that?

7 A. Approximately towards the end of February 2014.

8 Q. And was the borrower -- that's Blacksands Alpha Blue --
9 required to pay interest during that period?

10 A. Yes, it was.

11 Q. What would have happened if that entity missed its first
12 interest payment?

13 A. That would have been an immediate event of default, and one
14 of the rights of the lenders if there's a default is that you
15 can accelerate the loan saying that all the loan has to be
16 repaid immediately.

17 Q. Did Blacksands Pacific Alpha Blue make some interest
18 payments?

19 A. It made some interest payments.

20 Q. Did Blacksands Pacific Alpha Blue repay the bridge loan in
21 full by February 24th?

22 A. They did not.

23 Q. I'm sorry?

24 A. They did not, no.

25 Q. Let me just ask you a question about those interest

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1 payments. Is that a payment on the principal of the loan, or
2 is it just a payment on the interest or something else?

3 A. It's a payment on the principal of the loan.

4 Q. You just said they did not repay the entirety of the loan
5 by February -- by the end of February. What happened then?

6 A. In the runup to that, Blacksands requested an extension of
7 the loan for a further three months. There are a number of
8 developments which caused the bank to consider carefully
9 whether or not it should agree to such a request, including
10 that one of the conditions of the loan was that the full
11 audited account of the Blacksands Group would finally be
12 delivered roughly in the middle of February 2014, and
13 Blacksands advised that that date was not going to happen, and
14 that they requested they needed a further extension before
15 audited accounts could be produced until May 2014. That was
16 obviously a major concern, because it put a big question mark
17 on the validity of the accounts, and the financials, and the
18 ability of the company to repay.

19 Also, aspects connected with any consideration of the
20 future acquisition of Cat Canyon seemed to have ground to a
21 halt. In particular, required technical studies around Cat
22 Canyon were only produced the day before to repayment, which
23 was totally unreasonable to then assess to decide if to make
24 further extension.

25 Q. So let me stop you right there.

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1 A. Yep.

2 Q. I want to ask you about a few of those things, so we'll
3 just tick down them in order. The first is I want to clarify
4 something. You said the payments that have been made, I asked
5 whether those were towards the principal, the interest or a
6 combination of both. You said the principal?

7 A. No, I said on the principal.

8 Q. "On the principal." What does that mean?

9 A. It just means that you've got a principal outstanding, and,
10 therefore, you owe interest on the amount which you owe, and,
11 therefore, this was simply interest paid on the principal
12 outstanding.

13 Q. So does the principal amount change during that period?

14 A. No. It does not, no.

15 Q. So it remains 4.4 million?

16 A. Indeed, yes.

17 Q. You were discussing the reasons for extending or not
18 extending. You named a few things. So, first, did you ever
19 receive audited financial statements?

20 A. We did not.

21 Q. You mentioned a feasibility study.

22 A. Uh-huh.

23 Q. Did you ever receive a feasibility study?

24 A. We received a technical study on, I think, the day before
25 the loan was due for repayment on the 1st of February, so this

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1 is very late and not something which would allow for any
2 reasonable consideration of the merit of that study.

3 Q. And did the feasibility study adequately meet what ICBC
4 otherwise had requested?

5 A. We did not feel it did, but as there was very little time
6 to review it, it didn't have a great relevance on the decision
7 on the bridge loan.

8 Q. What, if any, significance did you ascribe to when you
9 received that feasibility study?

10 A. Immediately after the bridge loan was made, as the bridge
11 loan was intended to be a bridge to the acquisition of the Cat
12 Canyon facility, we tried vigorously in good faith to make
13 contact with the other banks which were supposedly providing
14 finance to Blacksands to acquire Cat Canyon. We only insisted
15 in having one telephone call with White & Case, who were
16 apparently representing Morgan Stanley, but Morgan Stanley were
17 not on the phone, so that didn't go very far.

18 And our attempts to engage effectively with
19 Mr. Brennerman at Blacksands were frustrated because he was
20 repeatedly advising us that he was traveling, and he was
21 working on another part of the total financing package, which
22 would be the high-yield part of the financing.

23 Q. So, around February 2014, did you become familiar with a
24 company called Gold Leaf?

25 A. We read about Gold Leaf in the press, and it appeared that

HBTKBREC6

Madgett - Direct

1 Gold Leaf --

2 MR. WALLER: Objection.

3 THE COURT: That's a yes or no.

4 THE WITNESS: Yes.

5 THE COURT: Okay. Go ahead.

6 BY MR. LANDSMAN-ROOS:

7 Q. And what, if anything -- well, let me ask: Did you talk to
8 Mr. Brennerman about Gold Leaf?

9 A. Yes.

10 Q. What, if anything, did he say?

11 A. He said that the story that Gold Leaf might be acquiring
12 ERG's Cat Canyon assets was not something which was actually
13 happening and, therefore, should be entirely disregarded.

14 Q. Did ICBC ultimately finance an acquisition of Cat Canyon?

15 A. No, it did not.

16 Q. Why not?

17 A. Because, first of all, we never approved the loan. We
18 never approved the loan because the kinds of conditions which
19 we had indicated we were looking for in the term sheet never
20 came close to being established, so it wasn't appropriate to
21 take it to credit committee, as this would not be approved.

22 In addition to that, by the time we got to the bridge
23 loan falling mature, then the inability of Blacksands to repay
24 the bridge loan reflected very badly on the credit risk of
25 actually taking the major loan facility.

HBTKBREC6

Madgett - Direct

1 Q. Did the fact that ICBC ultimately didn't go through with
2 the acquisition on Cat Canyon, did that affect whether or not
3 Blacksands had to repay the bridge loan?

4 A. In no way. The bridge loan is a standalone document. This
5 is very clear from the way it's drafted and the way that it's
6 been signed.

7 Q. Just simply, did ICBC grant Blacksands any sort of
8 extension?

9 A. Yes. We were still trying to be reasonable, even at this
10 stage, and, consequently, we offered the company a one-month
11 extension. We did ask the company to regulize that situation
12 by signing the one-month extension and agreeing that the
13 repayment would come at the end of the month, but the company
14 continued to insist that it wanted a three-month extension.

15 Q. Remind me again: Approximately how much money did you
16 understand Blacksands had in revenues?

17 A. In revenues?

18 MR. WALLER: Objection.

19 THE COURT: Overruled.

20 THE WITNESS: Based upon the 5 or 6 -- based upon the
21 5,000 barrels a day, if you assumed a 60-dollar oil price as
22 applicable in this period of time, that would have been worth
23 revenues of around \$110 million.

24 Q. Was that consistent with the financial statements you also
25 saw?

HBTKBREC6

Madgett - Direct

1 A. Well, the financial statements we saw were broadly
2 consistent with that. If you remember, they were inching up
3 towards a hundred million dollars.

4 Q. Okay. So \$100 million ballpark --

5 A. Ballpark. But could I just clarify, please?

6 Q. Let me ask the second part of the question.

7 So, with that sort of understanding in mind, what was
8 your view as to whether it was possible for a company like
9 Blacksands, with that type of revenue, to repay a \$5 million
10 loan?

11 MR. WALLER: Objection.

12 THE COURT: Overruled.

13 You can answer.

14 THE WITNESS: We thought it should be no issue at all,
15 practically speaking. First of all, the actual oil numbers in
16 the teaser documents were even higher than 5,000 barrels a day,
17 they were over 10,000 barrels a day, so suggesting there was
18 upwards of \$200 million of revenue of the company.

19 Additionally, if you remember, the subsidiary should
20 have had the \$11 million paid in as equity and, therefore, have
21 these funds available to repay \$4-1/2 million without any
22 difficulty.

23 And then, finally, consider it in the size of the
24 transaction, the Cat Canyon total purchase cost from all the
25 indications we had was something around \$800 million. So

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Madgett - Direct

1 \$4 million of that is a very small amount, indeed. So it
2 should not be any difficulty, if the company said it was
3 anything like what it said it was, to be able to meet that
4 cost.

5 Q. And after ICBC made that one-month extension, what happened
6 next?

7 A. As we got into April, since the company had not regulized
8 the document for the one-month extension, and the one-month
9 extension had also fallen overdue, and the company was refusing
10 to repay, we sent a formal default notice at that stage.

11 Q. Do you remember the date of the formal default notice?

12 A. It would have been early April, as I recall.

13 Q. If I showed you something, would it refresh your
14 recollection?

15 A. Very probably, yes.

16 THE COURT: When you said had not regulized?

17 THE WITNESS: The original -- your Honor --

18 THE COURT: In American, what does that mean?

19 THE WITNESS: Sorry. What I mean is that the original
20 loan should have been paid at the end of February. The bank
21 unilaterally said we're prepared to extend the loan for another
22 month, but, clearly, that has to be an agreement between the
23 two parties, so you agree to repay in a further month's time.
24 Blacksands did not respond to that.

25 THE COURT: You sent them a document?

HBTKBREC6

Madgett - Direct

1 THE WITNESS: Yes. We offered them to extend it for a
2 further month. They said, no, we're not interested, we want it
3 extended a further three months.

4 THE COURT: All right.

5 Go ahead.

6 BY MR. LANDSMAN-ROOS:

7 Q. I'm going to show you, to refresh your recollection, what's
8 been marked for identification as Government Exhibit 425.

9 A. Thank you.

10 MR. LANDSMAN-ROOS: This is not for the jury.

11 THE COURT: Okay. Don't show it to the jury. You can
12 show it to me, if you can.

13 Q. Let me know when you've had a chance to review the
14 document, and I will take it back from you.

15 Mr. Madgett, if you have had a chance to review it,
16 the question will be: What was the date that the notice of
17 default was sent?

18 MR. WALLER: Objection.

19 THE COURT: Well, you're objecting, in other words,
20 because the document is not in evidence.

21 MR. WALLER: It's not a proper refreshing of
22 recollection.

23 THE COURT: Well, does that refresh your recollection?
24 Here, give me the exhibit.

25 THE WITNESS: Yes.

HBTKBREC6

Madgett - Direct

1 THE COURT: Does looking at this document refresh your
2 recollection as to when you sent the notice of default?

3 That's the question?

4 MR. LANDSMAN-ROOS: Yes, that's the question.

5 THE WITNESS: Yes. 4th of April, 2014.

6 BY MR. LANDSMAN-ROOS:

7 Q. And after the 4th of April, 2014, did Blacksands Pacific,
8 Blacksands Pacific Alpha Blue, or Mr. Brennerman ever repay any
9 money to ICBC?

10 A. To date, no money, to my knowledge, has been repaid.

11 MR. LANDSMAN-ROOS: No further questions.

12 THE COURT: Why don't we take an afternoon break.
13 We'll pick up again in about ten minutes. Don't the discuss
14 the case, keep an open mind, take your notebooks, and,
15 hopefully, there's a snack back there waiting. Okay, have a
16 good break.

17 All rise for the jury, please.

18 (Continued on next page)
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HBTKBREC6

Madgett - Direct

1 (Jury not present)

2 THE COURT: Mr. Madgett, you can stretch or use the
3 restroom, if you want.

4 Anything we need to discuss before we take a break?

5 MR. WALLER: No.

6 THE COURT: All right. Mr. Waller, you're doing the
7 cross?

8 MR. WALLER: Yes.

9 THE COURT: How long, ballpark, rest of the day or
10 shorter?

11 MR. WALLER: It's hard to say. Probably the rest of
12 the day.

13 THE COURT: Okay. All right.

14 (Recess)

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Madgett - cross

1 (Jury present)

2 THE COURT: Okay. Have a seat. We will now begin the
3 cross-examination of Mr. Madgett by Mr. Waller.

4 CROSS EXAMINATION

5 BY MR. WALLER:

6 Q. Good afternoon, Mr. Madgett.

7 A. Good afternoon.

8 Q. When did you say you started working for ICBC?

9 A. 2009.

10 Q. And you work for ICBC in London, correct?

11 A. Correct.

12 Q. And it is a subsidiary of a Chinese bank?

13 A. It is a subsidiary and a branch of a Chinese bank.

14 Q. ICBC London is not FDIC insured; is that correct?

15 A. You are referring to the U.S. arrangement?

16 Q. That's correct.

17 A. No, it would not be because it's an operation in the U.K.

18 Q. When your credit committee makes a decision, a credit
19 decision whether or not to give a loan or not to give a loan,
20 what sort of documentation does it produce? Does it produce a
21 memo that explains its reasons or analysis for giving a loan?

22 A. The credit committee will have a series of minutes which
23 reflects a discussion of the case in credit committee and
24 records the decision of the credit committee.

25 Q. Did you ever produce the documents from that credit

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Madgett - cross

1 committee, the ones you just described, to the government?

2 MR. ROOS: Objection.

3 THE COURT: You can answer.

4 A. To my knowledge, no. But I need to state perhaps it's
5 appropriate to say this: After the loan was defaulted, the
6 internal process of the bank means that the direct relationship
7 managers who were responsible for that dialogue step away and
8 the defaulted loan is then passed to a different department.
9 So, I'm not fully aware of all aspects of what has happened to
10 the management of the loan after around April 2014.

11 Q. And when I say produced to the government, I meant to the
12 prosecutors here in this case. You understood that?

13 A. I understood that and to my knowledge, no, that has not
14 been the case.

15 Q. But ICBC did produce a lot of documents to the government,
16 correct?

17 A. All I can state is that the documents were provided to our
18 legal advisors and then our legal advisors have interacted with
19 the U.S. Attorney's office.

20 Q. Would it be fair to say that some documents that are in the
21 underwriting file for ICBC were produced to the document and
22 others were not?

23 A. Some documents will have been passed across. I do not know
24 whether or not all or some. I'm not in -- I don't have that
25 knowledge.

HBT5bre7

Madgett - cross

1 Q. Is there an underwriting file for a loan application such
2 as the one we are dealing with in this case?

3 A. There would be a credit application document which is where
4 the case for making the loan has been summarized, and that is
5 the credit application document which then goes to credit
6 committee for approval or decline.

7 Q. Do you know if that -- well who would have prepared that
8 document?

9 A. I would have been one of the main authors of that document.

10 Q. Do you know if that document was produced to the
11 government?

12 A. I do not and I wouldn't see great relevance in it, but I do
13 not know if it has gone to the government.

14 Q. Well, relevance is not really your determination, correct?

15 A. Correct, correct. Yes.

16 Q. So you don't know if it was produced to the government and
17 it certainly wasn't produced to the defense, correct, by ICBC?

18 THE COURT: Well, do you know?

19 THE WITNESS: I don't know, but I'm assuming from your
20 question that it wasn't.

21 THE COURT: Well, don't assume.

22 THE WITNESS: Okay, sorry. My apologies.

23 THE COURT: The jury knows not to assume anything from
24 a question. So, you just answer as to what you know.

25 THE WITNESS: All right.

HBT5bre7

Madgett - cross

1 BY MR. WALLER:

2 Q. Was there an answer?

3 A. Could you repeat the question, please?

4 Q. Yes.

5 Do you know if that document that we were talking
6 about was ever produced?

7 THE COURT: He answered. He said I don't know.

8 THE WITNESS: I don't know.

9 THE COURT: And then he started assuming things and
10 that's when I jumped in.

11 BY MR. WALLER:

12 Q. So the answer is you don't know?

13 A. I don't know.

14 Q. Now, you first met Mr. Brennerman in 2011, correct?

15 A. Yes.

16 Q. Did you meet him in person for a meeting?

17 A. Yes.

18 Q. Jumeirah Carlton Tower Hotel, does that sound right?

19 A. On one occasion I met him in a hotel, yes.

20 Q. At that point when you met him I think you testified that
21 there were no firm deals that he was bringing to you at that
22 point? There were no deals that he was bringing to you, he was
23 just making an introduction?

24 A. When the initial interaction between us started, yes.

25 Q. And, do you recall when the first deal was that he brought

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Madgett - cross

1 to you as a potential finance?

2 A. As I recall it, since this has nothing to do with the
3 bridge loan, it was the OPU 2012 transaction in Nigeria.

4 Q. It is actual OPL, 2012; is that correct?

5 A. That's correct, yes.

6 Q. When do you say that was?

7 A. That would have been during the first part of 2011, I
8 think.

9 Q. Now, the document -- you were asked on direct about
10 asset-based financing, correct?

11 A. Yes.

12 Q. Am I correct that you described it as akin to home
13 mortgage?

14 A. A home mortgage is an example of asset financing. It is
15 not the only example but it is an example which is readily
16 understandable.

17 Q. But, another example of asset-based financing would be
18 where the revenue from an asset is what's expected to fund or
19 to pay back the loan, correct?

20 A. It is the primary source of repayment, yes.

21 Q. So that's another type of asset-based loan?

22 A. It's the form of asset-based lending, yes.

23 Q. And so is a home mortgage, correct?

24 A. Yes.

25 Q. But you gave the example of the home mortgage? That's the

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Madgett - cross

1 example you gave on direct?

2 A. Yes. I was looking to come up with an example of
3 asset-based lending which would be readily understandable where
4 non-financial people to communicate the concept.

5 Q. But asset-based finance, like a home mortgage, is very
6 different than the type of loan that Mr. Brennerman was seeking
7 from you, correct?

8 A. The type of loan which Mr. Brennerman was seeking from us I
9 would describe as a reserve-based loan.

10 Q. As a reserve-based loan which means that the loan is to be
11 repaid from the asset, correct?

12 A. The loan is primarily to be repaid from the asset.

13 Q. Can we please turn to Exhibit 1-4? Government Exhibit 1-4.
14 Can we turn to the fourth page? Maybe it is the next page?
15 That's the one.

16 Do you see the document?

17 A. Yes.

18 Q. This document is an e-mail from you to Jason Tsui copying a
19 bunch of people; is that correct?

20 A. Yes.

21 Q. And the date was October 18th, 2013?

22 A. Yes.

23 Q. Who is Jason Tsui?

24 A. Jason Tsui would be an employee of ICBC New York.

25 Q. And why were you sending this e-mail to him and these other

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Madgett - cross

1 people?

2 A. Can I please read the e-mail?

3 Q. Please do.

4 A. Sorry. Could you take this off the screen?

5 Q. Did we lose the document?

6 THE COURT: Yes.

7 Can you read it?

8 THE WITNESS: Yes, thank you.

9 Q. It goes on to the next page, page 6, so can you take a look
10 at that as well before I ask you some questions?

11 A. Thank you. May I have the second page, please? And the
12 rest?

13 THE COURT: The next page.

14 A. Yes.

15 Q. Those are the only pages I'm going to ask about. There is
16 nothing but the signature block on the next page.

17 Okay. So what was the purpose -- did you read the
18 last pages I asked you to read?

19 A. Yes. I didn't get the end of the e-mail but I'm just
20 reading that now.

21 Thank you. I have finished.

22 Q. So, why were you sending this e-mail?

23 A. We were sending this e-mail to communicate an opportunity
24 with ICBC New York to work with us potentially on the main
25 financing for the Cat Canyon loan, if it happened.

HBT5bre7

Madgett - cross

1 Q. By the way, no account was ever opened in New York,
2 correct?

3 A. That is correct, yes.

4 Q. Okay. Just want to make sure.

5 But, you were, in this e-mail, you were summarizing
6 the deal you were working on with Mr. Brennerman to your
7 colleagues in New York, correct?

8 A. At that stage that is correct, yes.

9 Q. And that stage was October 2013, that was pretty far along
10 in the process, correct?

11 A. Yes.

12 Q. In fact, by that point you had already issued a commitment
13 letter to Mr. Brennerman about the loan he was seeking?

14 A. We never issued a commitment letter. We had issued an
15 update that the term sheet -- the indicative term sheets had
16 been discussed at a preliminary credit committee.

17 Q. We will get to that in a minute.

18 A. Indeed.

19 Q. Trust me, we will talk about that some more.

20 THE COURT: No, no, no. Wait a minute.

21 So, was there a commitment letter?

22 THE WITNESS: No, there was no commitment letter.

23 THE COURT: No commitment letter. Okay.

24 BY MR. WALLER:

25 Q. Now, this e-mail starts off by saying that you are

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Madgett - cross

1 looking -- the first line in the first paragraph after the bold
2 part, do you see that? It starts: Our deputy GM has mentioned
3 to your colleagues that we are looking at an oil reserves and
4 sales secured transaction for U.S. Delaware incorporated
5 company Black Sands Pacific Delaware, LLC, that will repay,
6 through oil sales, to Sinochem, for onsale, to Conoco Phillips
7 refinery in California; correct?

8 A. Correct.

9 Q. So, am I correct that this loan that was being contemplated
10 was to be repaid through the oil sales to Sinochem?

11 A. This was the preliminary means of repayment and at the time
12 we were indicated by Black Sands that Sinochem would be the oil
13 offtaker.

14 Q. That's correct; and this is already in October of 2013, at
15 that point -- well, I will get back to that, too. A lot to
16 talk about.

17 Yes. So, right, Sinochem is going to be the offtaker
18 and can you go to the last paragraph on that page and you
19 further described that it is a revolving credit facility
20 secured on the field with a corporate guarantee but main value
21 in the ring-fenced asset cash flow.

22 A. Uh-huh.

23 Q. What is a ring-fenced asset cash flow?

24 A. Right. That's referring to the cash flow which would come
25 out of the Cat Canyon operation if Black Sands took it over,

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Madgett - cross

1 that as the oil is then produced, as the oil is sold, then the
2 cash flow which would be generated, would be the primary source
3 of repayment for the main loan.

4 Q. Is that the same thing as -- do you also refer to that as
5 an insulated finance? Not in the document, I mean just
6 generally; is an insulated finance the same thing as
7 ring-fenced asset cash flow?

8 A. Insulated finance is not a term used in Europe and I don't
9 recognize what it means.

10 Q. Okay. Fair enough.

11 Now, can you go to the next page? The second
12 paragraph that starts, of course, and including the bullet
13 points. So, you then go on to explain: Of course, the primary
14 means of repayment in the production and sales to Sinochem,
15 assuming the project developed smoothly. Selling the reserves
16 is only a worst case recovery step.

17 Right? Is that right?

18 A. Yes. That's correct.

19 Q. So, what you are saying here is that this loan is to be
20 repaid by the sale of the oil that the asset produces to
21 Sinochem, correct?

22 A. The primary means of repayment is the oil sales which the
23 asset produces, and at this stage Black Sands were advising us
24 that Sinochem would be the contractor for that, the oftaker;
25 yes.

HBT5bre7

Madgett - cross

1 Q. And selling the reserves means actually having to liquidate
2 the property?

3 A. This is correct, yes.

4 Q. And that is the worst case recovery step, right?

5 A. Yes.

6 Q. It doesn't say anything in that paragraph about also
7 Black Sands has got lots of money in its bank accounts and can
8 also repay us?

9 A. I think you will find somewhere else in this e-mail there
10 is a reference to the guarantee from the corporate so I am
11 moving straight to the reserve, the worst case is to sell the
12 asset.

13 Q. Except didn't you testify on direct that there was no
14 parent guarantee for this asset loan, that there was only for
15 the bridge loan because the bridge loan had no security?

16 A. That is where we got to when the bridge loan was signed.
17 At this stage in the dialogue with Black Sands we were still
18 discussing a guarantee for the main loan as well.

19 Q. But, in the end, you didn't have it guaranteed so this loan
20 was only about --

21 THE COURT: In the end you didn't have a loan, did
22 you?

23 THE WITNESS: We didn't have a loan. It is a moot
24 point. There was no verifying or negotiation closed on the
25 issue.

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Madgett - cross

1 BY MR. WALLER:

2 Q. But you testified on direct and just a second ago that at
3 some point even the parent guarantee was no longer contemplated
4 for the \$600 million loan, right?

5 MR. ROOS: Objection.

6 THE COURT: Is that correct?

7 THE WITNESS: As the final terms of the facility were
8 not finalized it is wrong to say that is absolutely the case.

9 At the time of the bridging loan -- at the time of the
10 bridging loan we were concentrating on the bridging loan and
11 required the parent loan -- the parent guarantee for the bridge
12 loan. As the follow-on loan negotiations never concluded in
13 their final steps, this issue was still outstanding but it
14 is -- I do concede it is conceivable that there may not have
15 been a parent loan at the finance stage.

16 Q. Thank you.

17 And, in fact, you go on to talk about the two
18 potential risks that are involved in the loan, one of them is
19 market oil price, right?

20 A. It is one of the risks.

21 Q. One of the two risks that you listed? The other being
22 development risk mitigation, right?

23 A. Yes. This is a short e-mail for potentially a complex
24 transaction. These are two of the main risks which I am
25 highlighting to give my colleagues who are not familiar with

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Madgett - cross

1 this case, a sense of what the transaction could be and what
2 the main risks would be. It is not in any sense a
3 comprehensive listing of all aspects.

4 Q. No, but the two risks that you mentioned were market oil
5 price, right? That's one?

6 THE COURT: You have to say it.

7 A. Yes.

8 Q. And market oil price is a risk because if you can't get
9 good value for the oil that's produced, then you may not get
10 repaid on your loan, right?

11 A. This is correct.

12 Q. Okay.

13 And what's the second risk there?

14 A. The second risk is a development risk. That is to say
15 there are many wells in the Cat Canyon concession which had
16 been closed-in many years ago and these had to be revealed,
17 refurbished, and turned on again.

18 Q. In this e-mail you didn't really mention anywhere the
19 strength, the financial soundness of the company itself, right?

20 A. In this e-mail, no.

21 Q. So that you didn't even think to mention that when you were
22 telling your colleagues about the loan?

23 A. This I was telling my colleagues in New York and, as the
24 beginning of the e-mail indicates, this is about asking them to
25 potentially open an account to support the development of this

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Madgett - cross

1 structure. I'm not necessarily, in this e-mail, making a pitch
2 to my colleagues in ICBC New York to join the loan.

3 So, this was giving an overall sense of the structure
4 of the transaction, not a completely comprehensive review of
5 all the different risks and affects.

6 Q. But you also were talking about the opening of an account,
7 right?

8 A. Uh-huh.

9 Q. And you didn't really talk at all about the client and the
10 client's business, you talked about the loan and the asset that
11 was secured by the loan, right?

12 A. Yes.

13 Q. Okay. Thank you.

14 So, when you told the jury on direct examination when
15 you gave your hypothetical -- excuse me, your example of an
16 asset-based loan and you used the home mortgage analogy or the
17 comparison, that wasn't really accurate, right? It wasn't a
18 good comparison?

19 A. I'm not sure that I do agree with you on that. It's a
20 comparison.

21 Q. It is a comparison?

22 A. Yes.

23 Q. That's for sure, but in a home mortgage situation, the
24 lender -- excuse me, the borrower is expected to pay back the
25 loan on a monthly basis out of that person's that borrows

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Madgett - cross

1 income and revenue, correct?

2 A. Yes.

3 Q. Not from the home, right?

4 A. Not unless they've got a tenant in it, yes.

5 Q. Right. And if there is an agreement in that mortgage loan
6 that the person, the borrower is not on the hook for the money,
7 but that the loan will be repaid from a rental income, right?

8 A. Sorry, can you say that again?

9 Q. It would have been accurate if the home mortgage was
10 contingent on the loan being repaid from rental income, right?

11 A. If you wish, yes.

12 Q. Okay. But that's not the example that you gave, correct?

13 A. Correct.

14 Q. Thank you.

15 Now, when you first met Mr. Brennerman it was in the
16 beginning of 2011, right?

17 A. Yes.

18 Q. And, at that point you didn't even have any deals that you
19 were discussing, it was just an introduction, right?

20 A. Yes.

21 Q. And at that time he emailed you -- let's pull up 1-1. This
22 is in June of 2011 so not long after you met Mr. Brennerman,
23 right?

24 A. Uh-huh.

25 THE COURT: You have to say yes or no.

HBT5bre7

Madgett - cross

1 THE WITNESS: I'm sorry. Yes.

2 Q. And he sent you what have been marked -- what have been
3 introduced -- there were two attachments and one of those was
4 1-1B that we have already discussed extensively today.

5 Can you pull up 1-1B?

6 Is that correct?

7 A. Yes, that's correct.

8 Q. So, am I correct that this document was submitted to you in
9 2011 before you were even working on any deals with
10 Mr. Brennerman?

11 A. Accept for this dialogue which you are pointing to, yes,
12 there is an early stage in the dialogue, yes.

13 Q. What dialogue?

14 A. With the company, with Mr. Brennerman.

15 Q. Right, but you were not, working on any specific deals yet,
16 you hadn't proposed any financing at that point?

17 A. The date of receipt of this -- I have to apologize. This
18 is four or five years ago.

19 Q. June 2011?

20 A. June 2011; I thought by 2011 there was some early
21 discussion on the Agbara Nigerian transaction but I will take
22 your word for it if it is slightly before.

23 THE COURT: Well, don't take any word for it.

24 THE WITNESS: Okay. I'm sorry.

25 Q. But this was given to you or sent to you in more of that

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Madgett - cross

1 getting to know you phase, right?

2 A. It is certainly part of the getting to know you phase, yes.

3 Q. Part of the introduction to the bank?

4 A. As we were moving swiftly on to proposals, it was a very
5 important part of understanding what Black Sands Pacific
6 apparently was.

7 Q. You made that clear, but at this point that you received it
8 it wasn't in contemplation of any kind of deal. It was just
9 given to you to get to know the company a little bit, right?

10 A. Part of that process, yes.

11 Q. Now, can we turn to the second page of this document?

12 Now, that whole page is a disclaimer, right?

13 A. Yes.

14 Q. And, you use disclaimers, right?

15 A. Yes.

16 Q. You even testified on your term sheet you had disclaimers,
17 right?

18 A. Yes.

19 Q. So you know what a disclaimer is?

20 A. Yes.

21 Q. Okay.

22 And it says in the disclaimer on the very real first
23 substantive page or the first page of the document other than
24 the cover that: The statements contained herein are based upon
25 information which we believe to be reliable. We cannot

HBT5bre7

Madgett - cross

1 guarantee and make no representation that they are complete and
2 accurate.

3 Right?

4 A. Correct.

5 Q. And: It contains forward-looking statements which relate
6 to potential future events or circumstances and involve risks
7 and uncertainties and other factors beyond our control. These
8 statements are only predictions and actual results may differ
9 materially. There could be no guarantee of future results.

10 Right?

11 A. Yes.

12 Q. So, this is not a very firm statement by Black Sands; would
13 you agree with that?

14 A. I would agree this is an industry standard disclaimer which
15 you will find on all clients providing such kinds of
16 information.

17 Q. Right. But later in the process, and again we are going to
18 talk about this in a bit, but you do rely on this document
19 quite a bit in the decisions you made, right?

20 A. Because we understood these documents to be provided in
21 good faith to the best of the ability of the client and the
22 disclaimers are standard legalese on such presentations whether
23 they come from Black Sands or Shell.

24 Q. But more than just disclaiming and say that, well, they may
25 not be completely accurate, it actually says that these are

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Madgett - cross

1 predictions of future events, right? That's what a
2 forward-looking statement is?

3 A. The statement here about predictions to the reader would
4 refer to events have not yet happened. Where there are
5 presentations and slides which state we have a beneficial
6 ownership in a particular field, I, and any of my colleagues
7 and any other bank reading it, would interpret those as
8 statements of the current world, not the future world.

9 Q. Okay. Let's look at the next page of this document.

10 Now, I believe that you -- it was a long answer, I am
11 going to have you maybe say it again because I don't really
12 remember, but the second paragraph on this page says: Our
13 operations include the trading and marketing of petroleum and
14 petroleum products.

15 You said that trading in that context means what?

16 A. This is wholesale trading. Petroleum is referring to crude
17 oil, petroleum products is referring to refined products.

18 Q. And what is the difference again?

19 A. The difference, crude oil is what comes out of the ground.
20 When you put crude oil through a refinery you create refined
21 products -- gasoline, jet fuel, etc.

22 Q. Now, did Mr. Brennerman tell you -- but what did you
23 believe that trading meant in this context? What does that
24 mean? What did you think that meant or you say that meant?

25 A. What it would mean for any company stating trading which is

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1 an E&P company and which is in the wholesale space which is
2 that they are on-selling and buying and selling the crude oil
3 which they produce and this is stating they're also involved in
4 buying and selling refined product as well.

5 Q. Well, it doesn't say buying and selling, right? It says
6 trading.

7 A. Well, I can only give you the industry interpretation of
8 what trading is taken to understood.

9 Q. There are other kinds of trading, right?

10 A. Please elaborate for me.

11 Q. People trade commodities, right?

12 A. Yes.

13 Q. And they do that from their laptop, right?

14 A. Yes.

15 Q. You buy and sell shares, stocks, but that's not what you
16 said on direct. Didn't you say that this is involved --
17 producing massive amounts of oil and shipping it to some other
18 company and take -- what did you say that it actually meant
19 when you said trading earlier?

20 A. What I said earlier was that trading of petroleum and
21 petroleum products for a company which is physically producing
22 oil is interpreted by ourselves as a bank and any other bank, I
23 know who would read this, that the company is physically
24 trading oil. And if you are physically trading oil, crude oil
25 produced through fields, or you are physically trading refined

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Madgett - cross

1 oil, then this is shipped in significant quantities. These are
2 industry standard quantities, they are pipeline lots or vessels
3 on the water. So, on that basis, if you are physically trading
4 crude oil or petroleum refined products, the range of values
5 per shipment would be from several million dollars all the way
6 up to a hundred million dollars.

7 Q. But it also could mean trading commodities from your
8 laptop?

9 A. It could, but the context here does not suggest that. I
10 can elaborate, if you wish.

11 Q. Did you ever ask Mr. Brennerman what he meant by it?

12 A. Yes, I did.

13 Q. Did he tell you that he was making all of those shipments
14 of oil all around?

15 A. He was stating that his company has production and they are
16 developing physical trading of crude and petroleum products.

17 Q. Well, that is -- developing is different, right, than
18 trading? He is developing, he is trying to obtain assets and
19 develop oil, that's different than what you just said before
20 about trading, right?

21 MR. ROOS: Objection.

22 THE COURT: Overruled. He can answer.

23 THE WITNESS: When I said developing I mean that in
24 the context of his financial performance numbers shown to us
25 showed that the company was generating up to a hundred million

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Madgett - cross

1 dollars a year of revenues and this must be from physically
2 selling the oil. So, that is actually trading the oil, not
3 entirely future tense.

4 BY MR. WALLER:

5 Q. What does upstream mean?

6 A. Upstream is the term which is used in the industry to refer
7 to the part of the oil industry which is the exploration and
8 production of oil.

9 Q. What does downstream mean?

10 A. Downstream refers to the distribution of refined products.
11 So for example, your petrol station around the corner would be
12 an example of downstream.

13 And then there is midstream. Midstream is where you
14 have refineries which turn the crude oil into refined products
15 and you also have the wholesale trading of oil products and
16 crude oil.

17 Q. Downstream is the last part of the process, right?

18 A. That's correct. Value chain, if you like.

19 Q. Would you agree that Mr. Brennerman's company had always
20 represented to you and your understanding was that it was an
21 upstream company?

22 A. It was principally an upstream company. This opening
23 sentence which is right at the front, corporate profile, second
24 profile, second paragraph, it could have said our operations
25 are exploration and production that is upstream. Instead it

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Madgett - cross

1 states: Our operations include trading and marketing in
2 petroleum and petroleum product in addition to our core, main
3 business of exploration production which is the upstream.

4 Q. It also says with future plans to provide oil field
5 services and future proposal, and the next paragraph to provide
6 energy services and develop downstream operations.

7 A. That's correct. So, this paragraph we interpreted as being
8 that core business is upstream, exploration production. In the
9 First sentence they are also mentioning trading midstream of
10 physical crude oil and petroleum products, and then in the
11 future they will be developing the downstream operations as
12 well.

13 Q. And you just said that that was your interpretation, right?

14 A. Yes.

15 Q. But you wouldn't -- is that right?

16 A. Yes. Correct.

17 Q. But you wouldn't have to interpret it if Mr. Brennerman
18 just told you this is what we are doing?

19 A. Correct, and --

20 Q. So this is your interpretation of the words on this page,
21 correct?

22 A. You are asking me about my interpretation of the words on
23 this page. I have explained to you --

24 MR. ROOS: Your Honor?

25 THE COURT: Let him finish.

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Madgett - cross

1 THE WITNESS: Can I finish?

2 THE COURT: Yes.

3 THE WITNESS: I have explained to you we have met
4 Mr. Brennerman many times and those discussions also included
5 that his company was marketing some of the crude oil that they
6 were producing. But, obviously, as you correctly say, this is
7 expected to be a growing activity in the future.

8 BY MR. WALLER:

9 Q. Right.

10 Can we turn to page -- let me just ask you another
11 question. The first deal that Mr. Brennerman brought to you
12 for finance was OPL 2012, right?

13 A. As I recall, yes.

14 Q. And what was he seeking to do? To acquire an asset?

15 A. He was seeking, as I recall, this is going back a number of
16 years, to work with a joint venture partner in Nigeria to
17 activate a new license field which laid adjacent to an existing
18 license block where there is already substantial production in
19 a field called Agbara, and Agbara field is a existing reserve
20 with existing production which is operated -- remember,
21 managed -- by Eni Agip. And the proposal was that this new
22 block acreage which was close to this Agbara field, would
23 actually capture some of the reserve underground of the Agbara
24 field.

25 Q. New to who?

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Madgett - cross

1 A. New? Sorry?

2 Q. You said it was a new field or?

3 A. A new license block.

4 So, that license block would then be adjacent to --
5 the license block would have the Agbara field and capture some
6 of the Agbara field and then there would be a consolidating
7 effect. So, as I recall, I think about 30 percent of the
8 production would then go to the new field. It is what is
9 called a unitization, in license terms.

10 Q. Did Black Sands already own an interest in OPL 2012?

11 A. As explained to us, he did not. But, his joint venture
12 partner did, Stroke, had opportunity to, and therefore to
13 activate the new license. The dialogue was entered with us to
14 provide financing to both pay for the license and also then
15 develop the oil reserves and create production from that new
16 oil field.

17 Q. Who was the JV partner?

18 A. I would have to look into the partner. The joint venture
19 partner was a Nigerian.

20 Q. You just said the name. Did I mishear you?

21 A. I think you might have done.

22 What I said was there was a Nigerian joint venture
23 partner and the field adjacent is operated by Agip Eni, so it
24 wasn't the joint venture partner of Black Sands. But I think
25 you will find the details in one of the teasers which mentions

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Madgett - cross

1 that relevant field and the partner.

2 Q. So, I have been doing oil and gas a lot less time than you
3 have so it is a little confusing to me but --

4 MR. ROOS: Objection.

5 THE COURT: Just ask questions.

6 MR. WALLER: Sorry.

7 Q. Was it your understanding that Mr. Brennerman or
8 Black Sands already had an interest in OPL 2012 or that he was
9 trying to acquire an interest?

10 A. Our understanding, as I recall, and I do apologize here,
11 this is a long time ago and not that I focused on, was that he
12 was looking to acquire an interest.

13 Q. So, can we turn then to page 24 of this document? And
14 actually, before we go there, let's go to page 10 of the
15 document.

16 Am I correct that you have testified that this is the
17 part of the document that you interpreted or you believed
18 listed Mr. Brennerman's or Black Sands' assets?

19 A. This included, apparently, some of Black Sands' assets,
20 yes.

21 Q. Not all, but some? Selected?

22 A. Yes.

23 Q. What he is listing here are, you believe, are assets,
24 right?

25 A. Indeed.

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Madgett - cross

1 Q. Now, if we go to page 24 -- I can't find it.

2 A. Page 24.

3 Q. I have it.

4 One of the assets he lists is oil block OPL 2012,
5 right?

6 A. Uh-huh.

7 Q. And it talks about him becoming a JV partner -- well, it
8 says JV partner with Sigmund Oil Fields Limited, right?

9 A. Yes. This is the name of the Nigerian company.

10 Q. So you testified that these, your understanding were that
11 these were assets that he already owned and had an interest in,
12 correct?

13 A. No. I testified that some of these were assets which, from
14 our conversation with him, we understood that he asserted he
15 had an interest in. It would have been case by case. As I
16 mentioned in the case of OPL 2012, we had a detailed discussion
17 in that case and we understood that the Nigerian partners have
18 the interest and Black Sands was looking to buy into that and
19 to improve the license prospect, and that was the financing
20 which we discussed with him.

21 Q. Mr. Madgett, you testified extensively on direct
22 examination that you relied extensively on this document
23 because of what was listed in here, right?

24 A. It is one of the documents, yes.

25 Q. And one of the things you relied on were the assets that

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Madgett - cross

1 Black Sands listed in the document, right?

2 A. Correct.

3 Q. Because those assets, with your calculations, told you that
4 the company was worth \$11 billion or something like that,
5 right?

6 A. That's numbers which they have presented, yes.

7 Q. And you, your impression, was that these assets that are
8 listed here are Black Sands assets, current assets?

9 A. I stated that some of these assets are current assets.

10 Q. Well, do you know which ones were current and which ones
11 weren't?

12 A. Well, from the discussions, the assets which are listed in
13 this document at the beginning in more detail are the ones
14 which Black Sands do have and then the Nigerian asset you just
15 referenced, you will see that the way this document is laid out
16 at the end, it just refers to other assets.

17 Q. Right.

18 A. So, the beginning section --

19 Q. Traditional assets --

20 THE COURT: Let him finish.

21 A. So, the way this document is set out is that you have
22 assets operations and you have a lot of detail on these ones
23 and then, on page 24, as it correctly states, other assets.
24 And this is a much shorter summary, therefore it came as no
25 surprise to us that other assets were not such well developed

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Madgett - cross

1 opportunities and we knew about OPL 2012 from the in-depth
2 discussions we had with him.

3 Q. Right, but it doesn't say on the document other assets that
4 we would like to acquire.

5 MR. ROOS: Objection.

6 Q. Does it?

7 THE COURT: He can answer.

8 Go ahead.

9 A. It does not, but equally why does it differentiate assets
10 and give great detail in the first section and then other
11 assets summarized very briefly, why have they made the effort
12 to differentiate between assets and other assets? I don't
13 know. It is speculation.

14 Q. Right, but this is a document that you relied on in
15 connection with a \$600 million loan. Shouldn't you know the
16 answer to that?

17 MR. ROOS: Objection.

18 THE WITNESS: It is one document, yes.

19 THE COURT: There was no loan for this transaction.

20 THE WITNESS: No.

21 THE COURT: All right. Go ahead.

22 Q. But you relied on it in connection with -- there was a lot
23 of consideration of whether or not the bank was going to issue
24 a \$600 million loan, correct?

25 A. There was consideration, yes.

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Madgett - cross

1 THE COURT: Wait.

2 Finish the answer.

3 THE WITNESS: Yes, there was consideration, correct.

4 Q. Quite a bit? Okay, forget that. Withdrawn.

5 But this is one of the documents that you relied on in
6 making that determination, right?

7 A. It was a document as part of the determination process but
8 no final decision was made.

9 Q. Right.

10 And you relied on a document that lists assets and you
11 are not sure which ones are current assets and which ones are
12 speculative, I-hope-I-one-day-own-that asset?

13 A. And all that would have been made crystal clear before the
14 main loan facility would ever have been made because an
15 obligation on Black Sands would have been to provide audited
16 accounts which would have provided that level of detail. So,
17 you are talking about a process early on as we are accruing
18 information and equating it to the total information we have
19 available when we make a loan decision. First, we never made
20 the loan decision. Secondly, by the time we made the loan
21 decision we would have had amassed a great deal of additional
22 information including audited accounts before a final decision
23 on the loan would have been made.

24 Q. You met with the government before, correct?

25 A. The --

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Madgett - cross

1 Q. The prosecutors in this case?

2 A. Yes.

3 Q. And one of those meetings was in May of 2017?

4 A. It was a telephone call, not a meeting.

5 Q. Was your lawyer there?

6 A. My lawyer did attend, yes.

7 Q. But attend by phone?

8 A. By phone and simply listened.

9 Q. Now, did you tell the lawyers that there was a disconnect
10 between the reports and what assets Black Sands actually owned
11 versus was hoping to own?

12 A. I was never asked that question. This telephone call was
13 the U.S. Attorney calling and asking us about certain questions
14 and we gave precise, direct responses to the questions that
15 they asked. It was not a free form conversation.

16 Q. But, in response to a question from the government or from
17 whoever was asking the questions, do you recall telling them,
18 whoever was asking the question, that there was a disconnect
19 between the reports and what assets Black Sands actually owned
20 versus was hoping to own?

21 Do you recall that?

22 A. The point you are making, no, I don't think it was
23 discussed in that way.

24 Q. You don't?

25 A. No.

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Madgett - cross

1 Q. If I showed you a document would you see if it refreshes
2 your recollection?

3 A. By all means.

4 MR. ROOS: Objection.

5 THE COURT: Well, is there a document -- does your
6 recollection need refreshing?

7 THE WITNESS: Could you ask the question again,
8 please, precisely?

9 BY MR. WALLER:

10 Q. Yes. If I showed you notes from the date of the interview,
11 might that refresh your recollection as to whether or not you
12 said that?

13 MR. ROOS: Objection.

14 THE COURT: I don't think he has expressed any lack of
15 recollection, so sustained. Next question.

16 BY MR. WALLER:

17 Q. You testified on direct that you were under the impression
18 that Black Sands had large amounts of revenue, correct?

19 A. Those are the revenue figures which are stated which
20 Black Sands provided as their management account figures.

21 Q. But, isn't it true that your impression was that his
22 company was a comparatively new upstream independent?

23 A. Yes; as I said, apparently three years old at this time in
24 2011.

25 Q. And you considered it a startup?

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Madgett - cross

1 A. Not with the listing of assets which it represented to us.

2 Q. So, your understanding was not that it was a startup in
3 2011?

4 A. The company at an early stage of its development, but
5 Mr. Brennerman made assertions that there were interests in a
6 number of fields, particularly in the United States.

7 Q. Okay.

8 A. And they were not generating significant revenue because
9 they were still mainly oil in the ground rather than developed
10 reserves.

11 Q. Okay.

12 So, was your impression that they had oil in the
13 ground and not a lot of revenue or that they had a lot of
14 revenue?

15 A. They had a limited amount of revenue in the region of the
16 hundred million dollars or so which was indicated in their
17 management accounts.

18 Q. That's limited income?

19 A. I would say it's limited given the size of the assets he
20 was representing as having. To give you a sense of that, in
21 his own teaser documents which have been presented today, he
22 talked about quickly moving to a stage where production would
23 be closer to 50,000 barrels a day rather than 10,000/12,000
24 barrels a day.

25 Q. Did you use the word, in an e-mail to colleagues, that the

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Madgett - cross

1 company was nascent?

2 A. I might have done.

3 Q. Can we pull up Exhibit BA? Defendant's Exhibit BA?

4 MR. ROOS: Objection.

5 THE COURT: He said he might have, so he can show it
6 to him. It is not in evidence.

7 It is not on the jury's screen, right?

8 MR. WALLER: Yes, not on the jury's screen.

9 Q. Second page, please? Can you look at the e-mail in the
10 middle of that page and tell me if you recognize it?

11 A. Can you blow it up, please? Thank you.

12 Yes. Can I read the rest of the e-mail, please?

13 Q. And who did you send that document to?

14 A. This is from myself to Mr. Kelly, copying in --

15 THE COURT: Speak a little louder?

16 A. Sorry.

17 This is from myself to Mr. Kelly, copying in
18 Mr. Brennerman, and also one of the members of my front office
19 team and the head of syndications at ICBC London.

20 You are going to have to blow this up, sorry. The
21 print is very small.

22 Q. I am having a hard time, too.

23 A. The main text?

24 Q. Yes. Just bear with me. I'm sorry.

25 Ah, okay. So, you recognize this as an e-mail that

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Madgett - cross

1 you sent?

2 A. Yes.

3 MR. WALLER: I would move it into evidence.

4 MR. ROOS: Objection. Hearsay.

5 THE COURT: I'm not sure what it is being offered for.

6 MR. WALLER: It is offered to show his description of
7 the company in the e-mail.

8 THE COURT: Well, if you are just offering it to
9 refresh him whether he said "nascent" or not.

10 THE WITNESS: One of several summary points about the
11 company I mentioned --

12 MR. ROOS: Objection.

13 THE COURT: Well, does this refresh your recollection
14 as to whether you ever used the word "nascent" in describing
15 the company?

16 THE WITNESS: Yes.

17 BY MR. WALLER:

18 Q. What does nascent mean?

19 A. Nascent means early stage.

20 Q. Okay.

21 Now, at some point Mr. Brennerman discussed with you a
22 deal called Cat Canyon, right?

23 A. This is correct.

24 Q. And what he was asking for was \$600 million to finance and
25 acquisition, 50 percent acquisition in the Cat Canyon oil

1 field, right?

2 A. Correct. Yes.

3 Q. And, what steps do you take, generally, when somebody wants
4 to take a large loan from your bank? What diligence do you do?

5 A. Well, the first diligence with the KYC; that's not done by
6 my own department, this is a separate department.

7 Q. Who did the KYC in this case?

8 A. Well, our KYC department. They were responsible for what
9 questions were asked.

10 THE COURT: KYC is know your customer?

11 THE WITNESS: Know your customer, yes. So, it is a
12 control function in the bank and it is their responsibility to
13 vet new clients and decide whether or not they're acceptable
14 clients.

15 (Continued on next page)

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HBTKBRE8

Madgett - Cross

1 BY MR. WALLER:

2 Q. Do you know what documents your colleagues requested of
3 Mr. Brennerman?

4 A. I think as part of the evidence this morning, we listed the
5 typical documents, which were KYC process requires.

6 Q. What are those?

7 A. These would include typically IDs of lead individuals
8 within the company and, also, searches of the company's
9 registration, formation documents, and also a general search if
10 there are adverse stories about the individual in question.
11 Obviously, that process is as good as the information you put
12 into that process.

13 Q. Have you reviewed that file, those documents?

14 A. It's not my direct responsibility to review those
15 documents, but I do remember copies, for example, of
16 Mr. Brennerman's U.S. ID coming through the department. But,
17 as I say, it's not my responsibility, so I'm not familiar with
18 what that file looked like.

19 Q. What kind of ID did he provide?

20 A. You're asking me about something three, four years ago,
21 which I'm not responsible for, but I remember seeing a
22 photographic ID of Mr. Brennerman, but I can't tell you if it
23 was either a U.S. passport, or some other driving document or
24 something I simply don't recall.

25 Q. Did he have to answer a questionnaire?

HBTKBRE8

Madgett - Cross

1 A. He may well have had to do that. As I say, you are asking
2 me about a responsibility I'm not responsible for.

3 Q. Do you know if he listed, in writing anywhere, the --

4 MR. LANDSMAN-ROOS: Objection.

5 THE COURT: Let me hear the question. What's the
6 question?

7 MR. WALLER: If he listed in writing anywhere the
8 number of employees his company had.

9 THE COURT: You can answer.

10 THE WITNESS: I do not know, but from meetings that
11 both I had and also my deputy managing director had, we do have
12 concurrent record notes stating that he has told us his
13 employee numbers at different times between 80 and 130 staff.

14 BY MR. WALLER:

15 Q. Do you know if those were consultants or employees?

16 A. His statement led us to understand that these were
17 employees.

18 Q. You just said that you had notes from the meetings with
19 your colleagues, right?

20 A. Uh-huh.

21 THE COURT: You have to say yes or no.

22 THE WITNESS: Yes. Sorry.

23 Q. Did you review those notes before you came here to testify?

24 A. No. I only reviewed the documents that I understood that
25 the direct testimony may result in which had been shared, but

HBTKBRE8

Madgett - Cross

1 those are documents shared with you.

2 Q. The ones that the government showed you?

3 A. The documents which I presume have been released to the
4 Court. I'm sorry, I'm not familiar with the legal process.

5 Q. Where are your notes now?

6 A. My notes?

7 Q. The notes from your meetings about Mr. Brennerman's
8 application, his KYC application.

9 A. They would be in the file in the bank in England.

10 Q. Do you know if those documents, with those representations,
11 were given to the government here?

12 A. I do not think that was the case, no.

13 Q. No? But other documents were, correct?

14 A. I do not know, myself, what documents were given to the
15 government. I work for a bank. Documents which we've supplied
16 to our lawyers were then, in part, shared with the government.
17 I'm not party to that process, I'm sorry.

18 Q. Did you provide those documents to your lawyer?

19 THE COURT: Which documents are you referring to?

20 Q. The notes, your notes.

21 A. The record notes would be part of the total documents which
22 would have gone to our lawyers. That's all I can say.

23 Q. But you didn't see them when you were meeting with the
24 government?

25 A. No, I did not.

HBTKBRE8

Madgett - Cross

1 THE COURT: Let him finish the question.

2 THE WITNESS: Sorry. Sorry.

3 BY MR. WALLER:

4 Q. Now, what documents do you prepare in the process of
5 someone looking for a loan?

6 A. We, first of all, have to make an assessment of whether or
7 not this company is creditworthy, and this is partly to do with
8 their financials. And if it's the company which is also
9 borrowing on a secured basis, we also look at the quality of
10 the security which is available.

11 Q. I believe on direct testimony, you testified that KYC, know
12 your customer or know your client, was part of your function.
13 Is that not true?

14 A. No. KYC is part of the front office function, but I
15 represent a group which is financing natural resources, as I
16 said at the beginning. So KYC is a separate function, it's not
17 my responsibility.

18 Q. You don't take part in that process at all?

19 A. No. I have a role in that process because information
20 typically, first of all, comes in from the relationship
21 manager. So, we are one of the points at which information
22 flows into the KYC process, but we do not determine the KYC
23 process. So the KYC process policy was required, follow-up
24 questions and the final decision, if the KYC is acceptable, is
25 absolutely nothing to do with front office staff like me.

HBTKBRE8

Madgett - Cross

1 Q. What information do you provide to KYC officers? Do you
2 call them officers?

3 A. If you like, yes.

4 Q. Okay.

5 A. We will provide information which we understand to be the
6 case from the company, any market information we're aware of,
7 and the context of the dialogue which we're having with the
8 company, and then identify who in the company should be
9 identified for the KYC department to contact to then ask their
10 requirements of the company.

11 Q. How do you convey that information to your -- the KYC
12 officers, in writing or verbally?

13 A. It's a combination of both, but the KYC process is a very
14 official process, so any information which we have is put onto
15 a request to do a KYC on a new customer. That is then
16 submitted into the KYC department, and it is processed.

17 Q. Do you know where your -- whatever you wrote that was given
18 to the KYC, do you know where those papers are?

19 A. They would be in the files in London.

20 Q. Is it the same thing, that you don't know if you produced
21 them to the government here in this case?

22 A. I would not think that that would have been relevant,
23 because the papers which we produced to our lawyers were around
24 the dispute on the bridge loan. So that's what we were
25 engaging our lawyers for, in terms of vis-a-vis exchanges we've

HBTKBRE8

Madgett - Cross

1 had around the commercial term of the bridge loan. So, I
2 cannot recall that any KYC documents were handed across to our
3 local lawyers.

4 Q. Were you also aware, though, that Mr. Brennerman was being
5 charged with crimes?

6 A. I'm aware of that, but I haven't been following
7 Mr. Brennerman since 2014, when I was taken off the case. As I
8 said, I handle a very large group, many clients. So, once that
9 loan was taken away from me, this was not a major concern for
10 me anymore.

11 Q. Does the client have to clear KYC? Is that how it works?
12 Do they have to clear it before you can start working on a
13 loan?

14 A. Before a loan can be signed, the KYC must be done, yes.

15 Q. But from your end, what you do for the bank? What steps
16 did you take to try to finalize the loan or to investigate
17 whether or not the loan should be given?

18 A. Our primary job is to structure the transaction. So,
19 therefore, in the case of a reserve-based lending, in this case
20 for an oil transaction, we will be looking at what financials
21 are available for the company. That, as I said at the
22 beginning, the primary repayment would be coming from the oil
23 production, from the development of the asset, and, therefore,
24 we are structuring a loan which is secured on the reserves and
25 also capture the revenues from the oil sale.

HBTKBRE8

Madgett - Cross

1 Q. Since the primary source of repayment, other than
2 worst-case scenario when you actually take the asset --

3 A. Or called the guarantee, but, yes.

4 Q. Except that there was no corporate guarantee going to be
5 contemplated for this loan, right?

6 A. Except that there was no loan, so it wasn't determined,
7 but, yes.

8 Q. Yes.

9 So, the asset -- what investigation do you do into the
10 asset itself?

11 A. In the case of an oil license, then the licensed area will
12 typically have a report from an independent consultant which
13 has evaluated that asset, that reserve in the ground. So, for
14 example, Netherland Sewell Associates would be an example of a
15 worldwide petroleum consultancy company who specializes in
16 assessing the oil reserves in a license area, so that you can
17 buy that report, and that you can understand what the audited
18 reserves in that field are, what the challenges are to extract
19 the oil. And then it's a case of marrying the document with
20 the owners of the field, how competent they are to operate it,
21 and realize that fields to then make an assessment on the
22 structured loan.

23 Q. Is that a report that exists -- it just exists with an oil
24 field, you have to get it, or you actually retain that company
25 or another company like that to --

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Madgett - Cross

1 A. It's case by case. So, sometimes these reports are already
2 written for the existing owners of the field, sometimes you
3 have to commission it.

4 Q. What was done in this case?

5 A. This case being OPLU or Cat Canyon?

6 Q. I'm talking about Cat Canyon.

7 A. In Cat Canyon case, as I recall, the report had been done
8 for the existing owner at an earlier stage. And for the
9 preliminary assessment, we were happy with using that. The
10 later requirements, if the loan had gone ahead, would have been
11 an update of that report along with the production feasibility
12 studies and other consultancy signs of some things like
13 environmental compliance, et cetera. So, all these things are
14 part of the due diligence before a structured loan can be
15 signed.

16 Q. Isn't it true that in this case, Mr. Brennerman provided
17 you with tens of thousands of documents concerning the Cat
18 Canyon asset?

19 A. I don't recognize tens of thousands at all.

20 Q. Do you know whether he provided you with documentation that
21 was given to him by ERG?

22 A. He provided some of the documentation which was provided to
23 him by ERG, yes.

24 Q. And it was tens of thousands of pages. Do you recall that?

25 A. There were a substantial amount. We did not progress to

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Madgett - Cross

1 actually formally proposing the loan to credit committee and,
2 therefore, go into the final due diligence, so that part of the
3 work was not completed.

4 Q. The loan was never proposed to credit committee?

5 A. The final credit committee.

6 Q. Okay. But it had been sent to credit committee?

7 A. It had been discussed in credit committee, yes.

8 Q. Are you saying that you do all of the work for the loan,
9 and then you don't look at the documents about the asset, the
10 subject asset, until the very end?

11 A. The final credit approval process would be when the detail
12 assessment of the asset would be done. As we had not got to
13 the final credit approval process, that was not done in this
14 case.

15 Q. So, up until that point, you're just sort of taking his
16 word for --

17 A. No. We had --

18 Q. -- what the asset is about?

19 A. We had the audit reports on the Cat Canyon, which provides
20 an outline of what the reserves are in the field. That was
21 fine for the stage of the negotiations we were at. To go
22 further, to the final stage, would be when the in-depth due
23 diligence reports would be done.

24 Q. Did you have any doubt that this asset was a real asset?

25 A. I didn't have a doubt that Cat Canyon was a real asset, no.

HBTKBRE8

Madgett - Cross

1 Cat Canyon is a real asset.

2 Q. And a potentially lucrative asset, correct?

3 A. Potentially. Lucrative is an interesting word, but it's an
4 asset which appeared, at the kind of oil prices which existed
5 at that time, could be developed in a profitable way by a
6 competent operator.

7 Q. At some point, did you describe it to a colleague as
8 potentially a cash cow?

9 A. This is a referral to the way that the cash flows would
10 result. So that if you have developed a number of the oil
11 fields, then the cash generation which comes from those fields
12 will become significant. So, yes.

13 Q. And all indications that you had were that it would be a
14 very nice cash flow and would be able to repay the loan that
15 you were going to making?

16 A. Provided that the development risk was covered, and that
17 the oil hedge happened, yes, there was a potential for that to
18 be the case.

19 Q. Can you please -- and I apologize if you already did this.
20 Can you please explain to the jury what a data room is?

21 A. A data room, a data room -- sorry -- is one of these
22 Internet sites where information can be opened and left
23 available for access to relevant parties.

24 Q. Is that something that's typically done when a loan is
25 being sought from the bank?

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Madgett - Cross

1 A. Only a loan where there's a significant amount of
2 information which needs to be reviewed by any lenders. So, a
3 normal loan, probably not, but a loan which is asset-based and
4 based upon a complicated transaction where there are many
5 reports which would be required with due diligence, such as the
6 technical availability of the oil, the engineering reports, the
7 environmental reports, it's convenient to put that information
8 in a data room.

9 Q. What you just described, the latter situation that you just
10 described, that's what this was, right?

11 A. This is potentially what this was, yes.

12 Q. And was there a data room -- data room -- set up for this
13 loan?

14 A. There was the beginnings of that process, yes.

15 Q. What does that mean, "the beginnings of that process"?

16 A. Well, the final data which we need to go into that room
17 would be the finalized technical reports on the fields and
18 updated environmental reports. We would then also need
19 confirmations on the correct regulatory authorities signing off
20 on the transfer of the license and also the environmental due
21 diligence studies. So, data room is made available to other
22 creditors and other potential banks to join the transaction
23 when that data room is populated with up-to-date and accurate
24 information.

25 Q. At some point, was this data room populated with up-to-date

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Madgett - Cross

1 information?

2 A. No, not all the information was there. And as I mentioned
3 in my earlier testimony, for example, the technical report for
4 the development of the fields did not come to us until the day
5 before the due repayment of the bridging loan in March of 2014.

6 Q. What about the customer's financial documents, would that
7 go into the data room as well?

8 A. These would typically go into the data room.

9 Q. Say that again?

10 A. Yes, they would typically go into the data room as well.

11 Q. Did Mr. Brennerman put financial documents into the data
12 room?

13 A. I would have to check. I'm afraid at this stage, it's some
14 while back, and I'm sorry, I don't have recollection of that
15 immediately.

16 But those documents, as I said, would have needed to
17 be in the data room if we had got to the stage of a firm offer
18 going out and the requirement of all these updated informations
19 being provided. And as we stated in the direct testimony and
20 in the documents, we would require audited accounts of
21 Blacksands before we could have contemplated the main loan
22 facilities, and those audited accounts, to my knowledge, have
23 never been produced.

24 Q. Okay. Do you know how many pages of documents were in this
25 data room?

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Madgett - Cross

1 A. I'm sure it runs into many hundreds, if not thousands, but,
2 please.

3 Q. Not tens of thousands?

4 A. I'll take your word.

5 THE COURT: Don't do that.

6 He's not testifying.

7 THE WITNESS: Okay.

8 THE COURT: Do you know how many documents --

9 THE WITNESS: No, I don't know how many documents.

10 And to reiterate, the reason for that is that this never got to
11 the stage of a final loan application, and, also, the
12 populating of the data room with updated final reports,
13 including audit accounts.

14 BY MR. WALLER:

15 Q. One of the questions about the documents that were
16 generated in connection with this loan, you testified that some
17 of the documents were provided to the prosecutor, but some
18 others were not, correct?

19 MR. LANDSMAN-ROOS: Objection.

20 THE WITNESS: I don't know.

21 THE COURT: Okay. You don't know what was produced.

22 BY MR. WALLER:

23 Q. Before you came to testify, or at any point, did the
24 prosecutors ask you to produce documents?

25 A. Me personally? No.

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Madgett - Cross

1 Q. They never asked you for any documents?

2 A. They never asked me for any documents.

3 Wait, wait, my apologies, sorry, I'm recollecting
4 here. When we had the telephone conversation, there were, I
5 don't know -- I'm sorry, I'm trying to have to remember here
6 when we had the telephone conversation in May, was there
7 anything which we provided? Maybe some of the teasers and so
8 forth were discussed during the telephone call, which we had in
9 May, and some of these may have been forwarded after that
10 telephone conversation. But, as I say, the interface between
11 our lawyers and the government attorney is not really part of
12 what I'm familiar with.

13 Q. Do you know if they ever asked you for your notes, the
14 notes we were discussing before?

15 MR. LANDSMAN-ROOS: Objection.

16 THE COURT: Overruled.

17 THE WITNESS: No, they did not ask me for my notes,
18 and I did not offer to give them either.

19 BY MR. WALLER:

20 Q. Going back to the data room, the data room is like a
21 Dropbox account? Do you know what that is?

22 A. Sorry, it's not an English phrase.

23 Q. It's like a cloud-based --

24 A. Yes.

25 Q. That's what it is?

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Madgett - Cross

1 A. Okay. A cloud-based database, yeah.

2 Q. You're saying that's what it is? I just don't know if
3 you're asking me a question to clarify or that's what you're
4 asking.

5 A. You asked me what a -- the phrase was again? A?

6 Q. I said Dropbox, which is a company that has cloud-based
7 storage.

8 MR. LANDSMAN-ROOS: Objection.

9 THE COURT: It's not worth getting --

10 THE WITNESS: I'm very happy --

11 THE COURT: Stop, stop. Do you know what Dropbox is?

12 THE WITNESS: I'm not familiar with the phrase.

13 BY MR. WALLER:

14 Q. But is it a cloud-based storage system? Not Dropbox; the
15 data room.

16 A. The data room is typically an Internet-based site which is
17 encrypted, where, if you have permission, you can go in and
18 read what is in that Internet-based database. Whether or not
19 the data on that Internet database is kept in the cloud or it's
20 kept in the server somewhere is an IT question I have not the
21 slightest knowledge about.

22 Q. But does the bank itself set it up and invite the customer
23 to put documents in there?

24 A. No. Typically, there are third-party services. So, for
25 example, I think one of the ones we mentioned this morning was

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Madgett - Cross

1 Debtdomain, another one would be IntraLinks; so they're
2 third-party services which provide these encrypted
3 Internet-based services which you can log into.

4 Q. Now, can you explain the difference between a term sheet
5 and a commitment letter?

6 A. A term sheet is the heads of the main features of what a
7 loan would look like.

8 Q. A summary?

9 A. A summary, if you like.

10 Q. When is a term sheet provided?

11 A. A term sheet is provided as a negotiation instrument,
12 typically, very early on in the process, because if you're
13 talking about a relatively complex loan, you want to put down
14 the summary terms in an agreed format, so that this is
15 something which clearly is exchanged between parties so you
16 know what you're talking about, so early on in the process.

17 Q. It just memorializes the terms you've been discussing,
18 right?

19 A. Yes.

20 Q. But what is a commitment letter?

21 A. A commitment letter would be a letter which would typically
22 state, we've been to credit committee, we have final approval
23 on the following terms, and those terms may be X, Y, Z, these
24 are additional conditions which need to be met. One of those
25 will be the term sheet, which is typically attached to such an

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Madgett - Cross

1 offer letter, into a full loan agreement.

2 Q. Is there something between a term sheet and a commitment
3 letter, some other --

4 A. Something between a term sheet and a equipment letter?

5 They are different things. A term sheet is a summary of what
6 the loan agreement would look like. A commitment letter is a
7 clear statement from a lender saying, we are now approved and
8 we will commit to lend you the money --

9 Q. Okay.

10 A. -- on the following terms, and these are the remaining
11 conditions which you need to meet.

12 Q. Would it be typical for a client, when they receive a
13 commitment letter, to give that to a third party to evidence
14 that they've gotten a commitment from the bank? Do you
15 understand the question?

16 A. I -- yes, I think I understand the question.

17 I would have to say, in my experience, not really.
18 And that may be more to do with the fact that most of the
19 companies we deal with are huge companies which have internal
20 legal departments and they therefore don't go out to
21 third-party consultants concerning their financing
22 arrangements.

23 Q. Okay. I don't understand what you just said.

24 A. Sorry. I think what you asked me was that would it be
25 normal for a borrower, potential borrower, who's receiving a

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Madgett - Cross

1 commitment letter, to then share that with a third party.

2 Q. Yes.

3 A. That was what you were asking me.

4 Q. Yes.

5 A. I was saying to you, in my experience, that is rare, but my
6 experience is that I'm dealing with customers who are typically
7 very large companies and have their own internal legal
8 departments so they don't need to go out to third-party
9 consultants to give them input on what financing terms they
10 have.

11 THE COURT: That's your theory as to why you don't see
12 them?

13 THE WITNESS: Yes, that's right, that's all.

14 Q. So, if Mr. Brennerman is negotiating with ERG to acquire
15 that field and they say, we want to see that you have a
16 commitment from your bank, what would he show them, if
17 anything?

18 MR. LANDSMAN-ROOS: Objection.

19 THE COURT: Well, it's a hypothetical.

20 A. If he wanted to show a commitment from the bank, then he
21 should be sharing a commitment letter and he should be willing
22 to put ERG in contact with the bank making that commitment. If
23 he does not have a commitment letter, then he could only say,
24 I'm in discussion with XYZ bank, those discussions are moving
25 forward, we have a term sheet which is reflecting where we

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Madgett - Cross

1 think this potentially could look like. And if he wished to
2 share the term sheet, that is his business.

3 If we have a communication saying, this term sheet
4 must not be shared with anybody, that would be an additional
5 condition. We did not place that condition on Mr. Brennerman,
6 so he would have been free to show that term sheet to ERG. But
7 it was not a commitment letter; it was a term sheet.

8 THE COURT: It's 5:30. If you're right on the cusp of
9 finishing something, do that. Otherwise, we'll pick up
10 tomorrow.

11 MR. WALLER: Can I just have five more minutes? No,
12 we'll end.

13 THE COURT: Okay. I make them get here at 9:30, I
14 promise I let them leave at 5:30. So it's 5:30. We're going
15 to pick up tomorrow at --

16 JURY MEMBERS: 9:30.

17 THE COURT: -- 9:30. So, be here ready to go. We'll
18 have coffee and stuff and, hopefully, yogurt and things that
19 you like, that are high in protein and low in carbs. Bring
20 your notebooks, and don't discuss the case. Keep an open mind.
21 See you tomorrow. All rise for the jury.

22 (Continued on next page)
23
24
25

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Madgett - Cross

1 (Jury not present)

2 THE COURT: So, Mr. Madgett, be here ready to go a
3 little before 9:30. You're on cross-examination, so you should
4 not be discussing with anybody, including the government, the
5 substance of your testimony.

6 THE WITNESS: Understood.

7 THE COURT: You can talk about logistics, like, you
8 know, how do I get from here to there, and things like that,
9 but no substance of talk. Okay?

10 THE WITNESS: Understood.

11 THE COURT: Great.

12 MR. WALLER: Your Honor, could we just have a few
13 moments of your time, with the witness and his counsel excused
14 but remaining outside?

15 THE COURT: Okay.

16 You can step down, Mr. Madgett.

17 THE WITNESS: Sure.

18 MR. LANDSMAN-ROOS: Your Honor, I'm not sure what the
19 basis would be for excluding his counsel.

20 THE COURT: I don't know.

21 MR. LANDSMAN-ROOS: The courtroom is presumptively
22 open.

23 THE COURT: Yes. What's the reason for excluding
24 counsel?

25 MS. FRITZ: You know, it doesn't matter, as long as

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Madgett - Cross

1 the witness isn't here and we can just air this issue out.

2 THE COURT: Okay.

3 (Witness temporarily excused)

4 THE COURT: All right. So the witness has stepped
5 out. So what's the issue?

6 MS. FRITZ: The issue is: We had previously talked
7 with the Court about the fact that no matter how -- that we
8 tried to get the documents that relate to the meetings that
9 were at issue, et cetera. And I understand we weren't able to
10 do it. We tried by subpoena. Mr. Hessler successfully
11 opposed.

12 I think this is a very different issue, where a
13 witness now has gotten on the stand and said, yes, I made notes
14 of the meetings about which I am currently testifying and then
15 says, I was never asked for them - never even asked by the
16 prosecutor for those minutes.

17 THE COURT: So that's different. And that means what?
18 I'm not sure I'm following.

19 MS. FRITZ: I'm an old-fashioned girl. I think the
20 government has an obligation, when it presents a witness, to
21 ask them whether they have notes of the events about which they
22 are going to testify.

23 THE COURT: And if they don't, what? A mistrial? I
24 don't understand.

25 MS. FRITZ: I think they have an affirmative

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Madgett - Cross

1 obligation to obtain the notes and produce them to us.

2 THE COURT: So you're asking me to do what?

3 MS. FRITZ: Yes. I've had entire indictments
4 dismissed based on this kind of --

5 THE COURT: Really? What cases have you entire
6 indictments dismissed?

7 MS. FRITZ: U.S. versus chapman, in the District Court
8 of Nevada.

9 THE COURT: I hope that's true because I'm going to
10 check this out.

11 MS. FRITZ: 600 pages of Giglio and Jencks were
12 produced during the third week of trial.

13 THE COURT: Oh, that's Giglio and Jencks. That's not
14 what this is, right?

15 MS. FRITZ: Those are prior statements of the
16 government -- include prior statements of the government's
17 witness --

18 THE COURT: Those are situations where the government
19 didn't produce documents that were not in their possession and
20 the case was dismissed, the indictment was dismissed?

21 MS. FRITZ: We aired that issue, of whether or not the
22 government has to at least ask, do you have notes. When they
23 present a witness -- your Honor, the idea that they don't even
24 have to make that request, and your Honor's comfortable when a
25 witness just sat there on the witness stand and said, I have

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Madgett - Cross

1 notes of what I claim was said during the meeting but, no,
2 they --

3 THE COURT: I'm not sure he said that. But in any
4 event, what are you asking me to do?

5 MS. FRITZ: My recollection is that Mr. Madgett said
6 that Mr. Hessler -- I think he said -- that Mr. Hessler has the
7 notes. So my request is that the government --

8 THE COURT: I don't think he said that. But --

9 MS. FRITZ: And I'm not a hundred percent sure. There
10 were some things he said that -- counsel in the civil case has
11 those documents. Again, this is not the first time that I
12 raised the issue about the fact that we're trying to litigate
13 about a transaction where even the basic underwriting documents
14 have never been produced, including what now -- your Honor's
15 heard the witness describe the credit paper, which would, in a
16 transaction like this, be sort of the dispositive document.
17 Not here.

18 THE COURT: I don't think I'm agreeing with your
19 characterizations, but I don't know that I need to at this
20 point. So what are you asking me to do?

21 MS. FRITZ: To ask or direct, or whatever, the
22 government to get those notes from Mr. Hessler so that we can
23 review them tonight before further cross-examination of the
24 witness.

25 THE COURT: Okay.

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Madgett - Cross

1 What is the government's response?

2 MR. LANDSMAN-ROOS: First of all, your Honor, the
3 government is in compliance with its Giglio and 3500
4 obligations. We've produced literally every statement of
5 document we have from ICBC, including Mr. Madgett. We don't
6 have, I don't believe, these notes in our possession. If we
7 do, we've turned them over.

8 And, certainly, the Giglio and 3500 obligations only
9 go so far. It sounds like these are documents that are in the
10 U.K. somewhere. We don't have subpoena power over it. We
11 briefed this issue previously. There are a number of steps
12 that defense counsel could have taken. It appears they still
13 have not taken any of them. I have no knowledge of whether or
14 not, in the context of an attorney-client relationship, ICBC or
15 Mr. Madgett shared some of these documents with their counsel.
16 We haven't served a subpoena on ICBC's counsel.

17 So, if there's authority for Ms. Fritz's statement,
18 and she wants to brief it and cite to the transcript, we're
19 happy to respond to that, but I think really this is just
20 meritless. There's no authority for this idea that we need to
21 somehow try to get documents in the United Kingdom that are not
22 in the United States Government's possession.

23 THE COURT: If you want to make a motion, you can do
24 that. And do cite me authority. I'll look at Chapman to see
25 if it stands for the proposition for which you're --

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Madgett - Cross

1 MS. FRITZ: U.S. versus Chapman, a mistrial was
2 declared based on the 600 pages of Giglio and Jencks. The
3 indictment was actually then dismissed by the district court.
4 It was actually affirmed by the Ninth Circuit in a decision
5 that's one of the very few that really does specifically
6 address these issues of the prosecutor having an obligation to
7 get the materials and to produce them.

8 THE COURT: Well, I'll look at it, but I think you
9 should make your motion and cite authority and cite the
10 transcript, if there are parts of the testimony that you think
11 are relevant to this motion, but I'm not at this point sure
12 what you're asking me to do. So I'll let you make that motion.
13 I'll be around late, I promise, and we can talk about this
14 tomorrow morning, if necessary. So we can talk at 9:00 o'clock
15 about that.

16 How much more do you have, Mr. Waller, with this
17 witness?

18 MR. WALLER: Maybe 45 minutes.

19 THE COURT: That's fine.

20 Who is next after that?

21 MR. LANDSMAN-ROOS: Mr. Stoudt, from Morgan Stanley,
22 who was our next witness in line this evening. And after that,
23 we have a few law enforcement witnesses. And we'll let them
24 know later tonight about the order.

25 THE COURT: Do let them know, because it is now almost

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Madgett - Cross

1 a quarter to 6:00.

2 MR. LANDSMAN-ROOS: Part of it is a travel issue.
3 We're just trying to figure out who will be here, and that's
4 what will affect the order, but we'll let them know very
5 shortly.

6 THE COURT: Okay.

7 So, tomorrow will be a full day, and we're not sitting
8 Friday. So how are we doing in terms of the case coming in?

9 MR. LANDSMAN-ROOS: I think we are definitely on pace
10 to finish next week. I think, in terms of sort of the very
11 meaty substantive fact witnesses, we're about halfway done
12 through those. And our hope is, I think we're on a good pace
13 to finish them up, with maybe one exception, this week. Next
14 week, we have a few individuals who are law enforcement
15 witnesses as well as two witnesses that will be providing an
16 expert analysis. And I would say we're definitely on pace --
17 Mr. Madgett is by far the longest witness.

18 THE COURT: All right. So I'll see you tomorrow, and
19 maybe I'll hear from you tonight. Have a good evening. Thank
20 you.

21 (Adjourned to November 30, 2017 at 9:30 a.m.)

22 * * *

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HBUKBRE1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 CR 337 (RJS)

5 RAHEEM J. BRENNERMAN,

6 Defendant.

7 -----x

8 New York, N.Y.
9 November 30, 2017
9:15 a.m.

10 Before:

11 HON. RICHARD J. SULLIVAN,

12 District Judge
13 and a Jury

14 APPEARANCES

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16 Acting United States Attorney for the
17 Southern District of New York
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23 ALSO PRESENT:

24 Ariella Fetman, USAO Paralegal
25 Justin Ellard, Special Agent, U.S. Department of State
Dwayne A. Lunde, Thompson Hine LLP Paralegal

HBUKBRE1

1 (In open court; jury not present)

2 THE COURT: Good morning. Last night, at 11:43, I
3 received a letter from Ms. Fritz, and then this morning, at
4 8:42, I got a letter from Mr. Roos related to the issue of
5 Mr. Madgett's notes.

6 Let me ask Ms. Fritz: Did you get a copy of the
7 government's letter?

8 MS. FRITZ: Yes, I have. Thank you.

9 THE COURT: So you've seen it. So everyone has seen
10 everything.

11 All right. I guess it's not clear to me exactly what
12 the state of the request was, but I think the bottom line is, I
13 don't think these materials are discoverable under Rule 16. I
14 don't think they're Jencks Act materials. There's no evidence
15 to suggest that these are Brady or even Giglio materials, in
16 that there's been no testimony or anything to suggest that
17 there's anything that is inconsistent with the testimony of
18 Mr. Madgett. But, certainly, the documents are not in the
19 possession of the government. It's not clear to me what would
20 be the basis for concluding that the government has an
21 obligation to ask, and then a further obligation to collect,
22 the documents and papers that pertain to the transaction or a
23 witness' testimony. So I think the best authority cited by the
24 defense is not Chapman, which has, I think, virtually nothing
25 to do with this case, I think it's probably Stein, where Judge

HBUKBRE1

1 Kaplan concluded that there was an obligation on the part of
2 KPMG to turn over certain things to the defense, and Judge
3 Kaplan relied on the cozy relationship between KPMG and the
4 government at that point. But I'm not sure that there's really
5 a basis under the law for that decision.

6 And in any event, I certainly don't think that the
7 bank here is akin to an entity that is operating under a
8 deferred prosecution agreement or a cooperation agreement. I
9 think the law is very clear in other contexts that even a
10 cooperator is not deemed to be a government agent. So I think
11 there is some tension in the lower court law in this circuit,
12 and this is an issue that can go all the way up, depending on
13 the outcome of this trial. And maybe at the end of the day,
14 the government will wish they had just gotten the stuff and
15 turned it over, because it might have been better use of your
16 time than writing letters like this all night and then writing
17 a bunch of pages in an appeal brief. Who knows then what the
18 circuit or a panel of the circuit may do. That's not my
19 concern.

20 But I don't think there's any basis, as I see it here,
21 to order the government to go collect documents that are
22 apparently in London.

23 With respect to the subpoena: The witness has
24 apparently been served with a subpoena through his or through
25 somebody's attorney anyway. The fact, however, is clear --

HBUKBRE1

1 MS. FRITZ: Your Honor, your Honor, no. We have it
2 here, but --

3 THE COURT: You haven't served it yet?

4 MS. FRITZ: We wanted to hear what your Honor said.

5 THE COURT: In any event, the witness has indicated he
6 doesn't possess the documents, so the documents are not with
7 him. He doesn't have them. According to his testimony,
8 they're in London with the bank's files that he turned over
9 once the deal went south. He certainly said he didn't review
10 them in preparation for his testimony. He doesn't possess them
11 now.

12 So, to the extent the bank is subpoenaed with a Rule
13 17 subpoena, then that would be a different issue, but I don't
14 think serving Mr. -- who is the lawyer, Mr.?

15 MR. HESSLER: Hessler, your Honor.

16 THE COURT: Yes, Mr. Hessler. I'm sorry.

17 I don't think serving Mr. Hessler is adequate service
18 for purposes of the bank.

19 MS. FRITZ: Let me explain why we did it that way,
20 because initially last night, we had an ICBC subpoena drafted,
21 and the reason that we did it this way is, again, I don't
22 necessarily agree with your Honor's definition of possession.
23 I do think that Julian Madgett, I think quite plainly, has
24 access to these documents. People very rarely walk around with
25 the documents that you're asking for from them, but they do

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1 have possession or control of them. So I didn't think that was
2 an issue.

3 What I heard from the testimony yesterday -- and I
4 could be wrong -- I thought he said that right here, in
5 New York, Mr. Hessler has those notes, and Mr. Hessler is here
6 in the courtroom representing Mr. Madgett, as he testifies. So
7 I thought --

8 THE COURT: I didn't hear that.

9 Let me ask the government. Do you have a different
10 recollection?

11 MR. LANDSMAN-ROOS: We don't have a different
12 recollection.

13 THE COURT: You --

14 MR. LANDSMAN-ROOS: We don't have a different
15 recollection than your Honor.

16 THE COURT: Than me?

17 MR. LANDSMAN-ROOS: We do have a copy of the
18 transcript, if that's helpful.

19 THE COURT: I don't think so. Mr. Hessler is here.

20 Do you have these documents, Mr. Hessler?

21 MR. HESSLER: Your Honor, I have some difficulty
22 following what notes were being referred to at what points.

23 THE COURT: Yes, I think that's a fair statement, too.

24 MR. HESSLER: But what I can represent, your Honor --
25 maybe this will help, maybe not -- is that when we received the

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1 request from the government for documents, we made a good-faith
2 effort to produce what we had in our possession without sort of
3 turning the world upside down, specifically including
4 communications between Mr. Brennerman and Blacksands on the one
5 hand and the bank on the other hand. So what I would represent
6 to the Court is that if there were notes of a meeting between
7 Mr. Madgett and Mr. Brennerman or anybody else at Blacksands
8 that were turned over to us, that we did not withhold from
9 production to the government any such notes.

10 So, in other words, there are no notes in New York of
11 the sort that have been described.

12 THE COURT: All right. It's more than that. It's
13 that there are no notes that you possess that the government
14 doesn't also possess.

15 MR. HESSLER: That's correct, your Honor.

16 THE COURT: All right. Well, maybe that does end it.

17 In any event, I'm not going to order the government to
18 produce something or to collect things that are in London, in
19 the possession of the bank, and since Mr. Hessler doesn't have
20 them, I don't even need to go there.

21 So I think that leaves us sort of where we were at the
22 end of the day yesterday, which is we will resume the cross,
23 but I don't think the request or requests that are in the
24 November 29th letter from Ms. Fritz will lead me to order
25 anything. So the requests, to the extent I follow them, are

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1 denied.

2 MS. FRITZ: Your Honor, may we follow up with -- I
3 guess, of course we can -- follow up with the witness just to
4 try to confirm whether my understanding was correct, that he
5 said he has seen those records in the possession of
6 Mr. Hessler? Because I do think that was -- I think that was
7 the testimony. If he says no, so be it.

8 THE COURT: I didn't think that was his testimony.
9 You mean follow up outside of the presence of the jury?

10 MS. FRITZ: No, no, no. Just Mr. Waller can try to
11 button that one up.

12 THE COURT: Well, I'll allow a question or two, but I
13 don't want it to become a trial about the notes, and I don't
14 want the trial to be urged at a later point to infer that those
15 notes would have said something that would be pure speculation.
16 So, I'm not going to allow any sort of negative inference
17 argument to be made on the basis of these notes being produced,
18 or not produced or whatever. An extra line or two would be
19 okay, I think, but to the extent you want to do something out
20 of the presence of the jury, I guess I'd consider that, too,
21 but there was a transcript on this, and I don't think he said
22 that he's seen any notes. He hasn't seen these notes since he
23 turned them over, I thought.

24 MS. FRITZ: Perhaps the best way to resolve it really
25 is to simply bring him in and ask him. We know the notes exist

HBUKBRE1

1 because he immediately referenced them sua sponte in his
2 testimony. And the issue --

3 THE COURT: We know they existed, I think, is the
4 better way to say it.

5 MS. FRITZ: Okay. I don't think there's any basis to
6 assume that they were ever destroyed.

7 THE COURT: Or lost. They could be lost, who knows.

8 MS. FRITZ: It's a bank, it's an underwriting file on
9 a loan transaction. So I think, in the ordinary course of
10 business, it's more likely than not that those documents were
11 maintained. So we know that he made notes of his
12 communications with Mr. Brennerman. We also know that he made
13 what he described as a credit paper. That was the document
14 that set forth his recommendation to the credit committee with
15 respect to the loan. That's then received by the credit
16 committee, which we know does its own analysis and communicates
17 various questions back to Mr. Madgett. I know Mr. Hessler just
18 represented that they had done a fulsome production, but I can
19 tell your Honor, having reviewed that production at great
20 length, there's not a single internal communication in there,
21 not an internal Bo Jiang, Madgett, nothing internal was
22 produced.

23 THE COURT: I'm not sure what flows from that. It
24 seems to me -- what are you going to call on Mr. Hessler, and
25 we'll have a separate trial on where the notes are?

HBUKBRE1

1 MS. FRITZ: No.

2 THE COURT: We're not doing that. I've already ruled
3 that the government has no obligation to produce these things.
4 And so --

5 MS. FRITZ: But now we're talking about whether to
6 just go ahead and ask the witness, so that your Honor can feel
7 comfortable knowing what notes exist and where they are.

8 THE COURT: Okay. But I feel pretty comfortable with
9 my ruling without doing that. So I'm not inclined to do that
10 since it's now 9:28, and I want to start at 9:30 because that's
11 what I have told the jury. So let me see if the jury is here.
12 I assume they are. They've been very prompt after that first
13 misstep.

14 And then Mr. Madgett is here?

15 MR. HESSLER: He is, your Honor.

16 THE COURT: So let's get him in here, then, on the
17 stand.

18 MR. LANDSMAN-ROOS: Your Honor, two other points?

19 THE COURT: Yes.

20 MR. LANDSMAN-ROOS: You asked at the final pretrial
21 conference that we flag for the day that Exhibit 4-75 would be
22 coming in. It was a text message conversation that you
23 reserved on. Our estimate is that this witness won't be called
24 until either the third or perhaps the fifth witness of the day,
25 so we likely could resolve the admissibility of that --

HBUKBRE1

1 THE COURT: It's the Stauffer text message?

2 MR. LANDSMAN-ROOS: Exactly.

3 So that's number one. And, second, I believe your
4 Honor reserved on whether to admit the 310 to 333 series, the
5 receipts that were received, and I just wanted to flag for your
6 Honor that those will likely come in -- or we would use them on
7 Monday, and so we probably also want to address the final
8 determination of the offer sometime day.

9 THE COURT: I think I reserved so that the parties
10 could have an opportunity to look at them, and the defense was
11 really going to decide what was inflammatory or prejudicial
12 about them. So I think I'm waiting for that to happen, but I
13 wasn't going to let those come in until the defense had an
14 opportunity to do that. So it's not that I'm going to just
15 sort of wallow through these all weekend because I'm just so
16 curious. If somebody is going to make a motion to keep them
17 out, then they will get a chance, now having looked at them
18 carefully, to make arguments.

19 MS. FRITZ: Absolutely, Judge. We're happy to look at
20 whatever -- what's been happening is, exhibits are being
21 identified the night before, so that objections can be
22 presented to the government, and I think we have been doing
23 that pretty much --

24 THE COURT: 310 through 362, is that what it is?

25 MR. LANDSMAN-ROOS: It's 310 now to 333. We pared it

HBUKBRE1

1 down in light of the --

2 THE COURT: So those are the documents. So take a
3 look. We don't need to resolve that today, but we should
4 resolve it quickly, but in the absence of a renewed motion,
5 then they're coming in.

6 MR. LANDSMAN-ROOS: And, your Honor, for the four --
7 the Stauffer text message --

8 THE COURT: That, I want to take a closer look at
9 because I want to refresh myself on it.

10 Is the jury here?

11 THE LAW CLERK: Yes.

12 THE COURT: All right. So let's bring in the jury.
13 Who is the witness who's doing the Stauffer email?

14 MR. LANDSMAN-ROOS: I'll be doing that.

15 THE COURT: No, no. Who's the witness?

16 MR. LANDSMAN-ROOS: I'm sorry. It's Enrique Santos.

17 THE COURT: Santos? Okay.

18 (Continued on next page)

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HBUKBRE1

Madgett - cross

1 (Jury present)

2 THE COURT: Have a seat. Good morning. Thank you for
3 being on time. I really appreciate it. You're the hardest
4 working jury in show business, and it really is greatly
5 appreciated.

6 So we're now going to resume the cross-examination of
7 Mr. Madgett by Mr. Waller.

8 JULIAN MADGETT,

9 CROSS-EXAMINATION CONTINUED

10 BY MR. WALLER:

11 Q. Good morning, Mr. Madgett.

12 A. Good morning.

13 Q. How many years have you been in banking?

14 A. I moved into banking in 1993.

15 Q. Do you have an advanced degree in finance?

16 A. I have, ironically enough, from the London School of
17 Economics, an economics Bachelor's of Science honors degree,
18 and then I also have an M.B.A., a Master's of Business
19 Administration, from the London Business School, which is one
20 of the world's leading business schools, as I'm sure you're
21 aware.

22 Q. So, you're a very experienced banker?

23 A. I would say I'm a reasonably experienced banker. My work
24 has been with a number of different banks, but not necessarily
25 across the whole scope of banking, in commercial banking.

HBUKBRE1

Madgett - cross

1 Q. And you worked with Mr. Brennerman from early 2011 to early
2 2014, right?

3 A. I had contact with Mr. Brennerman between these periods.

4 As I explained in my testimony yesterday, I look after
5 a team. We are probably dealing with 50-odd clients during
6 that period and hundreds of different transactions. So, yes,
7 he was one person I dealt with.

8 Q. Right. And the first deal you said you started working on
9 with him was in earlyish or mid-2011?

10 A. There was an opportunity for a deal at that time, yes.

11 Q. And there were other deals, and you worked with him -- that
12 you worked with him on or discussed with him through pretty
13 much the beginning of 2014?

14 A. There was one or two other opportunities which he flagged
15 to us at that time -- around that time, yes, none of which came
16 to fruition. So, of course, the amount of work you do with a
17 client when something is not coming to fruition is not as great
18 as if you actually are closing a loan and doing work.

19 Q. But he didn't just come to you and say, oh, here's a deal,
20 and you're like, ah, I'm not going to go forward with that, you
21 did explore these other deals with him, right?

22 A. We explored the possibilities, yes.

23 Q. Yes, okay. So basically you worked with him for about
24 three years?

25 A. As you wish, yes.

HBUKBRE1

Madgett - cross

1 Q. There was no indication during this time that

2 Mr. Brennerman wasn't knowledgeable about finance?

3 A. He came across as someone who claimed that he had been
4 raising financing, as we saw in their balance sheet
5 representations yesterday, through the high-yield market. So,
6 therefore, he was raising funding less from banks and more, he
7 claimed, from hedge funds. But, yes, he seemed, as a
8 nonfinance person, to have some broad knowledge on how
9 financial instruments would work.

10 Q. There was no indication that he wasn't competent?

11 A. I would -- competent? No. I'd say from the interaction we
12 had with him, we wouldn't say that he came across as
13 incompetent. At the same time, I would not say that he came
14 across as a hugely proficient professional in that area.

15 Q. Okay. And you continued working with him because the Cat
16 Canyon deal, the asset, was quite promising, right?

17 A. The Cat Canyon asset, if the transaction took place, looked
18 like it could cover the requirement for generating enough cash
19 flow and security to safely repay the loan. So, therefore, it
20 fell, at a first examination, within the sort of required
21 parameters we would look at as a bank, yes.

22 Q. And you were very familiar with the asset, right?

23 A. Sorry, I was very familiar. I never visited the asset, per
24 se, because I have many clients in many parts of the world, so
25 we relied upon the general papers on the assets, which came

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Madgett - cross

1 from the independent consultants, who reviewed the reserves, as
2 we discussed yesterday. So these were independent papers, not
3 from Mr. Brennerman's company, which described the asset.

4 As I stressed in my testimony yesterday, this
5 information is useful to describe the asset, it doesn't tell
6 you about the ownership of the asset.

7 Q. But, at some point, you did go to the credit committee
8 about the asset, right?

9 A. I went to the credit committee with the proposal that we
10 would discuss looking at a loan for Mr. Brennerman's company,
11 secured on the Cat Canyon asset, yes.

12 Q. But when you did that, you had not visited the asset,
13 right?

14 A. No. Just as, for example, we recently approved a
15 billion-dollar financing with significant contributions from
16 ICBC and many other banks for some Nigerian fields for Shell,
17 which is a matter of public record. I similarly didn't visit
18 Shell's oil fields in Nigeria. This would not be a normal
19 requirement for such loans.

20 Q. But in addition to not visiting the asset, you also never
21 went into the data room to look at the thousands or maybe even
22 tens of thousands of documents that were in there, correct?

23 A. We did not go into the data room because we had not
24 progressed the negotiations to the point that we were going to
25 go to credit committee with a firm proposal for the asset-based

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Madgett - cross

1 financing. We were, therefore, concentrating on a discussion
2 around the bridge loan with the company guarantee based upon
3 the other information we had been provided about the parent's
4 financial well-being as a first step. And then we wanted to
5 see if the acquisition heads of agreement were actually reached
6 with ERG, which would then justify us making the effort of
7 doing the full analysis.

8 Q. Now, you testified yesterday you believed that Blacksands
9 Pacific was already producing large quantities of oil from
10 fields it had developed, correct?

11 A. From fields which it had an interest in, yes, that's the
12 case, based upon what they had told us, what Mr. Brennerman had
13 told us and based upon the information, such as the slides --
14 fliers, which we reviewed yesterday which had been received.

15 Q. But you also said yesterday that you believed that he was
16 involved in trading, as it said in his materials, and that that
17 meant taking large quantities of oil and shipping it, right? I
18 mean, he was actually dealing with large quantities of oil?

19 A. That seemed to be what he was stating in his fliers. And,
20 also, for us looking at a company which is stating it has the
21 best part of \$100 million turnover and is an E&P company, then,
22 clearly, that turnover is coming from the production of oil
23 from those fields which is being sold.

24 Q. If my question to you was do you believe that he was
25 already producing large quantities of oil, the answer would be

HBUKBRE1

Madgett - cross

1 yes?

2 A. He's producing quantities of oil which would generate 50,
3 hundred million dollars of revenues as the company grew
4 reported to us, yes.

5 Q. I'm asking you to take a look at what's been marked for
6 identification as Defendant's Exhibit CC.

7 MR. WALLER: The second page, about six little
8 paragraphs down. Just the small part, please.

9 Q. Can you, first of all, take a look at that document --

10 MR. WALLER: I'm sorry, just let him look at the
11 document. My apologies.

12 Q. Can you look at that document --

13 MR. WALLER: Go to page 1. Sorry, Dwayne.

14 Q. -- and tell me if you recognize it?

15 THE COURT: Can you read it?

16 A. I can't even read it.

17 Q. The heading of the -- can you, first of all, take a look at
18 that part of the exhibit. Do you recognize and know what that
19 is?

20 A. It's from myself to Mr. Kelly, a discussion document around
21 the proposed facility for Cat Canyon.

22 Q. Okay. And the date was November 1st, 2013?

23 A. Mm-hmm.

24 Q. Can you show --

25 THE COURT: You have to say yes or no.

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Madgett - cross

1 THE WITNESS: Yes, yes.

2 MR. WALLER: Can you just highlight the text of that,
3 that page.

4 BY MR. WALLER:

5 Q. Do you recognize this to be an email that you, in fact, did
6 send to Mr. Kelly on November 1st, 2013?

7 A. It would appear to be the case. I would need to
8 refamiliarize myself with it because it's been a few years,
9 but, yes.

10 Q. I'm not asking if you remember everything in it, but do you
11 recognize it to be an email that you, in fact, sent to
12 Mr. Kelly?

13 A. That appears to be the case, yes.

14 MR. WALLER: I would offer Defense Exhibit CC into
15 evidence.

16 MR. LANDSMAN-ROOS: Objection; hearsay.

17 THE COURT: Yes, the mere fact that it's a document
18 that he recognizes is not a basis for it to get in. So,
19 sustained.

20 BY MR. WALLER:

21 Q. Mr. Madgett, do you recall that you went to the credit
22 committee about the Cat Canyon loan in either late October or
23 early November 2013, and that the credit committee came back
24 with some concerns? Do you recall that?

25 A. Yes.

HBUKBRE1

Madgett - cross

1 Q. Do you recall that they came back with some concerns about
2 the Blacksands financials? Do you recall that?

3 A. Yes, we shared those concerns.

4 THE COURT: When you say "we shared those concerns,"
5 what do you mean?

6 THE WITNESS: Sorry. What I mean by that is, yes, the
7 credit committee expressed some concerns, and I, as head of
8 front office, was also concerned.

9 BY MR. WALLER:

10 Q. Do you recall that some of the concerns were that there was
11 no major -- that this was not a major or well-established
12 trader with an independent track record?

13 A. Yes, this would be a concern because the company is only
14 three years or so old compared with, say, a Chevron or an
15 Exxon, who is 70 years old.

16 Q. And were there concerns that the company had not completed
17 field developments yet, any field developments yet?

18 A. Completed field developments under its own belt. That is
19 shorthand for saying as --

20 THE COURT: Wait, wait. This is not in evidence, so
21 just answer the question.

22 THE WITNESS: Of course, yes.

23 Q. Do you recall that?

24 A. I recall that the point made was that the company did not
25 appear to have developed any field where it was the field

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Madgett - cross

1 operator as manager, which is distinct from having an interest
2 in a field.

3 Q. And do you also recall that there were concerns that they
4 hadn't seen any audited accounts?

5 A. Yes.

6 Q. Is that because normally when you are going to issue a
7 loan, you'd want to see audited accounts as opposed to
8 internal-use financials?

9 A. Clearly, audited accounts are more reliable, because
10 they've been independently checked, than management accounts.
11 That does not preclude there are occasions a bank will make a
12 loan based upon management accounts. It largely depends upon
13 an issue of trust with the client.

14 MR. WALLER: Can we pull up Government Exhibit 1-66A.

15 THE COURT: This is in evidence?

16 MR. WALLER: Yes.

17 THE COURT: That's what I thought.

18 MR. WALLER: So it will be for the jury.

19 BY MR. WALLER:

20 Q. Now, you testified earlier about this document, correct?

21 A. Correct.

22 Q. And this was -- or is a term sheet that was given to
23 Blacksands about the Cat Canyon deal?

24 A. Yes.

25 Q. And you stated that this document is not binding, right?

HBUKBRE1

Madgett - cross

1 A. As the disclaimer at the top of the bill -- the document
2 states.

3 Q. But it is a very detailed document, right?

4 A. Yes. We are a professional bank, and if we are dealing in
5 good faith with a client, we try to do as much work as we can
6 to highlight what the terms of lending would be.

7 Q. And all of the proposed details were contained in this
8 document? Although they were subject to change, but they
9 were -- this has pretty much all of the details that would have
10 been contemplated for the deal you were discussing?

11 A. Contemplated at the time, yes.

12 Q. Correct.

13 Okay. And who prepared this term sheet?

14 A. This was prepared by myself principally, other members of
15 my team, and in terms of the way that -- we would have bounced
16 this off our legal department as well because that's standard
17 practice.

18 Q. Would you have used outside counsel for this?

19 A. This one may have bounced off outside counsel as well, yes.

20 Q. And your outside counsel was Jones Day, correct?

21 A. Our outside counsel for the bridge loan was Jones Day. For
22 this particular document, it may have been Jones Day, it may
23 have been Linklaters.

24 When you are dealing with drafting an indication term
25 sheet, which is not a loan document, we clearly talked to many

HBUKBRE1

Madgett - cross

1 lawyers because it's only when you get to the term -- only when
2 it gets to the stage of a firm offer and actually negotiating
3 the actual documents do you employ a particular lawyer, which
4 we did for the bridge loan in that case, Jones Day.

5 MR. WALLER: You can take the document down.

6 Q. Sometime in August 2013, do you recall that Mr. Brennerman
7 requested a letter from the bank to show some sort of financing
8 commitment that he could show to ERG?

9 A. Yes.

10 Q. He made that request more than one time, correct?

11 A. That is correct.

12 Q. And that was in August of 2013, right?

13 A. Yes.

14 Q. And on September 1st, 2013, you -- ICBC did, in fact, give
15 Mr. Brennerman a letter that indicated preliminary approval of
16 the \$600 million loan for the Cat Canyon acquisition, correct?

17 A. This is correct.

18 MR. WALLER: Can we put up BI, not to the jury.

19 THE COURT: BI.

20 Q. Do you recognize this exhibit?

21 A. Yes.

22 Q. And you signed the exhibit?

23 A. Yes.

24 Q. That's your name at the bottom?

25 A. Correct.

HBUKBRE1

Madgett - cross

1 Q. And it's dated September 1st, 2013?

2 A. Correct.

3 MR. WALLER: I would offer this into evidence as
4 Defense Exhibit BI.

5 THE COURT: Any objection?

6 MR. LANDSMAN-ROOS: No.

7 THE COURT: No objection? Okay. Defense Exhibit BI
8 is received.

9 (Defendant's Exhibit BI received in evidence)

10 MR. WALLER: Can we publish it to the jury.

11 BY MR. WALLER:

12 Q. Now, yesterday, I had asked you whether or not there was
13 something that fell between a term sheet and a commitment
14 letter. Would this qualify as that in terms of the bank's
15 approval of a loan?

16 A. I would question that. I would say that attached to this
17 would have been the term sheet, and the conditions of the term
18 sheet represent the formal status of the communications in the
19 bank. It is, however, a positive indication that we've had
20 discussions with members of the credit committee and are
21 progressing with a positive attitude towards then submitting a
22 formal final full credit committee.

23 Q. But the document doesn't say that the term sheet is
24 attached, correct? It doesn't even reference the term sheet?
25 Or does it?

HBUKBRE1

Madgett - cross

1 A. I think you'd have to look at the email which was actually
2 sent.

3 Q. It says that it's in line --

4 MR. WALLER: Can you highlight the first paragraph,
5 please.

6 Q. So, this says that we, meaning ICBC, correct?

7 A. Yes.

8 Q. -- confirm -- oh, it says right there, "ICBC London has
9 preliminarily approved the proposed 600 million facility for
10 the Cat Canyon reserve-based prefinance facility substantively
11 in line with our previously provided term
12 sheet/correspondence," correct?

13 A. Correct.

14 Q. And you understood, when you issued this document, that
15 Mr. Brennerman was going to be showing it to ERG, correct?

16 A. That was a reasonable presumption.

17 Q. Because in the months before -- excuse me. In the month
18 before, in August, he was asking you for some sort of letter of
19 commitment?

20 A. Yes, he was asking for a letter of commitment. And in many
21 calls with him, I explained that until we had done a full
22 credit committee and had more information, we were not in a
23 position to make a judgment on that.

24 Q. But you understood that he was going to take this document
25 and show it to ERG to evidence some level of commitment to

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1 financing the project, right?

2 A. I could not be sure of that. And if you permit me, over
3 the following weeks --

4 Q. Well --

5 A. Can I answer the question?

6 Q. My question was very simple.

7 THE COURT: Just answer the question.

8 THE WITNESS: All right. That's fine.

9 BY MR. WALLER:

10 Q. Did you understand that Mr. Brennerman may be showing this
11 to ERG to show them evidence that ICBC was committed to moving
12 forward with this deal?

13 A. I understood that could be the case, as with other bank
14 indications he was getting.

15 Q. Okay. Thank you.

16 Now, this preliminary approval came through the credit
17 committee, correct?

18 A. Members of the credit committee, yes.

19 Q. And the data room that we discussed was opened that same
20 month, in September, correct?

21 A. I'm afraid I don't recall, but I assume that that is
22 correct.

23 Q. Well, don't assume it. Is that true or not?

24 THE COURT: He said he doesn't recall.

25 MR. WALLER: Okay.