

EXHIBIT 2

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OKLAHOMA

3
4 TRANSPORTATION ALLIANCE
BANK, INC.,
5 Plaintiff,

6 vs. No. 4:10-cv-00016-GKF-FHM

7 ARROW TRUCKING CO., et al.,
8 Defendants.

9
10 DEPOSITION OF JOSEPH MOWRY
11 TAKEN ON BEHALF OF THE PLAINTIFF
ON AUGUST 24, 2011, BEGINNING AT 9:11 A.M.
12 IN TULSA, OKLAHOMA
13

14 APPEARANCES:

15 Appearing on behalf of the PLAINTIFF:

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24 (Appearances continued on the following page.)

25 REPORTED BY: Lacy Antle, CSR, RPR

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1 Appearances continued:

2 Appearing on behalf of the DEFENDANT CAROL
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14 Joseph Mowry

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17

18 ALSO PRESENT: Pat Malloy & Allen Smallwood

19

20

21

22

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6

7 CERTIFIED QUESTIONS

8 PAGE LINE QUESTION

9 30 25 Now, at the time, did Arrow have another

10 financing facility for his invoices, either purchase

11 or ABL?

12 137 5 And in exchange for that release, what did

13 you give TAB?

14 150 1 Is the part that I just read of paragraph

15 46 a true statement or is it false?

16 151 10 Look at paragraph 94, page 18. You see

17 it says, "By submitting invoice reports to

18 TAB as described, above defendants: Arrow

19 Trucking, Moore, Mowry, and others

20 represented that each invoice accurately

21 reflected a bona fide obligation of

22 account debtor."

23 95 TAB goes on to say, "Some or

24 all of these representations were false

25 when made, including but not limited the

1 certain representations." Is this a true
2 or false allegation?
3 154 5 So that's a false statement by TAB;
4 correct?
5 159 24 Is it true or false?
6 163 21 Was the release that was given to you by
7 TAB conditioned upon the performance by
8 you of any actions?
9 164 19 Let me withdraw the question and ask you
10 this question. Are you telling the Court
11 that on January 8th, 2010, TAB's
12 allegations were false because they were
13 uninformed or misinformed?
14 171 20 Prior to the time that you entered into
15 this settlement agreement, did you undergo
16 any type of asset examination or answer
17 questions that TAB had of you with respect
18 to what assets you had available for
19 settlement?
20 172 24 Have you made any agreement to provide TAB
21 access to assets that are related to or
22 arose from the operations of Arrow
23 Trucking?
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STIPULATIONS

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys, that the deposition of JOSEPH MOWRY may be taken pursuant to notice and in accordance with the Federal Rules of Civil Procedure on AUGUST 24, 2011, at the offices of Pray Walker, Tulsa, Oklahoma, before Lacy Antle, CSR RPR.

1 WHEREUPON,

2 JOSEPH MOWRY,

3 after having been first duly sworn, deposes and

4 says in reply to the questions propounded as

5 follows, to-wit:

6 DIRECT EXAMINATION

7 BY MR. SHIELDS:

8 Q The record should reflect this is the time
9 and the place for the taking of the deposition of
10 Joseph Mowry.

11 Initially, Mr. Mowry, would you state your
12 full legal name.

13 A Joseph James Mowry, M-o-w-r-y.

14 Q And where do you reside?

15 A Houston, Texas.

16 Q What's your address there?

17 A 2315 McDuffie, M-c, capital D-u-f-f-i-e.

18 Q And how long have you resided there?

19 A Three and a half, four months, something
20 like that.

21 Q And before residing there, where did you
22 live?

23 A Tulsa, Oklahoma.

24 Q And whereabouts in Tulsa?

25 A 6207 East 89th Street.

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1 A Well, I think she's always been the
2 chairman. She was certainly the chairman after '03,
3 it was reflected that way in the minutes, as -- so
4 if it was that way in '02, I'm not sure, I just
5 don't recall that far back.

6 Q All right. In 2008 and 2009, did you, as
7 general counsel, interact with her on any level?

8 A Yes, quite often.

9 Q And when you say "quite often," tell me
10 what you mean by that.

11 A Carol would be at the office two or three
12 times a week, she'd have questions for me about
13 insurance programs or maybe some liability claims if
14 there happened to be a big one. We also worked on
15 some of her estate stuff, I worked with another
16 attorney in Texas who did all, primarily, the work,
17 but if she had a question she would ask me, and
18 sometimes she would call him, or I would. She was
19 there at the same time to kind of go through --
20 usually had a meeting with finance about kind of the
21 -- perhaps the monthly performance, or at least
22 quarterly performance, of the company, and then
23 certainly be in Doug's office talking about a
24 variety of things for, you know, for a bit. So she
25 was generally there a couple hours three times a

1 week, two to three times a week.

2 Q All right. When you spoke with her, did
3 she express an interest in knowing what the
4 company's operations were?

5 A I would say she expressed an interest in
6 the finance area, certainly in some of the legal
7 aspects of the company. When you say "operations of
8 the company," I think of operationally out on the
9 floor, where trucks are headed, where they're
10 located, what -- you know, what customers are --

11 Q Let me rephrase it. The performance
12 aspects of the company.

13 A Always interested in the performance of
14 the company, but did not delve into the operation,
15 day-to-day operations of the company.

16 Q And you're defining operations as what
17 lane a truck is in --

18 A Exactly.

19 Q -- or that type of thing?

20 A Yes.

21 Q And to your knowledge, was she provided
22 with financial information of any type on a regular
23 basis?

24 A I believe so. There was always a book of
25 sorts that would be circulated. John Pinkston did a

1 very good job, I think. As the economic struggle
2 mounted in '09 that book was not, probably,
3 completed as often, but certainly financials were
4 available any time that she was there.

5 Q Do you recall attending any meetings in
6 '08 or '09 where she was in attendance where the
7 financial performance of the company was reviewed by
8 anyone?

9 A Yes, several in '08. John Pinkston would
10 review it, Doug would review it. There was a book
11 that had graphs in it, we'd go through some of
12 those. Sometimes I was there, sometimes I wasn't,
13 depending on what the topics were. And in '09 there
14 was not many of those meetings, but the contents of
15 the book were -- it wasn't put into a formal book
16 but it was available. I know that -- of at least a
17 couple, three occasion in '09 where those meetings
18 took place.

19 Q How long would those meetings last?

20 A They ranged from 30 minutes to an hour and
21 a half.

22 Q And were people allowed to ask questions
23 about the financials?

24 A Yes, generally Doug would answer the
25 questions and go from there.

1 Q Did Carol participate actively in those
2 meetings?

3 A Yes, yes, she would ask a few questions,
4 but the nature of the graphs made it easy to kind of
5 go through. Usually you could identify the hot
6 spots, whether miles were down, or some of those
7 types of things, and that'd be the topic of
8 discussion, how to correct that.

9 Q All right. Now, there's been a term
10 that's been used by a couple of witnesses called the
11 "big book." Does that ring a bell?

12 A Yeah, I don't know if it would be
13 considered a big book like the exhibit books in
14 front of us. It was just a three -- it was just a
15 spiral that was put on with plastic on both sides
16 and Arrow's logo on the front, and then in it had a
17 variety of both operational and financial
18 information about the company. And like I said,
19 they were -- it was routine in '08. I don't know
20 that we missed any months in '08. It became much
21 less of '09.

22 Q All right. Why did it become less of in
23 '09?

24 A Well, I think there was -- as John Moore
25 got into the CFO position, he was trying to put out

1 certainly the full authority and ultimate decision
2 making was -- the structure was Doug, then Carol,
3 and Carol was consulted on a variety of topics over
4 the time I was at Arrow, and generally Doug viewed
5 -- I think Doug viewed her as the person he needed
6 to gain approval from on a variety of options,
7 although -- but usually -- I need to be clear, they
8 weren't day-to-day options, they were the higher
9 level, more expensive, truck purchases, equipment
10 purchases, those kinds of things. But as far as
11 dismissing employees or those kind of things, I
12 would say not -- I've never seen Carol terminate
13 anybody or anything like that.

14 Q Did Doug ever tell you that he felt he
15 needed to consult with his mother on the types of
16 things that you just testified to, the major items,
17 truck purchases?

18 A Oh, yes, yes.

19 Q Would he do so, to your knowledge?

20 A Actually, I witnessed it a number of
21 times.

22 Q Is that right?

23 A Uh-huh.

24 Q Is that "yes"?

25 A Yes, I'm sorry.

1 the terms, modify a couple of the terms, and
2 ultimately those changes were made, documents were
3 then sent back to Arrow, and Doug signed them. I
4 would have taken the documents, along with John
5 Pinkston and John Moore and Tom Witt to discuss the
6 document with Doug, and he executed it.

7 Q All right. Do you know if Carol
8 Pielsticker was aware that the negotiations with TAB
9 were going on?

10 A Yes, she was.

11 Q And how do you know that?

12 A Well, the nature of the changing a bank is
13 much like buying trucks, and so Doug talked to Carol
14 ten, 12 times a day and it was gen -- most of the
15 time the conversations I heard were about work, and
16 I know she was aware of the change of banks to TAB.

17 Q Okay. Did you regularly hear some of
18 those conversations that went on between Carol and
19 Doug?

20 A Regarding TAB specifically or just in
21 general?

22 Q Well, let me start with in general.

23 A In general, yes.

24 MR. WOHLGEMUTH: I'm going to object
25 unless we establish a time frame, a specific time

1 foundation.

2 Q (BY MR. SHIELDS) Go ahead.

3 A I recall an overview of the documents,
4 overview of the G.E. program and a -- and how the
5 TAB arrangement was different and an improvement
6 from finance's perspective.

7 Q All right. With regard to some of your
8 prior testimony, as you understood the managerial
9 practices of Arrow at that time, would the TAB
10 accounts receivable facility be the type of issue
11 that Carol Pielsticker would normally be consulted
12 about?

13 MR. WOHLGEMUTH: Objection. Speculative.
14 Lack of foundation.

15 THE WITNESS: Yes.

16 Q (BY MR. SHIELDS) All right. And tell me
17 why you believe that to be true.

18 MR. WOHLGEMUTH: Same objection.

19 THE WITNESS: Much like a truck purchase
20 or equipment purchase or an insurance program
21 change, the change of a bank is a signature
22 undertaking and has a big impact on the company, but
23 particularly on the finance department --

24 MR. WOHLGEMUTH: Objection. Move to
25 strike as nonresponsive.

1 THE WITNESS: -- that's the kind of
2 decision that Carol would be informed of and be a
3 part of.

4 MR. WOHLGEMUTH: The same motion to
5 strike, that underscores the lack of responsiveness.

6 Q (BY MR. SHIELDS) So in the managerial
7 practices of Arrow, the change of a lender would be,
8 in your experience, a very significant event?

9 A Yes.

10 Q In your observation, did Doug make
11 decisions such as a change in a bank without
12 consulting his mother?

13 MR. WOHLGEMUTH: Objection.

14 THE WITNESS: No.

15 MR. WOHLGEMUTH: Mr. Mowry, if I start an
16 objection, you might wait until I finish it.

17 THE WITNESS: I'm sorry, I thought you had
18 finished it.

19 MR. WOHLGEMUTH: No, I had not.

20 THE WITNESS: I'll hold up.

21 Q (BY MR. SHIELDS) All right. Turn to
22 Exhibit 74.

23 A Okay.

24 Q Could you review that and tell me if you
25 recognize that document.

1 employment did you have fairly regular contact with
2 John Moore?

3 A Yes.

4 Q And do you recall speaking with him about
5 the company's general financial condition during
6 2009?

7 A Yes, I think he spoke to me and several of
8 the other executives about that.

9 Q Now, as part of the AR agreement, there's
10 no question in your mind, is there, then, one of the
11 representations by Arrow is that the invoices that
12 would be sent to it would be genuine, payable,
13 authentic invoices?

14 A That's my understanding.

15 Q Did there come a time during 2009 that you
16 learned that Arrow, I'm not saying who at this
17 moment, was submitting deliberately inflated
18 invoices to TAB under the AR loan?

19 A Yes.

20 Q And do you recall approximately when you
21 learned of that?

22 A That would have been the latter part of
23 July or early part of August.

24 Q And tell me how you learned about that.

25 A During the early part of July there were

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1 some concern from TAB in which, I think, J.J. Singh,
2 and I can't remember our account person's name,
3 Curtis, Curtis Sutherland, were concerned about
4 short pays or -- by a variety of customers, some of
5 which were very good customers over the years, and
6 that kind of brought an issue to the front that
7 there'd been some billing errors. John talked about
8 -- Moore, talked in terms of billing errors in that
9 time frame, and then, ultimately, it came to light
10 from John that there was, I guess, what he called
11 advanced billing going on in addition to the errors.

12 Q All right. And did you talk to Mr. Moore
13 directly about what was going on?

14 A I did, generally it was in a group of
15 people, but yes, there were discussions because TAB
16 was asking to come in for an audit and began talking
17 about notification of customers and things like that
18 to ensure that the processes were not flawed or that
19 everything was working as everyone was indicating it
20 was.

21 Q This is toward the end of July?

22 A Early August, yeah.

23 Q Now, what did Mr. Moore tell you in that
24 time frame about inflation of the invoices?

25 A That there had been, on occasion, invoices

1 that had been inflated to enhance the cash flow of
2 the company.

3 Q Okay. Did you conclude with your
4 conversation from him that that inflation had been
5 deliberate on his part?

6 A Yes.

7 Q At that time did you get a sense for what
8 the magnitude of the inflated amount was?

9 A John told Doug and I that it was somewhere
10 around a million and a half dollars to as much as
11 \$2 million. Some of that included the errors, which
12 could have been a hundred, two-hundred thousand of
13 it.

14 Q But most of it was inflated invoices?

15 A Yes.

16 Q Did he give you an explanation as to why
17 he was doing that?

18 A He could not make ends meet otherwise.

19 Q Was the company having, to your knowledge,
20 cash flow trouble at that time?

21 A Yes.

22 Q Go back to book one and look at Exhibit 3.
23 That's an e-mail from Mr. Moore to you dated
24 August 15th; correct?

25 A Correct.

1 Q All right. He uses the term "fluff," do
2 you see that?

3 A Yes.

4 Q Was that the term he used to describe the
5 inflation of the invoices?

6 A Yes.

7 Q Now, it was your understanding that the
8 invoices that were purchased by TAB were actually
9 electronically batch loaded to TAB as opposed to
10 gathering up physical paper and sending it in?

11 A At this time I had no idea how the
12 information was transferred to the bank or what the
13 billing process was, but later in late November and
14 December I became aware of how it was done.

15 Q The exact methodology?

16 A Yes.

17 Q Now, when you first learned of the
18 deliberate inflation of invoices, did that cause you
19 any concern about propriety or legality?

20 A Yes.

21 Q And what steps did you take, if any, to
22 address those concerns?

23 A I told both Doug and John, and by the date
24 of this e-mail, Carol, and I believe Larry, that it
25 was a breach of contract and that it had to stop

1 immediately.

2 Q All right. Now, did you -- do you recall
3 ever having a meeting where Doug and Carol and Larry
4 and you were present to discuss this issue?

5 A Yes, and John.

6 Q And do you recall a specific occasion when
7 such a meeting took place?

8 A It would have been the first ten days of
9 August of 2009.

10 Q And how is it that you remember that?

11 A It was the first time that it was
12 discussed, it's a -- was a -- kind of a water mark
13 from my perspective.

14 Q And who called that meeting?

15 A I was called into it, so it was not me. I
16 don't know who or how it was -- come up.

17 Q And where was the meeting held?

18 A Doug's office.

19 Q At the Arrow premises?

20 A Yes.

21 Q And other than you, Doug, Carol, and John
22 Moore, who was present, if anyone?

23 A I thought -- believed Gary Jones was, but
24 I can't say specifically, but I remember everyone
25 else.

1 Q All right. Would you recount as precise
2 as you can what was said and by whom in that
3 meeting.

4 A Well, predominantly, it was, you know, I
5 was called in, this is what's going on and the issue
6 was on the table, and I was asked what I thought of
7 it and I conveyed, again, to Doug and to John and to
8 Carol that it was a breach of contract with the
9 bank, that if we lost our facility it would be
10 devastating, and it should stop immediately.

11 Q And was there a response to that advice?

12 A Well, Carol was very concerned, I think
13 Doug -- everyone was concerned about it, but when --
14 then the number was discussed as to it related to
15 one and a half to two million dollars, and that was
16 perceived, at least in the meeting, as an issue
17 that, if necessary, could be corrected and that --
18 then John explained how invoices kind of rolled off
19 if they're not paid and that that would catch itself
20 up and go from there.

21 Q All right. Was there an agreement at that
22 meeting to cease the practice immediately?

23 A I thought so, yes.

24 Q You thought there was?

25 A Uh-huh.

1 Q And what was said about that?

2 A Well, by this date certainly there was,
3 August 15th, and that it wouldn't occur, that it
4 would roll itself off and it would be as though it
5 never happened, and kind of go from there.

6 Q How long did that meeting last?

7 A Thirty minutes maybe. You know, it'd been
8 going on. My portion of it was 30 minutes.

9 Q While you were present did Mr. Moore
10 explain why he was doing the inflated invoice
11 situation?

12 A Well, from Mr. Moore's perspective, I
13 believe, that did occur as a result of an error, and
14 TAB paid that error, erroneous invoice, and it kind
15 of laid the foundation to do that.

16 Q Did he say why he was deliberately
17 inflating invoices?

18 A He could not make tag payments, he
19 couldn't make operational payments, the whole -- and
20 not with any consistency, payroll for drivers,
21 things of that nature.

22 Q Pretty fundamental expenses?

23 A Absolutely.

24 Q Was there any additional discussion about
25 the cash flow stress the company was having?

1 does that refresh your recollection as the time
2 frame when Mr. Bump put money into the company?

3 A Yeah, it was about -- it was some period
4 after there, and there were two or three of these
5 promissory notes and they totaled, roughly,
6 \$6 million, I can't recall the specific number.

7 Q All right. Wasn't there originally a
8 discussion about Mr. Bump actually purchasing the
9 heavy haul division of the company?

10 A Yeah, yes.

11 Q But that's not ultimately what happened?

12 A No.

13 Q And so he put in money by virtue of debt,
14 that is promissory notes?

15 A Yes.

16 Q All right. Now, what financial conditions
17 at the company necessitated getting \$6 million from
18 Mr. Bump in this time period?

19 A Well, with the continued reductions in
20 freight over the course of that time period, I know
21 that payroll taxes had not been paid, or at least
22 hadn't been paid in full, since, well, the beginning
23 of the year, is what I understand now. At some
24 point I thought there'd been payments made, but
25 evidently had not. And operational expenses didn't

1 reduce, and so we were, I guess, going the wrong way
2 as it relates to revenue and expense.

3 Q Okay. To your knowledge, was Carol
4 Pielsticker made aware that Larry was putting this
5 money in?

6 A Oh, yes, I had a number of discussions
7 with her about that directly.

8 Q And the rationale for it?

9 A Yes.

10 Q And in what time frame did you have those
11 discussions?

12 A When the promissory notes were being
13 drafted, so May through June 15th, or thereabout.
14 Whenever the last payment came in.

15 Q At that time Larry was her husband;
16 correct?

17 A Yes.

18 Q And still is?

19 A Yes.

20 Q All right. Now, after the meeting in
21 August where the group discussed the inflated
22 invoices, did you take any additional steps to see
23 whether that was continuing or whether it had been
24 abated properly?

25 A No, I did not, other than TAB was coming

1 Q Were there any subsequent meetings with
2 any member of management about the invoice inflation
3 situation?

4 A It was a hot topic all the month of
5 September, discussions about cutting the costs,
6 salaries. I recommended that none of the executives
7 get paid for the balance of the year. I know Gary
8 Jones recommended that the salaries be cut by
9 50 percent, the executives in particular, but he
10 actually went on to include the entire work force at
11 25 percent. I believe they had done that sometime
12 in the '80s or '90s, around the time the regulations
13 and things got real tight.

14 Q So it was a hot topic during the month of
15 September?

16 A Uh-huh.

17 Q Yes?

18 A Yes, sorry.

19 Q Let me make an effort, if we can, to break
20 down meetings that occurred. You'd indicated there
21 was a meeting with the group in August initially;
22 correct?

23 A Yes.

24 Q That was John, Carol, Doug, you, Gary
25 Jones, and John Moore?

1 A Yes.

2 Q All right. Did that group ever meet again
3 in September to discuss this issue?

4 A Yes.

5 Q And when was the next time they met, to
6 the best of your knowledge?

7 A It was in September, because that's when I
8 made the recommendation of no salaries, and I
9 actually discussed that directly with Carol.

10 Q All right. Well, let me talk about a
11 meeting. So was there a meeting of these people at
12 the Arrow premises?

13 A Yes, all -- 99 percent of the meetings,
14 except for the one that I can think of with John and
15 Doug, occurred in Doug's office, so if I fail to say
16 that, that's what I mean, but I'll try and do better
17 about it. They occurred at Arrow in Doug's office.

18 Q Doug's office?

19 A Uh-huh.

20 Q Okay. Was there ever a meeting attended
21 by persons in addition to you, Doug, and Moore where
22 the topic that you mentioned before of needing to
23 continue the inflated invoice practice was
24 discussed?

25 A Yes.

1 Q And tell me who was in that meeting and
2 when it occurred.

3 A I know that Carol, I don't recall if Larry
4 was there for that one, and Gary Jones, however,
5 that one I do recall, and it was after the 10th of
6 September and prior to the end of September.

7 Q All right.

8 MR. MALLOY: I'm sorry, I know I'm not in
9 this case, but I am interested and I am totally
10 confused as to who he said was in that meeting.

11 THE WITNESS: That's okay. I apologize.
12 John Moore and Doug Piel --

13 MR. MALLOY: What was your question?

14 MR. SHIELDS: I'm getting to the
15 question.

16 THE WITNESS: John Moore, Doug
17 Pielsticker, Carol Pielsticker, Gary Jones, and I'm
18 not sure if Larry Bump was or not.

19 Q (BY MR. SHIELDS) And do you know how that
20 meeting came to be?

21 A I did not call that meeting. It was an
22 ongoing meeting about operational. I think Gary was
23 reviewing some of the improvements and operational
24 data, which was kind of feeding into the forecast, I
25 guess, if you will, of when this could stop, and

1 then it was discussed about stopping it and
2 additional cuts that could be made in the company to
3 help eliminate the need for it.

4 Q All right. So on the topic of the invoice
5 scheme and the need for it to continue, tell me what
6 was said and by whom as accurate as you can recall.

7 A Well, again, in that time frame cash flow
8 was dismal, but we had seen a period --

9 MR. MALLOY: Again, I don't mean to
10 interrupt, but you asked him to say specifically as
11 to who said something --

12 MR. SHIELDS: Yeah, I'll get to my
13 questions but --

14 MR. MALLOY: Well, you asked that
15 question.

16 MR. SHIELDS: Yeah, but you're not a
17 party to this proceeding and I'm having you here,
18 you know, just as an accommodation.

19 MR. MALLOY: I have a right to be here,
20 Mr. Shields. You're not accommodating me. I have a
21 right to be here. And so my -- I can't object, but
22 I can request, and if you want a convoluted record,
23 that's your position.

24 MR. SHIELDS: I don't want a convoluted
25 record. I'm getting to it.

1 other things that we can do, whether it's cutting
2 salaries and getting rid of cars or getting --
3 taking any initiative that we can take to do that,
4 help speed that process up, and that's what the
5 nature of the discussion was.

6 Q All right. What did Mr. Moore say, if
7 anything, about the -- specifically about the
8 inflated invoice scheme continuing?

9 A He indicated that what had been discussed
10 earlier in the month had continued relative to this
11 rolling one and a half to two and a half million
12 dollars that would end in 90 to 120 days.

13 Q So --

14 A Because the freight volume was returning.
15 I hope I'm being...

16 Q And did Carol make any response to that
17 information?

18 A She indicated she was uncomfortable with
19 that, didn't like it. I certainly agreed with her.
20 I told her -- I reminded everyone, again, it was a
21 breach of agreement with the bank and that the loss
22 of the facility would be a horrible thing.

23 Q And what was Doug's response to it, if
24 any?

25 A Basically, you know, Doug was kind of the

1 eternal optimist on this and a number of things and
2 he thought freight was coming back and the numbers
3 in late July would suggest that and thought staying
4 the course, that is, continuing it and letting it
5 run off, would be the way to go.

6 Q Would it be fair to say that Mr. Moore was
7 characterizing ceasing the inflated invoice scheme
8 as kind of a weaning process?

9 A Absolutely, and I think the upshot of that
10 meeting was at least a discussion of how can we move
11 it along, and that is how can we cut costs and how
12 can we -- what else can be done.

13 Q But was there any question in your mind
14 that everyone in the meeting was informed that the
15 practice was continuing?

16 A Not in my mind.

17 Q Did anyone in the meeting state that, in
18 spite of Mr. Moore's sentiments that it needed to
19 continue, that it needed to stop right now?

20 A I think I said it was a horrible idea, I
21 said that for a lot -- a number of weeks. I don't
22 recall specifically saying this has to stop now, I'd
23 done that previously, but no one else -- and Carol
24 did say she was quite uncomfortable with it, but
25 that was as far as, I think, she went.

1 Q All right. Was anything else said at that
2 meeting on the topic of continuing the inflated
3 invoice scheme?

4 A Not that I can recall.

5 Q Was there any agreement or consensus
6 reached about the process of winding down off of the
7 invoice scheme?

8 A None other than what I've indicated, that
9 it would just take some time.

10 Q Now, you indicated that either Gary Jones
11 or John Moore, I can't remember, or Doug, thought
12 that it could be gradually discontinued over 120
13 days or so.

14 A And that's what I recall, 90 to 120.

15 Q All right. And was that stated to be
16 related to normalization of freight volumes or that
17 type of thing?

18 A Yes.

19 Q Were there any documents or pro formas
20 handed out that showed how that process would take
21 place?

22 A I recall a document that, I believe John
23 had, that was kind of a graduating of what was going
24 to be recouped, what was going to be billed, kind
25 of -- I would refer to it as kind of a rudimentary

1 forecast document for that -- about that period of
2 time, through the end of January, so whatever that
3 ends up being, 90 or 120 days.

4 Q When you left that meeting, did you
5 understand that the inflation of the invoices to TAB
6 would continue for at least 120 days while the
7 company worked its way out of it?

8 A That was my understanding.

9 Q All right. Did anyone in that meeting
10 state in words or in substance that, you know, maybe
11 we should call TAB and tell them about it?

12 A No.

13 Q In fact, Mr. Mowry, wasn't there a fairly
14 deliberate effort to hide the inflated invoice
15 scheme from TAB?

16 A I believe so, yes.

17 Q And what efforts were you aware of to
18 conceal this ongoing inflation from TAB?

19 A I'm sorry.

20 To my knowledge, the financial statements
21 were improved.

22 Q You mean falsified?

23 A They were intentionally improved, or made
24 to look better than they were, if you included --
25 from a revenue number. The revenue that was

1 submitted to TAB was used, I believe, with TAB. The
2 only time that I was present when that occurred was
3 at the meeting in Utah in November.

4 Q Were you aware of any alterations in the
5 TMW or Great Plains computer platforms?

6 A Not at that time, no. That came later,
7 and I became aware of that in the latter part of
8 November.

9 Q How did you become aware of that?

10 A It was a conversation with John relative
11 to turning something on -- and I was never in TMW, I
12 don't know how it was used or -- I'm simply
13 recounting how that information was being provided
14 to TAB, and that TAB had requested certain
15 information and, basically, it was just not provided
16 to them electronically, is my understanding.

17 Q Now, after the meeting you just testified
18 about in September, was there ever another meeting
19 that included more than you and John and Doug where
20 the topic of the continuation of the inflated
21 invoice scheme was discussed?

22 A Well, I know it occurred in the latter
23 part of October or early November.

24 Q And how do you remember that date?

25 A We had been in some conversations with an

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1 alternative lender, and I believe the lender was
2 LSQ, and I can't remember where they're from, I
3 think it's Florida or somewhere in the southeast.

4 **Q That was pursuant to efforts to find a**
5 **different lender?**

6 A In the event that there became a bigger
7 issue with TAB. And Doug actually led most of the
8 discussions with LSQ, I had some, but he was talking
9 to the guy on the phone and he kind of requested a
10 proposal. I recall, I think, that we actually
11 received kind of an informal from them, and then
12 that information was conveyed to Larry, Carol, I
13 don't know if Gary was -- I don't believe Gary was
14 in that meeting, but John, Doug, and myself were in
15 that meeting in the latter part of October to review
16 that proposal and talk about what the ramifications
17 would be moving from TAB to LSQ.

18 **Q All right. That would -- was the topic of**
19 **the ongoing invoice inflation discussed?**

20 A Right, the need for the move was, I guess,
21 premised on the basis that that had continued, that
22 it was still this kind of \$2 million rolling item,
23 and given the holidays and things, I believe John --
24 I concurred, was concerned about whether or not the
25 revenue stream would hold to hit the end date that

1 was projected, and so then we continued with the
2 whole discussion of LSQ and would they be available
3 to step in if the need arose.

4 Q And this is a meeting between?

5 A It was the update meeting for Carol on a
6 variety of topics.

7 Q Let me draw back. Who is physically in
8 attendance?

9 A It was held at Arrow in Doug's office.
10 John Moore, myself, Doug Pielsticker, Carol
11 Pielsticker, Larry Bump, and I don't believe Gary
12 was in that meeting, I'm almost sure he wasn't,
13 so...

14 Q This was triggered by the discussions with
15 LSQ to be a subsequent lender?

16 A Correct.

17 Q And the meeting, again, was in Doug's
18 office?

19 A Yes.

20 Q And what was the exact date of that
21 meeting, as close as you can recall?

22 A Somewhere between the -- the last ten days
23 of October, maybe early November, but I'm pretty
24 sure it was before Halloween.

25 Q Okay. Tell me what was said and by whom

1 in that meeting as precise as you can recall about
2 the continuation of the invoice inflation to TAB.

3 A Well, as I recall, Doug started the
4 meeting with the discussion of LSQ and the need to
5 have someone on-call if that -- if TAB had any
6 further issues with Arrow. I think they had
7 continued to ask about coming back in for an audit
8 at some point, which John had pushed off. And so
9 that was kind of driving the LSQ, if the issue
10 continued or became a problem, then LSQ would be
11 available and --

12 Q Was it discussed that TAB was continuing
13 to ask questions?

14 A Yes, yes, and it was specifically
15 discussed that we were still at that, you know, two
16 to two and a half million dollar rolling number,
17 which was the reason, I think, John actually said
18 that the deadline, or the dropoff date, or the quit
19 date, or whatever it is that was discussed was in
20 jeopardy because we should have seen a lower number
21 at that time, because it was still at the two, two
22 and a half million dollars number, and the freight
23 had begun to slow down. It usually starts to slow
24 down, kind of, you know, the 15th of November, and
25 so we were anticipating that. And the levels that

1 we had talked about at the latter part of July and
2 early August had not necessarily continued, so our
3 forecast, essentially, was not working.

4 Q So let me make sure I understand, so
5 Mr. Moore is reporting in words or in substance that
6 the plan to wind down out of the need to inflate the
7 invoices to TAB was behind schedule because of
8 revenues were not keeping up?

9 A Correct. And, actually -- but I want to
10 be clear, in the meeting Doug did the overview of
11 that. That information had been provided by John to
12 Doug. Doug did the overview of that and then went
13 on into, you know, if TAB comes in, we'll have LSQ
14 ready to go and we'll roll that off to them by the
15 end of November of 2009.

16 Q So it appeared that what he was hoping was
17 that one method of winding out of it would be to get
18 a substitute lender?

19 A Correct, if the need arose.

20 Q If the need arose. And what, if anything,
21 did others attending the meeting say about that
22 topic?

23 A About the need to move to an alternative
24 lender?

25 Q That, or the fact that the wind down

1 strategy wasn't working out.

2 A Carol, again, stated how uncomfortable she
3 was with it. Doug indicated that, as freight
4 normalized past the holidays, we would just be kind
5 of right back on track, just a little delay. And I
6 indicated that if there was a way to move to LSQ, it
7 should be done, because that would presumably -- but
8 that there would be a 2 million to two and a half
9 million dollars shortage that would need to be
10 addressed, because I asked John if there would be an
11 audit, much like there was for TAB, and he said
12 there would be, so --

13 Q By LSQ?

14 A By LSQ, I'm sorry. And in that audit
15 process it would be impossible to conceal the over
16 advance of the two and a half million dollars. And
17 at that point Carol was not encouraged by the notion
18 that there would be a two and a half million dollars
19 shortage, because the company would be in no
20 position to pay that and --

21 Q What did she say specifically?

22 A She said, "I do not want to pay two and a
23 half million to move banks, unless we absolutely
24 have to."

25 Q Was Larry in this meeting?

1 then Carol would begin paying it, but wanted to be
2 reimbursed for it, and then he was part of some
3 discussions with NetJets that he would be paying
4 part and she would be paying part, and that was a
5 difficult thing for him to work through because,
6 frankly, he couldn't pay it.

7 Q Were the -- in your observations, were the
8 airplanes ever used for personal use rather than
9 business use?

10 A I can only say that the business use for
11 them never came through me. I was not aware of it
12 being for business. I -- in nine years, I was on
13 the plane five times, I think, four or five times,
14 two of which were in '09 and one of which was hiring
15 Tom Witt out of Iowa, and another was -- I can't
16 remember, it's been -- but in nine years it was very
17 sparsely used, from my perspective, but I wasn't
18 privy to all the things that Carol would go out of
19 town for, but I certainly was Doug, but I would say
20 that the vast majority of it was not business
21 related.

22 Q At some point in -- well, let me ask you
23 this, do you recall the events of December 11th,
24 2009 when the TAB relationship changed?

25 A Yes.

1 Doug Pielsticker and Mr. Hunter.

2 THE WITNESS: Based on what Doug
3 Pielsticker provided me, yes, that was -- it was
4 750,000 from each of them for the guarantees to
5 operate through the weekend.

6 Q (BY MR. SHIELDS) All right. And Arrow
7 needed that money quite quickly that night, didn't
8 it?

9 A Yes, we had -- well, certainly we needed
10 the money for fuel, and I believe there was a driver
11 payroll pending. It was Friday, so I know there
12 was. They got paid every Friday. And without --
13 and it was already noticeably delayed to the
14 drivers, because people were getting calls.

15 Q All right. Now go to Exhibit 148. This
16 is an e-mail string, the top of which is
17 December 13th between you and me, but it goes back a
18 ways. If you would look at the third page, which is
19 an e-mail from me to you and others on December 11th
20 at 9:57 p.m. The third page of Exhibit 148 at the
21 bottom.

22 A Yes.

23 Q And do you recall receiving forms of
24 guarantee with that e-mail?

25 A Yes.

1 Q And then there is some additional e-mail
2 traffic going back and forth about trying to get the
3 guarantees back to TAB; correct?

4 A Yes.

5 Q And the top of the e-mail chain on page
6 one is an e-mail from you to me and others attaching
7 the requested documents. Do you see that at the
8 top?

9 A Yes.

10 Q And, in fact, you attached the guarantees
11 as signed; correct?

12 A Yes.

13 Q Now, when the guarantees, the unsigned
14 guarantees, came to you by e-mail on or about
15 December 11th, between then and the time that you
16 e-mailed them back to me on December 13th, tell me
17 what process you went through to get them signed, as
18 indicated when you sent them back.

19 A As I recall, I received a call from TAB on
20 Sunday --

21 MR. WOHLGEMUTH: Object as -- objection.
22 Nonresponsive. The question is what procedure you
23 went through.

24 Q (BY MR. SHIELDS) Go ahead.

25 A Okay. Go ahead, I'm sorry.

1 **conversations with a gentleman named Jim Boylin**
2 **about possibly buying the company?**

3 A Those actually were a little bit later, if
4 I recall them correctly, they weren't until after
5 the meetings in Dallas where it was determined that
6 TAB was not going to continue. That's my memory. I
7 could be wrong, but my -- I'm almost certain it was
8 after that fact, but before -- after -- I'm sorry,
9 after the meetings at Dallas to make that
10 determination.

11 Q **Okay. Well, we'll talk about those**
12 **meetings in Dallas in a little bit.**

13 **Now, during the weekend beginning with**
14 **Friday, December 11th through the 14th, that Monday,**
15 **did you ever speak to Carol Pielsticker about the**
16 **problem that had arisen with TAB and the disclosure**
17 **of the fraud?**

18 A I believe that occurred on Friday, after
19 the fact, and before, kind of, between the phone
20 calls with Boyd hunter, Doug and I got on the phone
21 with Carol and imparted what had occurred.

22 Q **Was this on Friday, December 11th?**

23 A Yes.

24 Q **You and Doug together?**

25 A Yes.

1 Q And what time of the day was that,
2 approximately?

3 A In the afternoon, I mean, it would have
4 been -- it was afternoon, but before the call with
5 TAB after hours.

6 Q And as best as you can recall, what was
7 said and by whom in that conversation?

8 A Just had told what had occurred earlier in
9 the day relative to the invoicing issues, and that
10 it was a significant and very serious problem and
11 they were threatening not to pay or not to --

12 Q Not to advance?

13 A Not to advance for -- on the invoices they
14 had because of the nature of the breach, and that we
15 had expenses to get through the weekend. It was
16 kind of a strategy session of what could be done
17 then.

18 Q All right. Do you recall any mention
19 of -- in that conversation, of TAB requesting
20 personal guarantees to make any additional advances?

21 A I'm not sure we had that information then,
22 but I believe we did, but we didn't have the
23 documentation for it yet, and so Doug communicated
24 to her that that was most likely forthcoming and
25 something that, unless they wanted to -- unless

1 Carol wanted to put in the cash needed to operate,
2 that was going to be a necessity.

3 Q And do you recall her responding to that
4 in any way?

5 A She was very unhappy with the whole
6 situation, I'm not sure she -- she didn't -- she
7 said -- I think her statement was, "Well, let's wait
8 and see what happens rather than guessing as to what
9 could happen," and then later that evening the
10 guarantees came in.

11 Q And did you have any subsequent
12 conversations with her after the guarantees came in?

13 A No. I provided those to Doug and they
14 were returned to me signed.

15 Q So after that you just let Doug handle it?

16 A Yes, which was the normal case with
17 Carol's signatures on the other items. I don't -- I
18 think I went to Carol's house once or twice in nine
19 years to get an actual signature on something.

20 Q In that period of time, around
21 December 11th, did Carol and Doug seem to have a
22 good relationship to you?

23 A Yes, but I think it was -- I'd
24 characterize it as tense. I mean, I think
25 everything was tense at that time, but they were

1 correct?

2 A Yes.

3 Q All right. And over what period of time
4 did that practice continue?

5 A The first part of December of '09 is my
6 understanding now.

7 Q So from August of '09 through December of
8 '09, notwithstanding the legal advice and
9 instructions you had given to Mr. Moore and
10 Mr. Pielsticker about not inflating invoices, that
11 practice continued; correct?

12 A That practice continued, and certainly
13 others other than Mr. Moore and Mr. Pielsticker were
14 informed of that opinion.

15 Q Now, and that's -- leads right to my next
16 question. During that period, let's take the period
17 from August 1st to December 1st, 2009, did you
18 notify TAB in writing or electronically of the
19 inflated invoices?

20 A No.

21 Q Why not?

22 A We were directed not to, the practice
23 would continue and the roll off -- recourse, would
24 ultimately correct the situation.

25 Q You said "we were directed not to." Are

1 you saying that you, as general counsel, were
2 directed by somebody not to disclose to TAB these
3 inflated and overstated invoices?

4 A Well, directed specifically by Doug
5 Pielsticker, and I guess, to some degree, Carol
6 Pielsticker.

7 Q Tell us on what date Carol Pielsticker
8 directed you not to disclose that information to
9 TAB.

10 A On three or four of the occasions, I've
11 testified. I don't have a specific date, but I've
12 given date ranges. I don't have -- the meetings
13 weren't on a calendar. I don't have a calendar from
14 that time frame.

15 Q Why not?

16 A Actually, it was electronic and I've never
17 obtained access to it after the closure of Arrow.
18 Most of the things weren't on the calendar anyway
19 because they were very impromptu.

20 Q Did you believe, as an attorney, that you
21 had an obligation to disclose this practice of
22 sending fraudulent invoices to TAB?

23 A I certainly had an obligation to make my
24 client aware of it and make them aware of the
25 consequences of it.