

# **EXHIBIT**

# **G**

IN THE UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION  
www.flsb.uscourts.gov

IN RE:	)	
	)	
ULRICH FELIX ANTON ENGLER;	)	Chapter 7
PRIVATE COMMERCIAL OFFICE, INC.;	)	CASE NO. 9:08-bk-04360-MGW
and PCO CLIENT MANAGEMENT, INC.	)	
	)	
Debtor.	)	
	/	

**JOHN BARRY'S DEPOSITION EXCERPTS FROM FEBRUARY 13, 2012**

*-Page 4 Lines 17-19*

4

17 Q. And you're testifying today in what capacity?  
18 A. I am testifying in my capacity as liaison to  
19 the subpoena department.

*-Page 7 Line 12 to Page 8 Line 6*

7

12 Q. Were any questions passed on in connection  
13 with the subpoena that we've been discussing today?  
14 A. Yes.  
15 Q. And who were those questioned passed off to?  
16 A. Those questions were passed directly to me  
17 from Richard McDonald.  
18 Q. And did you pass those on to anyone else?  
19 A. I did.  
20 Q. To who?  
21 A. I passed on -- I passed on the questions to  
22 our fraud department, to our fraud detection  
23 department, and also our BSA/AML department.  
24 Q. Who at those departments?  
25 A. My contact in the fraud department would have

8

1 been either John Reed, that's R-E-E-D, or  
2 Charlene Richardson.  
3 Q. What about the BSA/AML department?

4 A. Which is also called FIU or the Financial  
5 Intelligence Unit. I sent a copy to my contact in  
6 that department, whose name is Ed Phillips.

**-Page 9 Line 15 to Page 10 Line 3**

9

15 Q. Mr. Barry, when did you find out you would be  
16 testifying today?

17 A. I found out I would be testifying today after  
18 recognizing that many questions had been unanswered by  
19 our records custodian.

20 Q. That was this morning?

21 A. That was this morning, correct.

22 Q. So did you do anything to prepare for this  
23 deposition?

24 A. I'm very familiar with the file. I can't say  
25 that I prepared for a deposition that I just thought I

10

1 would be doing this morning, but I can say that I am  
2 very familiar with this file and with the questions  
3 that are posed.

**-Page 12 Line 12 to Page 12 Line 25**

12

12 Q. Can you tell me what topics you are prepared  
13 to testify as to?

14 A. I am prepared to testify to all of the  
15 topics, with the exceptions that counsel has already  
16 objected to.

17 Q. What do you understand those exceptions to  
18 be?

19 A. The exceptions that I understand to be?

20 Q. Yes.

21 A. Pursuant to the judge's prior order on the  
22 issue would be anything involving Questions 11 and 12.

23 Q. Are you knowledgeable about information  
24 identified in 11 or 12?

25 A. I am.

**-Page 17 Line 18 to Page 18 Line 14**

17

18 Q. The information that's referenced in this  
19 e-mail, who had that information?

20 A. The box of information came from FIU.  
21 Q. Do you know how the contents of that box came  
22 to be populated?  
23 MR. HENDRIX: Objection to form. Answer the  
24 question to the best of your ability. I don't  
25 understand that question.

18

1 A. The FIU area is tasked with AML/BSA  
2 compliance. Anything that would be in their  
3 possession would be in the furtherance of those aims.  
4 Q. Do you know why they had documents related to  
5 the Engler accounts?  
6 MR. HENDRIX: Objection. Instruct you not to  
7 answer the question, pursuant to the court order  
8 and pursuant to federal law given the existence  
9 or non-existence of SAR-related materials.  
10 Q. Without revealing the existence or  
11 non-existence of a SAR generated by SunTrust in this  
12 matter, do you know why FIU had these documents?  
13 MR. HENDRIX: I'm going to instruct you not  
14 to answer that question.

*-Page 19 Line 12 to Page 21 Line 25*

19

12 Q. What do you understand about SunTrust being  
13 tipped off by American Express?  
14 A. I understand that some information that was  
15 mentioned in the Wachovia document that you discussed  
16 earlier had been shared with American Express and that  
17 that information had, in turn, been shared with other  
18 financial institutions.  
19 Q. Including SunTrust?  
20 A. I believe so.  
21 MR. HENDRIX: Objection to that entire  
22 question. And if you're aware -- I'll instruct  
23 you not to answer the question within the  
24 confines of the SAR objection. You're quite  
25 familiar with them.

20

1 Q. When did SunTrust first learn the information  
2 that was provided by American Express?  
3 MR. HENDRIX: If you have independent  
4 knowledge of that, go ahead and testify. If that  
5 knowledge comes any documents that may or may not  
6 be related to a SAR and you have no independent

7 knowledge, I'll instruct you not to answer.

8 A. I can't answer that question, Counsel.

9 Q. You can't --

10 MR. HENDRIX: I'm instructing him not to.

11 MS. ELLIOTT: Are you instructing him not to  
12 provide the date at the time that SunTrust  
13 learned information about the accounts?

14 MR. HENDRIX: If he has independent knowledge  
15 of it that would not relate to any SAR or  
16 SAR-related material, should they exist or not  
17 exist, he may answer the question.

18 If his sole knowledge comes from SAR-related  
19 materials, whether they exist or do not exist, he  
20 cannot testify as to what is found in SAR-related  
21 materials.

22 Q. (BY MS. ELLIOTT:) Without revealing  
23 whether a SAR has been issued or not in this case,  
24 when did SunTrust first learn about any investigation  
25 of PCO or Ulrich Engler?

21

1 MR. HENDRIX: Same objection.

2 Q. When did SunTrust first come into possession  
3 of the press release that you mentioned was attached  
4 to this e-mail?

5 A. On the basis of prior objections I wouldn't  
6 be able to answer that question.

7 Q. Does the press release that you attached  
8 reveal whether a SAR was issued by any financial  
9 institution?

10 A. Answering that question could potentially  
11 also lead to the revelation, or lack thereof, of a  
12 SAR.

13 Q. If you answer a question about the contents  
14 of a press release that you shared with my office,  
15 that may reveal the existence of a SAR?

16 MR. HENDRIX: Well, you can ask him about the  
17 press release; you can't ask about where he got  
18 it.

19 MS. ELLIOTT: Correct.

20 MR. HENDRIX: I think is what he's trying to  
21 tell you.

22 Q. (BY MS. ELLIOTT:) My question to you was,  
23 does the press release itself indicate that a SAR had  
24 been issued or whether a SAR had been issued?

25 MR. HENDRIX: You can answer that.

**-Page 22 Line 9 to Page 22 Line 19**

22

9 Q. Did there come a time when SunTrust Bank had  
10 knowledge of the facts contained in that press  
11 release?

12 MR. HENDRIX: If you have independent  
13 knowledge, other than any materials that may or  
14 may not relate to a SAR or if a SAR exists or  
15 does not exist, you may testify. If any  
16 knowledge you have comes from a SAR or any  
17 SAR-related materials, I would instruct you not  
18 to testify.

19 A. I can't answer that question, Counselor.

**-Page 23 Line 25 to Page 24 Line 14**

23

25 Q. Why were the Engler accounts closed?

24

1 A. I can't answer that question on the basis of  
2 the objections already lodged by counsel before.

3 Q. Who was involved in the decision to close the  
4 Engler accounts?

5 A. It would have been FIU.

6 Q. Who at FIU?

7 A. I don't know who at FIU, but I did give you  
8 the contact that I have at FIU.

9 Q. When did FIU determine to close the accounts?

10 A. I can't answer the question based on the  
11 basis of prior objections already lodged.

12 Q. Did the SEC ever request documents from  
13 SunTrust Bank with regard to PCO or Engler?

14 A. Not to my knowledge.

**-Page 29 Line 8 to Page 29 Line 24**

29

8 The bank doesn't maintain a copy of its  
9 account closing letters?

10 A. Not that I am aware of.

11 Q. After this letter was generated, how long --  
12 strike that.

13 After this letter was generated, how long did it  
14 exist on SunTrust systems?

15 A. I don't believe there is a retention  
16 requirement for these kinds of generic closing

17 letters. There would be retention requirements for a  
18 number of other kinds of documents and client  
19 communication; this, however, would not be one of  
20 them.21 Q. Was a copy of this letter maintained by the  
22 bank?  
23 A. I don't believe so, and I attempted to find a  
24 copy and I was unable to find one.

*-Page 30 Line 17 to Page 30 Line 23*

30

17 Q. What account review resulted in the --  
18 without revealing the existence of a SAR or  
19 nonexistence of a SAR in this matter, what account  
20 review resulted in the issuance of the letter to the  
21 account holder?  
22 A. I can't answer that question based on prior  
23 objections, Counsel.

*-Page 32 Line 13 to Page 33 Line 14*

32

13 Q. Did SunTrust know at this time the accounts  
14 were being used as part of a fraud scheme?  
15 MR. HENDRIX: You can answer that question if  
16 you have independent knowledge. If you gained  
17 any knowledge through SAR documents or  
18 SAR-related documents, to the extent they exist  
19 or don't exist, I instruct you not to answer the  
20 question.  
21 A. I don't know.  
22 Q. Are you not answering on the basis that you  
23 don't have personal knowledge?  
24 A. I don't think so. I don't think the bank  
25 knew at that time, if you're saying the bank,

33

1 generically. Did a teller know or somebody like that?  
2 I don't know.  
3 Q. At the time this account closure letter was  
4 issued, did SunTrust Bank know that PCO or Engler was  
5 being investigated or in connection with any fraud?  
6 A. I don't know. When you say being  
7 investigated with any fraud, by US financial  
8 authorities? By European financial authorities?  
9 Q. By any authorities.  
10 A. I can't answer that question.

11 Q. On what basis can you not answer the  
12 question?

13 A. On the basis of the objections in prior  
14 communications.

*-Page 33 Line 23 to Page 36 Line 6*

33

23 Q. Without the revealing the existence of a SAR  
24 generated by SunTrust Bank in this matter, can you  
25 tell me what information SunTrust Bank had at the time

34

1 that this account closing letter was issued regarding  
2 the investigation by German authorities or Austrian  
3 authorities of Mr. Engler?

4 MR. HENDRIX: If you're asking him to testify  
5 what the content of a SAR file or SAR-related  
6 material in the FIU file would be, that's well  
7 within the scope of the court order and I  
8 instruct him not to answer.

9 If he has any knowledge as to German  
10 authorities investigating this outside the scope  
11 of a SAR file, to the extent if one does or does  
12 not exist, he can answer that question.

13 MS. ELLIOTT: I'm inquiring as to the bank's  
14 knowledge of facts whether or not a SAR was  
15 issued.

16 MR. HENDRIX: The bank's knowledge of facts?

17 MS. ELLIOTT: At this point in time.

18 MR. HENDRIX: If those facts are learned by  
19 him solely from a SAR file, should a SAR file  
20 even exist, he can't testify to it.

21 If he has independent knowledge of facts  
22 outside any SAR file, should a SAR file even  
23 exist, then he can testify to it.

24 Q. (BY MS. ELLIOTT:) Who can I ask that would  
25 know, within their personal knowledge, as to what

35

1 information SunTrust had at the time this document was  
2 issued to Private Commercial Office, Inc.?

3 A. It would be illegal for you, under the  
4 current law, to ask anybody the same question.  
5 I can tell you, and it's consistent with everything  
6 that you've found out so far, is that EFM, our  
7 Enterprise Fraud Management unit, did not have a file  
8 on this individual or on these companies.



9 Q. But FIU did have a file; is that correct?

10 MR. HENDRIX: He cannot testify as to --

11 A. I cannot testify to the existence or

12 non-existence of a SAR.

13 Q. Without revealing whether a SAR was issued or

14 not, did FIU have a file of documents related to the

15 Engler accounts?

16 MR. HENDRIX: Again, if you go to the court

17 order, the court order says we do not need to

18 produce SAR-related materials if it leads to the

19 existence or the identity of a SAR, whether SAR

20 relates or not.

21 If you read the order very carefully he is

22 not allowed to testify to any materials that

23 reveal the existence of a SAR, whether a SAR is

24 issued or not.

25 So therefore, anything that may be in the

36

1 fictional SAR-related file, should a SAR exist,

2 he cannot testify to.

3 Do you want to run through this dispute with

4 the court? We're more than happy to show up.

5 MS. ELLIOTT: We will do that.

6 THE WITNESS: We know.

*-Page 36 Line 15 to Page 37 Line 9*

36

15 Q. What negative news did Mr. Scott receive with  
16 regards to Private Commercial Office?

17 A. I can't answer that question on the basis of  
18 the objections already registered on the record.

19 Q. When did Mr. Scott received any news with  
20 regard to Private Commercial Office?

21 A. I also can't divulge that information for the  
22 same reasons. The Court understood this dilemma,  
23 which is why it instructed Mr. Hendrix to go through  
24 all of SunTrust's files and provide a certification,  
25 which we have done.

37

1 Q. Can you identify the increased suspicions  
2 that SunTrust had with regard to PCO accounts?

3 MR. HENDRIX: I have to object. You're  
4 asking questions based on Wachovia Bank  
5 documents. It's not a document generated by  
6 SunTrust Bank. Is that where these questions are

7 coming from?  
8 MS. ELLIOTT: I'm asking the questions that  
9 I'm asking.

**-Page 39 Line 3 to Page 39 Line 8**

39

3 Q. Are you prepared to testify as to the facts  
4 underlying SunTrust's decision to close the accounts?  
5 A. On the same objection I would have to  
6 restrict my testimony to what has already been said  
7 regarding the danger of revealing the existence, or  
8 lack thereof, of a SAR.

**-Page 49 Line 3 to Page 49 Line 13**

49

3 Q. Did the account activity on the Engler  
4 accounts ever trigger any review by SunTrust Bank?  
5 A. I can't answer that question on the basis of  
6 objections formerly registered and on the record.  
7 Q. Without revealing that a SAR has been issued  
8 or not, did the account activity in the Engler  
9 accounts trigger any review by anyone at SunTrust  
10 Bank?  
11 MR. HENDRIX: Prior to or outside of a SAR or  
12 any SAR-related materials.  
13 A. Not to my knowledge.

**-Page 52 Line 1 to Page 52 Line 5**

52

1 Q. What did SunTrust understand Mr. Engler's  
2 business to be?  
3 A. I don't know other than -- I don't know. I  
4 don't know. All I know is what I have learned  
5 subsequent.

**-Page 49 Line 14 to Page 52 Line 22**

49

14 From June 11, 2007 to July 27, 2007  
15 approximately \$35-and-a-half million was transferred  
16 out of SunTrust accounts and into Wachovia accounts.  
17 Is this normal account activity for these accounts?  
18 MR. HENDRIX: How much money?

19 MS. ELLIOTT: \$35-and-a-half million.  
20 A. As a point of comparison, at about the same  
21 time, about \$3 trillion was bled out of the real  
22 estate market across the United States.  
23 To answer the question specifically, talking in a  
24 bank between millions, billions and, unfortunately,  
25 since the Great Recession, trillions of dollars has

50

1 really become an everyday activity.  
2 Q. Was the transfer of \$35 million out of the  
3 SunTrust accounts and into the Wachovia accounts  
4 normal account activity for this account?  
5 A. I have no idea.  
6 Q. And would an account that held \$500 million  
7 be a sizable account for SunTrust Bank?  
8 A. For any financial institution it would be.  
9 Q. Would the dwindling of that \$500 million  
10 deposited into SunTrust Bank down to almost nothing  
11 concern the bank?  
12 A. As much as the \$3 trillion that was sucked  
13 out of the US finance sector probably at about the  
14 same time. There were a lot of concerns in the  
15 banking sector at the time.  
16 Q. I'm talking about SunTrust concerns with  
17 losing a \$500 million account within its own deposit  
18 system.  
19 A. I mentioned earlier that it wasn't surprising  
20 to me that an account representative wasn't  
21 specifically assigned to this account. And this is  
22 why -- and this answers your question. At some point,  
23 because of the size of the relationship, somebody  
24 would have, somebody within SunTrust Bank would have  
25 tried to reach out to PCO Client Services and would

51

1 have tried to offer probably a gambit of services,  
2 including credit arrangements or treasury management  
3 products, things that banks normally do.  
4 However, like many, many clients -- and I don't  
5 know because it's pure speculation in this case --  
6 many clients say, no thanks, I just want to use your  
7 bank as a place, basically, to receive wire transfers  
8 and to send wire transfers.  
9 And if it's consistent with what you know about  
10 the client and the client's activities, it doesn't

11 really raise any red flags. A lot of people with a  
12 lot of money frequently do not like to be bothered  
13 because they tend to be bothered more than other  
14 people.

15 It's not unusual in this case, and I can only  
16 speculate, if somebody tried to reach out to them and  
17 they were told, you know, I'm happy with my banking  
18 relationship as it is, that's all I want -- but I  
19 don't know. And to answer your question, for big,  
20 big, big, you know, titanic kinds of clients -- and  
21 we're one of the largest banks in the United States --  
22 it's one big fish among many in a big lake.

23 Q. Did anybody from SunTrust reach out to  
24 Mr. Engler?

25 A. I don't know.

52

1 Q. What did SunTrust understand Mr. Engler's  
2 business to be?

3 A. I don't know other than -- I don't know. I  
4 don't know. All I know is what I have learned  
5 subsequent.

6 Q. But you can't reveal that information to me?

7 A. I believe you showed me some information here  
8 that is on this document, which is Exhibit No. 7 --

9 MR. HENDRIX: That's not a SunTrust document.  
10 Are you testifying to that?

11 A. Oh, no. I can only testify what I see on  
12 this document and I cannot -- yeah, you're right,  
13 because of prior objections I wouldn't be able to talk  
14 about any other source, independent source for that  
15 kind of information.

16 Q. So you can't tell me today without revealing  
17 that a SAR was issued, or not, whether SunTrust Bank  
18 became aware that PCO or Engler was accused of  
19 operating a Ponzi scheme?

20 A. As I told Brett von Borke a year ago, as I  
21 said I think elsewhere I know, yes, I can't.  
22 I cannot. That's deja vu all over again.