Ex. 15 – Excerpts of Deposition of William Briggs, dated August 22, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALICIA MARSHALL, et. al.,)
individually and on behalf of)
all others similarly situated,)
)
Plaintiffs,)
vs.)Case No.
)5:21-cv-04337-JMG
PRESTAMOS CDFI, LLC.,)
)
Defendant.)

REMOTE DEPOSITION OF WILLIAM BRIGGS

Thursday, August 22, 2024

Austin, Texas

Reported By: TRICIA J. LATHOURIS, CSR, RPR

JOB NO. 31471

Page 25

recall the specifics.
Q Okay. Well, when you say "I may have been involved," is it your recollection that you had purchased a defective product and received money in compensation for that at some point in time?
A I have never received compensation from a class action lawsuit.
Q Okay. When you say "never," you mean either as a purchaser of a product or service or a service provider, excepting this lawsuit and Capital Plus?
A Correct.
Q Okay. What is your understanding of the requirements to have a class action?
MR. LEDERER: Objection to form.
BY MR. ROGERS:
Q You can answer, Mr. Briggs. Let me just be clear, Mr. Briggs.
Larry is going to object from time to time. That does not relief you of the obligation to answer. The only way that you are relieved of that obligation is if Larry instructs you not to answer.
MR. ROGERS: So, with that, can you read back my question, Tricia.

Page 26

(Record read as requested.)
MR. LEDERER: Objection to form. And, yes, Mr. Briggs, to the extent you can answer, you can answer.
A My understanding of class action -- I'm sorry. Can we ask the question one more time?
MR. ROGERS: Let me restate it in a simpler fashion.
BY MR. ROGERS:
Q What is a class action lawsuit?
A My understanding of what a class action lawsuit, is that it is a certain type of lawsuit generally composed of multiple class members, i.e., More than one or two parties, multiple parties, and that there are certain requirements that distinguish a class action lawsuit from, say, a normal lawsuit where there are two parties.
Q And what requirements are you referring to?
A My understanding is that, generally, there are civil procedure requirements and certain elements that are required in order for a lawsuit to be certified as a class action lawsuit.
Q Can you identify them for me, please?
A I can identify one, which is numerosity,

Page 27

and some other ones, but I am not an expert in class action litigation.
Q You're not a lawyer, are you, Mr. Briggs?
A No, sir.
Q You used the term "class representative."
What is a class representative?
A Can you restate the question or restate it in a different way?
Q What is a class representative?
A A class representative, as far as I understand, is someone who is a part of the class, a member of that class -- class action lawsuit.
Q Let's try this with an illustration.
The lawsuit that we are -- the lawsuit that brings us together today is being brought on behalf of a class.
Is that your understanding.
A Yes.
Q And that class has been defined by counsel for the class; correct?
A Correct.
MR. LEDERER: Objection to form. He still may answer.
BY MR. ROGERS:

Page 28

Q And is it fair to say that a class representative is an individual that fits the definition of the class? Is that your understanding?
A That is my understanding.
Q And we're going to get to your report in a little while because in your report you -- both your reports -- you talk about class actions and class definitions, and we're going to get into that in a little bit, but let's take a step back, if we can.
When were you hired by Bailey Glasser in this case? Not Capital Plus, but this case.
A I believe earlier this year I was hired.
Q Earlier in 2024?
A Correct.
Q Do you remember when?
A I don't remember the specific date.
Q How did you come to meet lawyers at Bailey Glasser?
A I can't recall how the first introduction was made. In my role I have introductions or recommendations for my services made by a lot of people that I'm not even aware of.
Q Did you negotiate your hourly rate with

Page 45

overall very proficient in discussing the Paycheck Protection Program requirements.

Q When you say "expert" has a certain meeting, is it your understanding that Judge Pittman is using "expert" in terms of its legal meaning?

MR. LEDERER: Objection to form. You're asking him to speculate regarding what Judge Pittman was thinking?

BY MR. ROGERS:

Q I'm asking you what your understanding is.

You used the phrase "certain meanings of the term 'expert,'" or something to that effect, and I'm just asking you whether the "certain meanings" you're referring to are legal.

MR. LEDERER: Objection to form. You can answer.

A I can't say for sure.

BY MR. ROGERS:

Q I want to go back to page 5. Get out of footnote 2 and go back to the paragraph that we began with. It says, "These experts claim that any failure to cancel a loan 'for whatever reason' within 20 days of issuance of an SBA number would 'be inconsistent with the program and in violation

Page 46

of the rules.' But while this reading of the provision would solve the commonalty issue here, the Court disagrees with this interpretation."

Correct?

A That's what it says, correct.

Q Was there a reason you didn't feel it relevant to your report, which is discussing what you regard as the differences between Capital Plus and this case, that the opinion you expressed in the Capital Plus case was one that did not carry the day?

MR. LEDERER: Objection to form. You can answer.

A "The Court disagrees with this interpretation" is the opinion of Judge Pittman.

BY MR. ROGERS:

Q I understand that.

Is that opinion relevant in your mind to this case?

A That specific interpretation, I think, in this case and -- I'm sorry, in the Capital Plus case, my understanding was -- I just disagree with that.

Q I appreciate that you disagree with that.

Page 47

I'm asking you whether the interpretation, whether you agree or disagree, whether interpreting this section of your opinion in Capital Plus is relevant in this lawsuit?

And it's just your understanding. I understand you're not a lawyer, and I'm not asking you to give me a definition or legal relevance or apply that term.

I'm just asking you whether the opinion that you've given in the Capital Plus case is relevant in any way to the opinion that you are giving in this case?

A I believe the regulations were clear and that cancellation, the 20-day cancellation, was one of the more clearer things of that -- of the program.

Q Did Judge Pittman grant class certification in the Capital Plus case?

A My understanding is he did not.

Q You also mention -- and we can go to your report for this -- in paragraph 32, after you note the denial of class certification, you say, "However, in this lawsuit, the class that the plaintiffs allege is narrower than the class alleged

Page 48

in the Capital Plus." And you go on to say that "The class here is not a nationwide class but only covers those in the plaintiffs' respective states."

Correct?

A Correct.

Q How does that affect your opinion in this case?

A My opinion is that the narrower class is a more precise definition, and the narrower class result are more geared to those plaintiffs and potential class members who were harmed.

Q And you say that -- based on the sentence you write -- at least in part you write -- that "The class in this case," the Prestamos case, "is not a nationwide class."

Correct?

A That is my understanding, correct.

Q And I know we can agree that that is your understanding. I mean, I'm not disputing that that is your understanding.

Have you, in your professional life, dating back to 1999, ever had occasion to analyze or articulate the differences between a nationwide class and a multi-state class?

A I have not.
MR. LEDERER: Objection to form.
BY MR. ROGERS:
Q That's not an area of expertise of yours; correct?
A As I established before, I am not an expert in civil procedure.
Q Or class action practice?
A Correct.
Q So I'm just going to ask you one more question about that section.
Why did you think it was necessary for you, as a non-lawyer, to add to your expert report that the difference between a nationwide class and a multi-state class should matter here? Why did you include that statement?
A I included that statement because overall it is consistent with my belief that this narrower case focuses on those who are harmed as opposed to anyone who had participated in some form with the Paycheck Protection Program, that it was a much narrower focus on those who were harmed.
Q How did you come up with the idea to differentiate on nationwide class and multi-state

class?
A I wanted to know why -- what the difference was myself.
Q You didn't know what the difference was until someone told you; correct?
A I believe I took that from the Prestamos' Second Motion to Dismiss.
Q Why don't we, actually, go to what you just referred to, which is the Prestamos Motion to Dismiss opinion, and then we'll move on. Again, this is 36 pages.
Can you tell by looking at the face of it whether it's the Prestamos Motion to Dismiss opinion you just referred to?
A Yes.
Q You've read that decision?
A Yes.
Q So you are aware that in this case the plaintiffs attempted to certify -- have attempted to bring the case on behalf of a nationwide class; correct?
A Correct.
Q And you're aware that Judge Gallagher has ruled that they can't do that; correct?

A Correct.
Q So it is Judge Gallagher who is responsible for the narrowing you refer to in paragraph 32 of your report; correct?
A Correct.
Q I want to talk about the PPP loan program for a few minutes.
In your own words, what was the purpose of the PPP?
A The PPP was a program, an emergency program, that was put up March of 2020 in response to the government-mandated shutdowns. The mission -- or the ultimate goal of the PPP was to support small businesses and their employees through the worst economic crisis since the Great Depression.
Q Is it fair to say that the PPP differed from other SBA loan programs in that it allowed for a simplified application?
A Yes.
Q And that required borrower documentation was streamlined so that the money could get out quickly?
A Yes.
Q And that meant there would be minimal

regulatory paperwork or other conditions?
A Correct.
Q But you agree that an applicant needed to provide certain documents in order to get a PPP loan?
A Correct.
Q And included in that group of documents were documentation of payroll records?
MR. LEDERER: I'm sorry. Could you repeat the question, please? Sorry.
MR. ROGERS: I'm going to rephrase it.
BY MR. ROGERS:
Q Among the documents required to be provided were payroll records; correct?
A There were multiple types of documents that could be provided.
Q Tell me what those were.
A Some examples include payroll records, tax forms and/or bank records.
Q Okay. Were any of those required?
A I believe that some form of documentation was required sufficient that the bank could make a loan calculation determination.
Q When you say -- what do you mean by "loan

Page 77

A The lender -- I think different lenders had different threshold amounts for determining whether the applicant was eligible or not.
Q I'm not talking about -- what do you mean by threshold amounts?
A I mean, whether the lender was able to use a variety of resources, including payroll, tax returns, I guess Schedule C, and bank records to help them make -- as part of the application process, or to make that decision.
Q Let me refine the hypothetical for you here so that we can try to get an understanding of what you're saying.
My hypothetical class member has no payroll records. So put that to one side.
My hypothetical class member has no income reported on the 1040. My hypothetical class member has filed a Schedule C, which is the sole document that it has filed with the Internal Revenue Service that has income reported.
Are you with me so far?
A Yes.
Q My hypothetical sole proprietor wants a PPP loan and is applying for a PPP loan. That person

Page 78

fills out an application. Okay? There is a form application -- and I know that it has an equation -- and we can look at it -- maybe we'll look at it after the next break if we're unable to reach a common understanding here -- can look at it, it talks about Schedule Cs.
And my question to you is: Under the hypothetical illustration I have provided you, is the Schedule C a required document to get a PPP loan?
A It is a document that could help a borrower get a PPP loan.
Q What document -- I'm going to ask this question again.
What document -- in the hypothetical example we're talking about, what document, if any, would serve as a proxy for a Schedule C?
A I believe bank records were allowed as well.
Q So you're saying to me, based on the work you did at the PPP, that an applicant who was a sole proprietor either needed to submit a Schedule C or bank statements in order to qualify for a PPP?
A They needed to submit -- those were

Page 79

documents they could submit as part of the application to then allow a lender to look at the loan application.
Q Absent either document, was my hypothetical person ineligible?
A I believe that the lender wouldn't have reason to then make a loan. The lender would request for documentation. The application by itself was not sufficient.
Q Are you aware, from the work you've done at the SBA and the work you've done with the PPP, Womply and others since then, that there were occasions when the lender -- whoever the lender is -- concluded the documentation submitted is insufficient?
A I -- yes. Generally speaking, yes.
Q Understood.
And am I correct that a lender -- am I correct that an applicant that failed to submit documents required by the lender was ineligible for a loan?
A I wouldn't make a determination of an eligibility based on not having documents. That is for the lender to decide.

Page 80

Q I appreciate that.
If the lender made that determination, would that strike you as consistent with PPP, based on your experience as an administrator there?
A There was nothing -- an application in and of itself was no guarantee that the lender would submit that loan to SBA for processing.
Q I want to talk about the Form 1502.
You're familiar with that form?
A Yes.
Q In fact, both of your reports contain references to that form; correct?
A Yes.
Q So if we can just orient you as we move to this new topic.
In paragraph 20 you say that the lenders must file the Form 1502s to obtain a loan processing fee; correct?
A Correct.
Q Was there any other reason that a particular lender would need to file a Form 1502?
A A Form 1502 was both when a loan was originated, as well as to update monthly on the status of that loan.

Page 89

with the borrower and/or the borrower's bank in order to rectify the situation.
Q And let me just try to make this a little more concrete. I want you to assume for purposes of my question that I am Prestamos and that you are Bank X where a particular sole proprietor who's applied for a PPP loan has an account.
You with me so far?
A Yes.
Q And I get the application. It gets approved. I file my 1502. I get the money. I send an ACH payment of $10,000 to you, Mr. Briggs, at Bank X.
Are you with me so far?
A Yes.
Q And you, Mr. Briggs, decide, after looking through the records, just by way of example, that this borrower we're talking about doesn't have an account at Bank X. Okay?
A Uh-huh.
Q You're with me on this so far?
A Yes.
Q And so you return the money -- you reject the attempt to deposit that I have made because,

Page 90

according to your records, the intended recipient of the loan doesn't have an account with you.
Correct?
A Correct.
Q Okay. And that at least in some instances -- and we don't have to quantify, and we don't have to get into the reasons why -- at least in some instances that occurred in the PPP; correct?
A Yes.
Q Okay. And that in the situation I'm describing, the hypothetical situation that I'm describing, that money comes back to me and I cannot -- I cannot pick up the phone or send an email or get together with you in person and say, "Mr. Briggs, this is an SBA-approved loan. This person submitted the application. The application was processed by our LSP, and the Federal Reserve Board gave me the money. What's the problem here? Take the money."
In that example, you would agree that I can't force you to take the money; correct?
A You, as Prestamos, in this hypothetical example, cannot force a bank to take money.
Q I want to go, now, to 46 of Castillo. I

Page 91

just want to read 46 and 47 together, just to orient you. Because this is another 1502 issue.
It says here, "Prestamos was required to submit 1502 monthly to report updates on the status of PPP loans."
That is consistent with your understanding; correct?
A Yeah.
Q In fact, you've said that in your report.
It then says, "During reverification and/or the enhanced due diligence process, Prestamos would keep the loan status as 'Funded' on Form 1502."
My first question is: Are you aware that Prestamos had a process that Mr. Castillo refers to "reverification"?
A I had not heard that specific term until Mr. Castillo's report.
Q Was it your understanding, without regard to the specific term "reverification" -- I'm going to use a very simple term -- that Prestamos had a process to give the borrower, whose loan was rejected by the borrower's bank, a second chance to get that loan?
Whether it's "reverification, enhanced due

Page 92

diligence," or whatever the technical term is, were you aware, until Castillo's Declaration, that Prestamos had a second chance process?
A I was not aware, until Castillo's Declaration, of that specific process.
Q Okay.
A I was aware, in general, that most PPP lenders had a process to manage their portfolios.
Q And did the process that you have just testified to manage their portfolios, did this portfolio management process include an effort to get the loan back on track, to get the loan to the borrower's account after the initial effort to do so had been unsuccessful?
A I would hope that most lenders did that.
Q Okay. And you now would agree with me, assuming Castillo's Declaration is accurate, that Prestamos did that?
A I don't have the details of Prestamos's exact reverification or enhanced due diligence process. If you say to me that it was their effort to then make a second chance to make sure that a borrower got a loan, then I will assume that is true.

says, "I don't have -- Tricia doesn't have an account here. I'm going to send the money back."
And what you said to me, in this hypothetical, is that I, Ed Rogers, cannot force you, Mr. Briggs, to keep that money that I have sent you as a loan for Tricia.
Right? I can't force you to do that; correct?
A Correct.
Q So how can I disburse the loan in this hypothetical? I've sent it to you. You have a rejected it. I then provided Tricia with a second chance, and she either doesn't have a Schedule C or her bank statements aren't sufficient, whatever it is. I tried again.
What am I supposed to do?
A So, I believe that you would also, from me, the bank -- or Tricia's bank in this hypothetical, would have an ACH code and information on which to look at to resolve the issue.
Q So I've got an ACH code and it says --
MR. LEDERER: Mr. Briggs, was your answer finished?
A And my understanding is that you would,

then, work with the borrower to resolve the issue.
BY MR. ROGERS:
Q Okay. I want you to assume that the code used was no account. That I went back to Tricia and I said, "Bank, Mr. Briggs doesn't have an account. Mr. Briggs has no record of you having an account there."
And she says, "Well, I have an account there."
And I say, "Well, send me some statements or some evidence." She doesn't do that. She can't do that. She doesn't have it. Okay?
What am I supposed to do -- I, Prestamos -- consistent with the PPP as you, Mr. Briggs, understand it.
A I generally think you are supposed to work with the borrower to resolve the issue.
Q I've told you I can't resolve the issue because you won't take the money. I tried.
Okay?
A In that instance, the one thing I would not do is report the loan as fully disbursed.
Q Would you, at that point, report the loan as cancelled?

A Yes. If after a 20-day period there was no resolution as required by PPP regulations.
MR. ROGERS: Let me pause for a minute, and we'll go off.
MR. LEDERER: When you say "off," off the record?
MR. ROGERS: Whatever you want. We can stay on the record for this.
MR. LEDERER: Okay.
I can take another short break now, or we can complete the deposition without an additional break, and I will just tell you that it will take us 45 minutes to do that.
So it's up to you, Mr. Briggs. Give or take 45 minutes to complete this.
THE WITNESS: I have to go to the bathroom.
MR. ROGERS: Let me just ask. You want to take a ten-minute break like we did before?
THE WITNESS: That would be great. Thank you.
MR. ROGERS: Then what we won't do, Mr. Briggs, is take a lunch break, which would be 30 or 40 minutes.
THE WITNESS: I understand.
MR. ROGERS: And that's okay with you, Larry,

and Tricia?
MR. LEDERER: Absolutely here.
THE REPORTER: Sure.
MR. ROGERS: We're going to come back in ten minutes and see if we can't finish this.
(Recess held.)
BY MR. ROGERS:
Q Mr. Briggs, I want to go to your rebuttal report at paragraph 16. This is in the middle of your discussion about Mr. Swain. If you need to refer back to earlier paragraphs to answer my question, you'll let me know. I don't think you will, but I don't want you to, you know, think I'm trying to play a trick or anything.
A I understand.
Q I have a very straightforward question.
You say in paragraph 16 that Swain doesn't "analyze or mention in his opening report the allegations that Prestamos obtained advances from the liquidity fund, or what Prestamos did with those funds or the present status of the advances."
Correct?
A Correct.
Q Okay. Is it your view, consistent with

your understanding of, you know, the rules of the program, purpose of the program, that Prestamos should have returned the credit advances once the second chance program had been exhausted and to -- a particular borrower and it was clear that they weren't going to get the loan?

A I am not clear, again, on the specific guidance and regulations regarding what -- concerning the PPPLF, or the Paycheck Protection Lending Facility, administered by the Federal Reserve.

My sense, without understanding those guidances, that those reserves probably should have been returned.

Q Okay. Are you aware, from the Castillo Declaration, that they were returned?

MR. LEDERER: Objection to form.

BY MR. ROGERS:

Q I can show you the Castillo Declaration, if you would prefer. But I'm just trying to save you a little time here.

A I would actually like to see that.

Q Sure.

A I don't recall that. But I'm not saying

it's not in the report.

Q Okay. We can go to the Castillo Declaration at 51. The one sentence -- it's the last sentence -- it says, "In September 2021, Prestamos returned the credit advances from the Federal Reserve for loans that were ultimately not funded."

Do you see that?

A Yes, I see that.

Q And with the qualification that you are not an expert on the liquidity fund and that you aren't familiar with its rules, would you agree -- I think you said it was your sense that the money should have been returned.

Is that your testimony?

A Correct.

Q So assuming Castillo is being accurate in his Declaration, what Prestamos did with the credit advances is consistent with what your sense is with what they should have done with it, which was return it?

A Correct.

Q If they had asked you -- if they had hired you as a consultant, based on your experience in the

program -- not in this lawsuit, but just as a consultant in terms of their business practices -- you would have said, "Look, I'm not an expert on the liquidity fund, but if you're asking my advice, my advice is to return it"?

A No. My advice would be to talk to an expert who's familiar with the liquidity program.

Q Fair enough.

But what they did is consistent with your sense of what they should have done?

A In plain language, that money that was not used to support a small business for that purpose, I believe should be returned.

Q Okay. Now, I want to go to the opening report at paragraph 52. We're now back to the subject of the -- what I think you refer to as the processing fee. Since this is the first time we're talking about the processing fee, let's just get a few basics out of the way.

Are you aware that the PPP entitled lenders to a processing fee in connection with the processing of loan applications?

A Correct.

Q And that at some point -- I think it was

after you left the SBA, but I'm -- and you'll tell me if you don't know about this -- at some point those fees were sweetened or modified to encourage more loans?

A My understanding is that the Economic Aid Act that was passed in December of 2023 increased the fees for certain levels -- certain loan amounts that were, then, implemented in early 2021.

Q You said December 2023, but I think you meant December 2020?

A Yes. I'm sorry. December 2020.

Q Okay. You say in various places that Prestamos shouldn't have asked for a fee for loans that ultimately did not make their way into the borrower's account; right?

A Yes.

Q They should have waited until the funds hit the borrower's account -- and stayed there permanently, as opposed to hitting them and then being bounced back like a handball against the wall?

A One perspective of the way I really look at this is what I would say to the borrower, which is that the lender says they have given you the money. The SBA has paid them a fee. They also received an

Do you know Mr. Jordan?
A I can't recall. I may have met him.
Q And he says -- Castillo says, "Hello, Craig. We are in the process of cancelling disbursed loans and would like to know if you can help us set up a meeting. We want to return the fees to SBA and want to be a hundred percent transparent with our process."
Do you see that?
A Yes.
Q I now want to go up to Mr. Jordan's response -- by the way, this was in September. Castillo asked the question on Tuesday, August 31, 2021.
Then the next day, September 1, 2021, Jordan says let me find out and I'll get back to you. Then he proceeds in the next email above the one on the screen to respond. And he said, "David, I did get a reply, but we have tried to take it a higher level because I know how hard it would be to cancel them all individually."
Are you aware that Prestamos had a distinction with the SBA about the means of cancelling loans? In other words, whether it could

be done in bulk as opposed to individually. These are cancelled loans we're talking about.
A This is the first time I'm seeing this document.
Q And the first time you're familiar with this issue with respect to Prestamos?
A Correct.
Q Okay. And then if you go to the second paragraph, five lines down Jordan says, "PPP processing fees. The lender is able to retain the processing fees on these loans." Okay? These are the cancelled loans.
A Uh-huh.
Q Is that consistent with your understanding and with the guidance that we just looked at with the footnote? Is that consistent with those documents?
A Generally speaking, yes.
Q Because it would be inconsistent if Prestamos had been found guilty of fraud; correct?
A Correct.
Q I want to now pull up --
A I don't believe Mr. Jordan would have the ability to know that.

Q Understood. Understood. I appreciate that. I appreciate that.
And if Prestamos is found guilty of fraud, then we're in a different ball game, but it's now 2024 and that hasn't happened, so I don't think we need to worry about that hypothetical at the moment.
MR. LEDERER: Is there a question?
MR. ROGERS: Yeah, there's about to be a question.
BY MR. ROGERS:
Q And the question is, relates to -- I want to go back to the ACH return code discussion we were having a couple of minutes ago.
Mr. Briggs, do you remember that?
A Yes, I do.
Q And you were generally familiar with OIG guidance when you were at SBA; right?
A Generally, yes.
Q You tried to keep abreast of it?
A Oh, yes.
Q I'm actually going to show you some OIG guidance from March of 2021. You'd been gone a couple of months. But you'll tell me if that's going to disable you from answering. You haven't

been shy about that.
This is a document entitled Paycheck Protection Program Application Fraud Indicators.
Do you see that?
A Yes.
Q It's a joint document between the OIG and the US Secret Service; correct?
A Yes.
Q And you were, I'm assuming from your testimony earlier today and your experience, that you were generally aware that the OIG focused, among other issues, on application fraud?
A I think based on my time up to January 2021, January 20, 2021, the OIG was looking at all aspects of the PPP program.
Q And included in that were the risks and potential for application fraud?
A One of many subjects, correct.
Q So I want to just direct your attention, first, to the section just underneath the line that is entitled Application Fraud Indicators.
Do you see that?
A Yes.
Q And you can just read those to yourself.