Ex. 14 – Excerpts of Deposition of William M. Manger, Jr., dated August 26, 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 M. MANGER, JR.

Monday, August 26, 2024

South Hampton, New York

Reported By: TRICIA J. LATHOURIS, CSR, RPR

JOB NO. 31472

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arbitration. The other was a case between a lender and a recipient that was not arbitrated but in which you were deposed?
A That is correct.
Q Can you tell me --
A Wait. Wait. Sorry. Sorry. Sorry. Incorrect.
I was not deposed in the case in Texas that I cited.
Q And did you testify in court in Texas in that matter?
A No, I did not. The -- no.
Q What was the gist of the dispute in Texas?
A The lender claimed that they had not gotten the size of loan that they were eligible for, and they were claiming that it was the bank's fault for not applying to the SBA for a larger loan.
Q I think you began your answer by saying "The lender."
Did you mean to say the borrower claimed --
A I'm sorry. Yes. I apologize. Yes. The borrower claimed that they did not get the size of loan that they believed they were eligible for.
Q And what was the basis of that complaint?

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A The basis of the complaint was that -- well, from the lender side or the borrower side?
Q Well, we'll start with the borrower side.
I'm just trying to understand how this became a lawsuit.
A Yeah. So the -- I'm sorry, did you say the lender or the borrower first?
Q The borrower.
A Okay. So the borrower claimed that the loan he received from the SBA through the PPP was not the size that his business was eligible for, and, really, the dispute hinged on the number of employees that that business had.
Q And what was the outcome of the lawsuit?
A So the lawsuit was settled, and, you know, I would say it was settled in favor of the bank.
Q And your expert testimony on behalf of the bank was to express an opinion that the bank lent the correct amount?
MR. LEDERER: Objection. Form.
A I mean, yeah, the bank lent the correct amount on the information that the borrower had provided to the bank.
BY MR. ROGERS:

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Q Understood.
Have we covered all of your expert engagements, or is there one more?
A Well, so, again, I've worked with Larry previously, Bailey Glasser, previously on a case very similar to the one that we're discussing today.
Q And that's the Capital Plus/Greathouse case?
A That is correct.
Q So have we now covered all of your expert experience?
A I believe that's correct.
Q Okay. Am I also correct that of those three matters, one was a class action lawsuit, and that was the Capital Plus case?
A That's correct.
Q Okay. And was that your first professional experience dealing with class action litigation?
I understand it was the first time you were an expert in a class action matter, but my question is a bit broader than that.
A You know, I think over the years I may have, you know, signed some things that entered me in a class action lawsuit as one of the members of

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the -- of the classes.
Does that make sense?
Q It does.
A Yeah.
Q You participated as a class member in a prior -- one or more prior cases?
A That's correct.
Q Can you tell me, in your own words, what is necessary for a case to be certified as a class action?
MR. LEDERER: Objection to form. You can answer.
A Yeah. I'm not a lawyer, so, again, I'm not well-versed on exactly how you certify a class.
BY MR. ROGERS:
Q Okay. And your engagement in this case does not include legal opinion; correct?
A That's correct. I'm not an attorney. Yeah.
Q So you were not expressing an opinion whether this case should or should not proceed as a class action; correct?
A Again, I'm not an attorney, so, again, I am not well-versed on the specifics of class

A Yeah, I don't know if it really stated that they disagreed with my interpretation of the PPP rules.

BY MR. ROGERS:

Q Okay. Let me just orient you by marking as Manger 4 the class certification decision that you cite on the second line of paragraph 24, which we are looking at now.

(Exhibit 4 marked for identification.)

BY MR. ROGERS:

Q Have we made this big enough?

A Yeah, I can see that.

Q Great.

You see the page numbers at the top there, Mr. Manger, where it says "Page 6 of 8" in the upper right-hand corner? My colleague is moving it now, but that's okay --

A I see. Yes. Yes. Yes. Now I see it. Sorry.

Q Where it says "Page 5 of 8."

Do you see that?

A Yes, I see it. I see it.

MR. ROGERS: Why don't you bring him to the first page.

BY MR. ROGERS:

Q Have you ever read this decision?

A It was sent to me and I think I skimmed it. I don't think I spent that much time on it. So, you know, it would be tough for me to recall it.

Q I am not going to give you a quiz on what's in the opinion.

A Okay.

Q I am going to ask you whether you know the outcome of the motion for class certification in the Greathouse versus Capital Plus case?

A You know, again, I -- I mean, I recognize Judge Pittman because Judge Pittman I quoted, actually, in my report. You know, he was speaking specifically about public policy and, you know, different elements of the Promissory Note that was contained in all of these loans.

But, again, I don't know if I could speak to exactly what the outcome of this was. I just know that there were issues with the class being, you know -- I don't know. You have to help me because, again, I'm not an attorney.

Q I appreciate that.

A I'm doing the best I can.

Q No. That's fine.

My question is -- this particular question is just a very basic one which is: Do you know whether Judge Pittman certified the class or not?

A I believe he did not certify the class.

Q And is it correct that you were an expert on behalf of the plaintiffs seeking to certify the class?

A No, I wouldn't say I was an expert on certification of the class, no.

Q No. No. I understand.

But you were engaged by the plaintiffs?

A Yes. Again, in regard to my knowledge, intimate knowledge, of the PPP.

Q And when you say "my intimate knowledge of the PPP," are you including in that area of intimate knowledge the meaning of the SBA regulations? And by that I mean to include both IFRs and notices --

A And Procedural Notices and SOPs and Q&As. Yeah. Everything that went along with PPP.

Q And you talked about, in your report, being involved in writing some of these regulations.

Am I correct?

A Yes.

Q Was that a collaborative effort within the agency?

A Oh, most definitely. And it was also collaborative not only within the Small Business Administration, but also within the US Treasury Department.

Q Were government lawyers involved in writing the regulations?

A Absolutely.

Q And do the regulations have the force of law, as you understand it?

A Yes.

Q When you say that you were involved in the drafting, can you tell me what you mean by involved in the drafting?

A Sure. I mean, I recall conference calls that we would be on with the Treasury Department where we would go over different elements of the program discussing different aspects and rules and regulations that we were going to incorporate into the IFRs.

You know, you were on, usually, with the attorneys and we discussed, you know, specifics about how it would be structured. Because the

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BY MR. ROGERS:
Q Now, before we get into paragraph 20, can you estimate the number of hours you have spent on this expert engagement, not including today?
A Oh, gosh. That's tough. I mean, I'm trying to keep records of it, but it would be -- it's hard for me to say exactly what that would be. I mean -- I don't know. Going back to the very beginning, reading all of the different documents?
Q Yes.
A Honestly, I'd have to -- I'd really have to refer to my notes to know exactly. I mean, it was done, obviously, over periods of time and at different times, so it's very hard for me to just give one number for the whole thing. I just don't think I'd be able to do that.
Q Okay. That's fine.
Turning to paragraph 20, there is a reference in paragraph 20, which I think you're going need to search for because it's so long -- oh, here we go.
At the bottom of page 6 it says -- you say in paragraph 20, "To quote the Complaint, the definition of the class in this case includes only

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those from plaintiffs' respective states, who, in 2021, applied for PPP loans with defendant Prestamos as the lender for whom the SBA provided an SBA loan number and who executed and submitted their loan documents and provided to Prestamos all required loan documentation, but as to whom Prestamos both failed to disburse the PPP loan proceeds and reported to the SBA that the loan proceeds were disbursed."
Okay?
A Yes.
Q I want to focus on the term -- the phrase "all required loan documentation" at the very end of page 6.
Do you see that?
A Yeah.
Q I just want to make sure that we are on the same page here.
So it is your understanding -- and, again, you're quoting the Complaint, and you're not a lawyer, and you're not a class action expert.
A Right.
Q But it is your understanding that the class here is being defined as applicants for PPP loans

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who submitted all required loan documentation; correct?
A Correct.
Q And we talked earlier about various forms of required loan documentation.
Do you recall that?
A Yes.
Q And we can just quickly go through the litany to refresh you.
Obviously, the borrower needed to fill out the loan application form; correct?
A Correct. I mean -- yeah. The lender, would, you know, do that in conjunction with them on their behalf, yeah.
Q Right.
But the application itself was not sufficient; correct?
A No. You had to show other -- other things such as like the business had been in operation prior to a certain date and, you know, lots of different components. Yeah.
Q Right.
And then there were various types of documents that addressed what you've referred to as

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lots of components, and those would include -- or did include tax returns, including Schedule Cs, bank statements, payroll records, that type of thing; right?
MR. LEDERER: Objection to form.
A Yeah. You had to show that you were -- you were, you know, a business that was actually in operation and had all of these documents to prove that, obviously. Yeah.
BY MR. ROGERS:
Q Okay. I am now going to show you a document by way of example.
A Okay.
Q This is a document that I think you've seen, but you'll tell me if I'm wrong. It is from one of the loan files of the class representatives.
And before I show it to you, are you familiar with the term "class representative" as it applies here?
A I mean, are you just saying that this is one person in the class?
Q Yes.
A Yeah.
Q In other words, your understanding is that

Larry rather than just give it to someone else. That's my scenario?

A Well, yeah, yeah, yeah --

MR. LEDERER: Excuse me. Is there a question?

BY MR. ROGERS:

Q My question is: Can Larry force you to take that money and credit it to Ed Roger's account at Manger Bank & Trust, which you believe doesn't exist?

A Well, I would just say if there's no account, you can't put the money in no account. So, yeah, that's logical.

Q Okay. And how about the next item is an "Invalid Account Number Initiated Under Questionable Circumstances."

Can Larry force you to take the money in that instance?

A Again, if -- I've had this happen to me, actually, with an ACH. I had one number in a series that was incorrect. Although I have a legitimate account, the one number off made it very difficult. So in that instance the bank reached out to me and said we're having a problem with this. Can you help us verify your account number. And then I actually

told the bank, this is the correct number, and then they said, oh, yes, we were one digit wrong in the series of numbers that we had for the account, so now that we've corrected it, now -- now it will work.

So, again, I would say that you'd have to -- the lender would have to understand why this wasn't working properly and try and rectify the situation just like my bank did with my ACH account.

Q Okay. Let's build on that example.

MR. ROGERS: We can take down the document now.

BY MR. ROGERS:

Q Are you aware, sitting here today, based on your review of the Castillo Declaration, that Prestamos had a process to correct errors of the type you mentioned, among others, and it was referred to as the reverification process?

MR. LEDERER: Objection to form.

A Yeah. I mean, they may have had that system. Again, I don't -- I'm not able to say whether it was used in every instance.

BY MR. ROGERS:

Q I'm not asking you whether it was used in every instance.

I'm asking you if you are aware that it was used in some instances.

A I think -- I think I read that they had, yes, a process to try and do that.

Q And is it fair to characterize that as, essentially, giving the borrower a second chance, just like your bank gave you a second chance when they were off a digit?

A Yeah. But, again, I don't know, again, if this happened in every instance, so, you know, I don't know if it was like a foolproof -- a foolproof system.

Q I'm not asking you about the success rate or the foolproof nature of the system?

A Okay.

Q I'm asking whether it's fair to describe that as, essentially, giving the borrower a second chance to meet the requirements so that the loan could go through?

MR. LEDERER: Objection to form. Asked and answered.

BY MR. ROGERS:

Q Can you answer that question, please, Mr. Manger.

A I would say, that, again, the lender should have been ensuring in every instance what they were doing in terms of disbursing fully loans to PPP borrowers.

Q So I want to talk a little bit about the administration of the program, as you understand it, and I think the best way to do that is to go to the Third Amended Complaint in this case.

MR. ROGERS: Which we are going to mark as Manger 10.

(Exhibit 10 marked for identification.)

BY MR. ROGERS:

Q And the good news is although the Third Amended Complaint is a 117-page PDF --

A I'm well aware.

Q -- we're only going to look at one document. We may not even need that one document.

We are going to look at the -- this is Exhibit A to the Third Amended Complaint, Mr. Manger, and what it is, is it's a series of documents that were signed by a borrower by the name of Alicia Marshall who is a class representative in this case.

You with me so far?

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Q And they -- the OIG and the Secret Service identified three return codes that were appropriate when there is a suspicion of fraud.
Do you remember that?
A Yeah. I don't know if it was -- if it was highlighting that it was fraud, but, yes, I remember seeing the three codes.
Q Okay. Well, I'll represent to you that it says that. I don't need to take it back and have you read it and all that?
A Okay.
Q That is what that document said. So for at least under the OIG guidance, it's really three of those 80 return codes that are of particular relevance here.
Now, Mr. Castillo's Declaration goes through them and explains this process. Okay? And it gives a number of examples.
For example, the borrowers's bank account was closed or frozen or invalid or non-existent. Or the borrower had a bank account that couldn't take business loans like a PPP loan. Or the bank detected fraud. And then it goes on to say that when an ACH payment was rejected, the borrower's

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bank would notify Prestamos. And it then goes on to describe what I have called the reverification process.
And I'm going to move now to start with paragraph 37, which is at the bottom, and then we're going to go on just to 38 and 39 -- you can read that to yourself -- and I'm just going to ask you whether this is -- whether you knew about this before you read Mr. Castillo's Declaration, that Prestamos had this process?
MR. LEDERER: Objection to form.
A Yeah, I don't think -- I don't think I knew much about this process, but if you go back -- could you just scroll back for a second -- it says, "Blue Acorn resolved a large number of PPP loan rejections." It doesn't say they resolved every PPP loan rejection.
So, again, they had some process that was identifying, you know, some of them, but, again, I don't know if it's definitive for all of them.
BY MR. ROGERS:
Q Okay. Fair enough.
My question is whether you were familiar with this process, however comprehensive it was or

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was not, prior to reading this Declaration?
A I don't know if I remembered anything about a specific process that I had knowledge of, and -- yeah, and then -- yeah, it gets more confusing in that it says that if it didn't go through, they got like a prepaid card.
So it gets more confusing because, obviously, that wasn't part of the PPP, to get prepaid cards. So I can't really speak to that. That's out of my realm of understanding in regard to the Paycheck Protection Program.
Q Okay. Now I want to go back to paragraph 20 of your opening report, and we're going to go to the middle of page 7. It says -- it's just a little below the middle of the page. Chesley will highlight it for us. This, again, is your opening report.
"A mere attempt to fund a loan, or an attempt to do so that, for instance, the borrower's bank rejected, should have resulted in the loan being cancelled in SBA's e-tran system."
Do you see that?
A Yes.
Q Is it your view that consistent with the

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program, Prestamos should not have given the borrower a second chance to satisfy the documentation requirements, but should simply have cancelled the loan if it was rejected by the bank the first time?
A No. The lender should have tried to clear up with the borrower any of the, you know, documentation that didn't, you know, seem to be accurate. Like my example, one of the digits in the account number was off.
Q Right.
And that's consistent with the purpose and the intent of the program that you were in charge of running, that you wanted to get the money out and you wanted to maximize the federal financial support to COVID-affected small businesses?
A Correct. And I think what I stated here is completely in line with that.
Q So, in other words, when you say a mere attempt to fund a loan, included in the mere attempt is this verification -- reverification process?
A Yes. I mean, what I was getting at here is if the bank, you know, formally rejected it for some reason, that should have been communicated to the

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Q I won't share that insight with Mr. Castillo.
A Okay.
Q But I would like to ask you, in terms of the writing of the sentence --
A Yeah.
Q -- is there any loophole that you are pointing to here? In other words, is there a reason you don't believe this is comprehensive?
A Yes. I mean, it says, "In September 2021, Prestamos returned credit" -- I mean, I don't know which ones they're referring to. I don't know -- it just doesn't seem -- it doesn't seem fulsome to me. It seems like a throw away last sentence trying to cover themselves.
Q So it says -- just so that we can all be clear on the record -- "Prestamos returned the credit advances from the Fed for loans that were ultimately not funded."
A To me it's just unclear. I don't know how to help you, Ed. It doesn't seem like a full response. It says "In September 2021." I mean, I don't know -- it seems -- I don't know. It seems just strange to me.

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Q Really?
A Yes.
Q If the word "all" were inserted between "for" and "loans," would that solve your problem?
A If it identified that every single credit advance from the Federal Reserve for loans that were, again, not funded, yes, it's just -- that sentence would have to be reconstructed for it to be comprehensive in my mind.
Q What, other than adding the term "all" before "loans," would you require?
A Well, I think it's strange just to refer to September 2021. I don't understand how they just name a whole month that all of a sudden all of these things were taken care of. It needs more definition and more backup or background as to exactly what happened in September of 2021.
Q Would you be comfortable if we added -- if the dates in September 2021 were added, the particular days of September 2021?
MR. LEDERER: Objection to form.
A Again, I just think that a better record should be provided to back up this short sentence.
BY MR. ROGERS:

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Q That's fine.
Well, assuming that the sentence is comprehensive and true, did Prestamos do the right thing?
MR. LEDERER: Objection to form.
A Again, I would have to -- I'd have to see the evidence to be able to render my opinion on if the right thing was done.
BY MR. ROGERS:
Q And that evidence would be that you would need the amount of the credit advances that were returned? Would that do it for you?
A I think you'd want to verify, again, that the information is all accurate and that it's fully covering the unfunded loans. I don't know, I just would like to -- you know, you'd like to just verify what he's trying to get across here.
Q Okay. I want to talk about the lender processing fees.
You're aware that lenders received processing fees for PPP loans; correct?
A Yes. That was -- that was always an integral component of the program.
Q That was an incentive for lenders to

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participate?
A Absolutely.
Q And at some point, I think in 2021, after you left the agency, those processing fee requirements were modified to be a bit more generous; correct?
MR. LEDERER: Objection to form.
A I think the -- I think that the language for changing those fees was -- the change in language for those fees was begun while I was still at the agency. Because I'm not sure exactly when it was implemented, but obviously, you know, there was a lead time and preparation for the IFRs and everything that, you know -- again, it took some time.
So I believe we discussed, actually, while I was there, how we were going to change the fees.
BY MR. ROGERS:
Q Okay. Is it your position that Prestamos was not entitled to keep the processing fees on loans that were ultimately not received by the borrower?
A Yeah. Well, again, the fact of the matter is if the loans weren't made, I still firmly believe

A Yeah, so the first sentence is definitely correct. You had to keep monthly reports on the status of PPP loans.
Q You're referring, now, to the first sentence of paragraph 46; correct?
A Yes.
Q Okay. The second sentence of paragraph 46 says, "During reverification and/or the enhanced due diligence process, Prestamos would keep the loan status as funded on 1502."
A I see that.
Q Okay. Was that correct?
MR. LEDERER: Objection to form. You've asked him to assume it's correct.
BY MR. ROGERS:
Q I've asked you to assume it's factually correct.
Assuming it's factually correct, was it consistent with the program rules?
A I don't know -- it's a little -- it's a little tricky because -- I mean, I guess it seems though, again, at some point, you know, a reverification shouldn't take that long and it should be pretty easy to tell whether it was going

to go through or not.
Like I said, changing the one number on an ACH code or something, but I don't understand how consistently 1502s kept being filed and filed and filed. That would give someone the idea that the loan was coming, and then the loan didn't come. So I just don't -- I don't -- I don't get it.
Q And 47 refers to what happened after reverification and/or enhanced due diligence, and it deals with a situation in which the borrower had failed that process.
Do you see that?
A Yes.
Q And at that point, Prestamos changed the status to "cancelled" on the 1502.
Do you see that?
A Yes.
Q And that was -- assuming that is what Prestamos did, that was consistent with the program; correct?
A Well, assuming that that's what they did, yes. But from what I've read, that's not the case.
Q Well, when you say "from what I've read" --
A Right.

Q -- you've read the Third Amended Complaint --
A Right.
Q -- you've read some SBA documents --
A Correct.
Q -- and you've now read the Castillo Declaration --
A Yes.
Q -- and the Castillo Declaration, is -- he is the only person with personal knowledge of what Prestamos did --
A Well, I mean --
Q -- of the materials you have reviewed; correct?
MR. LEDERER: Objection to form. You're mischaracterizing his prior testimony. He also said he read 1502s.
BY MR. ROGERS:
Q You can answer.
A Well, and I would answer that -- the thing is I don't know if I can take Mr. Castillo's word as -- as truly authentic. I mean, you know, he says this is what they did. I have no way to verify that.

Q I appreciate that. And the day may come when Larry will ask Mr. Castillo those questions under oath, and maybe that will advance your understanding. But we can't do that today.
MR. ROGERS: So I'd like to mark as Manger 12 an email thread between Mr. Castillo and an official at the SBA.
(Exhibit 12 marked for identification.)
BY MR. ROGERS:
Q I'd like to go to the end of the thread, which is really the beginning.
A Of course.
Q Of course.
So the first email is an email from Castillo to Craig Jordan at the SBA. You can read it to yourself.
A Okay.
Q And in that email Castillo is saying to Craig Jordan that Prestamos is in the process of cancelling disbursed loans and Prestamos wants to return the fees to the SBA.
Do you see that?
A Yes.
Q Okay. And we then go -- there's a few,

what I'm going to call procedural emails, and then when we get to page 2 of the thread, there is a substantive response from Craig Jordan which says, among other things, "PPP processing fees -- The lender is able to retain the processing fees on these loans."
Do you see that?
A I do.
Q Is that consistent with your understanding of the program?
A Yes. If there was no evidence of fraud.
Q Okay. And when you say "no evidence of fraud," you mean no evidence of fraud by Prestamos?
A Correct.
Q As opposed to the borrower?
A Correct.
Q And when you say "no evidence of fraud," are you referring, now, to the Procedural Notice we looked at a few minutes ago?
A Yes.
Q And let's just go back to that Procedural Notice, and we'll go to footnote 5, and it says at the end that you have "to repay the fee if the lender is found guilty of an act of fraud."

And that's what you were referring to?
A Yes.
Q Okay. So it isn't just impetuous of fraud. It's an actual finding of guilt of an act of fraud; correct?
A As this is written, correct.
Q Okay.
MR. ROGERS: I've got about no more than 15 minutes. You guys okay plunging ahead?
MR. LEDERER: Mr. Manger, totally defer to you, sir? Do you want to go 15 minutes more, or Ed's asking if you want five or ten minutes of a break.
THE WITNESS: Could I just have five minutes for a bathroom break?
MR. ROGERS: Five minutes is perfect for us.
(Recess held.)
BY MR. ROGERS:
Q Mr. Manger, I want to go back to your opening report. I want to go to the very end of your opening report, paragraph 25.
A Okay. That was Manger 1. Yeah.
Q Manger 1. Paragraph 25.
Do you see that?
A Yes. Yes.

Q I want to keep going down 25 until we get to the next page.
A Okay.
Q So I'm going to ask you a question about what I'm going to call the carryover sentence.
A Okay.
Q Okay. You say, "Finally, a central purpose of the PPP was to make money available to small businesses and not-for-profits as loans that would then be forgiven, essentially creating and distributing grants."
Do you see that?
A Yes.
Q Are you aware that the issue of whether the PPP was a loan program or a grant program has been covered in at least one Court opinion?
A Yes, I think I was -- I was aware of that a little bit. But maybe if there's more to it, you can enlighten me.
Q Okay. Well, based on what you do recall, the argument that the PPP was a grant program was one that the Court rejected.
Is that your recollection?
A Yeah. Although, I would disagree with that

to a certain extent.
Q When you say "I would disagree with that," let's take a look at what I'm referring to.
MR. ROGERS: I'm going to mark as Manger 13 a decision by the United States Court of Appeals for the Second Circuit from 2022.
(Exhibit 13 marked for identification.)
BY MR. ROGERS:
Q It's entitled Springfield Hospital, Inc. Against Guzman.
Is that the opinion that you are referring to? Can you tell me that?
A Yeah. I did not read this opinion. I think I just -- I just heard about that. I mean, I know Isabel Guzman is now the administrator of the Small Business Administration.
Q We don't need to take up everyone's time with the background on the Springfield Hospital decision, but I do want to go and look together at page 17 of the PDF, and the Section C addresses the issue of whether the PPP is a loan or a grant program as a legal matter, and the Court of Appeals ultimately reverses the bankruptcy court on that issue, and I want to focus your attention towards