UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:19-cr-00378-JMS-MJD
	)	
WILLIAM ERIC MEEK and BOBBY LEE PEAVLER,	)	
	)	
Defendants.	)	

DEFENDANT BOBBY PEAVLER'S RESPONSE
TO THE GOVERNMENT'S MOTION IN LIMINE

Over twenty-two months ago, the government was informed that its interview memorandum of Bobby Peavler "attributes many statements to Mr. Peavler that he did not say, did not accurately record statements he did make, and omitted important information about the context of his statements." Filing No. 113-8 at 2. When it came to omissions, among other things, Mr. Peavler's counsel observed that Mr. Peavler "did acknowledge that he viewed the circumstances differently at the time of the interview based on information he learned years after the events at issue, but that major distinction is substantially lost in the 302." *Id.* at 3. The government brushed aside the letter and did not respond. When Mr. Peavler raised the issue to the Court thirteen months ago as part of the many *Brady* concerns in this case, Filing No. 114 at 13-14, the government issued a summary denial and promised only to "review the agent's notes for any material discrepancies with the report, and if they exist, will make them available to the defense." Filing No. 120 at 16 n.8.

Now, the government seeks the ability to ask the Court in the future whether the government can present the inaccurate and misleading statements from its interview

memorandum to the jury. Filing No. 164. That government's motion in limine should be denied for four reasons.[1]

First, the government's motion is premature and cannot be decided without further context. Because Mr. Peavler has not put on a defense yet, the government has not identified which statement(s) from the 21 pages of its memorandum that it wants to put before the jury at the trial. It has not identified—indeed it cannot identify at this juncture – the specific circumstances that would justify the use of any particular statement from Mr. Peavler's proffer session. The government simply says that, before using any statements in the memorandum, it will ask the Court for permission in the future if it believes it has right to use any of the statements. Filing No. 164 at 13-14. While Mr. Peavler agrees the government should seek permission from the Court before trying to use these statements, the government is not asking for the Court to grant any meaningful relief at this point. Instead, the government's motion appears to be intended to send a warning to Mr. Peavler in an effort to chill his defense. Because the government is not asking for meaningful relief, its motion in limine should be denied as moot at this stage.

Second, Mr. Peavler never agreed that the government could make use of statements that he did not make or that his statements could be presented out of context and with a misleading spin by the government. Most importantly, the government has not made a showing that its FD-

[1] Aside from the lack of merits of the government's motion, counsel for Mr. Peavler is deeply concerned and indignant that the government has cavalierly published this memorandum while knowing that defense counsel has been expressing strong concerns about its inaccuracies for years. The government even has counsel for Mr. Meek mischaracterizing Mr. Peavler's statements in Mr. Meek's severance motion filed today. Filing No. 191. On top of that, the government potentially risks tainting the jury pool by publicizing mischaracterizations of Mr. Peavler's statements. Jonathan Swift once wrote, "Falsehood flies, and the Truth comes limping after it." The Department of Justice should not be the one pushing falsehoods along.

302 memorandum, which is full of mistakes and omissions, accurately reflects what Mr. Peavler said. For instance, the government's memorandum stated that Mr. Peavler "acknowledged" that the Stoops transactions were related, but failed to report that Mr. Peavler said he believed the values of these transactions were *not* interconnected at the time. In another example, the government's memorandum suggested that Mr. Peavler acknowledged that the auditor was not given all of the significant contracts, but failed to state Mr. Peavler said he believed that the auditor had been given everything it needed to conduct the audit. The proffer agreement does not permit the government to use the statements as they have been inaccurately characterized in the interview memorandum.

Third, the Court should reject the government's arguments that it might discard the proffer agreement altogether based on its speculation that it might believe at some future point that Mr. Peavler was not "complete and truthful" in some undescribed way in his proffer. It is unclear what specific factual scenario the government is contemplating. Mr. Peavler contended at his proffer that he did not commit any illegal conduct; he intends to make similar arguments at the trial. This is a complex case with millions of pages of documents, the vast majority of which Mr. Peavler did not have at the time of his proffer agreement, covering a year of activity among people at different companies spread throughout the United States. In the proffer session, the government frequently asked Mr. Peavler to opine on issues when he had not seen all of the documents. If Mr. Peavler's position changed based on new circumstances or newly acquired evidence, that does not mean that Mr. Peavler was "not completely truthful" at the proffer session or warrant releasing the government from the proffer agreement it drafted. There are countless factual variations of this argument, and the Court should reject the government's argument when there is no clear indication of what specific factual argument the government is making.

Fourth, the government's proposed solution to the Court – that it merely raise the issue in some form in the future for the Court's approval – is insufficient to address the issues that will be raised if the government intends to offer statements made under the proffer agreement. Once the government identifies whether it wants to elicit statements and what specific statements it wants to elicit, the Court may need to hold a hearing outside the presence of the jury to determine the preliminary questions of what was said in the proffer session and whether there has been any breach of the proffer agreement. FED. R. EVID. 104. Because there are substantial disputes over what was said at the proffer, that hearing may be need to be an evidentiary hearing. That likely cannot be accomplished at a sidebar in the presence of the jury, and it cannot be accomplished until the government identifies what specific statements it wants to elicit and why the government believes Mr. Peavler's defenses are somehow inconsistent with what was truly said in the proffer session.

BACKGROUND

On August 29, 2019, Mr. Peavler met with six government representatives – three prosecutors and three federal law enforcement agents – at the U.S. Attorney's Office in Indianapolis. The six individuals present for the government were Assistant Chief L. Rush Atkinson and Trial Attorney Kyle Maurer of the DOJ's Fraud Section in Washington, D.C., Assistant United States Attorney Nick Linder of the U.S. Attorney's Office in Indianapolis, FBI Special Agents Victoria Madston and Joseph Weston of the Federal Bureau of Investigation's Indianapolis Field Office, and United States Postal Inspector Anna Hallstrom. Mr. Peavler was represented by three attorneys, Sergio Acosta, Douglas Paul, and Sarah Wang of Akerman LLP's Chicago and Washington, D.C. offices. A proffer agreement was signed before the session began.

Before the interview, Mr. Peavler and his counsel had a very limited set of documents to review. In 2019, Mr. Peavler was no longer employed at Celadon and did not have access to his work documents. Because they did not have any independent access to Mr. Peavler's documents, Mr. Peavler's lawyers also had substantial limitations on the number of documents they could obtain and review before the interview. Mr. Peavler was only shown fourteen documents during the interview, which began at approximately 9:30 am and ended before 3 pm.

After the interview, Agents Madston and Weston prepared a 21-page memorandum of the interview on FBI Form FD-302. The government had chosen not to record the meeting or have a court reporter present to transcribe the questions and answers. With some exceptions, the agents structured their memorandum as purporting to recount a series of declarative statements from Mr. Peavler. Filing No. 164-2. There were generally no details about the questions, no context about the questions or answers, and no description of how much the government sought to push Mr. Peavler to adopt the government's narrative of events. For Mr. Peavler, Ms. Wang took transcript-style notes reflecting both the questions asked by the government and the answers provided by Mr. Peavler. Exhibit A, Declaration of Sarah C. Wang ("Wang Decl.") at ¶ 4.

After the interview memorandum was produced following the indictment, counsel for Mr. Peavler were alarmed to see a large number of significant inaccuracies in the memorandum. On March 5, 2020, Mr. Peavler's counsel wrote a letter to the government and expressed these concerns. Filing No. 113-8. The government did not respond. Mr. Peavler raised the issue again in an April 3, 2020 letter. Filing No. 115-10 at 5. The government still stayed silent.

On December 1, 2020, Mr. Peavler alerted the Court to these concerns as part of his *Brady* motion. Filing No. 114 at 13-14. Mr. Peavler expressed concern that the same problem could plague all of the government's interview memoranda in the case. *See, e.g.*, Filing No. 113

at 1. The government promised to review the notes for Mr. Peavler's interview only and identify any discrepancies, if any, from the agents' typewritten memorandum. Filing No. 120 at 16 n.8. Mr. Peavler pointed out that six prosecutors and agents attended the interview and heard firsthand what was said, and the government should be doing far more than reviewing one agent's handwritten notes. Filing No. 121 at 12.

On March 19, 2021, the Court granted Mr. Peavler's *Brady* motion in part and denied it in part. Filing No. 134. As relevant to this motion, the Court ruled as follows:

> While the Court does not agree that alleged errors in the memorandum summarizing Mr. Peavler's proffer interview warrant the broad order he requests, the Court does find that some action is necessary. Accordingly, the Court **ORDERS** that any notes taken during or relating to Mr. Peavler's proffer interview shall be reported to the Court and the Defendants in list form and preserved, regardless of who made the notes. The Government shall also identify whether the Government is claiming any such notes are privileged or otherwise protected from disclosure. In addition, the Court **ORDERS** the Government to produce to Defendants any non-privileged notes or summaries of Mr. Peavler's proffer interview with the Government. *See Giglio*, 405 U.S. 150. Moreover, the Court cautions the Government that if the other notes or materials show that the Government's memorandum contained material inaccuracies and led to the withholding of *Brady* material, the Court may require additional action to ensure that other *Brady* material has not been inadvertently withheld.

Filing No. 134 at 14.

On April 12, 2021, the government produced the handwritten notes of Agent Madston. Exhibit B. Like her typewritten FD-302 memorandum, Agent Madston's handwritten notes generally did not include the questions asked, the context surrounding the questions or answers, or detail the extent to which the government sought to push Mr. Peavler to adopt the government's narrative of events. Mr. Linder also produced his handwritten notes from the meeting, which were three lines long. Exhibit C. The government claimed privilege for the notes it made in preparation for the interview. Filing No. 138 at 2.

DISCUSSION

There are four reasons why the government's motion in limine should be denied: (i) it is premature, (ii) it seeks to introduce statements that Mr. Peavler did not make and to omit information from statements that he did make in order to make the statements misleading, (iii) it provides no specific factual basis for the Court to consider and simply speculates that Mr. Peavler will breach the proffer agreement in some way at some point in the future, and (iv) its proposed plan does not take into account the hearings and rulings that will be needed if or when the government does identify the specific statements it wants to introduce and the specific reasons why it believed the proffer agreement was breached.

A. The Government's Motion in Limine Is Premature

The government's motion in limine is premature because there is nothing for the Court to decide at this point. The government acknowledges that it does not currently intend to elicit testimony about any statement in the government's FD-302 memorandum. Filing No. 164 at 1. The government does not know if it will change its mind, because the government does not know (i) the precise defenses that Mr. Peavler or his counsel will present at trial; or (ii) whether those defenses will conflict with something that Mr. Peavler actually stated at the proffer session. It would not be practical or a good use of the Court's time to hold an evidentiary hearing now on a 21-page memorandum from which the government does not currently intend to elicit any testimony about any particular statement.

Courts routinely deny motions in limine when they are not asked to decide a concrete issue. *See, e.g.*, *Richards v. PAR, Inc.*, No. 1:17-CV-00409-TWP-MPB, 2021 WL 4775350, at *2 (S.D. Ind. Oct. 13, 2021) ("Courts often defer admissibility determinations so they can be made in the context of trial rather than granting a motion *in limine* when the case has not

significantly developed to a point where a court can make an informed relevancy determination"); *Hawthorne Partners v. AT & T Techs., Inc.*, 831 F. Supp. 1398, 1401 (N.D. Ill. 1993) ("Denial merely means that without the context of trial, the court is unable to determine whether the evidence in question should be excluded").

To the extent that the government is asking the Court to make a ruling in advance about what should happen if the government decides that it wants to elicit testimony about those statements, Filing No. 164 at 10-12, that motion should be rejected too. The Court should not rule on this motion without understanding the specifics of what the government is requesting. For instance, the proffer agreement addresses when "statements made by Client during the meeting" can be used. Filing No. 164-1 at 1. For purposes relevant here, it states "[i]n any proceeding, . . . the government may use Client's statements and any information provided by Client during or in connection with the meeting to cross-examine Client, to rebut any evidence or arguments offered on Client's behalf, or to address any issues or questions raised by a court on its own initiative." *Id.* at 2. The proffer agreement does not give the government the freedom to use statements that Mr. Peavler never made or to omit statements that Mr. Peavler did make in order to provide a misleading account of Mr. Peavler's proffer. In asking the Court to rule in advance, the government is asking the Court to assume that the government's FD-302 memorandum is accurate, which is an invitation that the Court should not accept.[2]

[2] The government relies on cases with different facts where there does not appear to have been a dispute over the contents of the proffer or whether the proffer was different than what the defendant argued. *See, e.g., United States v. Goodapple*, 958 F.2d 1402, 1409 (7th Cir. 1992) ("When his testimony was inconsistent with the substance of his proffer, the government impeached Goodapple with his proffer statements, as specifically permitted by the proffer letter"); *United States v. Peel*, No. 06-CR-30049 WDS, 2006 WL 3804846, at *4 (S.D. Ill. Dec. 22, 2006).

Nor can the Court rule on whether a defense is "inconsistent" with the contents of the proffer without understanding the context of the defense. The government cites to *United States v. Krilich*, 159 F.3d 1020, 1025–26 (7th Cir. 1998), but that case confirms that "[s]tatements are inconsistent only if the truth of one implies the falsity of the other." The Court cannot decide whether the truth of one statement implies the falsity of the other without knowing both statements. In any event, Mr. Peavler's defense at trial will be that he is innocent, similar to the way that he denied at the proffer that he ever engaged in illegal conduct, so it is unclear why the government suspects there will be inconsistent defenses. Moreover, a number of the government's "statements of interest" asked Mr. Peavler to opine on what others were doing: whether particular kinds of information were given to the auditor, whether information was given to a financial institution, etc. If Mr. Peavler learned new information or discovered new evidence, any new-found information does not imply the falsity of any previous opinions. It only means he learned new information or discovered new evidence. The government's motion in limine should denied subject to its renewal if the government can identify which statements it wants to attempt to elicit and can explain how it is inconsistent with a defense by Mr. Peavler.

B. The Government Should Not Be Permitted to Offer Testimony About Statements Bobby Peavler Never Made Or Omit What He Did Say

In its motion in limine, the government lists twenty-five quotes from its FD-302 memorandum and argues they are examples of "notable statements" that the government may want to elicit at trial depending on the substance of Mr. Peavler's defense. Filing No. 164 at 3-7. Counsel for Mr. Peavler has concerns that the government is attempting to goad him into providing a preview of his defense before trial or, worse, trying to pressure him not to put on a defense. Nonetheless, to provide the Court with an understanding of his concerns about the accuracy of the government's interview memorandum, Mr. Peavler believes that it is important to

provide four prominent examples of inaccurate or misleading statements contained within the memorandum. These are just examples, and there are similar problems with many of the other statements not specifically addressed herein. The Proffer Agreement does not give the government the right to elicit statements about things Mr. Peavler did not say, omit things that he did say, or draw inferences from things that Mr. Peavler never suggested.

Example 1: The Government's 302 Claims That Mr. Peavler Agreed that the Stoops Transactions Were "Related" – While Omitting the Critical Fact That He Did Not Believe the Values Were Related

The government's 302 memorandum suggests that Mr. Peavler confessed to making false certifications to BKD:

> Celadon's audit committee chairman, Bob Long ("Long"), had a discussion with BKD. Long asked Peavler to look at the issue more.
>
> BKD asked Celadon to certify that the purchases and sales with Stoops were not inter-related. Peavler acknowledged that Quality paid "a very high amount" for used trucks. DOJ Attorney Atkinson read aloud, "The Stoops sales and purchases transactions were conducted at arm's length and the prices at which the Company bought and sold vehicles reflect fair market values at the time of the transactions. Each transaction was discreet in nature and none were interdependent. There are no undisclosed side agreements related to these transactions." Peavler acknowledged that the purchases and sales were related, and there was a commitment back and forth.

Filing No. 164-2 at 5.

The FD-302 memorandum is inaccurate because Mr. Peavler did not confess that the *values* of the purchases and sales were interconnected, which is how he construed the "interdependent" language of the certification. As Ms. Wang reports, the conversation proceeded with the government making a series of accusations and Mr. Peavler trying to respond to them:

> Atkinson asked if BKD asked in the management representation letter about certifying that transactions were not related. Atkinson said that, at this point, Peavler knew that Celadon was buying used trucks at inflated values, but that he certified otherwise. Atkinson quoted the final management representation letters directly, and noted that Peavler certified the Stoops transactions were at "arm's

> length" and reflect "fair market values," and that they were "discrete in nature and independent" with "no side agreements." Atkinson noted that Peavler was involved in negotiations and signed the management rep letters.
>
> **Peavler acknowledged that now he understood the transactions to be interconnected. At the time he signed the letters, however, he did not.** Peavler said that he spoke with [Paul] Will [Celadon's CEO], and knew that **BKD had done the analysis requested by Long**, and that BKD looked at the fair value of what Celadon gave up because they accounted for the transactions as non-monetary. **Peavler also said there was a Board call with BKD, and the partner who reviewed the transactions had gotten comfortable with the values and did not believe there was any linkage in the values**. . . .

Wang Decl. at ¶ 7 (emphasis added). As Mr. Peavler told the government at the proffer, he believed that, if the *values* of one transaction were not interconnected or "linked" with the other, then the transactions were "not interdependent." As he also told the Justice Department, when he signed the certification to BKD, his understanding was that BKD agreed with that assessment after its own review (*i.e.*, there was no "linkage in the values" of the purchases and sales).

> **Example 2: The Government's 302 Omits Important Information and <u>Conflates What Mr. Peavler Believed Then with What He Believes Now</u>.**

In the second example, the government's FD-302 memorandum makes the following statement and suggests that it reflected Mr. Peavler's state of mind "as of the September 30, 2016 quarter-end:"

> Peavler acknowledged the following were true, as of the September 30, 2016 quarter-end:
>
> - Celadon had not disclosed all related transactions.
> - Celadon had not disclosed all significant transactions.
> - Celadon had still not disclosed the purchase agreement with Stoops as of the December 31, 2016 quarter-end.
> - Celadon certified that each transaction was discrete in nature, but Peavler acknowledged that one side of the transaction was conditional on the other.

Filing No. 164-2 at 6. Meanwhile, the government's memorandum omitted that Mr. Peavler consistently stated that he believed at the time that BKD had everything it needed to audit Celadon.

> Ms. Wang's declaration describes the discussion on these points:
>
> "Atkinson said that in the management rep letter, Peavler certified that everything had been made available to BKD, but that that was not true. Peavler said that at the time he inaccurately certified and did not read everything. **The FBI agent clarified that Peavler did not read it carefully, but that now he acknowledges it is wrong. Peavler said that he thought BKD had everything they needed for their quarterly review.**
>
> Atkinson specifically pointed out the 'unusual transactions' language in the management rep letter, and asked Peavler if the timing of the fourth Stoops transaction was unusual. **Peavler responded that he can now see that the timing was unusual.**
>
> Atkinson pressed, and said that there are statements in the management rep letters that Peavler certified that are false; specifically, Celadon did not disclose significant contracts or unusual transactions, and Celadon did not disclose that the transactions with Stoops were interdependent.
>
> Atkinson asked Peavler if Celadon had disclosed significant and unusual transactions with Stoops as of the September 2016 quarter; **Peavler replied that as he sits here today, he sees that they did not disclose significant and unusual transactions.**
>
> Atkinson asked whether Celadon had disclosed the purchase agreement by December 2016; Peavler replied that to his knowledge, they had not.
>
> Atkinson asked whether the Stoops transactions were discrete and not dependent on one another, when today he said that the purchases were conditional; Peavler said that is true.
>
> **Atkinson asked if BKD knew that and Peavler responded that he thinks they did**; **Linder asked how they would know that, and Peavler said that BKD auditors were diligent. . . .**

Wang Decl. at ¶ 9. The government seems to suggest that it will want to impeach Mr. Peavler if he or his counsel contends that he did not know in November 2016 or February 2017 that BKD had not received all of the relevant information about the Stoops transactions. But, contrary to

the suggestion of the FD-302, Mr. Peavler has always maintained that he thought at the time that BKD had all of the documents it needed to audit Celadon and was not aware at the time of anything being withheld. The government should not be permitted to use Mr. Peavler's proffer to falsely claim that he ever suggested otherwise.

Example 3: The Government's Memorandum Misattributes a Statement to Mr. Peavler That Was Made By His Lawyer and Then Hints That the Statement Reflects Mr. Peavler's Past Belief

In a third example, the FBI FD-302 memorandum mistakenly attributes a statement from Mr. Peavler's lawyer and then falsely hints that it is indicative of Mr. Peavler's past intent. The memorandum states, "*[Agent note: A lunch break was taken from 12:30 p.m. to 1:44 p.m.]*" and then "Peavler acknowledged that what he provided to Bank of America was deceptive." Filing No. 164-2 at 18.

But both Mr. Linder's notes and Ms. Wang's declaration show that Mr. Peavler did not make this statement at all. Significantly and in direct conflict with the agents' 302, Mr. Linder's notes state, "Sergio: Bank covenants were deception," indicating that Mr. Acosta made a statement. Exh. C. Similarly, Ms. Wang's notes are more fulsome than Mr. Linder's notes, stating that *Mr. Acosta* said "based on conversations with [Mr.] Peavler and from this morning's discussion, [Mr.] Peavler understands *now* that what was provided to the bank at the time of the September 30, 2016, cutoff was deceptive because it did not include all of the information for the company." Wang. Decl. at ¶ 11 (emphasis added). Mr. Acosta never said that was Mr. Peavler's belief during the relevant times of the indictment. *Id.* Moreover, as reflected in Mr. Linder's notes, Mr. Peavler did not say it. It is highly troubling that the agents would attribute a statement to Mr. Peavler in an official document that even the lead AUSA acknowledged was not made by Mr. Peavler.

More importantly, Ms. Wang's declaration shows that Mr. Peavler consistently denied that was his intent at the times alleged in the indictment, even when the government tried to push Mr. Peavler against his best recollection into adopting the government's narrative. Before the lunch break, the government asked a series of aggressive questions designed to push Mr. Peavler into agreeing with the government's contention that Bank of America was deliberately not told about the October Stoops transactions. Wang Decl. at ¶ 13. For instance, Ms. Wang reported that "Linder said that this was the whole point, to avoid telling the bank about the commitment" and that "Peavler said that no, the whole point was hitting the covenants, and that neither he nor anyone who dealt with the bank agreement prior to him believed it needed to be reported." *Id.* When Mr. Peavler did not agree with the government's view, the government lawyers berated him, accused him of being wrong, and asked him the question of whether "he really thought twelve Hoosiers" would believe him at trial. *Id.* at ¶ 14. One prosecutor told Mr. Peavler that he needed to think of a way forward. *Id.* In addition to falsely accusing Mr. Peavler of making the statement about "deceptive" conduct, Special Agent Madston's memorandum and her handwritten notes entirely omit the pressure that prosecutors brought to bear on Mr. Peavler before the lunch break was taken. *See* Exhibit B at 29-32.

Even after the break, when Mr. Acosta made the statement about what Mr. Peavler "now" believes, there was never a statement in the proffer that Mr. Peavler believed in November 2016 that "what he provided to Bank of America was deceptive." And Mr. Acosta made that statement when he and Mr. Peavler did not have access to an email from Celadon's Director of Finance to Bank of America in October 2016 (a few weeks before Mr. Peavler's certification to Bank of America) disclosing that Celadon *had* made an equipment purchase at the beginning of

October of roughly $32 million.[3] Exh. A-1 at 2-3 (October 14, 2016 email from Bank of America to Celadon stating that "[b]orrowings increased approximately $64MM from 9/30" and asking "[w]hat was the driver of the increase?" followed by a October 17, 2016 response that "[w]e had some equipment purchases at the beginning of October that will go into the JV deal (these are already included in the numbers from the MOU), that was about half the increase"). The government provided that email among the millions of pages of discovery provided after the indictment, but never showed it to Mr. Peavler during his proffer session. The FD-302 memorandum does not mention that omission either.

In the end, the "deceptive" statement in the government FD-302 memorandum is not one that the government should be permitted to elicit at any point in the trial. First, it is not a statement of Mr. Peavler, but his lawyer, and the proffer agreement (which the government drafted) only permits the government to use statements of the "Client," not the "Client's Lawyer." The government therefore does not have a right to use this statement under the plain terms of the proffer agreement. Second, and more importantly, it is not relevant to the charges in the indictment what Mr. Peavler or his counsel believed based on the information they learned in August 2019 or the berating Mr. Peavler received in August 2019. The issue is his intent at the relevant times in 2016 and 2017 alleged in the indictment. Finally, Mr. Peavler's counsel should be able to argue based on the documents that the government did not provide until after the proffer, which show that Bank of America understood in mid-October 2016 that Celadon had

[3] The government admits it asked Mr. Peavler whether Celadon's Director of Finance had spoken with Bank of America about the Stoops purchase, and Mr. Peavler replied that he did not know. *See* Filing No. 164-2 at 17. If the government was aware of this email between Celadon's Director of Finance and Bank of America, it is even more confounding that the government lawyers pressed ahead with berating Mr. Peavler with their "deceptive" narrative.

just made a large equipment purchase at the beginning of its quarter (which followed the quarter for which Mr. Peavler later would later be making a certification in early November).

Example 4: The Government Attributes a Statement to Mr. Peavler That Mr. Peavler Did Not Say or Adopt

In the final example, the government's FD-302 memorandum claimed "Peavler understands that BKD relied on Celadon's representations and was not there to question or catch errors or misstatements." Filing No. 164-2 at 17.

That is not what Mr. Peavler said. As Ms. Wang reports, at this point in the interview, "Atkinson reminded Peavler that the role of BKD as an auditor is not to catch all the bad things, and that [Peavler] does not get to just rely on them" and that "Peavler said he understood." Wang Decl. at ¶ 16. Mr. Peavler's assent that he understood the government's narrow statement does not mean that he agreed with the expansive notion that the auditors had no responsibility to question the company's accounting or to catch errors or mistakes under any circumstances. Mr. Peavler's understanding of the government's sentiment also does not mean that he agreed that he or others at Celadon were not allowed to rely on Celadon's external auditors in any circumstances. As the evidence at trial will show, the government's view of the auditor-auditee relationship does not reflect the daily reality of BKD's relationship with Celadon. The proffer agreement does not provide that the government can elicit testimony about things Mr. Peavler did not say in his proffer and falsely or mistakenly attribute it to Mr. Peavler.

C. The Court Should Reject the Government's Threats to Declare the Proffer Agreement Void

The government also threatens to declare the proffer agreement void "[i]f the evidence presented at trial demonstrates that Peavler was not completely truthful during the proffer session" and argues that it "should be permitted to use any statements from the proffer session

for any admissible purpose" in that situation. Filing No. 164 at 13. It is difficult to respond to this argument without understanding the specific context that the government is suggesting. The government also does not explain what it means by "complete." However, if the government is suggesting that it should be able to use statements from the proffer session if it does not like Mr. Peavler's defense or if Mr. Peavler presents evidence about facts that he did not know at the time of the proffer or if Mr. Peavler did not anticipate every nuance of his defense before his lawyers reviewed millions of pages of documents, the government's argument should be summarily rejected as unreasonable. The same is true if the government is suggesting that it should be allowed to claim a breach of the proffer agreement because the government did not accurately record what Mr. Peavler said during his proffer and wants to rely on a false and misleading account of the proffer. Mr. Peavler was being completely truthful at the proffer when he denied allegations of illegal conduct; his defense at the trial will be the same.

The government has not alleged any facts remotely resembling the cases it cites in its brief. In *United States v. Coleman*, 149 F.3d 674, 678 (7th Cir. 1998), the Seventh Circuit observed that the defendant "presented contradictory testimony regarding the amount of cocaine attributed to him" in connection with his sentencing hearing. *See also United States v. Delzer*, No. 08-CR-138-BBC, 2010 WL 3395670, at *4 (W.D. Wis. Aug. 13, 2010). The government has not alleged that Bobby Peavler said one thing in his proffer and is defending himself in an inconsistent way in this case.

D. A Hearing Outside the Jury's Presence At a Later Time Will Likely Be Necessary If the Government Seeks to Introduce Statements From Its FD-302 Memorandum

Finally, the government's recommended trial procedure is insufficient. Filing No. 164 at 13-14. Mr. Peavler agrees that the government should not attempt to use any of the proffer statements until the Court approves it. For the Court to approve of the use of a statement from

the proffer session, Mr. Peavler believes that the Court should make a ruling under Rule 104 of the Federal Rules of Evidence as to whether: (i) the statement from the proffer was actually made by Mr. Peavler and is being presented fairly and in context; (ii) the proffer statement is inconsistent with Mr. Peavler's testimony or defense (*i.e.*, "the truth of one implies the falsity of the other") and cannot be explained by access to information that Mr. Peavler did not have at the time of the proffer or by other similar circumstances; and (iii) the use of Mr. Peavler's proffer would be consistent with the proffer agreement that Mr. Peavler signed with the government. *See* FED. R. EVID. 104(a) ("The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible."); FED. R. EVID. 104(b) ("When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist.").

Depending on the specific statement that the government might seek to elicit, this will likely require an evidentiary hearing outside the presence of the jury as to what Mr. Peavler actually said at the proffer session. FED. R. EVID. 104(c) ("The court must conduct any hearing on a preliminary question so that the jury cannot hear it if . . . justice so requires"). Because witness would likely need to be presented in this scenario, the government would need to give reasonable advance notice so the witnesses would have time to appear at the hearing. This hearing cannot be held until the government identifies the specific statement that it is attempting to elicit and its theory as to how the statement is inconsistent with Mr. Peavler's testimony or trial defense. Otherwise, it would waste the Court's time and resources if the parties do not know what statements are at issue and how they are allegedly inconsistent with Mr. Peavler's testimony or evidence.

CONCLUSION

For the reasons stated above, Defendant Bobby Peavler respectfully requests that the Court deny the government's motion in limine.

Respectfully submitted,

/s/ Michael P. Kelly
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sergio.acosta@akerman.com

Attorneys for Bobby Peavler

CERTIFICATE OF SERVICE

I hereby certify that, on January 7, 2021, a copy of Defendant Bobby Peavler's Response to the Government's Motion in Limine was filed using the CM/ECF electronic filing system. Service of this filing will be made on the persons listed below by operation of the Court's electronic filing system, and parties may access these filings through the Court's electronic filing system.

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Attorneys for William Eric Meek

/s/ Michael P. Kelly
Attorney for Bobby Peavler

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:19-cr-00378-JMS-MJD
	)	
WILLIAM ERIC MEEK and BOBBY LEE PEAVLER,	)	
	)	
Defendants.	)	

DECLARATION OF SARAH C. WANG

I, SARAH C. WANG, hereby declare as follows:

1. I am a special counsel with the law firm of Akerman LLP. I have been practicing law for approximately fifteen years. I graduated with an undergraduate degree from Washington University in St. Louis, Missouri in 1999 and with a law degree from American University in 2004. I have been based in Washington, D.C. for my career, working as an attorney for the law firm of Hogan & Hartson LLP (and its successor, Hogan Lovells U.S. LLP) from 2004 to 2010; as a Trial Attorney in the Office of General Counsel, Division of Compliance for the United States Consumer Product Safety Commission from January 2011 through August 2012; as an attorney for Hogan Lovells U.S. LLP from 2015 to 2019; and as a special counsel for Akerman LLP from 2019 through the present.

2. On August 26, 2019, I attended the interview of Bobby Peavler at the U.S. Attorney's Office in Indianapolis, Indiana. The interview began at approximately 9:30 am and lasted until approximately at 2:48 pm.

3. In addition to myself and Bobby Peavler, the interview was attended by Rush Atkinson and Kyle Maurer of the Fraud Section, Criminal Division, United States Department of Justice; Assistant United States Attorney Nicholas Linder of the United States Attorney's Office for the Southern District of Indiana; Special Agents Victoria Madston and Joseph Weston of the Federal Bureau of Investigation; U.S. Postal Service Inspector Anna Hallstrom; and Sergio Acosta and Douglas Paul of Akerman LLP.

4. Throughout the entire interview, I took transcript-style notes on my laptop computer and tried to write down all of the communications during the day. In some instances, the government lawyers did not ask questions, but made declarative statements and asked if Mr. Peavler agreed with them. I also tried to write down every comment that was made by the government and Mr. Peavler, regardless of whether it was connected to a question.

5. I have reviewed the FD-302 memorandum prepared by Agents Madston and Weston and produced by the government, and compared it with my own notes of the interview that day. I believe that the FD-302 contains significant mischaracterizations and omissions about what was said during the course of the interview. For the purposes of this declaration, I have attempted to provide examples of the mischaracterizations and omissions that I see in the FD-302 memorandum, but have not attempted to recite all of them.

6. Page 5 of the government's FD-302 memorandum states:

> Celadon's audit committee chairman, Bob Long ("Long"), had a discussion with BKD. Long asked Peavler to look at the issue more.
>
> BKD asked Celadon to certify that the purchases and sales with Stoops were not inter-related. Peavler acknowledged that Quality paid "a very high amount" for used trucks. DOJ Attorney Atkinson read aloud, "The Stoops sales and purchases transactions were conducted at arm's length and the prices at which the Company bought and sold vehicles reflect fair market values at the time of the transactions.

Each transaction was discreet in nature and none were interdependent. There are no undisclosed side agreements related to these transactions." Peavler acknowledged that the purchases and sales were related, and there was a commitment back and forth.

7. My recollection and my notes for that portion of the interview are substantially different than the government's memorandum. I recall that the following exchange took place:

Atkinson asked if BKD asked in the management representation letter about certifying that transactions were not related. Atkinson said that, at this point, Peavler knew that Celadon was buying used trucks at inflated values, but that he certified otherwise. Atkinson quoted the final management representation letters directly, and noted that Peavler certified the Stoops transactions were at "arm's length" and reflect "fair market values," and that they were "discrete in nature and independent" with "no side agreements." Atkinson noted that Peavler was involved in negotiations and signed the management rep letters.

Peavler acknowledged that now he understood the transactions to be interconnected. At the time he signed the letters, however, he did not. Peavler said that he spoke with [Paul] Will, and knew that BKD had done the analysis requested by Long, and that BKD looked at the fair value of what Celadon gave up because they accounted for the transactions as non-monetary. Peavler also said there was a Board call with BKD, and the partner who reviewed the transactions had gotten comfortable with the values and did not believe there was any linkage in the values.

8. Page 6 of the government's FD-302 memorandum states the following:

Peavler acknowledged the following were true, as of the September 30, 2016 quarter-end:

- Celadon had not disclosed all related transactions.
- Celadon had not disclosed all significant transactions.
- Celadon had still not disclosed the purchase agreement with Stoops as of the December 31, 2016 quarter-end.
- Celadon certified that each transaction was discrete in nature, but Peavler acknowledged that one side of the transaction was conditional on the other.

9. Once again, I have a different recollection and notes of that portion of the interview, which was much more drawn out than the government's memorandum suggests and includes information that the government omitted:

> Atkinson said that in the management rep letter, Peavler certified that everything had been made available to BKD, but that that was not true. Peavler said that at the time he inaccurately certified and did not read everything. The FBI agent clarified that Peavler did not read it carefully, but that now he acknowledges it is wrong. Peavler said that he thought BKD had everything they needed for their quarterly review.
>
> Atkinson specifically pointed out the 'unusual transactions' language in the management rep letter, and asked Peavler if the timing of the fourth Stoops transaction was unusual. Peavler responded that he can now see that the timing was unusual.
>
> Atkinson pressed, and said that there are statements in the management rep letters that Peavler certified that are false; specifically, Celadon did not disclose significant contracts or unusual transactions, and Celadon did not disclose that the transactions with Stoops were interdependent.
>
> Atkinson asked Peavler if Celadon had disclosed significant and unusual transactions with Stoops as of the September 2016 quarter; Peavler replied that as he sits here today, he sees that they did not disclose significant and unusual transactions.
>
> Atkinson asked whether Celadon had disclosed the purchase agreement by December 2016; Peavler replied that to his knowledge, they had not.
>
> Atkinson asked whether the Stoops transactions were discrete and not dependent on one another, when today he said that the purchases were conditional; Peavler said that is true.
>
> Atkinson asked if BKD knew that and Peavler responded that he thinks they did; Linder asked how they would know that, and Peavler said that BKD auditors were diligent.

10. Page 18 of the government's FD-302 memorandum states that, after a lunch break, "Peavler acknowledged that what he provided to Bank of America was deceptive."

11. My recollection and my notes for that portion of the interview are not the same as the government's memorandum. After the lunch break, I recall and my notes reflect that Sergio Acosta said that "based on conversations with Peavler and from this morning's discussion, Peavler understands now that what was provided to the bank at the time of the September 30, 2016, cutoff was deceptive because it did not include all of the information for the company." I recall that Mr. Acosta never opined in the interview about what Mr. Peavler believed about this subject in 2016 or 2017.

12. At the time of the interview, I did not recall seeing the email from Kathryn Wouters to Bank of America that is attached to my declaration as Exhibit 1.

13. The questioning before the break was contentious as the government questioned Bobby Peavler about whether the October Stoops transaction should have been included in Celadon's debt calculations for its debt covenant certificate. For example, my notes reflect and my memory is that:

> Linder said that the thing he could not understand is that the total indebtedness should have included the commitment made to Stoops. Peavler disagreed, and said no, total indebtedness is current indebtedness plus long-term debt. Atkinson challenged Peavler and said that the point is that right now they are on the hook to Stoops for $27M, and that Stoops is going to come collecting. Peavler said he believed at the time that commitments did not go into total indebtedness.

Here was another exchange:

> Linder asked if it was ever disclosed that they had a commitment to pay out almost $30M later, and Peavler said he did not know. Linder said that this was the whole point, to avoid telling the bank about the commitment. Peavler said that no, the whole point was hitting the covenants, and that neither he nor anyone who dealt with the bank agreement prior to him believed it needed to be reported.

14. As this discussion continued, the government appeared to me to become frustrated and made a series of accusations against Mr. Peavler. For instance, Mr. Atkinson surmised that Mr. Peavler's "intent here was to keep his revolver open and to report that they have

not blown a covenant" and later asked "Peavler why he did not think hiding a $27M commitment was wrong." Mr. Linder argued "that Peavler never told them that and they did it on purpose" and "instead it was the plan to tell BoA that you met the terms of the covenant with flying colors." When Mr. Peavler denied these and other similar allegations, he was asked by Mr. Linder in a raised voice "if he really thought twelve Hoosiers are going to buy" his explanation of his intent with the bank covenant.

15. Mr. Atkinson suggested taking a break at that point and told Mr. Peavler, among other things, that he should "spend lunch thinking about a way forward."

16. Page 17 of the government's FD-302 memorandum states "Peavler understands that BKD relied on Celadon's representations and was not there to question or catch errors or misstatements." My notes from that portion of the interview state that "Atkinson reminded Peavler that the role of BKD as an auditor is not to catch all the bad things, and that he does not get to just rely on them" and that "Peavler said he understood."

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 7th day of January, 2022 in Potomac, Maryland.

Sarah C. Wang

EXHIBIT A-1

From: Kathryn Wouters [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C131AC2D36D54A369B0DE1FF2644ECD5-KWOUTERS]
Sent: 10/17/2016 4:52:05 PM
To: Brown, Jen [jen.brown@baml.com]
CC: Crask, Andrew J [andrew.crask@baml.com]; Komrska, David K [david.komrska@baml.com]
Subject: RE: Credit Agreement

The timeline is really just working through an agreement, and at this point, we really aren't comfortable with a date yet. I'll get with Paul and see if he has any additional information.

What would be the benefit of doing a dry close versus waiting, just one less thing to have to do with the JV closing?

It looks like Ken just sent over his comments to Mike.

Thanks!

Kathryn Wouters | Director of Finance | kwouters@celadontrucking.com
P: 317.972.7000 Ext. 22540 | C: 217-493-4431
Celadon Group, Inc. | www.celadontrucking.com
9503 East 33rd Street | Indianapolis, IN 46235

From: Brown, Jen [mailto:jen.brown@baml.com]
Sent: Monday, October 17, 2016 3:20 PM
To: Kathryn Wouters <kwouters@celadontrucking.com>
Cc: Crask, Andrew J <andrew.crask@baml.com>; Komrska, David K <david.komrska@baml.com>
Subject: RE: Credit Agreement

Kathryn:

Thank you for the update below.

Do you have any update on the JV timeline and driver behind the change in schedule from 10/24? One thought we had not discussed before is that we could do a dry close on this agreement and make its effectiveness conditioned to close of the JV. Once available, please send us a copy of the draft JV agreement. We will also need the fully executed copy for closing.

In regards to documentation review, please keep in mind that we will need to give the banks at least 2 full business days to review the documents once you have indicated they are in executable form. As I will be out of the office Tuesday and Wednesday with limited access, I am copying Dave Komrska. Please feel free to reach out to him if anything urgent develops while I am out.

Thank you,
Jen

Jennifer Brown

Vice President
Sr. Portfolio Management Officer
Global Commercial Banking
Bank of America Merrill Lynch
Bank of America, N.A.
MI9-161-04-01, 161 Ottawa Avenue NW, Suite 400, Grand Rapids, MI 49503
T 616.451.7562 C 616.350.5186
jen.brown@baml.com

From: Kathryn Wouters [mailto:kwouters@celadontrucking.com]
Sent: Monday, October 17, 2016 2:26 PM
To: Brown, Jen
Subject: RE: Credit Agreement

Hi Jen –

Sorry for the late reply, I was trying to track down some answers.

1. I followed up with Ken and he said he's just trying to finish up the company structure portion of the amendment and then would send his revisions over to Bobby and I for our review. I'm hoping to see his draft shortly, so we can still get it over to you guys today.
2. It doesn't look like it will happen 10/24, it looks like its definitely going to be later, I just don't have any better idea on timing, but we do have more time than one week.
3. I sent the subordination agreement on to SunTrust, and I think they were okay with it. We are in a holding pattern with SunTrust right now until we get a couple of items figured out. I thought the two different attachments for the asset listing were just the way Element looked at them, they had two different tabs of equipment when they were calculating buyouts, but if the same VINs are on both pages, then the second page would not be needed.
4. We had some equipment purchases at the beginning of October that will go into the JV deal (these are already included in the numbers from the MOU), that was about half the increase. If you look at the first day of the quarter in the past year plus, you'll see it jump pretty quickly through the normal course of business naturally. We make a big payment to Comdata at the beginning of the month, as well as all the lease payments that were collected the previous month, will get remitted to Element and 19th at the beginning of the month as well. Those then get paid down again through the course of the month.

Let me know if there is anything else you need from me. I'll make sure Ken gets the balance of his comments over to Mike once he's finished.

Thanks!

Kathryn Wouters | Director of Finance | kwouters@celadontrucking.com
P: 317.972.7000 Ext. 22540 | C: 217-493-4431
Celadon Group, Inc. | www.celadontrucking.com
9503 East 33rd Street | Indianapolis, IN 46235

From: Brown, Jen [mailto:jen.brown@baml.com]
Sent: Friday, October 14, 2016 3:36 PM
To: Kathryn Wouters <kwouters@celadontrucking.com>
Subject: Credit Agreement

Kathryn:

I am following up on a couple of open items.

1. Amendment timing - In order to keep up with the timeline for the Bank Group, we would need to get the legal documents posted on Monday morning and provide the banks with 2 days to review/comment. Is your team on track to finalize on Monday for posting?
2. Closing – Is the target for the execution still 10/24; concurrent with the JV? Any indication of a change?
3. Subordination agreement –I have not seen any update on this recently. I believe our last inquiry was if the last page of the exhibit was required as it included duplicate information?
4. Borrowings increased approximately $64MM from 9/30. What was the driver of the increase?

Also, next week I will be out of the office on Tuesday and traveling for business all day Wednesday. My out of office will have a backup, but please feel free to call my cell (616-350-5186) if you need to reach me urgently.

Thank you,
Jen

This message, and any attachments, is for the intended recipient(s) only, may contain information that is privileged, confidential and/or proprietary and subject to important terms and conditions available at http://www.bankofamerica.com/emaildisclaimer. If you are not the intended recipient, please delete this message.

EXHIBIT B

Kelly, Michael (Ptnr-DC)

From: Maurer, Kyle (CRM) <Kyle.Maurer@usdoj.gov>
Sent: Monday, April 12, 2021 12:06 PM
To: Acosta, Sergio (Ptnr-Chi); Paul, Douglas (Ptnr-DC); Kelly, Michael (Ptnr-DC); Wang, Sarah (DC); Sean.Berkowitz@lw.com; Joshua.Hamilton@lw.com; eric.swibel@lw.com
Cc: Linder, Nick (USAINS); Scruggs, Emily (CRM); Atkinson, Lawrence (CRM)
Subject: Agent Notes from Peavler Proffer
Attachments: Peavlernotes_2019.08.26_1.pdf; Peavlerprofferattachmentlist8-26-19_1.pdf

Counsel,

Attached please find scanned copies of the agents' notes from Mr. Peavler's proffer.

The file titled "Peavlernotes_2019.08.26_1" Contains Special Agent Madtson's notes from the proffer. The file titled "Peavlerprofferattachmentlist8-26-19_1" contains Special Agent Weston's notes from the proffer. We have confirmed that Inspector Hallstrom did not take notes.

Thanks and I hope all is well.

Best,

Kyle

Kyle W. Maurer
Trial Attorney, Market Integrity and Major Frauds Unit
Fraud Section, Criminal Division
United States Department of Justice
1400 New York Avenue, NW
Washington, DC 20005
Tel.: (202) 598-2930
Cell: (202) 230-0583

~~Robert Reuter~~ 8/20/2019

Govt: Atkinson, Maurer, Linder, Halstrom, Weston, Vom @ USAO Vom

Attys: Sergio
Sarah Wong
~~Chuck~~ Doug Paul

9:35A. Introd.
Proffer signed.

NJL - Expl. voluntary, can take a break at any time - to speak w/ attys or otherwise. Must be truthful. - Don't make anything up, or leave anything out. Complete answers. Leaving something out equivalent to lying. Lying to Agents is a crime - ack. and. ~~Understands~~

Ack - Lying to investors is a crime.

Spring 2016 - Did Cel. (sub) have fin diff based on used truck Mkt?
Qual started as sub of Cel, to sell used equip. As grew, dev. leasing portfolio, which grew as well. Big business, used Element to purchase leases. Q serviced leases.

& slowed funding w/ Q's act, combined (buy equip & lease drivers) w/ slowdown in trucking ind. Mkt + trouble w/ 2012 ProStar MaxF + others.

Q's

Aging of fleet + engine probs w/ ME.

YES - aware of general downturn in trucking industry & demand.

Yes, it led to unsealed trucks.

Shortage of drivers, got worse.

2016 - Lg # of inactive trucks @ Q.

Strat to dispose of unused trucks?

Yes, aware of it

Spearheaded by Eric & Danny & Paul

↓

Worked w/ Stoops & other dealers

Yes Present for high level mtgs abt disposing of trucks

↓

in meetings w/ 3 to discuss the issue

Eric - Pres/CFO of Cel @ one pt

Q was his baby, started it.

At 1st, to sell used equip vs. auctions before Q. Danny was top salesman.

Q grew fast after leasing bus started.

At 1st - Col's O/O (~80)

Then Col's O/O count was 1,000

Element came in to buy leases - took off.

By 2016, Q was a sig. segment of Col.

Aware of plan to trade older used tr for new

Aware trade diff accts treatment?

~~If cash involved~~

~~If buy fr. cash~~

If trade 2 items - trade

If buy an item + cash back/forth, that's diff.

this Underst.

Treated like buying + selling b/c cash going back + forth.

Short seller article raised Q. up to that pt - never looked at accts guidance 945

Asked SB to look @ accts guidance.

SB + BP Dbt to be: Monetary Transaction

~~Sept~~ –

Knew trucks going out + coming in w/ Stoops – yes, he knew. Esp last transaction.

4th Stoops Trans:

Fin difficulties, cash was

Bank cov rel. to Dbt to E. Had been tight for awhile

Sept Qtr, going to be close again–

1st/2nd wk Sept, Eric came to BP + said DW working w/ Stoops. Said, they can help us out w/ cash Stoops situation, w/ timing of pmts.

Timing mattered b/c bank cov comp calc @ end of qtr.

Structuring – BP aware of it: Paul, Finance Group, Accts Grp + Eric, DW

stoop?
25M before end of qtr

BP part of developing terms of Agr.

Early Sept - BP had disc. w/ Grawe.

Stoops concerned Cel wasn't going to pay them in Oct. S knew C's cash situation.

S knew C needed "cushion" for bank cov.

Aware of Purch Agr:
- Late Sept, 1st sent over. BP had disc w/ Paul - said S wanted something signed, concer

Paul asked - do we need the cash. BP - yes
Paul said - we need to work through it. BP took that as - do what is need

BP never gave orig PA to Will.

PA gets signed.

To BP, trade - were the values fair? If trade, values tied to one another. Up to that pt, thought both at fair value.

BP asked DW if gain on equip - worried abt facetious gain.

PA signed, Stoops wires $ on Sept 29.

After $ sent, or Sept 30 was Q obl's to buy equi

Yes,

$27M Not reported in Q.

Yes, ack sig.
When going thru Q - sold equip, purchase commitment.

Assumed BKD saw purchase after Q-end.

Now, thinks should have been disclosed but not deliberate omission.

BP Did not have disc w/ BKD for 3rd Qtr.

b

Knows fr past BKD goes thru procedure after Qtr end.

Assumes BKD went thru cash pmts after Qtr end.

Took benefit of cash & reported met covenants in Q - yes.

Ack if didn't take 27M would've been over 4 to 1. (4.01)

Ack purpose of timing the trans that way. The cushion.

Reported met cov. on 3rd Q inv call - yes
No specifics recalled but knows question asked.

Looking back now - inv wanted to know abt 27M.

- Should've looked at Q's more stringently. Accts/finance grps knew

Pat

Jay Yoon – BKD asks Q.

When act 1st came out, BP talked to DW + EM. Accts treat. didn't concern him much, but values concerned him. BP had Boyer look @ values + accts treatment.

BP Long had disc w/ BKD. Long asked BP to look at ~~the~~ it more.

BKD asked to cert trans not inter-related.

Very high amt pd for used trucks

"~~Mgmt has agreed indep est by~~ 3rd pty"

RA read "Sales + purch trans... none intend... no undisclosed side agr."

Ack – related + commit back + forth.

BP Disc BKD lang w/ PW. Non-Mon Trans. Went thru FV of what gave up

Day of rep letter – call w/ BKD + Greg Rexing – they'd gone thru trans + didn't see linkage.

8

1st rep ltr version - Cel said no indep 3rd pty, BP didn't agree w/ that.

2nd rep letter - BP viewed prices as NOT interdependent. Thought DW & Stoops each set its value. Didn't think BKD concerned abt timing of transactions. BKD went thru every trans w/ SB.

Not aware of Cel/Q ever telling BKD it was a trade.

In rep letter - "gave all rel K"

Didn't read letter carefully.

Ack that he inaccurately certified.

"Disclosed trans... unusual trans whether rel. parties."

Ack. Stoops deal was unusual.

Ack mult. cert. stmts that were not truthful.

As of Sept Qtr.

① C had not discl all rel trans

② C had not sig transactions

Dei. Qtr ③ Had still not discl. purch agr.

④ Each trans. was discrete in nature — but ack the 2 sides were conditional.

BP signed BKD cert – needed to get Q out.

Should've asked Greg what he meant.

* Rep ltrs verbatim boilerplate – looked @ end for something new.

But knew and wanted to know abt maj. cont.

BP signed rep ltr, Sept Q went out.

Mike Wolfe more involved.

BKD wanted to know if purch + sales linked.

Mid Feb 2017 BP said to ~~Bob L~~ Paul Thomas Maybe Bob Long Greg - talking about purch + sales. BP thought greg knew sales/purch linked. GJ

Paul or BP
- Said "they're tied tog" at that mtg. They wouldn't agree to buy ours if we didn't buy theirs.

started
BCD asking for emails.

Decision not to volunt?

Bob L wanted BP to go thru emails w/ Eric, Danny,

to see if anything supporting our position.

Asked the 3 if ha

Eric - nothing
Les "
DW - can go back + look

Said most of his emails get deleted

DW started sending BP emails

- Some not rel. to neg. process (BP deemed not supportive)

- BP realized DW didn't have a lot of supportive

  - BP asked Gabbei (CIS) if can restore DW's em

  - Event - restored, thinks substant

  - Welch + Selm went thru em w/ DW.
    - W/ DW + then by themselves.

BP said to DW - those not supportive or rel, "don't need it" or "get rid of it"

- DW didn't have anything prior to Dec 2016.

- Then asked Gabbei.

- BP doesn't recall saying - we don't need to give BID more than they asked for

Doesn't recall disc. abt O/A while at Cel.

Only convo abt it - BP asked DW if he could've sold elsewhere for the prices to stoops. /stoops

- DW said yes but would've taken more time. They "had their margin on the back end."

While SB & BP going thru adctg treatment.

When BP asked why higher prices.

SB looked at Truck Paper and found some that matched.

Why trucks on mkt for less than what sold to S for?

BP thought possibility "something was happening".

BP guest whether can trust DW or Stoops, so relied on guidance.

BP told Bob L - we should get FV assess. on both sides. BL said let's just see what BKD comes back w/.

BP never went to BKD & said can't stand by cert.

Apr. 2017 Mtg

- BP involved w/ prep for mtg. prep - to make sure everyone same pg.
- BP doesn't recall advising DW & LT to not use word "trade".

BP recalls PW & DW walking/talking, BP did not join. BP acc walked w/ PW.

DW refers to purch agr & BKD doesn't knows what talking abt

Remembers - long had to get PA before BKD. BP doesn't know

BP didn't have final signed PA before DW sent. Eric came to BP & said "I don't think we should send it to BKD. Will just make things worse." BP replied "I think we should give it to them." after BP recd it

Em Stmt

Case for concern for BP.

Meek had never said before abt not giving stuff to BKD.

In hindsight, BP thinks he didn't ask enough Q's.

(Em Stmt)
Apr 2017 - At time, recog as red flag / concerning stmt.

Em - smooth-talking person.

Email rev of DW. DW did searches. BP told him to use Stoops, TC, + names such as McCoy.

Short Break

11:02 Resumed.

Tab 1 - Doc/Attach #1.

Who had best sense of truck mkt?
Went to
Eric or Danny

On Att #1.

4:56 - Jake R. Col. finance, then
↓ orig worked for Col. maint,
then Quality - in maint. group.

"40-45 k all in"

5:03 - Meek's reply

3) Dan/Les model

I would anticipate...

500-750 is # 2012 ProStar?
Yes, that would be his guess.
Hundreds

DW reply

"We should .... (up 25k)."

40K after new eng, up

↦ BP ack worth $15K
Ack $15K is market value of
DW is saying trucks.

[illegible] chain / LT, DW, CM, BP, JR, PW [illegible]

LT reply: Under Assumptions

SS - has: Mkt Value w/ MaxxForce of $15,000

Ack LT notifying C-Suite that Q has 500-750 trucks worth $15K.

Cash flows analysis for leased assets

How to calc CV of unleased - Look at mkt. Protocols:

- Steve went thru, looked at Truck Paper to see what selling for.
  - To support 630 values
- DW also signed off on values.

No one beside SB looking at values.

SB asked Chad, Eric, Danny for class. of assets (leasing, inactive, etc.).

Tab 2. Att #2

Meek → Wouters/Danny/JR

"Any chance ... in monthly dep exp."

Meek is talking abt reducing the size of Q's portfolio, + reducing inactive truck count.

Decision to grow or shrink port?

At Q, Paul/Eric/DW
↑ mostly

Att #2 is abt shrinking fleet (not refreshing).

Wms response "Sounds ... ASAP."

"Open Pros" ⇒ means unseated trucks.

Tab 3 – Att #3

Greg B (pg 1) – worked for Elem, oversaw E side of Q-E rel. GB was analytical guy, not decision-maker.

BP spoke w/ GB occasionally.

"TY ... mtg on 7th" DW, LT, EM

– Elem mgmt had monthly mtg w/ Q's mgmt grp to go thru E-Q portfolio going

3rd A - I think it is very ... going forward."

At this pt, BP was aware of cov compl. issue.

Dec 2015 - started being tight on cov. Had convo w/ Andy C + Jen B, giving them forecasts.

+ pay fee for waiver

If C doesn't meet compl, C asks for waiver but have to report to market. Would have ~~to~~ neg. impact to mkt.

BP had not personally been thru viol. cov compl before.

How mkt would react

PW more concerned abt it than anyone

PW said "What would be the impact..."?

PW eval. SH impact of decisions, if take certain actions

On 19 2: Unseated - Q had exhausted reserve acct, paid on top of reserve.

BP's opinion

Thinks good bus decision to start Q, but ramping up so ~~quickly~~ not a good idea.
ramping up fast

Eric + Danny - stuck in on Quality's bus. model. Didn't want to admit they were wrong.

BP hasn't seen SK write-downs for 19th Cap (w/in last few mo.)

Tab 4 / Attach 4.

KW: "There is a ..... att"

Michael Miller - lead outside director.

made 1st when Q started.

~ 2nd time Q made presentation to BOD

BOD mtgs were short.

PW response:

- Global inactive truck ct - c thinks mean Q + Elem's port both.
- Trade transactions - the trans DW already did, the Stoops deal already done. No other trade trans. besides Stoops

PW uses word "trade".

↳ Ppl used word "trade" to discuss

Then/@Time

BP thinks BKD knew trucks being bought + sold @ same time w/ same dealer.

" 1200/700 deal "

↳ PW, EM, DW - were working on deal w/ Daimler to refresh, that didn't come to fruition.

- No connection bet Daimler deal + Stoops.

Tab 10 / Attach 5.

Bottom email -

"unseated assets" - Q still working thru high unseated tr count.

BP asking b/c of classification on B/S. Affects valuation.
Eg. Equip held for resale - have to look at FMV
Equip for lease

Greg wanted to discuss classification of assets (ST or LTerm); make sure in right buckets. (flexing)

Tab ~~13~~ / ~~D6~~ Att 6.

"Below is .... them out today."

Elem - Flatbed trailers, leased to 3rd pty, became unused, E wanted Q to take them back.

Eric's flatbed div using some of the trailers them

$11M is what Q would have to buy them for.

8/29/16 - Thinking of spending $11M in cash they don't have.

EM response - "I am fine... based on values."

Last part - means what he was buying them out at, couldn't sell at that

EM conceding abt to overpay for trailers.

Pres of co saying putting assets on books + will incur losses if sell.

Ack Acct Rule:
If you're going to sell them, have to put on books @ FV.

Ack EM's sugg to put on books at above-FMV is improper.

Elem threatened to stop funding or sue under PPay scenario.

- So one of them (EM/PW) agreed to take assets back.

Mkt had fallen, no losses reported?

BP: Looking back, losses prob should have been reported

No allowance for losses in the fleet.

~~A loss in~~ Co size is such that $10M loss is sig?

A: It could be sig, but truck mkt analysts know mkt fluctuates.

BP added that
A few other co's took 1q impairment w/ not much impact.

Discussions abt taking losses/reserves] impairment.

- BP doesn't recall it.

- There were discussions - (A) are we in the reasonable range. Ack. They were aggressive on valuations, C took high val.

- EM + PW were all over the place on "What is our plan?" re the inactive trucks.

Ever a plan to lease out 750 trucks?
No. Always goal to lease all the trucks.

C-Suite
They were aware other co's were taking losses. PW said - lease or sell.

BP had a lot going on.
JV was closing soon. BP ack. That was not supp to affect acct. beforehand.

BP recog. - incentive to kick losses down the road. EM's ego - didn't want to take huge hit.

with: Paul

B BP disc abt taking impair chg when did JV, b/c mkt had fallen.

Purp of JV - not to avoid taking a loss.

But no impairment ultimately taken.

A $20-30M write-down Q wouldn't have hurt investors aside Q's operations. Element dynamic PPay was hurting it. Q

B When we SB + BP started looking at guidance for contrib to JV → certain JV acctg.

- If not true JV, have to put in at FMV.

- $15K value - in BP's subconscious. Along w/ mkt falling.

Dec 31, 2016 - JV closed

BP talked abt re-valuation of total JV.

Back to Stoops deal -

Outside EM's office - doorway. Mo/two prior, had been talking abt not spending $ (e.g. truck maint.). EM trying to come up w/ funding or financing ideas.

EM either called BP down or BP already there (just EM + BP)

Said DW working on deal w/ Stoops that can help w/ cash.

- Usually Q paid S, + S paid Q.

BP asked if he meant timing of cash, EM said yes.

Next - BP talked to DW.

DW said - "Stoops can help us out w/ our cash situation." Means having enough cash @ Qtr end to meet covenant.

BP introd to Grawe. Tel. call — JG said, what do you guys need/want". BP said - "I know what timing was before but would like to chg." JG said "we'll think abt it."

BP said - will help us out w/ CF at the end of Qtr. Thinks cov.

At 1st call - BP didn't know where cash would be.

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After 1st call w/ JG - BP talked to Em + DW + PW, said Stoops going to talk abt it internally.

Tab 19 / Att 7.

1st email - Kyle Dillon/BKD

Forwarded to BP, who forwarded to others "Let's make sure BKD was asking abt class. BP also spoke to Greg + Nicki abt class bet 3 buckets

Boyer response. "I know we need help ... of assets."

→ Refers to end Sept trans.

- This is pt of B/S class issue, equip held for resale.

~~If couldn't show Stoops~~

- Why prove to BKD that equip going to sell?

→ B/c big $

Yes - Gen parameters of Stoops transaction already sketched out by Sept 9, 2016.

Recall meeting JG in person? Yes.

JG concerned on timing/getting pd. Asked abt invoices - BP said to do like normal

Celadon's

JG had Q abt 10Q coming out, it's creditworthiness. Wanted to make sure BP was OK w/ deal structure. — as CFO.
+ make sure Cel. wouldn't stiff them.

Deal was that S would fund 1st but C had to buy S's trucks after

In Top 3 transactions in that Qtr - dollar wise.

From accts persp. -

Agreement that C buys 27 M of trucks on Oct 3rd.

BP Believes should've been footnote in 10Q, as a footnote.

Investors sometimes asked abt commitments + what happ in future.

For Sept 10Q - Cel. does not report one of its largest commit.

- Who aware of commit.
BP, DW, EM, LT, KW, Steve, Paul

Procedure to make BKD aware of commit:

On BKD open item list – KW/SB gave BKD a list of open commit.

Call w/ BKD at close of qtr - not every time.

- Can't recall if happ in ~~Sept~~ Sept 30 Q-end.

- Can't recall telling BKD abt $11 M ~~truck~~ trailer re-purch.

- BP talked to Greg when Greg had concerns.

- BP understands BKD relies on the co's reps, not there to Q/catch errors/misstatements.

Tab 39 / Attach 8

- BP signed Cov Comp Cert.

- "Cash" is LOC balance

- Cash coming in pays down LOC bal.

By structuring trans —
"Total Indebtedness" would be higher.

Total Indebtedness includes oblig to Stoops?

- BP doesn't think it includes oblig/commitments like Stoops. (that to)

No one brought up including Stoops commit in T. Indebt.

In past jobs - didn't pay any $ out in last 2 wks of qtr, but didn't include A/P in T. Indebt.

- BP thinks int. counsel knew, abt commit or whether KW spoke to BOD abt it.

BP didn't believe $27M needed to be reported in "Total Indebtedness" # to bank.

Intent of this doc - to not have to get waiver & be able to tell market incompliance.

- BP didn't want to blow covenant.
- As (new) CFO, didn't want the bank to say [redacted] out of compl.

When signed/sent over, BP knew $27M not in 449,486 figure.

Para 1 - the bank wrote lang.

BP ack he was attesting to F/s being GAAP.

BP ack Cel was trying to find a loophole but didn't think wrong.

At time, thought didn't have to include in T.I. based on past exp. only (no guidance, written or otherwise).

BP - not a CPA.

Cel knew cov would be tight, had convos w/ BOA abt whether would violate cov.

BP never told A Crask abt plan to space $27M out.

B/C It was the plan to meet the covenant.

BP Not aware of previous $27M commit left out of T. Indebt.

In past other commit. like land - not in T. Indebtedness

Lunch Break - 12:30 — 1:44

BP
Ack → - What provided to BOA was deceptive.
↳ - In interact w/ BKD, focused on supp what prev- done + not having re-strnt.

Tab 29. / Attach. 9

J. McCoy email - "In addition.... did not get the titles."

Ref to "trade unit" - yes, referred that way in comm w/ Stoops.

9/28/16
- When BP forwarded agreement - read agr quickly, close to qtr-end.
- BP doesn't recall convo w/anyone before reply to Wms.

Tab 30. / Attach 10

BP Said "I don't really like.... trade."

- In PA, everything looked OK except - before this, BP assumed prices back + forth weren't related.
- Have booked as sales/purchases (vs. trades), thought more clean way to do it.

If trade, need third pty valuation, cost assoc w/ that.

"However ... though."

- Danny said it was a purchase agreement.
- BP never saw final agreement, to assess for acctg implications.
- BP did not get acctg advice or raise any red flags.
- PA gets filed away after signed.
- Why BP didn't like trade lang:
  Didn't like "dependant on one another" lang - b/c focused on what valuations were. DW said "no gain".
  - BP thought on 6/30, B/S had been signed off on valuations.

BP: Thought ^"trade" (term) meant values were based on each other.

That day - he thought "dependant" meant values, not relationship.

If lang left in, would've raised Q. w/ having to go thru Celadon legal + 3rd party valuation necessary.

BP ack. poss. downside risk if involve 3rd pty. Valuation.

Did tell anyone took long out?

- DW, BP
- BP meant to PW, when he asked how it turned out. PW knew there was an orig agreement – no time to get thru legal. (no agreed)

PW – a lot more involved than typical CEO.
Always in ofc, talking to ppl.

Talked abt acctg issues occasionally, started in acctg dept @ Cel.

Tab ~~50~~ 69 / Attach. 11

- BP supervised SB.
- BP helped review what SB put tog. SB + BP bounced things off ea. other.
- BP reviewed Att. 11. Devel. over mult. drafts.
- 1st sect – Values + NADA "Negotiation Process"
- 2¶ • "The table below .... no written/oral agr .... any of the trans"

"no oral or written agr...."

Last part – agrees not true.
Yes, read all of it @ time.

BKD cared about linkage?
Yes, ack. that is true.

Recalls Wolfe say he wanted to hear fr. ops ppl.

Tab 67 / Attach 12 - earlier version

Conf. - prev. disc lang not in here

Doesn't recall who added false stmt to Attach 11.

Tab 53 / Attach 13
+ Tab 50 / Attach 14

Attach 13 - Yellow ones were fr. Stoops.

Orig e-mail - BP "How do these look?"

SB replies.

Attach 14.

To Bova: "Please make sure ... auditors."

Break

Post-Break:

2:51p R.A. - Will adjourn proffer for today.

Bobby Dearler

Proffer attachment list

8/26/19

1. Tab 1
2. Tab 2
3. Tab 3
4. Tab 4
5. Tab 10
6. Tab 13
7. Tab 19
8. Tab 39 - Compliance Cert
9. Tab 29 - email 9/28/16
10. Tab 30
11. Tab 69 - Draft Boyer memo
12. Tab 67
13. Tab 53
14. Tab 50

EXHIBIT C

Kelly, Michael (Ptnr-DC)

From: Linder, Nick (USAINS) <Nick.Linder@usdoj.gov>
Sent: riday, April 0, 2021 :12 PM
To: Acosta, Sergio (Ptnr-Chi); Paul, Douglas (Ptnr-DC); Kelly, Michael (Ptnr-DC); Wang, Sarah (DC); Sean.Berkowitz@lw.com; eric.swibel@lw.com; Joshua.Hamilton@lw.com; Nathan.Saper@lw.com
Cc: Sawa, Kyle (USAINS); Scruggs, Emily (CRM); Atkinson, Lawrence (CRM); Maurer, Kyle (CRM)
Subject: U.S. v. Meek et. al. - Proffer Notes
Attachments: AUSA Linder Notes from Peavler Proffer.pdf

Counsel,

Attached please find a redacted copy of my notes taken during Mr. Peavler's proffer interview, which are referenced in the eport we filed today at docket num er 138, paragraph 8.

Have a good weekend,
Nick

Nicholas J. inder
Deputy Chief
Major Fraud, Pu lic Integrity, and Child plotation Unit
U.S. Attorney's ffice for the Southern District of Indiana
10 West Market Street, Suite 2100
Indianapolis, IN 46204
Main: (31) 226-6333

Sergio
Doug
Sarah along

Prosecutor Proffer — 8/26/19

- Playing w/ wedding ring
- Absence of General Market Conditions

[redacted]

Sergio:
Zack Comments were dispositive