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ARKANSAS JOINT PERFORMANCE REVIEW COMMITTEE

HEARING ON

ARKANSAS SECURITIES COMMISSION

Little Rock, Arkansas

January 8, 2014
1:00 p.m.

500 Woodlane Avenue, Room A
Little Rock, AR 72201

E X H I B I T S

(Exhibits A-J Not Included)

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- 5 K. NASAA Insight Winger 2012
- 6 L. E-mail Correspondence from NASAA
- 7 M. Language of Crews and Associates Order
- 8 N. Article from AR Democrat-Gazette
- 9 O. Memorandum from NASAA
- 10 P. Memorandum from NASAA
- 11 Q. Schedule of Monies Going to IPT and NASAA
- 12 R. Use Limitations Applicable to Funds Deposited
- 13 S. ProEquities, Inc., Consent Order
- 14 T. UVEST Financial Consent Order
- 15 U. Economics Arkansas Information
- 16 V. Summary of 2011 Enforcement Orders
- 17 W. Summary of 2012 Enforcement Orders
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- 19 Y. Department Revenue Information 7/2007 - 6/2013

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1 P R O C E E D I N G S

2 CHAIRMAN ENGLISH: I'd like to call this
3 meeting to order. And I'd like to just read a
4 little thing that we try and do at the
5 beginning of every one of our joint performance
6 review meetings so that everybody understands
7 what this committee is about.

8 This committee has the authority and
9 responsibility to make random and periodic
10 performance reviews of specific governmental
11 programs and agencies, conduct investigations
12 into specific problem areas of the
13 administration of state government as may be
14 brought to the attention of the committee,
15 refer specific problems regarding the operation
16 of state government to appropriate interim
17 committees in the general assembly for
18 continuing study, conduct hearings on citizen
19 complaints and views regarding the operation of
20 state government, and serve as a forum for
21 citizens to air their complaints and
22 suggestions regarding the operation of state
23 government. Review the expenditures of the
24 various agencies, departments, and programs of
25 state government to assure that they are being

1 administered in accordance with legislative
2 intent and are being administered in such
3 manner as to provide the tax payers with the
4 greatest service at the lowest reasonable cost,
5 and make reports and recommendations to the
6 governor, the general assembly, and legislative
7 counsel as the committee deems necessary or
8 appropriate to promote more effective and
9 efficient operation of state government.

10 That's kind of what this committee is
11 about and I appreciate everybody being here
12 today.

13 Mr. Abshure, thank you for being here.
14 Mr. Smith?

15 MS. MCDUGAL: I'm Ann McDougal, Deputy
16 Commissioner.

17 CHAIRMAN ENGLISH: Thank you very much,
18 Ms. McDougal, for being here.

19 Today, we're going to be discussing the
20 operations of the Arkansas Securities
21 Department. Particularly, its regulatory and
22 enforcement duties. As has been discussed in
23 the media, there is a pending complaint before
24 the Arkansas Ethics Commission concerning
25 certain settlement practices of the department.

1 I would like to note that this ethics
2 matter is pending. The purpose of this meeting
3 is not to address the merits of those claims
4 but to examine the regulatory authority and
5 practices of the Securities Department in
6 general.

7 Additionally, Arkansas law requires the
8 Arkansas Ethics Commission to keep records of
9 its investigations confidential in advance of
10 the hearing. The Chairs will be mindful of
11 steering discussion away from the pending
12 ethics complaint in any lines of questioning
13 that might impede that investigation.

14 Representative Rice, do you have some
15 comments?

16 REPRESENTATIVE RICE: No. I'd just like
17 to welcome everyone today. I appreciate the
18 committee members being here. I know we've got
19 bad weather in some parts of the state.

20 I reserve any other comments at this time.
21 Thank you.

22 CHAIRMAN ENGLISH: Thank you. And I think
23 we have to approve the minutes from the last
24 meeting.

25 Do I hear a motion to approve the minutes

1 from the last meeting? Representative Eubanks,
2 second from Representative Rice.

3 So moving right along here, a little
4 overview of the Securities Department and the
5 Securities law. Actually, what I'd like to do
6 is to ask Mr. Abshure if you would give us an
7 overview off the Securities Department. I
8 think there are -- it's kind of a quiet little
9 organization. And probably, it's not like the
10 department of Human Services here, so we don't
11 hear about it every day. So if you would, give
12 us a little overview of the agency.

13 MR. ABSHURE: The Arkansas Securities
14 Department is a special revenue agency of
15 approximately 40 employees charged with
16 regulatory and enforcement jurisdiction over
17 the securities industry, which includes offers
18 and sales of securities and investment
19 professionals such as investment advisors and
20 broker dealers and their representatives.

21 The mortgage lending industry, which are
22 mortgage loan companies, mortgage servicing
23 companies, and loan officers -- and I should
24 point out those are mortgage loan companies
25 that aren't regulated by either a federal or

1 state banking regulator.

2 We have jurisdiction over money
3 transmission and currency exchange businesses,
4 state-chartered savings and loan institutions
5 and foreign savings and loan institutions.
6 Right now, there's one state-chartered savings
7 and loan. State-chartered credit union, right
8 now there are no state-chartered credit unions.

9 And in addition, the department assists
10 the Arkansas Cemetery Board which regulates
11 Arkansas perpetual care cemeteries.

12 Turning to specific functions under the
13 Securities Act, I'll start with corporation
14 finances, which is where we regulate the offer
15 and sales of securities. And I should point
16 out, issuers that sell securities in Arkansas
17 are not regulated entities the way that broker
18 dealers or investment advisors are, so we don't
19 have that sort of jurisdiction over them. We
20 have jurisdiction over the transaction in which
21 the securities are offered and sold.

22 We regulate securities transaction by
23 requiring disclosure to purchasers and
24 providing remedies in cases of fraud. My
25 corporation finance section received, reviewed,

1 and processed 2,500 initial filings and 5,500
2 renewal filings relating to securities
3 offerings during 2013. These included exempt
4 private offerings, mutual funds, and registered
5 offerings.

6 The compliance and registration section
7 deals with compliance exams and registration
8 material reviews for our regulated entities,
9 which are broker dealers and investment
10 advisors.

11 Currently, there are 108 investment
12 advisor firms licensed in Arkansas. There are
13 an additional 879 firms licensed with the SCC
14 that do business in Arkansas through a notice
15 filing procedure. There are approximately
16 3,269 investment advisor representatives
17 licensed here.

18 Because of the changes made by the
19 Dodd-Frank Financial Reform Act, we saw an
20 increase of 41 investment advisor firms
21 becoming state registered. These entities are
22 larger from the old maximum of 25 million in
23 assets under management to the newly
24 established \$100 million limit and will require
25 more time in personnel to review. We review

1 and approve the registration and renewal
2 applications at each one of these firms and
3 their representatives.

4 Currently, there are 1,362 broker dealer
5 firms registered in Arkansas with 1,004
6 registered branch offices. There are
7 approximately 101,353 registered broker dealer
8 agents. We review and approve the registration
9 and renewal applications of each one of these
10 firms and their agents.

11 Currently, there are 297 mortgage
12 companies licensed in Arkansas with 354
13 licensed branch offices. There are 2,265
14 licensed mortgage loan officers. We review and
15 approve the license and renewal applications of
16 each one of these companies and their loan
17 officers.

18 There are 60 money transmitters and four
19 currency exchangers licensed in Arkansas.
20 There are approximately 6,985 delegates
21 authorized to engage in money transmission
22 activities in Arkansas. We review and approve
23 the license and renewal applications of each
24 one of these entities.

25 On-site compliance examinations are

1 conducted at the main Arkansas branch offices
2 for all of the licensees or registrants. If we
3 receive a complaint or other evidence of a
4 violation, we investigate and bring in
5 appropriate enforcement action.

6 With regard to perpetual care cemeteries,
7 the staff assists the Arkansas Cemetery Board
8 in the regulation of perpetual care cemeteries.
9 There are currently 100 permitted cemeteries
10 that are regulated by the board and the
11 department staff.

12 I should point out under perpetual care
13 cemeteries that even though the act is entitled
14 the Arkansas Cemetery Act, we do not have
15 jurisdiction over every cemetery in Arkansas.
16 It's just the perpetual care cemeteries. Now,
17 we try to help the folks out that give us a
18 call and do the best we can, but it's just the
19 perpetual care cemeteries that we have any
20 jurisdiction over.

21 We also have a very active investor
22 education section. The department continues
23 its efforts to refine and improve this investor
24 education program. For the last five years,
25 we've been an active participant along with the

1 insurance department, DHS, the attorney
2 general's office, and AARP in town-hall-style
3 meetings throughout the state focusing on
4 consumer protection and fraud prevention for
5 senior investors.

6 The department partners with the
7 University of Arkansas' Walton Business College
8 and library system in promoting and conducting
9 retirement planning seminars for the public and
10 is a sponsoring partner of Economics Arkansas
11 Stock Market Game for public school students
12 providing both resources and teacher training.

13 Historically, the two groups that we find
14 it easiest to contact with our investor
15 education are school kids and senior citizens.
16 Folks that are of working age that are out at
17 their jobs, their nine-to-five then they're
18 coming home and taking kids to soccer practice,
19 things like that, they're hard to reach.

20 So a highlight of 2012 was the
21 implementation of a retirement and financial
22 planning program specifically designed for
23 state employees. We thought we'd start there
24 with the idea that maybe we could convince
25 agencies to make employees available for an

1 hour or so at lunch to receive our investor
2 education message.

3 This program was presented to employees at
4 several state agencies as a workshop at the
5 Arkansas State Employees Association state
6 convention as well as to representatives of the
7 Arkansas Public Employees Retirement System
8 with a favorable response from all
9 participants. As a result of these sessions,
10 (inaudible) have asked the department to
11 participate in seminars that it conducts for
12 its members during the year. The department
13 plans on increasing the participation by
14 offering this program to additional state
15 agencies and looks to expand similar programs
16 to the private sector.

17 Looking at current enforcement trends in
18 securities regulation -- now, these are
19 enforcement figures for 2012. They do not
20 include compliance and regulatory examinations
21 or other activities and they don't include
22 enforcement actions under any of our other
23 statutes. This is strictly under the
24 Securities Act.

25 In 2012, we received 237 complaints and

1 conducted 63 investigations. We initiated 52
2 administrative actions and two criminal
3 actions. I issued 37 administrative
4 enforcement orders and we obtained two
5 injunctions in court proceedings. We assessed
6 almost \$180,000 in fines and penalties and
7 ordered approximately 65,000 in restitution to
8 investors.

9 With regard to licensing sanctions, 260
10 licenses were withdrawn due to state action,
11 five were conditioned, two were suspended, and
12 nine were barred or prohibited from
13 registering.

14 In addition to the securities enforcement,
15 the department collected over one million
16 dollars in fines related to enforcement actions
17 for mortgage companies.

18 As I said before, the department is a
19 special revenue agency. The department
20 generated gross revenues of more than 16.5
21 million in the last fiscal year. The
22 department's approved budget for the same
23 period was approximately 3.5 million, and that
24 result was that over 14 million went to the
25 state's general revenues.

1 Historically, fees are less than ten
2 percent. In fact, they're usually closer to
3 about one or two percent of the special
4 revenues that come into the agency. And as you
5 all know, an increase in special revenues,
6 whether through fines, fees, or any other way,
7 doesn't directly go to the department for its
8 use. Our budget is still \$3.5 million.

9 I'll be happy to answer any questions.

10 CHAIRMAN ENGLISH: Okay. Thank you.

11 Representative Westerman?

12 REPRESENTATIVE WESTERMAN: Thank you,
13 Madam Chair.

14 Mr. Abshure, I've got several questions I
15 wanted to ask you. While you were president of
16 the NASAA, a (inaudible) settlement of \$150,000
17 with a Little Rock firm was directed to your
18 organization. Can you tell us what that money
19 was used for?

20 MR. ABSHURE: That money was earmarked for
21 training in investor protection programs.

22 REPRESENTATIVE WESTERMAN: Why wasn't that
23 money deposited in the treasurer's office as
24 special revenue under Arkansas code?

25 MR. ABSHURE: Because it wasn't collected

1 by the state.

2 REPRESENTATIVE WESTERMAN: Can you
3 elaborate on that, please?

4 MR. ABSHURE: You're referring to
5 23-42-213, which is the disposition of fines.
6 That statute is an accounting statute that
7 basically says any money the department brings
8 in, no matter how the department brings it in,
9 goes to the treasury.

10 If you look, the operative language in
11 that statute is all fines imposed and collected
12 or monies collected in lieu of a fine. A
13 donation is just like ordering restitution be
14 paid to a victim. It's just like ordering
15 disgorgement that rather than coming to the
16 state goes to a victim.

17 That's money that never came in to the
18 state, it was never the state's money. And so
19 those statutes' application that deal with how
20 we account for our funds don't limit my ability
21 under those other statutes that we've cited to
22 exercise discretion in the wide body of
23 remedies that are available and commonly
24 abused.

25 REPRESENTATIVE WESTERMAN: So your

1 position is that was not state money that was
2 --

3 MR. ABSHURE: No.

4 REPRESENTATIVE WESTERMAN: Whose money was
5 that?

6 MR. ABSHURE: It was a contribution to
7 NASAA.

8 REPRESENTATIVE WESTERMAN: So the state
9 can --

10 MR. ABSHURE: Let me give you another
11 example. Say that I have an enforcement action
12 that involves a senior citizen and a firm that
13 has targeted senior citizens. And when the
14 firm comes to me, they're cooperating, they
15 admit that what they did was wrong, they've
16 tried to fix things, and they say, Commissioner
17 Abshure, is there any way we can not have a
18 fine. And I say, well, you could make a
19 charitable contribution. Let's say you could
20 make a charitable contribution to AARP
21 earmarked just for its investor protection.
22 And that's part of my broad discretion that's
23 granted to the commissioner in fashioning
24 remedies that are appropriate for a particular
25 enforcement action.

1 Just like if I had an agent that wasn't
2 registered and improperly received commissions,
3 I could order disgorgement. And realizing that
4 all of his clients lost money, I could order
5 disgorgement and say, you know what, pay it to
6 those clients.

7 Now, in common language (inaudible),
8 that's a payment in lieu of a fine because I
9 consider all of that in determining what that
10 fine should be. I consider cooperation,
11 whether it's a firm violation or an individual
12 violation, whether or not they offered
13 restitution, did they pay all of their
14 customers back, have they taken steps to fix
15 those things. All of those things get factored
16 in to determine, one, whether a fine is
17 appropriate, and two, what the amount of that
18 fine should be.

19 But a fine is only a fine when it's
20 designated a fine and I have the discretion to
21 do that. I could call it a penalty and I could
22 not call it anything. I could just say it's
23 money paid somewhere.

24 Now, this statute says any money that
25 comes into the state has to go to the treasury,

1 which is why we never fund restitution programs
2 to customers from us. If you look at the
3 orders I've listed on my exhibits, anytime that
4 we've ordered restitution paid back to the
5 customer, it either has to come directly from
6 the entity or through the registry of the
7 court. Because if that money hits the Arkansas
8 Securities Department, not only do I have to
9 send it through the treasury, I don't have an
10 appropriation to pay it out. There is no
11 appropriation in my budget that says, hey, this
12 is for customer restitution. So none of those
13 monies ever come to the state.

14 213 has no application to monies that
15 don't come to the state. The plain language of
16 that statute says fines imposed and collected
17 or monies collected, and these aren't monies
18 that were collected by the state.

19 REPRESENTATIVE WESTERMAN: Right. So
20 there was another settlement in 2012 where
21 \$22,350 were also directed to the same
22 organization that you are president of.

23 MR. ABSHURE: Uh-huh.

24 REPRESENTATIVE WESTERMAN: Was that money
25 used for training as well?

1 MR. ABSHURE: Are you talking about the
2 UVEST settlement?

3 REPRESENTATIVE WESTERMAN: It was a
4 multi-state settlement.

5 MR. ABSHURE: The way a multi-state
6 settlement works is NASAA facilitates and sets
7 up a group of states to lead the charge of
8 investigating this thing. And then they are
9 responsible for providing the resources to
10 negotiate, draft a settlement.

11 Literally, what happens to us is they send
12 us a document and say here's the agreed to
13 settlement. So that money was actually sent
14 back to NASAA to further fund global
15 settlements.

16 Now, if you look on the exhibit I gave you
17 which is -- I'm sorry. Let me go to the one
18 that we gave you. If you'll look at what I've
19 labeled as Exhibit Q, which I'm going to find
20 you a page number in just one second. Okay.
21 It's Page No. 53 in my exhibits, Representative
22 Westerman. Let me know when you get there.

23 REPRESENTATIVE WESTERMAN: I've got it.

24 MR. ABSHURE: Okay.

25 This goes a little bit beyond the

1 information you've asked for, which was the
2 past three years. This actually goes all the
3 way back to 1999. You will notice that at the
4 beginning, the first research analyst global
5 settlements all involve large Arkansas
6 penalties. But then over on the very last
7 column, a very large amount of money was paid
8 to us called the Investor Protection Trust for
9 all states.

10 The next group are option rate securities.
11 And you'll notice in those, the total Arkansas
12 penalty was certain amounts. But then
13 approximately ten percent would be sent to IPT
14 for further use at the IPT level.

15 Now, when you get down to the last two
16 that went to NASAA, the two that you are
17 talking about, which are Bankers Life and
18 Casualty and ProEquities, both of which were,
19 those were related matters. Those monies went
20 back to NASAA to further fund these type of
21 settlements where we don't do anything. NASAA
22 facilitates all of the communication.

23 I hate to say we get free money because
24 there's actually violation in the state. But
25 in terms of the use of resources, of department

1 resources to obtain that money is not there.
2 Literally, we get the form settlement, we edit
3 it to put in our statutes, you know, our
4 violations of law. We send it to the firm,
5 they've already settled, they signed it, and
6 sent us a check.

7 Well, in this case, they didn't send us a
8 check, we had them send it back to NASAA. One
9 for a little over 8,000, one for a little over
10 14,000, to compensate for NASAA's role in
11 facilitating those global settlements.

12 REPRESENTATIVE WESTERMAN: Okay. So your
13 position is the reason this money wasn't
14 deposited with the treasurer's office is
15 special revenue under the 23-42-213 because it
16 wasn't state revenue? It's a fine?

17 MR. ABSHURE: It's not a fine.

18 REPRESENTATIVE WESTERMAN: It's not a
19 fine, and you --

20 MR. ABSHURE: And it's not collected.

21 REPRESENTATIVE WESTERMAN: You have sole
22 discretion to determine whether it's a fine?

23 MR. ABSHURE: If you look in various
24 statutes throughout the Securities Act, there
25 is authority for calling something a fine,

1 there's authority for calling something a
2 penalty, there's authority for calling it
3 nothing and just recognizing that a payment
4 goes somewhere.

5 Oddly enough within the securities
6 industry, those labels which might not mean
7 anything to you are extremely, extremely
8 important. Because whenever I enter an order,
9 FINRA, which is the self-regulatory
10 organization that oversees brokerage dealers is
11 going to look at that to determine if they need
12 to pile on or if the SCC needs to pile on.

13 So it's in -- more often than not, it's
14 going to be in the registrant's best interest
15 to have something not called a fine, to have
16 something not called a penalty, to have
17 something not just referred to as a payment to
18 the state, but be recognized contribution.
19 It's no benefit to me, it's a benefit to them.
20 Because then, when FINRA takes a look at that,
21 they're not opening up a possible licensing
22 action of their own.

23 REPRESENTATIVE WESTERMAN: So do you
24 discuss with people who may be fined that this
25 could be a fine or this could not be a fine, be

1 a contribution? Do you lay out options for
2 them or do you --

3 MR. ABSHURE: Yeah. And again, it goes
4 back to -- each time that you have an action,
5 you have to consider within the overall
6 umbrella of remedies that are available.

7 If a fine is part of that mix, the amount
8 is determined by considering the conduct, the
9 violation, whether it was firm wide or limited
10 to one person, harm to investors, danger of
11 being repeated, previous violations, regulatory
12 history, level of cooperation, and whether the
13 violation is admitted or denied. And there's
14 many other determinations that go in there.

15 For example, the last consent order we
16 entered in 2013 was against a gentleman named
17 Benjamin Paul Moore and he engaged in
18 unauthorized trading and we fined him \$5,000.
19 Well, why that fine and why that amount, just
20 an idea of some of the things I considered.
21 None of the customers wanted to resend the
22 trades. Edward Jones, his employer, had
23 already repaid all the commissions. The
24 particular broker had actually repaid the
25 commissioner plus the fees, Edward Jones had

1 already required the broker to have additional
2 compliance training, and Edward Jones put him
3 on heightened supervision.

4 So you consider that along with all the
5 other remedies I might have. I could suspend
6 their license for a period of days. Say I
7 could suspend it just for one day. Well, the
8 problem there is that's usually not good.
9 Because if FINRA receives a suspension, even
10 for one day, they're going to come in and take
11 somebody's license away. I could limit their
12 ability to sell certain products. Well, here,
13 it was an unauthorized trading, it wasn't tied
14 to any particular product.

15 Limits on types of customers, I could
16 order rescission. Well, the customer has already
17 been paid back. Order restitution, customer
18 has already been paid back. Disgorgement, he
19 had already paid back his fees and commission,
20 so disgorgement didn't make sense. Didn't need
21 an asset liquidation or a cease and desist, a
22 point of receiver in accounting.

23 So in this case, I determined that a fine
24 was more appropriate than a contribution for a
25 number of reasons. One, we didn't have -- the

1 level of compo ration. This was kind of, yeah,
2 you did it, he's not in Arkansas, and I had
3 just had an ethics complaint filed against me
4 for doing it so I didn't figure it was good to
5 do it again so soon.

6 And here's another thing to consider. Had
7 this been a case which was right for a
8 charitable contribution instead of a fine, the
9 charitable contribution would have been more.
10 I wouldn't have taken 5,000 for a charitable
11 contribution. If you're going to get the
12 benefit of saying I didn't get fined, I got a
13 charitable contribution, well, it's going to be
14 more. You weigh all of those things.

15 REPRESENTATIVE WESTERMAN: And we may need
16 to get Mr. Smith involved, but in looking at
17 the Code, I see the section that says nothing
18 in this section shall prohibit or restrict the
19 informal disposition of a proceeding or
20 allegation which might give rise to proceeding
21 by stipulation, settlement, consent, or
22 default, in lieu of a formal hearing on the
23 allegations or in lieu of the sanctions
24 authorized by this section.

25 There's a lot of legal speak in there.

1 But Section 23-42-213(b), which comes before
2 that, still says monies collected in lieu of a
3 fine under 308(h) shall be deposited as special
4 revenue into the state treasury and credited to
5 the investor education fund.

6 MR. ABSHURE: We didn't collect those
7 monies.

8 REPRESENTATIVE WESTERMAN: So you're
9 saying that because they didn't come into the
10 state --

11 MR. ABSHURE: Exactly.

12 REPRESENTATIVE WESTERMAN: -- you just
13 directed them to another --

14 MR. ABSHURE: That's exactly right.

15 REPRESENTATIVE WESTERMAN: Okay.

16 MR. ABSHURE: Had that been the case --
17 okay. Consider this, Representative Westerman.
18 Had I had a case where I said, you know what,
19 you violated the law, this is the amount, and
20 I'm going to make you pay it back to all the
21 victims. Your interpretation wouldn't allow me
22 to do that because your interpretation says --
23 and I didn't fine them because he didn't have
24 the money and I just want him to pay it back to
25 his victims. Your interpretation wouldn't let

1 me do that.

2 For example, the Crews order, if you
3 looked at the Crews order, I agreed to a
4 contribution in that case because of two
5 payments. One was the -- no fine because of
6 the two payments. One was the contribution to
7 NASAA of \$150,000. The second was that Crews
8 paid back all their customers. Now, if I were
9 to follow that interpretation of what Section
10 213 means, that potentially 18 -- I can't
11 remember what the total was on the bonds.

12 UNKNOWN SPEAKER: Seven-plus-million
13 dollars, I think.

14 MR. ABSHURE: Seven-plus-million dollars
15 would have been paid to the state as opposed to
16 the victims.

17 213 is an accounting statute that tells
18 you that when I bring money in, it has to be
19 treated as fines. It has to be treated as
20 special revenues and go to the state treasury
21 and dispend it. And the constitutional things
22 that are cited within Stephens' materials deal
23 with spending those funds.

24 REPRESENTATIVE WESTERMAN: And understand
25 I don't have an interpretation, I'm trying to

1 understand. But you're saying there's three
2 things that can happen? A fine, a payment to
3 victims, or charitable contribution? And the
4 charitable contribution, the payment to victims
5 doesn't come into --

6 MR. ABSHURE: There's much more. But
7 let's say that I ordered a respondent to pay a
8 penalty or to pay an amount as restitution for
9 the cost that the department had incurred in
10 investigating the violation. It's not a fine,
11 not a penalty, it's some sort of reimbursement.
12 But because it comes to the state, it goes
13 through 213.

14 I can't -- there can not be a check that
15 comes into the Arkansas Securities Department
16 that doesn't go to the treasury. That's what
17 the statute says. But it doesn't say that
18 parties can't agree to settle on terms that
19 involve payments that aren't payments to the
20 state. That doesn't make --

21 REPRESENTATIVE WESTERMAN: Does it seem to
22 be a conflict of interest at all to you to send
23 175,000, or if we look at this other list,
24 \$389,000 of -- well, I guess all of it's not
25 money from Arkansas but the big majority of it

1 is Arkansas money, to an organization out of
2 state that you happen to be president of?

3 MR. ABSHURE: No.

4 If you will take a look at the exhibit I
5 provided which is Exhibit A, we'll just start
6 there. This is information dealing with NASAA.
7 And if you will note, NASAA is the oldest
8 international investor protection organization.
9 When you look at Page 3, the first president of
10 NASAA from Arkansas was Ed. R. Hicks in 1932.
11 NASAA provides an inordinate amount of
12 resources to Arkansas.

13 They provide free training for every one
14 of my examiners, they facilitate all of these
15 global settlements, they developed the software
16 system that we use to do compliance exams on
17 broker dealers and investment advisors. And
18 the Doctrine of Cy Pres tells you that whenever
19 -- with Crews, the customers had already been
20 made whole. But the Doctrine of Cy Pres tells
21 you that when you have an amount that's
22 earmarked to remedy a wrong, that it should go
23 toward that wrong. It should benefit the
24 people that were the victims of that wrong.

25 Well, if they've already been made whole,

1 how do you do it, you make that donation to a
2 charitable organization that has investor
3 protection at its heart. Of those, I know two.
4 One is NASAA and one is Economics Arkansas.

5 I mean, how many do you know of, how many
6 charities do you know that their focus is to
7 protect investors, and that's where this money
8 should go.

9 REPRESENTATIVE WESTERMAN: And you may
10 just be a victim of being in the position
11 you're in. In a position, it seems as though
12 we've created the judge and the jury and the
13 prosecutor all in one office there.

14 But to wrap up, Madam Chair, I've got just
15 a couple more questions.

16 Mr. Abshure, in a December article in
17 Arkansas Business, you used an expletive to
18 describe the level of interest by a brokerage
19 firm over, quote, where I send my other
20 settlements.

21 MR. ABSHURE: Uh-huh.

22 REPRESENTATIVE WESTERMAN: You claim these
23 settlements are not state money, were you
24 misquoted or do you feel that these settlements
25 are yours and it's your discretion where you

1 send those?

2 MR. ABSHURE: Absolutely not. They're not
3 mine, they're not my settlements. And I think
4 that quote was taken out of context because the
5 quote was intended -- well, first of all, I
6 will tell you that I absolutely, wholly regret
7 the language I used, but I don't regret the
8 sentiment.

9 Now, the point that I was trying to very
10 and artfully make that was even following
11 through with Stephens' arguments that I
12 controlled where these settlements went, which
13 is not the case, that they don't care, that
14 it's not a big issue. It's certainly not an
15 issue to them, that there's another underlying
16 reason why all of this is going on. And it has
17 nothing to do, even if I was to follow
18 Stephens' arguments -- like I said, biggest
19 regret and really the only regret I have in all
20 of this is the language I used in that article.

21 REPRESENTATIVE WESTERMAN: So you believe
22 the citizens of Arkansas have a right to wonder
23 why the settlement you collected was not
24 directed to a place designated by law but
25 instead to an organization you headed? And

1 that's part of this process, is to get
2 information out and to help people to
3 understand what goes on in state government can
4 be transparent in that.

5 MR. ABSHURE: Uh-huh.

6 REPRESENTATIVE WESTERMAN: And also, you
7 directly report directly to the governor?

8 MR. ABSHURE: Yes.

9 REPRESENTATIVE WESTERMAN: Is the governor
10 in full support of the position you've taken
11 here and the way you administer the office?

12 MR. ABSHURE: You would have to ask the
13 governor.

14 REPRESENTATIVE WESTERMAN: He's not
15 directed you one way or the other on this
16 issue? Have you discussed this issue with the
17 governor?

18 MR. ABSHURE: Yes. The governor called me
19 over after representatives from Stephens went
20 to meet with him.

21 REPRESENTATIVE WESTERMAN: Okay. And you
22 left the meeting thinking everything is okay to
23 continue?

24 MR. ABSHURE: I believe the governor's
25 exact words were I know you didn't personally

1 profit from this and I know you didn't do
2 anything wrong but they're going to make this
3 look bad.

4 REPRESENTATIVE WESTERMAN: Okay.

5 Thank you, Madam, Chairman.

6 CHAIRMAN ENGLISH: Okay. Who's sitting at
7 71, seat 71, Nate?

8 UNIDENTIFIED SPEAKER: Thank you very
9 much, Madam Chair. I appreciate the
10 opportunity to ask my question.

11 Mr. Abshure, I spent a few years wearing a
12 uniform and making traffic stops. And if I
13 pulled somebody over who had obviously been
14 drinking and they said, you know what, Officer,
15 my parole officer is going to send me back to
16 prison if I get sent to jail, is there any way
17 we can work this out; and I said, well, you
18 know what, I'm president of the local MADD
19 chapter and if you'll agree to donate \$2,000 to
20 my MADD chapter we'll just pretend this never
21 happened. That's essentially what it appears
22 to me you've done here.

23 Or we could use the parallel and say, you
24 know what, I've got a friend, she was hit by a
25 drunk driver and, you know, we need to make her

1 whole. And if you'll agree to pay her rent for
2 the next year, we'll just pretend this never
3 happened.

4 How are your actions in these cases
5 different than the two scenarios I just layed
6 out to you?

7 MR. ABSHURE: Statutes expressly authorize
8 me to do it.

9 UNIDENTIFIED SPEAKER: So what we have is
10 a legislative issue that we need to correct, is
11 that your testimony?

12 MR. ABSHURE: I don't think there's a
13 legislative issue and I certainly don't think
14 correcting a statute that gives the parties
15 authorization to enter into consents on any
16 terms is in anyone's best interest.

17 Because what happens then is, every time
18 we have an enforcement action against a broker
19 dealer firm or an investment advisor firm, you
20 leave me with two options, which is fining them
21 or take action against their license. And if I
22 take action against their license, FINRA comes
23 in and there are bigger issues than that.

24 The thing that's -- and I'm sorry for
25 getting frustrated. I like to think that I

1 bring a certain amount of objectivity to
2 everything I do as securities commissioner.
3 And whenever I have a settlement and we have a
4 consent order, we do the best that we can to
5 benefit not only the victims but also the
6 regulated entity.

7 For example, little things have to be
8 considered. A lot of times if you have a
9 younger broker dealer, he's not going to be
10 able to, he doesn't have the money to afford to
11 pay a fine but he could take a couple of days
12 of a suspension, or he'd rather have a fine and
13 not a suspension. It's things like that. And
14 if you take away the flexibility for me to
15 negotiate terms with a party, that's going to
16 hurt the party.

17 And what you've got to remember, in each
18 one of these cases, these were not forced down
19 anyone's throat. It was offered up and they
20 accepted.

21 UNIDENTIFIED SPEAKER: Let's go back to
22 the scenario by the side of the dark road in
23 the middle of the night and I've got this
24 person who is vulnerable.

25 MR. ABSHURE: Uh-huh.

1 UNIDENTIFIED SPEAKER: They've potentially
2 violated the law. Now, there's not been an
3 adjudication. At this point it's
4 discretionary.

5 MR. ABSHURE: Uh-huh.

6 UNIDENTIFIED SPEAKER: That discretion is
7 impowered to me as an officer of the law to
8 decide whether I believe I should make an
9 arrest. If I direct a contribution to an
10 organization that I'm in charge of in lieu of
11 prosecution, you believe that would be
12 appropriate for me as an officer of the law to
13 exercise my discretion in that way?

14 MR. ABSHURE: None of these contributions
15 were in lieu of prosecution. Each one of these
16 were in the context of a public consent order
17 that involved other aspects. There was nothing
18 in here that said if you make a contribution
19 you get off scot free.

20 The Crews consent order still found them,
21 that they had violated the law, ordered them to
22 hire an expert to come in and take a look at
23 their practices and procedures. It reflected
24 the fact that they had already paid back all of
25 their customers.

1 And just like the orders in the others,
2 these aren't -- I think this is a concern
3 that's been expressed by a number of people.
4 There is absolutely no case where your
5 hypothetical has happened at the Securities
6 Department where somebody would come in and I
7 could tell them, hey, make a donation, this all
8 goes away. Everything happens in the open,
9 everything happens in an order.

10 UNIDENTIFIED SPEAKER: You've mentioned
11 FINRA.

12 MR. ABSHURE: Uh-huh.

13 UNIDENTIFIED SPEAKER: Let's go back to my
14 hypothetical.

15 MR. ABSHURE: Okay.

16 UNIDENTIFIED SPEAKER: How is FINRA
17 different from that parole officer?

18 Basically, if I said, you know what, okay,
19 I'm going to write you a warning ticket so
20 there's going to be a record of it. That seems
21 to fit your parallel of we're going to enter
22 into a consent order. I agree, you know, I'm
23 not going to speed anymore or I'm not going to
24 drink and drive anymore. I'm not saying I did
25 but I'm not going to do that anymore and you

1 agree that you're not going to tell my parole
2 officer that you had contact with me, can we
3 both agree that we're both okay with that. How
4 is FINRA different in your scenario than the
5 scenario I described here?

6 MR. ABSHURE: How is FINRA not your parole
7 officer?

8 UNIDENTIFIED SPEAKER: Let's look at the
9 parallel here.

10 MR. ABSHURE: There is no parallel. I
11 don't have the ability to not tell FINRA
12 anything. Everything I do is public.

13 UNIDENTIFIED SPEAKER: If you don't ever
14 charge that person with driving under the
15 influence, then their parole officer never gets
16 the report.

17 MR. ABSHURE: But --

18 UNIDENTIFIED SPEAKER: Just make the
19 contribution to my organization and this all
20 goes away. I can just give you the warning
21 ticket and you can go home.

22 MR. ABSHURE: There is, within the statute
23 itself, Arkansas Code, a difference between
24 fraud, as under 23-42-507 which is the fraud
25 statute, and then you have 23-42-308 which

1 talks about dishonest and unethical practices.
2 The language and the conduct that could fall
3 within each one is exactly the same.

4 If you engage in unsuitable trading, it
5 might be a 308 violation. If you engage in
6 unsuitable trading, it might be a 507
7 violation. The only difference gets back into
8 the weighing of the overall violations.

9 Now, in each one of these cases, if you
10 take a look at the Stephens' order, for
11 example, I included language in there saying
12 that I didn't intend for that order to serve as
13 a disqualification. And it was the same way
14 with the Crews and Associates order.

15 I felt like we had dealt with these issues
16 on a local basis and I didn't want a
17 self-regulatory organization, which in my
18 opinion is not a regulator. A regulator is a
19 governmental entity. But I didn't want a
20 self-regulatory organization coming in behind
21 the department and the regulated entities
22 decide that something else ought to happen to
23 them.

24 UNIDENTIFIED SPEAKER: I would just
25 provide you with this one little bit of

1 guidance and I'm finished, Madam Chair.

2 In the times that I made DUI arrests, I
3 can't recall a time where I ever suggested to
4 someone, you know, I've got discretion, I can
5 charge you with public intox, I can charge you
6 with driving under the influence. I can charge
7 you with driving while intoxicated, I can
8 charge you with drinking on the highway. All
9 those are options to me depending on what kind
10 of contributions you make to certain entities
11 or how you help out my victims. And I would
12 just encourage you to consider that parallel in
13 your future decisions.

14 Thank you very much, Madam Chair.

15 MR. ABSHURE: If that were the case,
16 Stephens and Crews are now out of business.

17 CHAIRMAN ENGLISH: Thank you.

18 Representative Ballinger?

19 REPRESENTATIVE BALLINGER: Thank you,
20 Madam Chair.

21 I understand that you're upset, you feel
22 like this whole situation is undue. One of the
23 things that I would say, I'll consider this
24 free advice, is when you come in here with an
25 attitude like there's no way I've done anything

1 wrong, it tends to get our dander up just a
2 little bit. Especially since -- let me ask you
3 a couple of questions.

4 When did you actually -- what was your
5 position within the NASAA, N-A-S-A-A or
6 whatever? Were you the president of the
7 organization?

8 MR. ABSHURE: Arkansas is a member of the
9 organization, has been a member since 1932 --

10 REPRESENTATIVE BALLINGER: Okay.

11 MR. ABSHURE: -- at least. When I became
12 securities commissioner in 2007, I became the
13 voting member. In other words, I'm the one
14 that can go up and vote for Arkansas.

15 At some point after that, I became
16 chairman of their corporation finance section.
17 NASAA is broken up into sections that deal with
18 specific areas. You'll have a broker dealer
19 section, you'll have a corp fin section, an
20 enforcement section, and an education section.

21 While I was the chairman of the corp fin
22 section, each year when they elect a president,
23 they elect a president and a president elect.
24 And the president elect was a gentleman named
25 Preston DuFauchard from California. In

1 December, the governor of California fired
2 Preston so we were without a president elect.
3 I offered up my name, I served as, effectively,
4 vice president until the following September.
5 And then I was president of NASAA for a year
6 which ended this last October.

7 REPRESENTATIVE BALLINGER: Okay. So from
8 October of 2012 through October of 2013, you
9 were the president?

10 MR. ABSHURE: Basically a year, that's
11 right.

12 REPRESENTATIVE BALLINGER: Okay. And this
13 is kind of in my first statement. The point
14 that I want you to look and kind of see it from
15 our standpoint is the first contribution that
16 you ordered, are you calling them penalties?
17 Because it does say penalties on the sheet that
18 you provided to us, are they penalties?

19 MR. ABSHURE: Yes.

20 REPRESENTATIVE BALLINGER: You said those
21 were important?

22 MR. ABSHURE: The UVEST? Are you looking
23 at the UVEST?

24 REPRESENTATIVE BALLINGER: Yeah. And we

25 --

1 MR. ABSHURE: Those were labeled as
2 penalties.

3 REPRESENTATIVE BALLINGER: Okay. So the
4 first penalty that you ordered -- and I'm going
5 to say that you ordered that based on your
6 position as the director of this state agency,
7 correct?

8 MR. ABSHURE: Yes.

9 REPRESENTATIVE BALLINGER: That's the only
10 authority you had, right?

11 MR. ABSHURE: Yeah, that's right.

12 REPRESENTATIVE BALLINGER: Okay. So you
13 ordered that. The first one was in November of
14 2012?

15 MR. ABSHURE: Uh-huh.

16 REPRESENTATIVE BALLINGER: Okay. You said
17 that we have been members since when,
18 nineteen-thirty-something?

19 MR. ABSHURE: 1932.

20 REPRESENTATIVE BALLINGER: Okay. Have
21 there ever been ordered contributions to this
22 organization?

23 MR. ABSHURE: If you take a look at my
24 Exhibit L, which begins on Page 43 and it
25 carries over into 44, you will see the monies

1 from settlements that have been forwarded to
2 NASAA by other states just since 2009.

3 REPRESENTATIVE BALLINGER: Okay. I'm
4 sorry. No, that wasn't my question.

5 In Arkansas, when did we first start
6 ordering contributions to NASAA?

7 MR. ABSHURE: I'm probably the first one.

8 REPRESENTATIVE BALLINGER: Okay. So after
9 you've taken the president is the first time
10 that any penalties were ordered to give, begin
11 to this organization?

12 MR. ABSHURE: I don't know, because we
13 won't have records going back.

14 REPRESENTATIVE BALLINGER: Well, okay. So
15 1999, the records you provided us --

16 MR. ABSHURE: Uh-huh.

17 REPRESENTATIVE BALLINGER: -- in those
18 records that we have that's Exhibit Q on Page
19 53 --

20 MR. ABSHURE: Uh-huh.

21 REPRESENTATIVE BALLINGER: -- it doesn't
22 have any contributions with NASAA until 2012.

23 MR. ABSHURE: Okay.

24 REPRESENTATIVE BALLINGER: So, you know,
25 at least you would have to agree that there's

1 at least a perceived conflict of interest here
2 if nothing else, wouldn't you say?

3 Could have you -- in these situations,
4 could have you ordered a penalty or a fine
5 where those funds would have went to either the
6 organization, into the general coffers, would
7 have been used for the citizens, the tax payers
8 of Arkansas?

9 MR. ABSHURE: Yes. But then it doesn't go
10 to remedy the underlying violation.

11 REPRESENTATIVE BALLINGER: Okay. Then
12 could have you ordered restitution in these
13 cases that would have went directly to some
14 individual who could have been harmed in this
15 process?

16 MR. ABSHURE: The customers had already
17 been paid back.

18 REPRESENTATIVE BALLINGER: Okay. So this
19 was just, purely a penalty to cause them not to
20 do this kind of wrong in the future? So you
21 could have ordered that as a fine to the state
22 because they breached the confidence or
23 whatever?

24 You chose in this case for it to go to an
25 organization that you were the president of?

1 MR. ABSHURE: The two that you're talking
2 about were global settlements that Arkansas did
3 absolutely no work on. So I sent them back to
4 facilitate further global settlements.

5 REPRESENTATIVE BALLINGER: Okay. Hold on.
6 But you ordered the penalty, correct?

7 MR. ABSHURE: No. The penalty was already
8 negotiated. It would have been a part of the
9 package that came in.

10 REPRESENTATIVE BALLINGER: Well, what does
11 your state agency have to do with this?

12 MR. ABSHURE: With the global settlements?

13 REPRESENTATIVE BALLINGER: What does your
14 state agency have to do with these three --
15 from the documents that you provided to us,
16 these three penalties, one dated November 19th
17 of 2012, one's dated in December of 2012, and
18 one dated in July of 2013.

19 MR. ABSHURE: Okay. The 8,207.55, that's
20 ProEquities, right? The 14,150, that's UVEST.

21 REPRESENTATIVE BALLINGER: Right.

22 MR. ABSHURE: Those were global
23 settlements that were negotiated by other
24 states facilitated by NASAA. We didn't do
25 anything. We received an order that said this

1 is the amount of the Arkansas money.

2 REPRESENTATIVE BALLINGER: So why did you
3 -- why is this included with your state agency
4 with your information on it?

5 MR. ABSHURE: Because it was our order.

6 REPRESENTATIVE BALLINGER: Okay. It's
7 only by your authority as the agency of the
8 State of Arkansas, under the authority of the
9 code section where we put it together, that is
10 the only way that you had any authority to
11 order these to be paid, correct?

12 MR. ABSHURE: When you're settling with
13 all the states, like you have a global
14 settlement, you're going to have a number of
15 states that go in and agree to the template.
16 But every state is autonomous, so every state
17 has to sign that template. That party is going
18 to agree that they're going to pay \$200
19 million. And there's going to be a formula
20 that says, okay, this is the state amount.

21 Typically, the states are always going to
22 agree to those amounts. You're not required
23 to.

24 REPRESENTATIVE BALLINGER: Right. So it
25 is by virtue of your authority that those were

1 given?

2 MR. ABSHURE: Yeah. Now, the 150,000 is
3 totally different.

4 REPRESENTATIVE BALLINGER: Okay.

5 MR. ABSHURE: That was strictly an action
6 that we took.

7 REPRESENTATIVE BALLINGER: Okay.

8 MR. ABSHURE: Now, why does it, not
9 restitution, Crews had already paid their
10 customers back to the tune of millions of
11 dollars. They had cooperated with our
12 investigation.

13 They came to us in a very professional
14 manner, layed everything out. We saw the
15 violations, we worked together to get to a
16 remedy, and then they said is there any way we
17 can not have a fine and I said yes.

18 REPRESENTATIVE BALLINGER: Okay. So at
19 that point, you made the decision for it to go
20 to the organization of which you were the
21 president of?

22 MR. ABSHURE: Yes.

23 REPRESENTATIVE BALLINGER: Okay. You
24 would have to agree that if you were sitting in
25 my seat and you were the state legislator

1 vested with the responsibility to make sure the
2 state agencies were conducting business the way
3 that the state agency is supposed to with the
4 best interest of the tax payers of Arkansas at
5 heart, that this is the kind of thing that we
6 would want to look into and be somewhat
7 concerned about?

8 MR. ABSHURE: Absolutely. And I totally
9 agree with you and I think you should look into
10 it and determine whether or not I personally
11 profited from any monies that were sent to
12 NASAA.

13 REPRESENTATIVE BALLINGER: Okay.

14 MR. ABSHURE: And I think that's the focus
15 on the ethics commission.

16 REPRESENTATIVE BALLINGER: And that's
17 great and I think that's good, but there's
18 another aspect of this. Whether financially,
19 you benefited from it. But you know, if you're
20 all the sudden a really good fund raiser for an
21 organization that you're a part of, that tends
22 to give you a certain amount of notoriety that
23 is above and separate all together from any
24 financial gains that you may get.

25 So from my perspective, I think as an

1 elected member of the state legislature, I
2 think that's the kind of thing you need to take
3 into consideration, the way that our state
4 agencies are acting.

5 Let me ask you, what is the limit of your
6 authority? What can you do in fining? Can you
7 order them to pay it to anybody?

8 Under the law, what do you think your
9 limits are?

10 MR. ABSHURE: In an order or a consent
11 order?

12 REPRESENTATIVE BALLINGER: Okay.

13 MR. ABSHURE: Are you talking about an
14 order post-hearing or are you talking about a
15 consent order?

16 REPRESENTATIVE BALLINGER: In this
17 example, it was a \$150,000 donation that you
18 required as a penalty.

19 MR. ABSHURE: Uh-huh.

20 REPRESENTATIVE BALLINGER: What can you
21 agree to -- in your position as director of
22 this state agency, what can you basically
23 require them to say, hey, that is enough, we
24 won't penalize you, we won't fine you?

25 MR. ABSHURE: Require them is an

1 inappropriate term to use in the term of a
2 consent order. A consent order is a negotiated
3 order.

4 REPRESENTATIVE BALLINGER: Okay.

5 MR. ABSHURE: But I can't require them to
6 do --

7 REPRESENTATIVE BALLINGER: But it is part
8 of the negotiation. You said that they came to
9 you and said, hey, what can we do to keep this
10 from being fined and keep this from being
11 published. So in your position as a state
12 agency, can you say I want you to give this
13 money to the United Way? Do you have authority
14 to do that?

15 MR. ABSHURE: Yeah, but that would violate
16 the Doctrine of Cy Pres. That would be kind of
17 like if I'd taken this money and just thrown
18 it, taken money that should go to further
19 investor education to prevent these violations
20 from recurring and then I built a bridge in
21 White County.

22 I mean, that charity has nothing to do
23 with investor protection.

24 REPRESENTATIVE BALLINGER: You made the
25 comment that the statute authorizes you, you

1 said actually, specifically authorizes you to
2 do this action.

3 MR. ABSHURE: Sure.

4 REPRESENTATIVE BALLINGER: When you say
5 specifically authorizes, what do you mean by
6 that? And I apologize for not having the
7 statute here in front of me.

8 Does it say that you will have the ability
9 to impose a penalty that would require them to
10 pay it to some non-profit organization?

11 MR. ABSHURE: No.

12 REPRESENTATIVE BALLINGER: It does say
13 that?

14 MR. ABSHURE: No.

15 REPRESENTATIVE BALLINGER: So it doesn't
16 specifically authorize you to do this?

17 MR. ABSHURE: Yes.

18 REPRESENTATIVE BALLINGER: Now, maybe you
19 feel like you have authority, and I'm not
20 saying that you have violated any criminal
21 sanctions. That's not my -- even in ethics
22 laws, that's not what I'm looking for.

23 But, you know, in looking at this --

24 MR. ABSHURE: You're asking --

25 REPRESENTATIVE BALLINGER: -- you said it

1 specifically authorized you to do this?

2 MR. ABSHURE: Yes. Settling on whichever
3 terms the parties agree to is specifically
4 authorized. Me ordering someone to make a
5 charitable contribution is not authorized. It
6 would be prohibited and that hasn't been done.

7 REPRESENTATIVE BALLINGER: Okay. And I
8 guess that's what we're dealing with, is
9 semantics. You negotiating for them to make a
10 charitable contribution, you are saying is
11 authorized. And the question is whether or not
12 and how tenuous that contribution would be to,
13 ultimately the penalty associated with it.

14 MR. ABSHURE: I'm not following your
15 question.

16 REPRESENTATIVE BALLINGER: Okay. My
17 question, I guess is, so in going back to what
18 I asked before, what -- how far could you carry
19 this authorization?

20 I mean, you obviously feel like you can
21 require -- not require, we'll take that word
22 back. You can negotiate to have a settlement
23 where they make a payment to the organization
24 that you're the president of, how much further
25 could you take it?

1 Is that the line? Is that as far as you
2 can go and it be ethically, or we won't even
3 say ethically, be okay as the director of a
4 state agency or could you go a little further
5 than that?

6 MR. ABSHURE: I have no idea.

7 REPRESENTATIVE BALLINGER: Okay.

8 MR. ABSHURE: I mean, I still don't
9 understand your question.

10 If Crews came to me and said we would like
11 to not have to call this a fine, what can we
12 do, and I said I could recognize an appropriate
13 charitable contribution and that charitable
14 contribution was to NASAA and it was earmarked
15 for training and investor protection programs,
16 I feel that statute authorizes me to do that.

17 REPRESENTATIVE BALLINGER: Okay.

18 MR. ABSHURE: Which is what happened.

19 REPRESENTATIVE BALLINGER: But could you
20 do this to another -- let's say that you had an
21 organization, a specific organization that
22 you're a part of -- actually, no further
23 questions.

24 MR. ABSHURE: Well, and I think the other
25 organization is Economics Arkansas, because

1 that was also offered up. Which Economics
2 Arkansas has its focus, as you know, training
3 teachers and providing economic education to
4 school kids throughout Arkansas. And the
5 answer to that is yes. I think, had they
6 chosen Economics Arkansas, I could have done
7 that.

8 Now, had they chosen the United Way, no.
9 Because it has nothing to do with the
10 underlying violation, it has nothing to do with
11 securities regulation, it has nothing to do
12 with investor protection.

13 REPRESENTATIVE BALLINGER: Actually, one
14 other question.

15 Who is the ultimate arbiter as to whether
16 it does, it is connected to that? Who makes
17 that decision? Is that completely up to you?

18 MR. ABSHURE: No. I think the parties
19 would have to agree.

20 REPRESENTATIVE BALLINGER: Okay. No
21 further questions.

22 CHAIRMAN ENGLISH: Thank you. I have a
23 couple of questions I'd like to ask you.

24 Going back to the case where the \$8,000
25 and all of the states made a settlement and an

1 agreement, did all the states give \$8,000 or
2 their portion of whatever that settlement was
3 to NASAA?

4 MR. ABSHURE: If you look at the exhibits
5 there --

6 CHAIRMAN ENGLISH: I know we did, but in
7 the --

8 MR. ABSHURE: All states gave a certain
9 portion initially during what was called the
10 research analyst settlements to fund the IPT,
11 which is the Investor Protection Trust.

12 And after that, each particular settlement
13 is going to depend on whether or not you want
14 to. Also, it depends on which states were part
15 of that settlement. So in terms of which
16 states would have contributed money out of each
17 one, I really don't know.

18 CHAIRMAN ENGLISH: I mean, that was just
19 your choice? It wasn't an overall --

20 MR. ABSHURE: Hu-uh, no. And there's
21 nothing in the order that can make you do --
22 short of the research analyst settlements which
23 were drafted in a way to set up the Investor
24 Protection Trust, you had initial funds at the
25 Investor Protection Trust that was set up with

1 just the research analyst funds. Then you had
2 a separate state account that was set up for
3 other funds that you could put in there from
4 other settlements.

5 And I have a list of the things that have
6 been used out of the Investor Protection Trust
7 funds. So the \$8,000 we were talking about
8 earlier and the \$14,000, \$78,594 went to the
9 University of Arkansas for a program how can I
10 afford retirement; \$25,000 went to the AARP for
11 protecting Arkansas town hall meetings; \$15,000
12 went to the AARP for its campaign for wise and
13 safe investing; 76,564 went to the University
14 of Arkansas for another how can I afford a
15 retirement program. A little over \$45,000 went
16 to the University of Arkansas for a global
17 financial trading center; \$80,000 actually came
18 to the department for a series of radio
19 programs we did.

20 CHAIRMAN ENGLISH: What was the total?
21 And where was that?

22 MR. ABSHURE: \$320,236. It's on Page 54
23 of the materials that I submitted.

24 And following that --

25 CHAIRMAN ENGLISH: Now, that's part of

1 your investor fund? I mean, you have a --

2 MR. ABSHURE: The investor education fund?

3 CHAIRMAN ENGLISH: Right.

4 MR. ABSHURE: No.

5 CHAIRMAN ENGLISH: So this is a separate
6 fund for --

7 MR. ABSHURE: This is separate.

8 CHAIRMAN ENGLISH: You have a securities
9 fund, you know, this investor education
10 program, and then you've got a third fund?

11 MR. ABSHURE: No. And I'll let Ann answer
12 this. She's had a better grasp.

13 CHAIRMAN ENGLISH: Okay. The department
14 has two funds authorized by statutes, and
15 that's the investor education fund and the
16 securities department fund which pays for our
17 operations.

18 MR. ABSHURE: Right.

19 MS. MCDUGAL: The Investor Protection
20 Trust is a totally unrelated entity that was
21 set up for investor education and investor
22 protection that is a 501(c)(3) organization.

23 CHAIRMAN ENGLISH: Where does that money
24 come from?

25 MS. MCDUGAL: That's from these original

1 global analyst settlements that were done back
2 from '99 through 2007. Those global
3 settlements ordered that some of the money be
4 paid to the Investor Protection Trust.

5 CHAIRMAN ENGLISH: So I'm familiar with
6 class action suits and settlements and
7 settlement agreements that attorneys
8 (inaudible) for a state. And what I've seen in
9 there is the folks sit down together from the
10 states, they determine what that settlement is
11 going to be. They agree upon it amongst
12 themselves and then they go get the judge to go
13 sign off on it. And if everybody's in
14 agreement, then the judge says it's fine as
15 long as you all agree, sort of like a divorce
16 case.

17 So what I'm hearing here those is that you
18 all have some other -- where did this global
19 thing come from? And I know it precedes you,
20 but where did those monies come from and who
21 was involved in those settlements? Is it only
22 the director of the agency? Unlike where you
23 have a big class action suit, is it just you or
24 whoever is in your position?

25 I mean, there's an awful lot of money

1 floating around and I don't know that any of us
2 have the opportunity -- there's no accounting
3 for it. We see what you spend your money on
4 every day, but then there's just kind of this
5 attitude, we can sort of give it away to
6 whoever we feel like and we like that cause and
7 so we're going to give it away to that
8 organization.

9 MR. ABSHURE: But all of those will
10 involve orders that are publicly available. I
11 mean, nothing is done in the dark.

12 In the last three years, there have only
13 been three that have gone to entities that
14 didn't involve the actual victims.

15 CHAIRMAN ENGLISH: Let's go back to the
16 question I asked about the -- sounds like a
17 small amount. But the NASAA money, the \$8,000
18 that you all -- how did you decide that money
19 was going to go to NASAA?

20 MR. ABSHURE: Because it was a global
21 settlement that we didn't work on at all.

22 CHAIRMAN ENGLISH: And so what did you do?
23 I mean, neither did the other state. According
24 to what I've read, is that they all took their
25 money and did whatever they wanted to with it.

1 MR. ABSHURE: And that's not true.
2 Because if you look at the exhibit, you'll see
3 that a number of states have sent money to
4 NASAA following global settlements.

5 CHAIRMAN ENGLISH: So tell me again about
6 this ITP fund.

7 MR. ABSHURE: IPT?

8 CHAIRMAN ENGLISH: IPT, uh-huh.

9 MR. ABSHURE: Investor Protection Trust.

10 CHAIRMAN ENGLISH: Uh-huh.

11 MR. ABSHURE: Now, admittedly, I wasn't
12 around. But in the early 2000s, you had a huge
13 case involving both the SCC, the forerunner to
14 FINRA which was the NAIC was involved, in which
15 they brought very, very, very large actions
16 against investment banks for violations dealing
17 with the intermingling of information between
18 their research and other parts of their
19 entities in which there should have been a
20 chinese wall.

21 So the parties all came together.
22 Obviously, it's in no one's best interest to
23 have these firms go out and do, you know, 52
24 separate settlements with all the various
25 states. So they came together and had one

1 settlement or at least one proposed settlement.

2 Now, as you know, no other state can agree
3 to settle for the State of Arkansas. And it's
4 just like the AG's settlements. They might all
5 come together and have an agreed-upon
6 settlement, but you still have to go to each
7 state and get the signatures.

8 So that settlement included a certain
9 amount that went to go fund the IPT, the
10 Investor Protection Trust, which was a trust
11 set up to very specifically, and its only
12 purpose was to provide investor education. So
13 that's how the IPT guys got started.

14 And entities like the University of
15 Arkansas, as I mentioned, could make grant
16 requests to the IPT or AARP could make grant
17 requests to the IPT for grants for investor
18 protection projects, investor education
19 projects.

20 CHAIRMAN ENGLISH: How much money is in
21 this fund right now?

22 MR. ABSHURE: Ann probably has that
23 information.

24 MS. MCDUGAL: Okay. This latest figure
25 was as of May 31st, 2013. There was 7,600 in

1 that one account and \$95,840, so a total of 95
2 plus seven, so just a little over 100,000
3 designated for Arkansas grants.

4 If we wanted to get that money, we'd have
5 to be a grantee request just like the
6 University of Arkansas or anyone else, like we
7 did with the radio program. So we don't
8 control those funds, okay?

9 CHAIRMAN ENGLISH: All right. Thank you.

10 MS. MCDUGAL: Okay.

11 UNKNOWN SPEAKER: Just a quick question,
12 Mr. Abshure. I know you've demonstrated you
13 are extremely knowledgable on this. It's hard
14 for me to comprehend a lot of the stuff and
15 I've had to head start on some of the committee
16 on looking at some of this.

17 NASAA has a budget, no doubt. As the head
18 of NASAA -- and as the little state deal I was
19 head of at one time in the state, we had a
20 little, small budget. We knew we had to meet
21 certain things during the year. Is that
22 divided out in a budget per state or a
23 percentage that states would need to kick in to
24 be part of NASAA? How does that work?

25 MR. ABSHURE: The way NASAA works is each

1 state pays a fee, which is a ridiculously low
2 fee when compared to what states pay to be, for
3 example, members of the conference of state
4 bank supervisors or the NAIC. I think it's
5 about \$1,800.

6 NASAA is funded through the amounts that
7 agents, potential agents pay to take the state
8 exams. You know, there's a Series 7 exam or a
9 Series 6 exam or what have you. But there's
10 also an exam that relates to state law. That
11 test bank is maintained by NASAA even though
12 it's administered through FINRA. So there's a
13 revenue split from those tests and that's what
14 funds NASAA.

15 UNKNOWN SPEAKER: But the programs, I can
16 tell you're totally sold on it and if I was
17 going to be affiliated with the organization I
18 like to be sold on it, too.

19 MR. ABSHURE: Uh-huh.

20 UNKNOWN SPEAKER: I can tell you're sold
21 on it and I don't doubt they do good work. But
22 they have programs --

23 MR. ABSHURE: Uh-huh.

24 UNKNOWN SPEAKER: -- that they do that
25 you're telling us enhances the industry in the

1 work that you do and others?

2 MR. ABSHURE: Absolutely.

3 UNKNOWN SPEAKER: There has to be costs
4 affiliated with that --

5 MR. ABSHURE: Yes.

6 UNKNOWN SPEAKER: -- because you're
7 putting money in that. What I'm, I guess,
8 trying to get at, when I know I've got x-number
9 of dollars to be able to do programs and all --

10 MR. ABSHURE: Uh-huh.

11 UNKNOWN SPEAKER: -- and it's not there
12 unless we go out and solicit it or find it,
13 what is the driver to get those funds in? And
14 not without making accusations, if I know that
15 Arkansas, basically with its own paper or not,
16 needs to raise -- or if I'm president of an
17 organization and I want to raise revenue for a
18 worth-while entity --

19 MR. ABSHURE: Uh-huh.

20 UNKNOWN SPEAKER: -- can I not, if it's
21 statutorily available, go out and help drive
22 that fundraising? That's the perception that I
23 get and it's been mentioned in here today is
24 the concern.

25 And to know whether you have what you

1 think you do -- and I can't dispute because I
2 don't have that knowledge, that you have the
3 total authority to do that. The perception is
4 that it's driven to raise money for that. And
5 as a business that gets hit up all the time,
6 I'm not under regulatory like some of these
7 things are, but there is -- there have been
8 circumstances that you feel like you're under
9 the gun anyway. Can you see where I'm going
10 with this?

11 MR. ABSHURE: Yes, I can. And I'll say
12 this. The three orders that we're talking
13 about at issue, two of them I sent to NASAA
14 because we didn't do any of the work, right?
15 Those are the global orders, the 8,000 and the
16 14,000.

17 The Crews and Associates, I agreed to a
18 charitable contribution there based upon the
19 nature of the violation. We would have only
20 been able to bring it had it been for the
21 training that NASAA provided. But also, it was
22 requested by Crews that we try to find a way,
23 if it were possible, that they treat it other
24 than a fine.

25 I think you ought to take a look at what I

1 submitted as Exhibits V, W, and X, which are a
2 summary of all of the orders that I entered
3 over these last three years.

4 Now, I think if my goal -- and if my goal
5 were to fund NASAA through Arkansas orders, it
6 wouldn't have been limited to those three.

7 UNKNOWN SPEAKER: That's fair. But again,
8 the appearance of impropriety is not saying
9 anything that's illegal. And we had a
10 five-hour meeting yesterday with things that
11 may appear or may be right or wrong and it's
12 just that. It's the appearance that's out
13 there --

14 MR. ABSHURE: Uh-huh.

15 UNKNOWN SPEAKER: -- and that's what --
16 I'm not hearing concern from you because
17 evidently you feel like you're on as solid
18 ground as you can be on, and that's where I
19 have concern.

20 MR. ABSHURE: Well, and it's also -- I
21 realize no one in this audience or no one here
22 has any idea what NASAA does. NASAA is a
23 501(c)(3) made up of all the state securities
24 regulators and the securities regulators in
25 Canada and Mexico. Its sole purpose is to

1 enhance investor protection. So there could
2 not be a more appropriate charity to send this
3 money to.

4 UNKNOWN SPEAKER: And I can tell you're
5 sold on that and basically you've sold me on
6 that and I don't have a negative connotation in
7 my mind about NASAA other than the fact it
8 takes money to drive organizations and
9 programs.

10 MR. ABSHURE: Uh-huh.

11 UNKNOWN SPEAKER: And I'm looking -- I'm
12 having trouble with that, so I'm going to rest
13 right now and let some others ask questions.

14 Thank you.

15 CHAIRMAN ENGLISH: Representative Lowery?

16 REPRESENTATIVE LOWERY: Yes. Thank you,
17 Madam Chair.

18 I'm going to ask for some latitude from
19 the Chair in terms of addressing some issues
20 that we've been told to stay away from but the
21 door has been opened on it. And it's this
22 issue, Mr. Abshure, you reference that -- and
23 if I'm mischaracterizing the terminology used,
24 please forgive me.

25 But you said that you're basically doing

1 these institutions a favor by offering them an
2 opportunity to make a contribution rather than
3 a fine because you recognize that the fine has
4 other implications.

5 MR. ABSHURE: Uh-huh.

6 REPRESENTATIVE LOWERY: -- beyond that,
7 that you're doing them a favor. And because
8 you're doing them a favor, you're actually able
9 to ask for more in a contribution than you
10 would a fine. You made that statement.

11 MR. ABSHURE: But you would have to
12 consider all of the other -- you can't just
13 consider those two elements of --

14 REPRESENTATIVE LOWERY: But you did make
15 the statement that because you're doing them
16 this favor and they're not incurring the
17 further implications of FINRA looking into
18 their activities, that you're able to offer to
19 them a consent order that says that they would
20 make more in a contribution than they would if
21 paid in a fine.

22 MR. ABSHURE: If I were to have a consent
23 order that only had the payment of amount of
24 money and one amount was a fine and the other
25 amount was a contribution, the contribution

1 would be more.

2 REPRESENTATIVE LOWERY: Okay. Except in
3 the case of Stephens, Inc., where they refused
4 the consent order to make a contribution and
5 you then ordered a fine more than the
6 contribution amount, correct?

7 MR. ABSHURE: No.

8 REPRESENTATIVE LOWERY: The documents that
9 we have of the consent order is that the
10 contribution recommendation was \$20,000 to
11 NASAA.

12 MR. ABSHURE: The contribution
13 recommendation was not \$20,000.

14 REPRESENTATIVE LOWERY: What was the
15 amount?

16 MR. ABSHURE: I started at 30. And this
17 was after we had already decided there wasn't
18 going to be a contribution. I started at 30 as
19 the amount of the fine.

20 Stephens asked for that amount to be
21 \$15,000 based upon a previous order with Morgan
22 Keegan. Now, I hadn't read the previous order
23 before I came in. And I said, look, I will
24 take a look at this Morgan Keegan order and I
25 will also consider the language of the consent

1 order that the staff puts together. And if
2 those two -- if we get there, maybe we'll go to
3 20. But we didn't have an agreement at 20.

4 And in fact, I went back and looked. The
5 Morgan Keegan order was vastly different. The
6 consent order that the staff had drafted for
7 Stephens was vastly -- it was a whale of a deal
8 and I still dropped from 30 to 25.

9 REPRESENTATIVE LOWERY: The sworn
10 statement says that the commissioner then
11 proposed that Stephens pay \$20,000 for the
12 alleged violation.

13 MR. ABSHURE: Well, my sworn statement --

14 REPRESENTATIVE LOWERY: Offered to allow
15 Stephens to make a 20,000 --

16 MR. ABSHURE: -- is that that's not what
17 happened.

18 REPRESENTATIVE LOWERY: -- charitable
19 contribution.

20 Okay. Let's move on then to the issue of
21 where contributions would be directed. In
22 2009, we have precedent from your Investor
23 Protection Trust that AARP received \$40,000.

24 MR. ABSHURE: Uh-huh.

25 REPRESENTATIVE LOWERY: Would that not be

1 a more appropriate entity to receive these
2 contributions to be able to do investor
3 protection education rather than some national
4 entity where there may be some channel or
5 funnel back to the state?

6 MR. ABSHURE: No. Because AARP would have
7 been appropriate had the violation targeted
8 senior citizens.

9 REPRESENTATIVE LOWERY: But we're talking
10 about investor education. I mean, that's your
11 justification for the money being sent to
12 NASAA, is for investor education.

13 MR. ABSHURE: We already --

14 REPRESENTATIVE LOWERY: Why would we not
15 aim for something that is more feet on the
16 ground and also something that you don't have a
17 direct relationship with?

18 MR. ABSHURE: Because the contributions to
19 AARP in Arkansas are already there. We've
20 already made contributions to AARP, we already
21 fund those programs.

22 REPRESENTATIVE LOWERY: 2009 was the last
23 one that is documented.

24 MR. ABSHURE: We do those every year. We
25 do town hall meetings with AARP, with the AG's

1 office every year.

2 REPRESENTATIVE LOWERY: Have you had any
3 reason to not feel like they could use more?

4 MR. ABSHURE: AARP always asks for more
5 money, yes, sir.

6 REPRESENTATIVE LOWERY: Okay. So would
7 that not be -- would that not keep us out of
8 this situation of being concerned about
9 conflicts of interest?

10 MR. ABSHURE: No. Because it's kind of
11 the same thing that happened with IPT funds.
12 If you take a look, you know who asks for IPT
13 funds every time, the University of Arkansas.
14 Every time. And we couldn't get anyone else to
15 ask for them.

16 You know, these amounts that we have
17 discretion, that there is some discretion and
18 they're out there for use for grants and other
19 things, you kind of want to spread that around.
20 You want other people to use it. AARP, we had
21 funded. AARP, they do great work, they're not
22 the easiest to work with all the time.

23 University of Arkansas routinely made
24 grant requests. NASAA is just, yet another one
25 that does actions that have a direct benefit to

1 Arkansans.

2 REPRESENTATIVE LOWERY: Let me just ask
3 one last question.

4 In your consent orders, when there is an
5 offer of a contribution, is the wording
6 actually in the consent order that says a
7 contribution in lieu of a fine? Do you
8 actually include that wording?

9 MR. ABSHURE: In the Crews order, it said
10 in recognition of their repayment to customers
11 and the contribution to NASAA, there will be no
12 fine.

13 REPRESENTATIVE LOWERY: Okay. But
14 semantically, it's the same thing? That you
15 have agreed to a contribution in lieu of a
16 fine?

17 MR. ABSHURE: No. In recognition of the
18 payment up to seven to eight million dollars.

19 REPRESENTATIVE LOWERY: Those are two
20 separate -- paying restitution is separate from
21 whether you should collect a fine or not?

22 MR. ABSHURE: No. And that's just it. I
23 consider all of those when I consider whether a
24 fine is appropriate. I consider everything.

25 I consider remedial efforts that they have

1 taken, I consider whether they've paid the
2 customers back, I consider whether they put
3 somebody on heightened supervision, I consider
4 all of those things.

5 REPRESENTATIVE LOWERY: Correct. I
6 understand that. But there's nothing that
7 limits you from having to choose one or the
8 other. You can do both, correct?

9 MR. ABSHURE: Sure.

10 REPRESENTATIVE LOWERY: Okay. The
11 argument that you made earlier in response to
12 Representative Westerman was that if you take
13 the reasoning that he's presenting about
14 whether these funds should go into state
15 coffers, if that were the interpretation, then
16 all the restitution would go into the state
17 coffers rather than to those who were, that
18 money was taken from.

19 MR. ABSHURE: Uh-huh.

20 REPRESENTATIVE LOWERY: You have the
21 ability to be able to bifurcate those. To be
22 able to have parallel track, restitution, plus
23 the fine. So why is that not considered to be
24 state funds when that fine or that contribution
25 that consent order is recommending?

1 MR. ABSHURE: Exactly. I mean, that's my
2 point. That can't be the case or I would never
3 be able to order restitution. Because you're
4 talking about ordering money --

5 REPRESENTATIVE LOWERY: But those are
6 separate. Those are two separate things, are
7 they not?

8 MR. ABSHURE: No.

9 REPRESENTATIVE LOWERY: And you order them
10 together all the time?

11 MR. ABSHURE: Sure.

12 REPRESENTATIVE LOWERY: Okay.

13 MR. ABSHURE: And sometimes I don't order
14 one and sometimes I order both and sometimes I
15 order the other --

16 REPRESENTATIVE LOWERY: Okay.

17 MR. ABSHURE: -- but they're considered at
18 the same time.

19 REPRESENTATIVE LOWERY: Okay. Well, I
20 just have to say, as a former debate coach, I
21 just admire your tenacity in sticking to your
22 position.

23 Thank you very much and thank you, Madam
24 Chairman.

25 CHAIRMAN ENGLISH: Thank you.

1 Representative Gillham?

2 REPRESENTATIVE GILLHAM: Thank you, Madam
3 Chair.

4 I'd like to switch gears just a little bit
5 and go back to a couple of the answers you
6 gave. I want to retrack a little bit here,
7 back to some answers you gave to Representative
8 Westerman on the topic. You mentioned you
9 didn't have the appropriations in place to
10 handle restitution and things from your
11 position --

12 MR. ABSHURE: Uh-huh.

13 REPRESENTATIVE GILLHAM: -- so I'd like
14 you to tell us a little bit about the
15 procedural framework here for just a second to
16 make sure I'm getting on the right page here.

17 You've been there in your position since
18 2007. In all of that time, have you ever
19 looked at that as an option, you know, to ask
20 for those appropriations so that you could
21 handle restitution through your offices?

22 MR. ABSHURE: No.

23 REPRESENTATIVE GILLHAM: Okay. And could
24 you -- I know you have a reason for it.

25 MR. ABSHURE: Uh-huh.

1 REPRESENTATIVE GILLHAM: If you wouldn't
2 mind, maybe explain to the committee why that
3 wouldn't be a good idea.

4 MR. ABSHURE: Well, one, because 213
5 doesn't allow it. But typically, in terms of
6 restitution, for example, restitution -- me
7 being able to order restitution can only follow
8 a hearing and in certain cases.

9 I don't really have -- and it's the
10 distinction between an issuer -- remember when
11 I first mentioned that there's a difference
12 between an issuer and a broker dealer and an
13 investment advisor which are regulated
14 entities.

15 With an issuer, I'm only going to be able
16 to get restitution if it's ordered through the
17 court. I'd have to sue an issuer to get that.
18 And I'm not sure that I have the ability to
19 order restitution in a hearing with a broker
20 dealer or an investment advisor. If I go to a
21 hearing with a broker dealer or an investment
22 advisor, I can do one of two things. I can
23 take action against their license or I can fine
24 them up to \$10,000 for a violation, that's it.
25 I can't limit their license, I can't order

1 restitution, I can't do any of that. So
2 restitution always come into the consent order.

3 And from an audit standpoint -- have we
4 ever had an audit issue?

5 MS. MCDUGAL: No.

6 MR. ABSHURE: We've never had an audit
7 issue and we're going to be inviting that if
8 all of the sudden we start taking in funds and
9 doing restitution.

10 And another reason it's a bad idea is
11 because it places the agency in the position of
12 being the attorney for this group of investors
13 which is not what we do.

14 Now, in certain cases, restitution makes
15 sense. But a lot of times, you're going to
16 have a dispute as to the amount that's at
17 issue. And placing us in a position of
18 gathering up restitution and giving it out to
19 the customer places us in the position of
20 determining which customers are entitled to
21 that restitution and what's the appropriate
22 amount of restitution. And that's really not
23 our role.

24 REPRESENTATIVE GILLHAM: Okay.

25 MR. ABSHURE: We're not the investor's

1 attorneys.

2 I'm much, much more comfortable with
3 agreeing in a settlement that this is the
4 amount of money, you're going to pay that to
5 these customers directly. And if there's
6 leftover, they still have the ability to bring
7 suit against you or that it's paid through the
8 registry of the court.

9 REPRESENTATIVE GILLHAM: Okay. And that's
10 a good answer and a good line of thinking on
11 that.

12 What about, though, looking at it from the
13 standpoint of setting up some appropriations
14 for you to be able to do your consumer
15 protection instead of having it always routed
16 through AARP and all these other groups and
17 some of the folks you partner up with? I mean,
18 have you ever considered that as a possibility
19 and you handling that with some of the funds
20 coming in, you know, into a designated account?

21 MR. ABSHURE: Well, the way it works, the
22 statutes you have all seen, the first 150,000
23 -- the first \$150,000 of fines goes into our
24 investor education fund. Typically, that's
25 what we're going to use to buy materials,

1 develop programs. It's also used in a grant
2 program where we make grants to schools and
3 Economics Arkansas for facilitating the stock
4 market game and things like that.

5 In terms of the investor education program
6 specifically using that money to help fund the
7 town hall meetings, we're going to get more
8 folks there with the more names that are there.
9 In election years, we're going to get more of
10 you guys there which gets more folks there.

11 Just having us show up to talk about
12 investments, not going to do it. But if we've
13 got the AG and we've got insurance and if
14 they've got Medicaid and Medicare issues, kind
15 of an information fair where they can get all
16 of their questions answered at one time, we get
17 much more of a response.

18 REPRESENTATIVE GILLHAM: Okay. All right.

19 And one final question, Madam Chair, if
20 you wouldn't mind. And I may have missed this
21 in somebody's line of questioning when I had to
22 step out for a few minutes.

23 This organization that everybody keeps
24 going back to on this NASAA group and
25 everything, how exactly is the compensation

1 schedule set up for membership on that? I
2 mean, are you paid in any way, shape, form, or
3 fashion for your --

4 MR. ABSHURE: No.

5 REPRESENTATIVE GILLHAM: -- affiliation
6 with them?

7 MR. ABSHURE: Reimbursed for travel,
8 that's it.

9 REPRESENTATIVE GILLHAM: But they do have
10 actual employees of the group?

11 MR. ABSHURE: Yeah. NASAA has full-time
12 employees at its office in D.C. In terms of
13 numbers, I'd say it's 14, maybe.

14 REPRESENTATIVE GILLHAM: Okay.

15 MR. ABSHURE: But the individual members
16 -- president of NASAA is kind of a misnomer.
17 What the president is the chairman of the board
18 of directors and the board of directors. And
19 the board of directors is made up of other
20 voting members from other states.

21 For example, the new president is the
22 commissioner from Ohio, the president elect is
23 the commissioner from Washington. I'm still on
24 the board as past president. But, you know, a
25 lot of times, people think president means a

1 level of management. It doesn't. It's a board
2 position.

3 REPRESENTATIVE GILLHAM: Okay.

4 Actually, I just thought of one last one.
5 Sorry, Madam Chair.

6 Thinking about -- you've referenced
7 several times about the University of Arkansas
8 making grant requests --

9 MR. ABSHURE: Uh-huh.

10 REPRESENTATIVE GILLHAM: -- and things
11 going into that. This NASAA group, do they
12 routinely contact you with grant requests?

13 MR. ABSHURE: NASAA?

14 REPRESENTATIVE GILLHAM: Yeah.

15 MR. ABSHURE: No.

16 REPRESENTATIVE GILLHAM: They don't do
17 grant requests or anything?

18 MR. ABSHURE: No.

19 REPRESENTATIVE GILLHAM: Okay. All right.
20 Thank you, Madam Chair.

21 CHAIRMAN ENGLISH: Thank you.

22 Senator Teague?

23 SENATOR TEAGUE: Thank you, Madam Chair.

24 Hi, Heath, how are you doing?

25 MR. ABSHURE: I've been better.

1 SENATOR TEAGUE: I hear you.

2 Madam Chair, have we done any inquiries as
3 to other agencies and their ability to do a
4 similar thing? I hear that there's some of
5 them that do that and some of them have
6 statutory authority and maybe some don't.

7 CHAIRMAN ENGLISH: I think it's something
8 we need to look in to. I know that this
9 question has come up with the attorney
10 general's office. And I think a year or so
11 ago, it started to come up with the securities
12 commission. What is the authority, and it
13 clearly doesn't lay it out in the law for any
14 of these agencies. So it may be something that
15 we need to clean up in the legislative session.

16 SENATOR TEAGUE: I think I heard the folks
17 over at ADEQ --

18 CHAIRMAN ENGLISH: Yeah. In fact, I read
19 that in the paper. That they also collect
20 fines and things and they give it off to
21 nonprofit organizations.

22 SENATOR TEAGUE: Okay. Thank you.

23 MR. ABSHURE: Actually, Madam, if you take
24 a look at the insurance statute, specifically
25 23-61-402, which is disposition of fees, it

1 says the insurance commissioner shall deposit
2 all fees collected under 23-61-401 into the
3 state treasury as special revenues, again, the
4 operative word is collected, unless
5 specifically authorized by law, order of
6 consent decree for collection and deposit into
7 other accounts or other trust funds as general
8 special revenues, including but not limited to
9 state and insurance department trust funds.

10 Each statute is a little bit different.
11 Each thing is worded a little bit different.
12 But the statutes that deal with monies that are
13 collected by the state agencies and where those
14 monies should go, I don't think, can reasonably
15 be read under rules of statutory interpretation
16 as setting limits upon a commissioner's ability
17 or a department's ability to settle a matter,
18 any terms to which the two parties agree. I
19 just don't think that's what the statutes are
20 there for.

21 SENATOR TEAGUE: Okay. So help me. When
22 Larry Teague has done wrong and you and I are
23 talking about how we're going to settle the
24 wrong doing --

25 MR. ABSHURE: Uh-huh.

1 SENATOR TEAGUE: -- and you say I'm going
2 to fine you \$30,000.

3 MR. ABSHURE: Uh-huh.

4 SENATOR TEAGUE: Do you also say, and
5 you're going to pay NASAA something? How does
6 -- I'm trying to understand how NASAA gets
7 involved in the conversation.

8 MR. ABSHURE: In connection --

9 SENATOR TEAGUE: Or how anybody outside
10 state government gets involved in the
11 conversation.

12 MR. ABSHURE: The connection with Crews is
13 because they asked if there is any way they
14 could not pay a fine.

15 SENATOR TEAGUE: I understood that, but in
16 other cases?

17 MR. ABSHURE: The only two other cases are
18 the ones that were global settlements in which
19 we sent that because -- that went there because
20 we didn't have anything to do with the
21 settlement.

22 But I think, Senator Teague, really, it's
23 a consideration. You can't isolation and go,
24 okay, how did you decide. If I came in and I
25 did something wrong and you said a fine is \$30,

1 how does the money get to NASAA, what did you
2 do wrong, what is your regulatory history, how
3 are you licensed, are you licensed, was it firm
4 wide.

5 I mean, all of those considerations go
6 into determining whether or not there's a fine
7 and your level of cooperation and everything
8 else.

9 SENATOR TEAGUE: My question is, does
10 Larry Teague say, hey, why don't I send NASAA
11 some money or does the Securities Department
12 say why don't I sent NASAA some money?

13 MR. ABSHURE: Typically, it's the entity.
14 It's the respondent that's going to ask for it
15 and we've turned people down.

16 I mean, there have been times that
17 someone's come to us and said, hey, we saw that
18 order where you accepted a contribution to
19 NASAA, can we do the same thing, and the answer
20 is no, because it's not appropriate in every
21 case.

22 SENATOR TEAGUE: So when Crews said any
23 way we can not pay a fine and you agreed -- and
24 that was how much? I forgot.

25 MR. ABSHURE: \$150,000.

1 SENATOR TEAGUE: So it was \$150,000 that
2 the people of Arkansas didn't get deposited in
3 their account on the decision that you made
4 instead of the general assembly making.

5 Now, I'm willing to admit we don't always
6 make good decisions. But I think that we're
7 the body who makes those decisions. Maybe
8 we've given you some statutory authority to
9 make those decisions for us but I'm not
10 comfortable with the process. I don't know if
11 the people in here are, I'm not comfortable
12 with it, but maybe I don't understand enough
13 about it to be comfortable yet.

14 But my thought would be that you should
15 stop it until some of us get comfortable with
16 it.

17 Thank you.

18 MR. ABSHURE: I think I can do that,
19 Senator Teague.

20 SENATOR TEAGUE: Thank you.

21 Thank you, Madam Chair.

22 CHAIRMAN ENGLISH: Thank you.

23 Representative Ballinger?

24 REPRESENTATIVE BALLINGER: Thank you,
25 Madam Chair.

1 This is just, basically hits on the last
2 question Representative Gillham had. But
3 NASAA, can they apply for the grant?

4 MR. ABSHURE: From IPT?

5 REPRESENTATIVE BALLINGER: Yeah.

6 MR. ABSHURE: I don't think so.

7 REPRESENTATIVE BALLINGER: What would
8 prohibit that?

9 MR. ABSHURE: Because if you take a look
10 at the exhibit that you might not have but will
11 be on your disc, it's going to be Exhibit Q,
12 this is the list of contributions to IPT. It
13 also has the list of grants from IPT, some of
14 the grant proposal documents. And following
15 that, Exhibit R is the governing documents of
16 the Investor Protection Trust. And if you read
17 that, it will tell you how the grants are
18 limited. And typically, they're limited by a
19 definition of investor education which is also
20 part of Exhibit R.

21 So there are some very strict limits on
22 what the funds under IPT can be used for.
23 Whether or not NASAA could ever apply for them,
24 I don't know. But they never have and they've
25 never received any Arkansas funds.

1 REPRESENTATIVE BALLINGER: Okay. Let me
2 go back to the question that I asked then.

3 Can NASAA apply for a grant from IPT?

4 MR. ABSHURE: I don't know.

5 REPRESENTATIVE BALLINGER: Okay. That
6 wasn't your first answer. Your first answer
7 was no and now it's I don't know.

8 My question then is, you know, if they
9 could apply for grants and we're going investor
10 education in Arkansas or wherever else that I
11 assume -- okay. Let me not assume.

12 The funds that Arkansas gives to IPT, if
13 instead of these funds being directed to NASAA
14 were directed to IPT, would those funds be
15 designated to be used in Arkansas?

16 MR. ABSHURE: Yes.

17 REPRESENTATIVE BALLINGER: Okay. So
18 you're saying that at this point, you don't
19 know whether NASAA could have applied to use
20 those funds to educate people in Arkansas?

21 MR. ABSHURE: I don't know that they
22 could. But even if NASAA did apply, anyone
23 that applies for those funds ultimately has to
24 go through an approval process that includes
25 the department.

1 REPRESENTATIVE BALLINGER: Okay.

2 MR. ABSHURE: So we wouldn't approve
3 anything that's not in line with what you've
4 seen has already been approved before. The
5 University of Arkansas, our own outreach
6 programs, and the AARP, for programs
7 specifically earmarked for Arkansas.

8 REPRESENTATIVE BALLINGER: So you would
9 not approve NASAA to educate people in
10 Arkansas, is that what you're saying?

11 MR. ABSHURE: Well, NASAA programs are
12 going to be nation wide.

13 REPRESENTATIVE BALLINGER: Okay. So as it
14 is now, NASAA doesn't offer any services in
15 Arkansas?

16 MR. ABSHURE: Absolutely.

17 REPRESENTATIVE BALLINGER: Okay. So would
18 you approve a grant for them to do those
19 services in Arkansas?

20 MR. ABSHURE: What's the service? I mean,
21 the grant would have to be -- for a grant from
22 the IPT, it would have to be something that was
23 specifically targeted to Arkansas.

24 REPRESENTATIVE BALLINGER: Right. So
25 that's my point. Could they apply to do

1 something specifically targeted to Arkansas?

2 MR. ABSHURE: I'd have to go back and look
3 at the documents.

4 REPRESENTATIVE BALLINGER: I mean, you
5 know, you can look at it from our prospective.
6 That if you feel like the people who are
7 applying for IPT are not doing a good enough
8 job or they're already funded and they're not
9 doing everything that they should, if these
10 funds are designated for folks in Arkansas,
11 then to me it makes sense that penalty should
12 go to that program. If NASAA wants to
13 participate and apply for a grant, that may be
14 one way you can get another organization to
15 apply for the grant doing the things that you
16 think they need to be doing.

17 Now, unless your mindset is it's better to
18 go to national programs than to the programs in
19 Arkansas -- but I would say that's probably a
20 bad position to hold as director of a state
21 agency.

22 MR. ABSHURE: You know, that could
23 certainly -- you could certainly take that
24 view. But to assume that the world of
25 securities regulation is anything other than

1 global and that there's resources that can be
2 provided by NASAA because of its presence in
3 every state and territory in North America,
4 that it can provide services that no one else
5 does -- and like I said, the biggest -- the
6 earmark was for training and investor
7 protection.

8 REPRESENTATIVE BALLINGER: And, you know,
9 that makes sense. It sounds like NASAA is an
10 incredible organization. And if you know
11 someone in NASAA who could make an application
12 to IPT for the folks in Arkansas, that'd be a
13 good person to talk to and see if they could
14 apply for that grant.

15 No further questions.

16 CHAIRMAN ENGLISH: Thank you.

17 Representative Harris?

18 REPRESENTATIVE HARRIS: Thank you, Madam
19 Chair.

20 One thing that I've learned from yesterday
21 and today, people who have been in government a
22 long time kind of get on my nerves because they
23 learn how to answer a question without really
24 answering the question and I guess you'd call
25 those bureaucrats.

1 But one thing I want to know, did NASAA
2 ever apply for the funds that you sent to them?

3 MR. ABSHURE: No.

4 REPRESENTATIVE HARRIS: Or did you just
5 send them?

6 MR. ABSHURE: I just sent them.

7 REPRESENTATIVE HARRIS: Because you're
8 president of the program?

9 MR. ABSHURE: Well, no. I sent them
10 because Crews -- are you talking about -- which
11 ones are you talking about?

12 REPRESENTATIVE HARRIS: All that you sent
13 to NASAA.

14 MR. ABSHURE: NASAA never requested a
15 single dollar.

16 REPRESENTATIVE HARRIS: You just decided
17 to send them --

18 MR. ABSHURE: I sent them as Arkansas
19 Securities Commissioner, yes.

20 REPRESENTATIVE HARRIS: Okay. But I want
21 to get back to -- because I know Representative
22 Lowery asked this question but I don't think
23 you were direct enough. I want to go back to
24 Section 213, allows of other than fines to go
25 to the treasury. Why could you not structure a

1 consent that went to fund 213 when we seem to
2 be getting off the point but the law states
3 that you can do so, I meant why could you not
4 take the funds and put them in there?

5 MR. ABSHURE: I don't know that I'm
6 following your question. I'm sorry.

7 REPRESENTATIVE HARRIS: Section 213 --

8 MR. ABSHURE: Yes.

9 REPRESENTATIVE HARRIS: -- allows other
10 than fines to go to the treasury.

11 MR. ABSHURE: Uh-huh.

12 REPRESENTATIVE HARRIS: So why didn't you
13 do that?

14 MR. ABSHURE: Those monies weren't
15 collected. They never came into my office.
16 What 213 says is all fines imposed and
17 collected were monies collected in lieu of a
18 fine shall be deposited to special revenues
19 into the state treasury. I never collected any
20 of those monies.

21 It's the same thing with restitution or
22 disgorgement that I order to the clients. I
23 never collect those monies. Because if they
24 come into my office, I don't have an
25 appropriation to spit them back out.

1 REPRESENTATIVE HARRIS: Okay. I'm not a
2 lawyer, so I guess I'm trying to -- what is the
3 definition other than fines?

4 MR. ABSHURE: Payments in lieu of a fine,
5 is that what you're asking?

6 REPRESENTATIVE HARRIS: Other than fines,
7 yes.

8 MR. ABSHURE: For example, let's say the
9 order said penalty. Let's say the order said
10 that they're going to pay the state the cost of
11 investigation. Let's say they're going to
12 reimburse the state for expert witness fees,
13 any of those things. It can even be an amount
14 that didn't have a label, it just said you're
15 going to pay this. But the operative language
16 is not that it's a fine or a payment. The
17 operative language is that it's collected by
18 the state.

19 Anything that comes into the Securities
20 Department has to go through this. But this
21 doesn't say that I can't have, recognize
22 payments as part of a settlement that don't go
23 through the Securities Department.

24 REPRESENTATIVE HARRIS: Can you have legal
25 counsel? Could it not have given you wiggle

1 room to have done that other than fines and put
2 it into the treasury? Because this is your
3 interpretation.

4 MR. ABSHURE: Well, it's my
5 interpretation, it's the dean of the law
6 school's interpretation.

7 REPRESENTATIVE HARRIS: And that's your
8 legal counsel?

9 MR. ABSHURE: No, I'm my legal counsel.

10 REPRESENTATIVE HARRIS: Okay. And I just
11 would like to state with your -- the governor
12 said it would make you look bad.

13 MR. ABSHURE: Uh-huh.

14 REPRESENTATIVE HARRIS: That's kind of
15 hypocritical. I would just like to say that.

16 MR. ABSHURE: What's hypocritical?

17 REPRESENTATIVE HARRIS: Just saying that
18 today is to make you kind of look bad. I meant
19 it would have to look bad that you give it to
20 NASAA the year that you're president of NASAA.
21 Which, from 1999 or whatever, is the only time
22 that we have given to NASAA, when you could
23 have put it into treasury because of your
24 interpretation of the law. And I'll put it
25 into a question, would you agree with that, yes

1 or no?

2 MR. ABSHURE: No.

3 REPRESENTATIVE HARRIS: Okay. Thank you.

4 CHAIRMAN ENGLISH: Representative
5 Copenhaver?

6 REPRESENTATIVE COPENHAVER: Thank you,
7 Madam Chair. And it looks like we've dwindled
8 down to the final three, so Mr. Sabin and I are
9 the only ones that haven't spoken I don't
10 think.

11 And I'm probably one of the few on this
12 committee that has a securities license and et
13 cetera, so I appreciate all the hard work that
14 you do and I never wanted to hear from you as
15 long as I had a securities license and I'm glad
16 I never did.

17 But my question to you is what other
18 entities or sources did you have options to
19 other than NASAA and as mentioned by the
20 treasury department? Were there any other
21 entities that would be classified or you could
22 classify that would be acceptable of these
23 funds?

24 MR. ABSHURE: As mentioned before, I think
25 Economics Arkansas would have worked. But I

1 would have found myself in the same boat being
2 a board member of that, although there's a
3 couple of folks in this room that are also
4 board members of Economics Arkansas, so I feel
5 a little more comfortable there.

6 Had it been a senior citizen specific
7 offense, I would have felt comfortable sending
8 it to AARP with the specific earmark that it
9 provide investor education and training for
10 senior citizens.

11 Outside of that, the only one that I can
12 think of that might be there would be the
13 Consumer Federation of America. However, their
14 agenda is rather broad and extremely political
15 and I don't know that I would feel comfortable
16 sending something to an entity like that,
17 that's not so focused on investor protection
18 and investor education.

19 So really, the only ones I could think of
20 that would fit in this case were NASAA and
21 Economics Arkansas.

22 REPRESENTATIVE COPENHAVER: And you are
23 sworn to uphold that?

24 MR. ABSHURE: That's right.

25 REPRESENTATIVE COPENHAVER: Thank you.

1 Thank you, Madam Chair.

2 CHAIRMAN ENGLISH: Well, I hate to do this
3 to folks, but the weather is getting bad
4 outside. Some people have some ways to go. So
5 what I would like to do is adjourn this or
6 recess this meeting until January the 22nd,
7 which is a Wednesday, at ten o'clock in the
8 morning, and I think right back here in this
9 same room. Will that work?

10 MR. ABSHURE: Yes.

11 CHAIRMAN ENGLISH: Okay. Ten o'clock on
12 the 22nd. And then for any other folks who
13 wanted to be heard from, I will expect you to
14 be back here at that time.

15 I appreciate you all coming and being
16 here, but we are dwindling down to very few.
17 We will come back here on the 22nd at ten
18 o'clock.

19 Thank you very much.

20 (WHEREUPON, the proceedings were paused in
21 the matter and concluded at a later date.)

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<p>AARP 11:2 16:20 57:10,12 62:16 71:23 72:6,19,20,25 73:4 73:20,21 80:16 91:6 99:8</p> <p>ability 15:20 24:12 38:11 52:8 75:21 78:18 80:6 84:3 85:16,17 101:7</p> <p>able 35:10 65:9 66:20 69:8,18 72:2 75:21 75:22 76:3 78:7,15 80:14</p> <p>Abshure 4:13 6:6,13 14:14,20,25 15:4 16:3,6,10,17 18:23 19:1,5,24 21:17,20 21:23 23:3 26:6,11 26:14,16 27:14 28:6 29:3 30:16,21 31:2 32:5,8,12,18,24 33:11 34:7,12 35:25 36:5,14 37:12,15 38:6,10,17,22 40:15 41:8,11 42:10,19,22 43:1,8,11,15,19,23 44:7,12,16,20,23 45:9,16 46:1,7,12,19 46:22 47:5,12 48:2,5 48:8,22 49:8,14 50:10,13,19,25 51:5 51:15 52:3,11,14,17 52:24 53:2,14 54:6,8 54:18,24 55:18 56:4 56:8,20 57:22 58:2,4 58:7,11,18 60:9,20 61:1,7,9,11 62:22 63:12,25 64:19,23 65:2,5,10,19 66:11 67:14,20 68:10,22 69:5,11,22 70:7,12 70:16 71:13,16,24 72:6,13,18,24 73:4 73:10 74:9,17,22 75:9,19 76:1,8,11,13 76:17 77:12,22,25 78:4 79:6,25 80:21 82:4,7,11,15 83:9,13 83:15,18,25 84:23 85:25 86:3,8,12,17 87:13,25 88:18 89:4 89:6,9 90:4,16,21 91:2,11,16,20 92:2 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