Report to Cobb EMC Audit Committee by Fellows LaBriola LLP and CliftonLarsonAllen LLP

March 27, 2015

Final Report
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REPORT TO COBB EMC AUDIT COMMITTEE

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Report to Cobb EMC Audit Committee by 
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I. Introduction

a. Professional Engagements and Scope of Work

CliftonLarsonAllen LLP (also referred to as “CLA”) was engaged by the law firm of Fellows LaBriola LLP to provide forensic accounting services to the Audit Committee of Cobb Electric Management Corporation (“Cobb EMC”) to examine possible financial misconduct by Cobb EMC’s former CEO, Dwight T. Brown and possible financial misconduct by former directors, officers, and employees of Cobb EMC, and to determine if Cobb EMC has viable claims. We examined their actions on behalf of Cobb EMC, their transactions involving Cobb EMC’s property, and their transactions with entities and individuals outside Cobb EMC. While the Cobb EMC Board of Directors (“the Board”) is keenly aware of the pending criminal prosecution of State v. Dwight Brown, CliftonLarsonAllen LLP and Fellows LaBriola LLP were not requested to gather information to assist in the prosecution or defense of the case.

This Report contains the findings of the forensic audit and is based on our best assessment of events, but would not necessarily be admissible as evidence in a civil or criminal case. The Report is furnished to the Audit Committee pursuant to our January 21, 2014, Confidentiality Agreement with the Board of Directors. The Report is intended for Discussion only among the CliftonLarsonAllen LLP and Fellows LaBriola LLP personnel involved in the examination and our client – the Audit Committee. The Report is not written for any other dissemination. The Report contains our assessments based on the facts as well as our candid opinions and advice to you, our client, and was not written for distribution to the membership nor for any other publication.

The Audit Committee requested an investigation be performed in an effort to understand what occurred during Dwight Brown’s tenure, to determine if there are any legal claims that are held by Cobb EMC that should be pursued, and to assist the Board of Directors in making management decisions. This report, any supplemental written or oral information or other documents provided in connection with our engagement (collectively, the "materials"), are provided solely for the information of the Audit Committee.

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This report is incomplete without reference to any supplemental information provided, and without reference to discussions with the Audit Committee, CliftonLarsonAllen LLP, and Fellows LaBriola LLP. The materials may not be relied upon for any purpose except as expressly permitted by CliftonLarsonAllen LLP and Fellows LaBriola LLP's engagement letters. The materials were prepared for the Audit Committee, and were not prepared with a view for public disclosure or to conform to disclosure standards under any state, federal, or other laws, rules or regulations. CliftonLarsonAllen LLP and Fellows LaBriola LLP assume no responsibility for the use of the materials by persons other than the Audit Committee.

The materials necessarily are based on the information currently available to CliftonLarsonAllen LLP and Fellows LaBriola LLP. Although additional information may be available that would impact the contents of the Report, and the opinions of CliftonLarsonAllen LLP and Fellows LaBriola LLP, we have not undertaken, and are under no obligation to update, revise or reaffirm the materials, except as expressly contemplated by CliftonLarsonAllen LLP and Fellows LaBriola LLP's engagement letters. The materials are not intended to provide the sole basis for evaluation of the issues addressed in the Report and do not purport to contain all information that may be required to analyze the issues addressed.

CliftonLarsonAllen LLP and Fellows LaBriola LLP also had access to materials, including documents, interrogatories and sworn depositions generated during discovery by the litigants in a derivative stockholder case: *Pounds v. Brown, et al.*, Civil Action No. 07-1-9408, filed in Cobb County Superior Court, as well as the pleadings and transcripts of court proceedings relating to the case. *(See e.g. Exhibit 1, Complaint)*. After the *Pounds* Complaint was filed, a Special Litigation Committee (SLC) of Cobb EMC conducted an investigation, during which retired Cobb County Superior Judge Thomas Cauthorn interviewed a number of individuals and examined exhibits. The SLC issued a Report *("Cauthorn Report" (Exhibit No. 2)) which is publically available, and was reviewed by the authors of this Report.*

CliftonLarsonAllen LLP and Fellows LaBriola LLP’s understanding of the issues addressed herein is based upon the information identified, including witness statements and other items which, although valuable for management purposes, may be insufficient to constitute defensible factual support in the event of a libel or slander claim if the Report is disclosed. Further, the documents identified and relied upon in this report may not be the final versions of documents but are merely the best and most reliable support located by CliftonLarsonAllen LLP and Fellows LaBriola LLP during the investigation. As this report is for internal management purposes only, CliftonLarsonAllen LLP and Fellows LaBriola LLP have not evaluated...
the report to determine whether information contained herein is subject to confidentiality provisions that would prohibit disclosure.

Source Citations: As detailed below, the Report refers to selected documents gathered from numerous sources, including Cobb EMC and Cobb Energy internal records, email and instant messages, as well as data from these companies' professional advisors, accountants, auditors and attorneys. Additionally, as noted above, reference is made to materials gathered during the Pounds' litigation and the SLC investigation. A substantial volume of this information was copied and archived in a searchable data bank – Recommind. All the materials referenced in the Report have been indexed as exhibits, and provided separately to the Audit Committee.

b. Professional Standards

CliftonLarsonAllen LLP's engagement has been described by the Audit Committee as a "forensic audit", and is not a financial statement audit and thus was not performed in accordance with generally accepted auditing standards promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants ("AICPA"). CliftonLarsonAllen LLP performed this forensic audit engagement in accordance with the AICPA's Code of Professional Conduct, and the Statement on Standards for Consulting Services. It is our understanding that the primary purpose of engaging our services is for the benefit of counsel and the Audit Committee of Cobb EMC. Our services are not intended to benefit or influence any other person or entity.

c. Forensic Audit vs. Attest Audit

For purposes of this engagement, we will define the term "forensic audit". Since there is always the potential for confusion about the level of responsibility forensic accountants assume, we wanted to clarify for the Committee the meaning of "forensic audit." A forensic audit is a consulting engagement that normally resides between a financial statement audit and an investigation. A financial statement audit is an attest engagement, which is designed to express an opinion on the financial statements of the entity under examination. An investigation is a reactive consulting engagement that is predicated upon allegations of fraud or misconduct on the part of the subject.

A forensic audit, although not specifically defined in AICPA professional standards or non-authoritative guidance, such as practice aids, special reports and discussion papers, can be defined as the systematic gathering of evidentiary data through the use of recognized investigative techniques that can be presented in a
court of law. Like forensic investigators, forensic accountants may examine emails, image hard drives and other electronic storage devices, conduct interviews and perform analytical procedures as necessary.

d. Fellows LaBriola LLP and CliftonLarsonAllen LLP’s Roles

On August 15, 2012, the Audit Committee of Cobb EMC engaged Fellows LaBriola LLP to investigate available legal claims held by Cobb EMC and conduct an internal investigation of Cobb EMC. On November 5, 2012, the Audit Committee of Cobb EMC engaged CliftonLarsonAllen LLP to provide forensic accounting services related to this matter. Fellows LaBriola LLP oversaw the forensic audit performed by CliftonLarsonAllen LLP and provided legal guidance throughout the process. CliftonLarsonAllen LLP assessed and analyzed all accounting and financial related issues that came to light during the forensic audit.

The Cobb EMC Audit Committee requested Fellows LaBriola LLP and CliftonLarsonAllen LLP focus on three issues: (1) what happened during the time that Dwight Brown was CEO of Cobb EMC; (2) what recovery, if any, is available to Cobb EMC after the settlement of the Derivative Action; and (3) whether there are any issues with Cobb EMC governance remaining from Dwight Brown’s tenure.

II. Executive Summary

a. The Beginning of Cobb Energy

At the September 6, 1997, Cobb EMC annual meeting, Dwight Brown told the members: "[w]e will not allow Cobb EMC to subsidize this new company [Cobb Energy];" and "[w]e make this pledge that Cobb Electric Membership Corporation will not subsidize this other company, and this other company is created to work for you and to work for Cobb Electric Membership Corporation." (Exhibit No. 3). In spite of these statements regarding Cobb EMC not subsidizing Cobb Energy, Brown did the exact opposite. As discussed below, from the beginning, Brown and counsel for Cobb EMC planned to use Cobb EMC’s assets as initial capital for Cobb Energy.

While Brown and his counsel may not have planned to form a corporation that would continually leech money from Cobb EMC, they fully expected Cobb Energy would not be profitable for some time. Counsel for Cobb EMC understood that there was no chance for profitability for the services offered by Cobb Energy until it reached a subscription level well beyond Cobb’s current membership. In order to capitalize Cobb Energy, Brown and his legal counsel devised a plan to circumvent the Cobb EMC By-Laws by transferring Cobb EMC’s assets to a wholly-
owned subsidiary corporation (Cobb Energy) without first receiving the approval of
the Cobb EMC membership.

A significant source of revenue for Cobb Energy was a gas-marketing
contract with SCANA Energy Marketing, Inc. ("SCANA"). On or about May 29, 1998,
Cobb Energy entered into a ten-year contract with SCANA to market natural gas to
Cobb EMC’s membership ("Natural Gas Retail Services Alliance Agreement").
SCANA needed access to customer information since the natural gas industry had
recently been deregulated in Georgia. Cobb Energy contracted to market SCANA gas
to Cobb EMC members using Cobb EMC’s customer list. Cobb Energy did not
compensate Cobb EMC for the customer list, nor did it share any of the proceeds of
the SCANA contract with Cobb EMC. When the SCANA contract was terminated,
SCANA paid Cobb Energy over $8 million, none of which was shared with Cobb EMC.

The income from the SCANA contract was able to cover a multitude of
financial sins committed by Cobb Energy between 1998 and 2005. This was
because the SCANA revenue stream, along with the adder fee that was charged to
Cobb EMC by Cobb Energy, was sufficient to cover the losses of the various
subsidiaries Cobb Energy started up or acquired.

The Brown Indictment focuses heavily on the SCANA Contract and the fact
that its revenue did not go to Cobb EMC. The Grand Jury also alleged that Brown
made numerous false statements to the members and deliberately concealed
material facts. After the SCANA/Cobb Energy marketing alliance ended in October
2005, additional expenses for maintaining a customer call center, computerized-
billing, personnel and other expenses continued through March 2006. Although
Cobb EMC never received any revenue from the alliance, Brown convinced the Cobb
EMC Board to pay a total of $3,090,855 to Cobb Energy for these expenses.

From its inception, Cobb EMC owned its electric meters. In 1998, after Cobb
Energy’s formation, the Cobb EMC Board approved the transfer of the meters to
Cobb Energy in a three-party deal. Cobb EMC transferred the meters to Cobb
Energy at a book value of approximately $10 million in exchange for 200,000 shares
of Class A common stock and $5 million in cash. National Cooperative Services
Corporation National ("NCSC") also paid Cobb Energy $5 million and received
200,000 shares of Class A common stock. Although the transaction with NCSC was
on its face a stock transaction, the Subscription Agreement operated like a loan
agreement and even included the guarantee of ‘interest’ payments through stock
dividends.
The electric meters have been valued in two ways during Cobb Energy's history. The use of book value (cost less depreciation) was used when it was convenient to lower the value of the transaction that benefited Cobb Energy. This was used when the stock and cash transaction above were entered into with Cobb Energy. The fair market value was used when it suited Cobb Energy and the defendants in the Derivative Action. Testimony offered at the December 2, 2008, "Fairness Hearing" valued the meters in the range of $18-19 million.\(^1\)

After the meters were transferred, Cobb Energy continued seeking additional funds from Cobb EMC. On or about December 17, 1998, the Cobb EMC Board approved payment to Cobb Energy of $3,165,881 for meter reading and marketing services. Counsel for Cobb EMC and Cobb Energy had previously highlighted meter-reading services as a way to run losses through Cobb EMC because the meter reading would be a cost-plus contract. Meaning, any expenses incurred by Cobb Energy related to the meters (including maintenance) would be billed to Cobb EMC, along with the adder fee.

Thus, by January 26, 1999, Cobb EMC only owned 200,000 shares of Cobb Energy stock (the same amount as NCSC) even though it had contributed: (1) its employees; (2) its customer list; and (3) its electric meters. Further, Cobb EMC was being charged 2% ("adder fee") to use the services of the employees it transferred to Cobb Energy, and all the costs associated with the meters it no longer owned.

In December 2000, the Cobb EMC Board renewed its meter reading contract with Bermex. Although this contract was between Cobb EMC and Bermex, Cobb Energy charged Cobb EMC an adder fee for Bermex’s services.

\[b. \quad \text{Payments to Preferred Shareholders}\]

From 1999 to 2008 preferred shareholders holding Cobb Energy stock were paid approximately $6.4 million in dividends. There were approximately 166 preferred shareholders. As we discuss in later sections of this report, most of the preferred shareholders were friends or business associates of Dwight Brown.

The earliest discussion regarding payment of dividends related to preferred shareholder NCSC. On August 27, 1998, the Cobb Energy Board approved amended

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\(^1\) Although the range in the value of the meters fluctuated greatly from $10 million to $19 million, there are explanations given for this fluctuation. For example, new meters are installed, meters are repaired, meters are retired, new customers are...
Articles of Incorporation that provide for the payment of an 8.85% dividend to the owners of Cobb Energy preferred stock. NCSC received close to $2 million in dividend payments.

Dwight Brown and his wife received $1.7 million in preferred dividend payments; followed by Dean Alford who received $465,000, Anis Sherali who received $443,000; and Lee McKinstry who received $395,000. A list of the top 20 recipients of preferred dividend payments is detailed in the Report.

c. Brown’s Employment Contract

In 2005 Dwight Brown renegotiated his employment agreements with Cobb EMC and Cobb Energy. It is apparent from the communications regarding negotiation of his contracts that the objective was to conceal the amount of compensation he was receiving from the Cobb EMC membership. Although the agreement made it appear that Brown was being paid by both entities, there is no information in the Cobb EMC or Cobb Energy books and records that showed Brown was being paid a salary from Cobb EMC (all payroll was run through Cobb Energy and there are no notations that would allow CliftonLarsonAllen LLP to determine how much (if any) of the payments going to Brown through payroll were being charged back to Cobb EMC). We have detailed this analysis in another section of this report.

d. Cobb Energy was a Financial Drain on Cobb EMC

From its inception, Cobb Energy was a drain on Cobb EMC’s cash flow. An “adder fee” was originally set at 2% but that escalated to 6% in 2000, and to 11% in 2005. The adder fee was calculated on the payroll and the meter reading fees, which, as was previously discussed, were payment of Cobb EMC’s employees that were transferred to Cobb Energy, and the Bermex Contract that was always a Cobb EMC contract arrangement. When Cobb Energy and its various subsidiaries needed money, Cobb Energy provided it at the expense of Cobb EMC. Specifically, Cobb Energy failed to remit payments it received from Cobb EMC power customers in order to increase its cash flow. Ultimately, due to Cobb Energy’s failure to timely remit the electric customer receipts, Cobb EMC was forced to rely on its lines of credit. By 2008, Cobb EMC was near its $125 million credit limit due to the constant drain from Cobb Energy. This issue is discussed further in several sections of the report.

e. Power4 Georgians (“P4G”)
P4G is a partnership formed on January 15, 2008, by ten Georgia electric membership co-ops: Snapping Shoals, Cobb EMC, Diverse Power, Excelsior, Central Georgia, Upson Electric, Washington Electric, Jackson Electric, Pataula Electric and GreyStone Power. Brown championed this project as a means to create a power generation facility for Cobb EMC and the other partners in P4G.

P4G’s announced goal was to develop Plant Washington, an 850-megawatt power plant near Sandersville, Georgia, at an estimated cost of $2.1 billion. Despite the member co-ops’ limited credit, no business plan was developed to consider the value and risks inherent in the project. P4G hired Allied Energy Services ("Allied"), a subsidiary owned by Cobb Energy and run by Dean Alford, to develop Plant Washington. Allied was hired by P4G without a Request for Proposal or competitive bidding process to develop the project. Before being hired by P4G, neither Alford nor Allied had any experience building or developing a coal-fired power plant, and witnesses indicated he was hired on the basis of a recommendation by Dwight Brown.

f. Insolvency of Cobb Energy

Before the court approved the Pounds Derivative Action settlement in 2008, Cobb Energy’s auditor, BDO, stated that they were considering issuing a “going concern” opinion on Cobb Energy’s financial statements. The going concern issue and the related insolvency due to insufficient cash flow raised the specter of Cobb Energy filing for bankruptcy protection. The discussions prior to the “Fairness Hearing,” and testimony during it, focused on what would have happened if Cobb Energy filed bankruptcy. We discuss various definitions of insolvency and explain the financial conditions of Cobb Energy, allowing the Audit Committee to draw its own conclusions regarding whether Cobb Energy was insolvent.

g. Brown’s Self-Enrichment

Between 1996 and 2011, the total disbursement made to Dwight and Mary Ellen Brown was $21.3 million. Payroll payments accounted for $16.2 million of the disbursements, including approximately $2.9 million payout for the “Top Hat” executive retirement program, $5.6 million related to loan forgiveness and tax gross up to cover any tax expense related to the loan forgiveness, $746,653.78 for Cobb Energy’s executive contract buyout following the 2008 settlement, and $6.8 million in salary payments. The salary payments included $527,895.84 for his deferred compensation payout.

During his tenure as Cobb Energy’s CEO, Brown and his wife also received approximately $5 million in non-payroll payments from Cobb EMC and Cobb
Energy. This amount includes the redemption of his and his wife’s preferred Cobb Energy stock for $3.1 million plus the dividends, totaling $1.7 million.

\[ h. \quad \text{Cronyism and Payments to Anis Sherali} \]

Anis Sherali was a trusted confidant and a substantial investor in both of Brown’s personal real estate projects. Between 2000 and 2011 Sherali received a total of $13.6 million. The majority of these payments were related to earning distributions from ECG totaling $10.5 million. Sherali also received approximately $340,000 in total expense reimbursement from both ECG and Cobb Energy, and payroll payments from Cobb Energy totaling approximately $751,000. Sherali owned preferred shares of Cobb Energy stock and received roughly $443,000 in dividend payments, and $1.4 million when the stock was repurchased in 2008. Additionally, Cobb Energy paid Sherali $250,000 in August of 2000 for a 25% ownership stake in ECG.

\[ i. \quad \text{Payments to Former Board Members} \]

CliftonLarsonAllen LLP and Fellows LaBriola LLP analyzed all disbursements to former Cobb EMC and Cobb Energy Board members and summarized the transactions by individual Board member. From 1996 to 2012, a total of approximately $4 million was paid to former board members. The majority of these disbursements were related to per diem reimbursements for meeting attendance. These per diem amounts ranged from approximately $400 to $600 for each meeting attended.

The top 5 Board members each received over $350,000 in disbursements and benefits. Al Fortney was at the top of the list receiving approximately $452,444, followed by Frank Boone ($413,915), Sarah Brown ($372,703), Larry Chadwick ($369,126) and David Herndon ($362,280).

\[ j. \quad \text{Disbursements to Law Firms} \]

Cobb entities made approximately $59.8 million in disbursements to law firms between 1996 and 2012. Cobb EMC and Cobb Energy accounted for $49.4 million and $9.1 million, respectively, of those payments. Brock Clay, which received $6.6 million, was counsel to Cobb EMC prior to the creation of Cobb Energy. Most of the legal fees related to the derivative suit were borne by Cobb EMC and its insurer, as were the legal fees related to the criminal case against Dwight Brown.

\[ k. \quad \text{Payroll to Other Individuals} \]
Cobb EMC and Cobb Energy paid the following individuals substantial amounts from 2001 until 2012. Current CEO Chip Nelson led this group, receiving $4.8 million in payroll (including a "Top Hat" payment of approximately $1 million). Other Cobb Energy employees received lucrative severance packages including: Brian Brockel who received $3.1 million (including $947,735 related to his termination and "Top Hat" payout); Clarence Dean Alford who received $2.8 million (including $430,638 related to his termination and "Top Hat" payout); Winston Tan who received $2.1 million (including $539,338 related to his termination); Carol Robertson who received $1.7 million (including $635,478 related to her termination); and Thomas Cothran who received $1.5 million (including $546,319 related to his termination).

l. A Review of the Financial Statement Audit Conducted by MMM

CliftonLarsonAllen LLP and Fellows LaBriola LLP analyzed the work papers and interviewed Cobb EMC's auditors McNair, McLemore, Middlebrooks & Co., LLP ("MMM"). Specifically, we examined the audit of Cobb EMC's consolidated financial statements for the year ended April 30, 2009, and for the single audit of consolidated financial statements for the year ended April 30, 2011. Although we understand the MMM auditors may disagree with the findings in this report, we believe the Audit Committee should review the findings presented later in this report so they can judge for themselves whether the comments have merit.

m. Conflict of Interest and Self-Enrichment by Cobb Energy Board Member Lee McKinstry through the Sale of Property on White Circle

The White Circle property is located a short drive from Cobb EMC's headquarters, and functions as backup power center in the event of an emergency. Prior to its 2004 purchase by Cobb Energy, Lee McKinstry, a Cobb Energy Board Member was an owner of the building. In 1991, Lee McKinstry and three others, D. Ellis Scarborough, Brian D. Wright and Eric K. Batten, purchased the property for $480,000. McKinstry was installed as a Cobb Energy Board Member and preferred shareholder in 1998. His real estate partners also became preferred shareholders in Cobb Energy. On December 15, 2004, Lee McKinstry sold the property to Cobb EMC for $1,500,000.

n. The Tan and Cothran Severance Agreements

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Winston Tan, Senior Vice President of Cooperative Benefits and Financial Services, LLC, entered into a purchase and severance agreement with J.W. Rayder, the Liquidating Trustee for Cobb Energy Management Corporation. Mr. Tan was paid a total of $471,055 as severance pay, accrued paid leave and continued health coverage for 18 months along with an additional $68,283 for a total of $539,338 covering a period through October 27, 2010.

On October 1, 2010, the same date as the Tan Severance Agreement, an Asset Purchase Agreement was made between Mr. Winston Tan and Cooperative Benefits and Financial Services, LLC and J.W. Rayder, as Trustee of the Cobb Energy Management Corporation Liquidating Trust. The salary, wage and benefit consulting services portion of Cooperative Benefits and Financial Services, LLC was sold to Mr. Tan for $150,000 plus 10% of the net monthly revenue of the business, payable for a period of 24 months.

On May 19, 2010, Cobb Energy Management Corporation and Thomas H. Cothran entered into a Confidential Separation Agreement and Full and Final Release of all Claims ("Cothran Separation Agreement"). Cothran ran Alamo Pest Control, a Cobb Energy affiliate, and was a Senior Vice-President. Per the agreement, Mr. Cothran was to receive a total of $462,460 as separation pay, health coverage cost, and accrued paid leave. CliftonLarsonAllen LLP noted in the payroll data that $462,460 was paid to Mr. Cothran with a check dated May 18, 2010, and five additional payments totaling $88,192 were paid to him through August 11, 2010, bringing the total amount received pursuant to his termination to $550,652.

On May 19, 2010, the same date as the above-mentioned Cothran Separation Agreement, a Stock Purchase Agreement was executed between Thomas Cothran ("Purchaser") and J.W. Rayder, as Trustee of the Cobb Energy Management Corporation Liquidating Trust ("Seller"), whereas Mr. Cothran purchased 100% of all shares of stock of Cobb Energy Pest Control, LLC d/b/a Alamo Pest Control ("Alamo Pest Control") for $185,000.

o. **Cobb EMC is a Cash Cow for Cobb Energy**

CliftonLarsonAllen LLP identified nine instances where Cobb EMC borrowed money that was then distributed to Cobb Energy. For the identified transactions, Cobb EMC assumed the debt and then disbursed the funds to Cobb Energy, typically on the same day. CliftonLarsonAllen LLP's tracing analysis shows the debt assumed by Cobb EMC for these nine transactions totaled $47.9 million dollars. These transactions occurred between June 2005 and June 2009.

p. **Corporate Governance**
The United States Sentencing Guidelines Manual requires all organizations to have an effective compliance and ethics program in place. Good corporate governance starts with proper oversight by the board of directors. Management is primarily responsible for establishing internal controls and a control environment where the “tone at top” clearly communicates ethics and integrity from the top to the bottom of the organization. An effective compliance and ethics program is one that reaches all levels of the organization through constant communication, testing and affirmation.

From 1997, prior to the formation of Cobb Energy, and up until a truly independent board was appointed; Dwight Brown literally ran the show. This is not to say that he did not have attorneys and consultants helping him. He did, and very expensive ones at that.

During Brown’s tenure as CEO for both Cobb Energy and Cobb EMC, and as chairman of Cobb Energy’s Board of Directors, he did what he wanted. He entered into business and accounting transactions such as the formation of Cobb Energy, acquired subsidiaries and funded Cobb Energy with Cobb EMC’s money without much pushback. He created a negative “tone at the top” where employees and others were afraid to speak up or disagree with him.

The boards of directors of both Cobb Energy and Cobb EMC did nothing to check Brown’s autocratic practices, and supported his leadership despite his indictment. When Glenn Brock, a member of Cobb Energy’s board questioned Brown about serving as the CEO of both Cobb Energy and Cobb EMC, Brown was contemptuous and disrespectful. Brock subsequently resigned. When members of management or others tried speaking up they met the same hostility. When certain members got together and filed a derivative action, they were subsequently sued. The local newspapers also ran various stories on Cobb EMC and Cobb Energy and their management. Although none of the reporters or their newspapers was sued, Cobb EMC’s board authorized a libel suit and a complaint was drafted and ready to be filed.

Due to a lack of internal controls and the ineffective compliance and ethics program, Brown was able to profit from his role as CEO of both Cobb Energy and Cobb EMC. With no real oversight by those responsible for overseeing him and working with or for him, Brown did as he pleased. Brown’s profiteering has been more fully described in other parts of this report.

q. The Detection of Fraud, Corruption and Misconduct
The most frequent way fraud is detected is through a whistleblower hotline or anonymous reporting mechanism. Hotlines are most effective when the whistleblower knows that their call will be taken seriously and acted on. They also need to know that if they make the call their employer will not retaliate against them. Anonymous reporting mechanisms work effectively if implemented. In the absence of a hotline or anonymous reporting mechanism, disgruntled employees or others could go the media, law enforcement or outside counsel to have their complaints heard.

When individuals have no choice but to go outside the company it usually results in greater financial and reputational damage to the company. The ideal situation is where the company acts on the complaint and conducts a prompt and thorough internal investigation. Throughout the course of the forensic audit, we were told by the interviewees that they were not aware of any fraud. In spite of the Derivative Action and the indictment of Dwight Brown, where allegations of fraud and misconduct were laid out with specificity, the interviewees could not or would not connect the dots. CliftonLarsonAllen LLP believes part of the problem is a lack of understanding of the indicia of fraud, corruption and misconduct.

The forensic audit has determined that a number of individuals saw Dwight Brown’s behavior and had knowledge of the business and accounting transactions he entered into but with few exceptions, almost no one was willing to speak up. The Derivative Action was the first real wake up call to senior management. The Board reacted by circling the wagons and hiring some of the highest profile and most expensive attorneys they could find to defend the case.

Criminal indictments were filed against Brown in 2011, and laid out serious charges of theft, fraud and making false statements, mostly dealing with the SCANA Contract. Nearly half of the allegations in the indictment refer to false statements and failures to disclose the revenue and other financial details of the SCANA Contract to the members. During CliftonLarsonAllen LLP and Fellows LaBriola LLP’s interviews, members of Cobb EMC management were asked whether there had been adequate disclosures of business and financial transactions regarding the formation of Cobb Energy, the acquisition of various subsidiaries, Brown’s compensation, stock ownership, interest free loans, and forgiveness of loans and preferred dividend payments. Most agreed that these disclosures either were not made or were made in such a way that the reader of the financial statements could not reasonably understand these events. If these disclosures had been made and members had the chance to see and comprehend what was going on with Cobb EMC, then they may have been able to mitigate the damage done.
III. Procedures Used in the Forensic Audit

a. Work Plan and Budgeting

CliftonLarsonAllen LLP and Fellows LaBriola LLP worked with the Audit Committee to develop a work plan and budget for this engagement, with the different phases of the work plan covering various areas of analysis and review. For each phase of work, a budget of hours as a percentage of overall engagement hours was developed and shared with the Audit Committee. As the engagement progressed, professional hours were coded to particular phases in order to help the Audit Committee assess the budget and work performed. The following are the phases of work performed by CliftonLarsonAllen LLP under the direction of Fellows LaBriola LLP:

- Collaborative planning and engagement management:
  o Conducting conference calls, status updates, and/or presentations to discuss case background, potential findings, etc.
  o Maintaining the work plan and overall budget for the engagement to strategize on the procedures to be performed
  o Reviewing key memos, schedules and other documentation to gain background understanding of the engagement and issues at hand

- Information and evidence gathering
  o Generating data request lists and managing information received
  o Obtaining images of hard drives
  o Obtaining email and chat log data
  o Obtaining accounting data from the ERP system and other data sources
  o Obtaining financial statements, tax documents, bank statements and other relevant financial documents
  o Running non-intrusive, background reports from public sources on key individuals and related entities

- Analysis
  o Performing forensic data analysis on acquired accounting and financial data
  o Testing of particular transactions and business dealings
  o Analyzing and reviewing hard drive images and related searching efforts
  o Analyzing and reviewing emails and chat logs
  o Performing interviews of key individuals
• Reporting
  o Providing updates based on findings from the analysis phase of the engagement
  o Generating final report and presentation

b. Information Gathering

CliftonLarsonAllen LLP and Fellows LaBriola LLP worked together to develop data requests to Cobb EMC and the related subsidiaries under its current control. Additionally, Fellows LaBriola LLP worked to obtain Cobb EMC and Cobb Energy’s client files from the 16 law firms and 2 accounting firms that they used between 1996 and 2012. Fellows LaBriola LLP also worked to obtain files from counsel for the Special Litigation Committee, counsel for the Derivative Plaintiffs, and from J.W. Rayder in his role as head of the Liquidating Trust. The sections below identify what data was acquired and from what source.

1. Accounting Information Obtained from Cobb EMC

CliftonLarsonAllen LLP obtained accounting related information from two different systems at Cobb EMC: Orcom and Lawson. The Orcom system was used from 1996 to 2006 and was replaced by the Lawson system in 2004. As the Orcom system had already been decommissioned by the time that Fellows LaBriola LLP and CliftonLarsonAllen LLP were engaged in this matter, Cobb EMC obtained an outside technical consultant to assist in the legacy data acquisition process.

During the data acquisition process, the following information was obtained from both systems: general ledger data, accounts payable ("AP") data, vendor master data, and chart of accounts data, all dating to 1996. CliftonLarsonAllen LLP also obtained payroll and employee data dating to 2001. Payroll and employee data prior to 2001 was not available because when Cobb EMC transitioned to the current Lawson system in 2004, it only imported payroll and employee data from 2001 forward. CliftonLarsonAllen LLP tried to obtain information from the system used prior to Lawson, but it had been decommissioned and could not be accessed.

In general, depending on the data provided, the Orcom data covered the period from December 1995 to February 2006, and the Lawson data covered the period from January 2001 to October 2012. The systems contained accounting and financial data for Cobb EMC, Cobb Energy Management Corp., Cobb Energy Pest Control (formerly Alamo Pest Control), Gas South, ProCore Solutions, ProCore Staffing, Cooperative Business Ventures, Cooperative Benefits & Financial Services, Cobb Energy Right-of-Way, and Energy Consulting Group. The data metrics from
both systems can be seen in the following table. As listed below, the accounting information reviewed consisted of approximately 9.5 million transactions/lines of data and over 2 Terabytes of information.

<table>
<thead>
<tr>
<th>Source</th>
<th>Description</th>
<th>Files</th>
<th>File Size (Mbs)</th>
<th>Date Range</th>
<th>Records</th>
</tr>
</thead>
<tbody>
<tr>
<td>Orcom</td>
<td>Accounts Payable</td>
<td>30</td>
<td>259.0</td>
<td>Jan-96-Dec-05</td>
<td>616,396</td>
</tr>
<tr>
<td>Orcom</td>
<td>General Ledger</td>
<td>33</td>
<td>526.0</td>
<td>Dec-95-Feb-06</td>
<td>2,565,832</td>
</tr>
<tr>
<td>Orcom</td>
<td>Chart of Accounts</td>
<td>4</td>
<td>0.4</td>
<td></td>
<td>2,786</td>
</tr>
<tr>
<td>Orcom</td>
<td>Vendor Master</td>
<td>4</td>
<td>3.7</td>
<td></td>
<td>9,852</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3,194,366</td>
</tr>
<tr>
<td>Lawson</td>
<td>Chart of Accounts</td>
<td>1</td>
<td>1.4</td>
<td>Dec-03-Nov-12</td>
<td>4,997</td>
</tr>
<tr>
<td>Lawson</td>
<td>Accounts Payable</td>
<td>5</td>
<td>132.0</td>
<td>Jan-04-Oct-12</td>
<td>638,515</td>
</tr>
<tr>
<td>Lawson</td>
<td>General Ledger</td>
<td>8</td>
<td>945.0</td>
<td>Jan-04-Oct-12</td>
<td>4,943,716</td>
</tr>
<tr>
<td>Lawson</td>
<td>Payroll</td>
<td>1</td>
<td>57.3</td>
<td>Jan-01-Oct-12</td>
<td>473,296</td>
</tr>
<tr>
<td>Lawson</td>
<td>Employee Master</td>
<td>1</td>
<td>1.4</td>
<td></td>
<td>3,596</td>
</tr>
<tr>
<td>Lawson</td>
<td>Vendor Master</td>
<td>1</td>
<td>85.0</td>
<td></td>
<td>221,951</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>6,286,071</td>
</tr>
<tr>
<td></td>
<td>TOTAL</td>
<td>88</td>
<td>2,011.17</td>
<td></td>
<td>9,480,937</td>
</tr>
</tbody>
</table>

2. **Email Data Obtained from Cobb EMC**

CliftonLarsonAllen LLP and Fellows LaBriola LLP also obtained emails from Cobb EMC's Lotus Notes system. The email domains that were hosted by Cobb EMC consisted of cobbenergy.com, cobbemc.com, ecg-llc.com, gas-south.com, and procoresolutions.com. CliftonLarsonAllen LLP coordinated with Cobb EMC's Information Technology ("IT") department to extract the needed data. The Cobb EMC IT department used a search mechanism built into the Cobb EMC system to extract emails using a list of key words generated by CliftonLarsonAllen LLP and Fellows LaBriola LLP. The key word list was designed to capture emails relevant to specific persons of interest and areas of analysis.

The population of email data that the IT department key word searched was generated via a “journaling” mechanism in Lotus Notes. The “journaling” of email traffic was implemented at Cobb EMC in September 2007 as a result of the litigation hold on all records. Through “journaling,” Cobb EMC was able to capture and copy all email traffic, both inbound and outbound, for the email domains it hosted. As such, CliftonLarsonAllen LLP and Fellows LaBriola LLP were able to obtain all emails responsive to a key word, even if the email was deleted. CliftonLarsonAllen LLP met with Tom Bland and others in Cobb’s IT department to view the key word searching and “journaling” process. Once the email data was searched and found to be responsive to a key word, the data was extracted and sent to CliftonLarsonAllen LLP.

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As an additional measure of quality control, a screen shot of the key word searching queries as well as a screen shot displaying a record count of responsive results were generated. These screen shots were reviewed by CliftonLarsonAllen LLP and used to ensure completeness of the email population before analysis. After completeness testing was performed on the data, a process of deduplication was run by CliftonLarsonAllen LLP to remove duplicate emails and files. Once this process was complete, the data was loaded into a data review platform for analysis.

After the initial email review, CliftonLarsonAllen LLP and Fellows LaBriola LLP requested a second email extraction from Cobb EMC related to additional key individuals and topics identified during the forensic audit process. The same protocols for completeness testing and processing were used. The table below outlines the data metrics for both email review populations:

<table>
<thead>
<tr>
<th>Source</th>
<th>Description</th>
<th>Files</th>
<th>File Size (GBs)</th>
<th>Documents/Emails*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emails</td>
<td>First Email Review</td>
<td>1,201</td>
<td>190.0</td>
<td>518,539</td>
</tr>
<tr>
<td>Emails</td>
<td>Second Email Review</td>
<td>3,446</td>
<td>2,143.4</td>
<td>5,849,524</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>1,201</td>
<td>2,333.4</td>
<td>6,368,062</td>
</tr>
</tbody>
</table>

*This is an estimate based on subset of processed documents

3. Chat Logs Obtained from Cobb EMC

CliftonLarsonAllen LLP and Fellows LaBriola LLP also obtained and reviewed instant messaging chat logs from Cobb EMC. The instant messaging system works through the Lotus Notes platform and employees can communicate by sending each other typed messages in real-time, like text messaging. The table below outlines the data metrics for both extractions related to the instant messaging chat logs:

<table>
<thead>
<tr>
<th>Source</th>
<th>Description</th>
<th>File Size (GBs)</th>
<th># of Chats</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chat Logs</td>
<td>First Extraction</td>
<td>0.6</td>
<td>121,000</td>
</tr>
<tr>
<td>Chat Logs</td>
<td>Second Extraction</td>
<td>4.4</td>
<td>1,600,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>5.0</td>
<td>1,721,000</td>
</tr>
</tbody>
</table>
4. Records of Items Purchased on Cobb EMC Credit Cards

CliftonLarsonAllen LLP and Fellows LaBriola LLP obtained transactional information for all corporate credit card activity from November 2005 through December 2012. Cobb EMC had two credit accounts with Bank of America and a total of 120 corporate credit cards. The table below outlines the data metrics for the credit card transactional data that was obtained.

<table>
<thead>
<tr>
<th>Source</th>
<th>Description</th>
<th>Files</th>
<th>File Size (MBs)</th>
<th>Date Range</th>
<th>Records</th>
</tr>
</thead>
<tbody>
<tr>
<td>Credit Cards</td>
<td>Acct x0208</td>
<td>72</td>
<td>72.2</td>
<td>Nov-05 Dec-12</td>
<td>13,196</td>
</tr>
<tr>
<td>Credit Cards</td>
<td>Acct x0281</td>
<td>70</td>
<td>7.3</td>
<td>Feb-07 Dec-12</td>
<td>1,573</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td><strong>142</strong></td>
<td><strong>79.49</strong></td>
<td></td>
<td><strong>14,769</strong></td>
</tr>
</tbody>
</table>

5. Phone Records of Dwight Brown

CliftonLarsonAllen LLP obtained a download from Cobb EMC of all call activity for two phone extensions attributed to Dwight Brown as well as his cell phone activity for the period of December 2008 to July 2011.

6. Hard Copy and Electronic Documents

Hard copy and electronic documents were obtained throughout the engagement from a variety of sources. These documents were converted into electronic form, when practical, and uploaded to a document review platform for analysis and key word searching. The table below outlines the metrics for the electronic documents obtained from each source:
<table>
<thead>
<tr>
<th>Description</th>
<th>File Size (MBs)</th>
<th>Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brock Clay</td>
<td>570</td>
<td>22,130</td>
</tr>
<tr>
<td>Carr &amp; Palmer</td>
<td>670</td>
<td>15,919</td>
</tr>
<tr>
<td>Cauthorn</td>
<td>2,490</td>
<td>44,270</td>
</tr>
<tr>
<td>Cobb DA</td>
<td>3,880</td>
<td>52,577</td>
</tr>
<tr>
<td>Cohen</td>
<td>1,490</td>
<td>808</td>
</tr>
<tr>
<td>Grand Jury Subpoena</td>
<td>8,410</td>
<td>145,077</td>
</tr>
<tr>
<td>King &amp; Spalding</td>
<td>152,800</td>
<td>1,851,618</td>
</tr>
<tr>
<td>MMM</td>
<td>12,700</td>
<td>23,695</td>
</tr>
<tr>
<td>Rogers &amp; Hardin</td>
<td>1,100</td>
<td>12,758</td>
</tr>
<tr>
<td>Schreeder Wheeler Flint</td>
<td>390</td>
<td>854</td>
</tr>
<tr>
<td>Cobb EMC—Accounting Dept.</td>
<td>385</td>
<td>508</td>
</tr>
<tr>
<td>Other Background Information</td>
<td>304</td>
<td>454</td>
</tr>
<tr>
<td>Vinson Elkins</td>
<td>5,150</td>
<td>23,972</td>
</tr>
<tr>
<td>Andrews Kurth</td>
<td>7,100</td>
<td>27,168</td>
</tr>
<tr>
<td>CEI Energy Trading</td>
<td>1,700</td>
<td>3,708</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>199,139</strong></td>
<td><strong>2,225,516</strong></td>
</tr>
</tbody>
</table>

CliftonLarsonAllen LLP and Fellows LaBriola LLP also obtained a number of paper records. Specifically, the following law firms provided:

<table>
<thead>
<tr>
<th>Law Firm</th>
<th>Volume of Paper Records</th>
<th>Cost to Convert (Excluding database processing fee)</th>
<th>Amount Converted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brock &amp; Clay</td>
<td>153 Bankers Boxes</td>
<td>$96,390</td>
<td>None</td>
</tr>
<tr>
<td>Paul Hastings</td>
<td>125 Bankers Boxes</td>
<td>$78,750</td>
<td>None</td>
</tr>
<tr>
<td>Special Litigation Committee</td>
<td>15 Bankers Boxes</td>
<td>$9,450</td>
<td>None</td>
</tr>
<tr>
<td>McGuire Woods</td>
<td>7 Bankers Boxes</td>
<td>$4,410</td>
<td>None</td>
</tr>
</tbody>
</table>

In evaluating the value of the records to the investigation Fellows LaBriola LLP performed a high-level manual review of the records received and created an index of documents. Due to the large cost of processing the records for electronic review, Fellows LaBriola LLP and CliftonLarsonAllen LLP decided that the most practical way to proceed was to rely upon the document indexes to identify any pertinent documents.
7. Background Searches of Relevant Individuals and Entities

CliftonLarsonAllen LLP performed approximately 100 background searches on various entities, individuals and addresses based on information obtained through meetings, documents, and emails. CliftonLarsonAllen LLP performed the background searches to assist in identifying any potential relationships and/or conflicts of interest that may have existed among Cobb EMC and Cobb Energy subsidiaries, directors, shareholders, key individuals, investors, and/or other relevant entities.

Each background search contained information related to the entity being searched and address information from three consumer-reporting agencies. In order to produce the results, the background search platform searches thousands of national and state public record databases. This information includes but is not limited to a summary of assets, driver licenses, professional licenses, real properties, vehicles, criminal history, and involvement in litigation.

8. Interviews

CliftonLarsonAllen LLP and Fellows LaBriola LLP interviewed select Cobb EMC employees, accounting staff, and members of senior management, derivative plaintiffs, and counsel for the derivative plaintiffs. The purpose of these interviews was to gather background information related to key business processes at Cobb EMC, Cobb Energy, and Cobb Energy’s subsidiaries during Brown’s tenure, provide clarification on various business dealings, understand past and current corporate culture, and support the underlying efforts of the forensic audit.

CliftonLarsonAllen LLP and Fellows LaBriola LLP conducted interviews at several different stages of the investigation. Interviews were initially used to provide background and context for the overall corporate structure and functioning of Cobb EMC and Cobb Energy, as well as to highlight areas that Cobb EMC employees and others had noted were problematic during Brown’s tenure. Later in the investigation, after the team performed an independent analysis of the available financial information, documents, and email communications, interviews were used to obtain additional information about specific events, perceived management and control failures, and to evaluate current management and corporate governance.

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2 The team also requested interviews with other relevant individuals but those requests were declined.

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During the interview process, CliftonLarsonAllen LLP and Fellows LaBriola LLP obtained substantial information on the day-to-day operations of Cobb EMC, Cobb Energy, and the subsidiary corporations. The information supplied by witnesses helped to fill in areas where documentary evidence was insufficient such as how corporate decisions were made, how management (particularly Brown) reacted to challenges, how information was conveyed to the Cobb EMC and Cobb Energy Boards, conversations that occurred between Brown and senior management relating to mismanagement of Cobb EMC’s finances, etc.

9. **Cobb Electronic Invoice Access**

CliftonLarsonAllen LLP was given access to Cobb EMC’s FileNet Workplace XT ("FileNet"), which is an electronic document repository of vendor invoices received and vendor payments made. FileNet can be searched based on vendor name, vendor ID, invoice number, invoice date, etc., and the resulting electronic supporting documentation can be downloaded. CliftonLarsonAllen LLP used FileNet to supplement payment and invoice information as needed during the course of the engagement.

**IV. Analysis and Work Performed**

a. **Scope Limitations**

As discussed above, CliftonLarsonAllen LLP and Fellows LaBriola LLP used all available resources to gather information pertinent to the investigation. However, there was certain information that they were not able to access because third parties refused to provide the information. Fellows LaBriola LLP consulted with the Audit Committee and ultimately decided that pursuing the additional information through litigation was not in the best interests of Cobb EMC.

Specifically, CEI, ECG, and EDF Trading North America, LLC refused to provide power purchase and trading documents and records requested by Cobb EMC. As discussed in further detail below, Fellows LaBriola LLP filed a claim in Newton County, Georgia Superior Court to preserve Cobb EMC’s contractual rights to access the records. The parties agreed to stay the action while Fellows LaBriola LLP and CliftonLarsonAllen LLP worked to determine whether further litigation was in the best interests of the Cobb EMC membership. Ultimately, the Audit Committee accepted the recommendation of CliftonLarsonAllen LLP and Fellows LaBriola LLP that it was not in Cobb EMC’s best interests to pursue the additional data due to the high cost and potentially marginal value of the additional data.

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Given the large quantity of data that CliftonLarsonAllen LLP and Fellows LaBriola LLP did gather (emails, accounting records, phone logs, etc.), in conjunction with the Audit Committee, electronic review tools were used in the investigation. Those tools and steps are summarized below:

b. *Forensic Data Analyses Performed*

1. *Accounts Payable, Payroll, General Ledger, and Credit Card Transactions*

   The accounting data Cobb EMC provided to CliftonLarsonAllen LLP was normalized and imported into forensic data analysis software. Once imported, the data was generally reconciled to other supporting documentation to help ensure the completeness of the data. Utilizing forensic data analysis software, CliftonLarsonAllen LLP was able to analyze and extract transactions associated with key individuals, entities, and patterns of activity. Additionally, the software was used to summarize transactions by particular variables over time to help isolate specific periods and dates of interest. CliftonLarsonAllen LLP utilized forensic data analysis techniques to review General Ledger, Payroll, Accounts Payable, and credit card data with the goal of isolating transactions that appeared to be outside of the normal observed patterns of activity. Furthermore, these techniques were used to help uncover opportunities for potential circumvention of internal controls.

2. *Phone Call Log Data for Dwight Brown*

   To assist in identifying individuals and businesses of interest in the investigation, CliftonLarsonAllen LLP obtained a download of all call activity for Dwight Brown's two phone extensions at Cobb EMC/Cobb Energy, as well as his cell phone activity for the period of December 2008 to July 2011. CliftonLarsonAllen LLP reviewed the data to identify irregular calling patterns, calls made on particular dates of interest, and calls made to key individuals and/or entities. These individuals and entities were those for which Brown also had an outside business relationship.

3. *Analysis of Emails, Documents, and Instant Message Files*

   CliftonLarsonAllen LLP loaded all the emails and electronic documents obtained during the investigation into a document review tool that allows the reviewer to perform key word searches and filter the documents by various criteria such as document date, document name, the email address that sent the email, the email address that received the email, the type of attachments, etc. CliftonLarsonAllen LLP and Fellows LaBriola LLP obtained approximately 190.3
gigabytes ("GBs") of electronic documents and 391 GBs of emails during the investigation. The team worked with the Audit Committee to determine which of these documents should be loaded into the review software for analysis. Ultimately, CliftonLarsonAllen LLP loaded approximately 1.1 million individual documents into the review tool.

After the documents and emails were loaded into the review tool, CliftonLarsonAllen LLP utilized the tool's capabilities to identify potentially relevant documents. Some of the tools used are as follows:

- **Predictive coding** – the main feature of the email review software is that the user can review and code a small set of documents, and based on that coding "teach" the software what documents are likely relevant. The software will then search the database for additional documents that contain similar concepts or phrases. Additionally, the user can categorize documents by specific categories, and the tool will then suggest similar documents that may be part of each selected grouping. The use of the predictive coding software allowed the team to efficiently and effectively review the documents because the software selected the more relevant documents for review earlier in the document review process compared to the traditional linear review. For example, without the software, the documents most relevant to the audit might have been in the last documents reviewed and that information would not have been learned until the end of the review; whereas with the software, the documents relevant to the audit are automatically pulled from the software culling out the most important information early in the process and ultimately making the review process more efficient.

- **Filtering** – when the documents are imported into the software, the software identifies various fields that can be used to filter the items in the database. For example, a user can sort the database (or a subset identified by keyword, etc.) by time frame, individuals that sent or received the email, the type of document or attachment, the date the attachment was created, the custodian of the document, etc.

- **Concept groups** – the software also groups documents based upon word sets found within the data. This allows the user to isolate all documents that are part of a concept group and review them together. This allows the user to more quickly and comprehensively review an issue or topic that might otherwise be spread throughout the entire database (and thus require the user to go back to previously reviewed documents to identify key facts). An example of one concept includes the following words: king spalding, natives,
davi, king, davis, and confidentiality notice. This group corresponds to work performed for Cobb EMC by Dwight Davis of the law firm King and Spalding.

- **Phrases** – the software also groups documents based on phrases included in the data. This differs from the concept groups because the phrases are identified individually and not in relation to other words. Thus, the user can select various phrases to review all documents relating to a specific area of inquiry. For example, a user could select an individual's name, their nick names, and their job title in an effort to capture all the documents relating to that individual in the database; or a user could select a phrase like “please let me know” and an individual or company's name to identify documents related to a specific item about which they were supposed to provide feedback.

All of the tools discussed above were used to assist CliftonLarsonAllen LLP and Fellows LaBriola LLP to obtain information about specific issues that were identified in the course of the investigation.

CliftonLarsonAllen LLP and Fellows LaBriola LLP also developed a list of topics/categories that were used throughout their review to group documents into categories of interest. These categories were used in addition to other coding to “teach” the software what documents were relevant.

4. **Review of Instant Messages**

CliftonLarsonAllen LLP reviewed and analyzed instant messages (“IMs”) from the period May 2005 to May 2013. Instant messages are another format of electronic communication, similar to email, and just between company personnel. Typically, instant messaging communication tends to be more candid and similar to telephone calls. However, this type of communication is typically not used on a regular basis by upper management. CliftonLarsonAllen LLP collaborated with Fellows LaBriola LLP to generate a list of key words that were used to identify relevant IMs within the total population of conversations. The search identified approximately 4,000 conversations that CliftonLarsonAllen LLP then reviewed. As with the email and document review, any information of interest in the IMs was followed up on as appropriate.
V. **Criminal and Civil Allegations of Fraud and Other Financial Improprieties**

a. **The Indictment of Dwight Brown**

The Indictments in *State v. Dwight Brown* lay out the criminal conduct alleged by Grand Juries sitting in the Cobb Judicial Circuit. The trial court dismissed the initial indictment since the charges were not presented by the grand jury in open court as required by Georgia law. The Georgia Supreme Court affirmed the dismissal on September 9, 2013.

After the original indictment was filed in January 2011, Brown allegedly conspired with Cobb EMC’s directors to file a civil lawsuit against three of the *Pounds* derivative action case plaintiffs and one of their attorneys, David Cohen, who may have cooperated in the criminal investigation of Brown. The superseding indictment in *State v. Brown* ("Brown II") was returned on July 7, 2011. (Exhibit No. 3). According to the second indictment, the civil suit was filed to intimidate and deter those defendants from assisting the prosecutors in the criminal investigation, and charged Brown with obstruction of justice. The charges in Brown II were very similar to the first indictment, but added four counts of obstruction of justice stemming from the Cobb EMC’s civil suit. The obstruction charges were later dismissed.

The 35 counts in Brown II allege false representations and lack of disclosures to members, and diversion of personal property and funds from Cobb Energy and Cobb EMC. Counts 1-3 allege violations of the Georgia Racketeer Influenced and Corrupt Organizations Act (Georgia RICO).

The 35 counts in the July 7, 2011, superseding indictment Brown II, are detailed below:

- **Count 1 - Georgia RICO Act Section 16-14-4 (a)**, alleges Dwight Brown acquired money and property interests (salary & benefits; Cobb Energy preferred stock dividends; and interest-free loans from Cobb Energy and Cobb EMC) from Cobb Energy by theft; illegally diverted members’ patronage capital funds and property (meters, work force, customer data, and SCANA revenue) from Cobb EMC to support Cobb Energy; illegally gained control over Cobb Energy; and that Brown and others made false statements and concealed information from the members and government agencies to execute Brown’s illegal acts. Count One’s “victims” were Cobb EMC’s members, many of whom are “elder” victims, Cobb County, and Cobb County School District.

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• Count 2- Georgia RICO Act Section 16-4-4 (b) alleges Brown, as the CEO of both Cobb Energy and Cobb EMC, and the Chairman of Cobb Energy's Board, conducted and participated in the affairs of Cobb Energy and Cobb EMC by the pattern of illegal racketeering activity summarized in Count One. They allege that because of Brown's access to financial information, his control of the flow of information to the Boards, and his positions with these entities he was able to conduct the activities of the businesses and influence the respective board to accomplish these illegal activities, and served as the official voice of both Cobb Energy and Cobb EMC.

• Count 3- Georgia RICO Act Section 16-4-4 (c) alleges that Brown conspired and acted to accomplish the pattern of racketeering activity detailed in Counts One and Two.

• Counts 4, 6, 8, 10, 12, 14, 16 and 18 - allege Theft Involving Revenue and Property From SCANA (for the years 1998 to 2005). The Indictment charges that on May 29, 1998, Cobb Energy signed a Natural Gas Retail Service Alliance Agreement ("Alliance Agreement") with SCANA to market SCANA's natural gas to Cobb EMC members using Cobb EMC's membership data without payment, misrepresented that EMC was a member of the Alliance Agreement, and concealed these facts from the members. These counts also allege that Brown illegally used property of Cobb EMC (the customer information of its membership database), and concealed and covered up these thefts.

<table>
<thead>
<tr>
<th>COUNT</th>
<th>YEAR</th>
<th>AMOUNT OF REVENUE TAKEN BY THEFT</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>1998</td>
<td>$455,143</td>
</tr>
<tr>
<td>6</td>
<td>1999</td>
<td>$8,332,631</td>
</tr>
<tr>
<td>8</td>
<td>2000</td>
<td>$8,120,692</td>
</tr>
<tr>
<td>10</td>
<td>2001</td>
<td>$9,524,010</td>
</tr>
<tr>
<td>12</td>
<td>2002</td>
<td>$7,526,423</td>
</tr>
<tr>
<td>14</td>
<td>2003</td>
<td>$8,150,851</td>
</tr>
<tr>
<td>16</td>
<td>2004</td>
<td>$9,875,435</td>
</tr>
<tr>
<td>18</td>
<td>2005</td>
<td>$9,511,173</td>
</tr>
</tbody>
</table>

• Counts 5, 7, 9, 11, 13, 15, 17, 21, 24 and 26 - allege Brown made or caused a series of False Statements and Writings to be made to the membership as well as to Georgia state and county (Cobb County and Cobb County School District) governmental agencies during the years 1998 to 2007 to cover up and conceal the thefts alleged in Counts 4, 6, 8, 10, 12, 14, 16 and 18. The Indictment alleges that Brown made the false statements in the Annual
Reports to the Membership, the Independent Auditor's Reports and in numerous member Newsletters for the years 1998 – 2007, as detailed below:

- "(Cobb Energy) is ... being financed independent of Cobb EMC."
- "Cobb EMC is pleased to announce our alliance with SCANA Energy." Brown knew that this statement was false and by making it concealed that Cobb EMC was not a party to the contract with SCANA and was not receiving any of the revenues from the SCANA contract.
- The 1999 issue of the Newsletter contained an article with Brown's picture enrolling to become the first "Cobb EMC/SCANA Energy natural gas customer."
- In the 1999 "Officer's Message to the membership," Brown stated: "While this is the annual report of Cobb Electric Membership Corporation, it is important to also relate its success to the success of our for-profit affiliate, Cobb Energy. Cobb Energy Management exists to assure the continued success of Cobb Electric Membership Corporation. The many products and services available through Cobb Energy Management are offered on a for-profit basis and Cobb Electric Membership Corporation will benefit from those profits, through its stock ownership and dividends." This is a false statement because Cobb Energy was still operating at a loss, made no contribution to Cobb EMC's success, and did not pay dividends on the Cobb Energy stock owned by Cobb EMC.
- In the Officer's Message in the 1999 Cobb EMC Annual Report Brown wrote: "By far, the most significant event in Cobb EMC history occurred this fiscal year when your electric cooperative began selling natural gas. While we were confident that we had chosen the right alliance, SCANA Energy, we did not anticipate the huge success we would have this early in the deregulated gas market." However, there was no alliance between SCANA and Cobb EMC, Cobb EMC was not a party to the SCANA Contract, Cobb EMC did not sell natural gas, and none of the revenues from the alliance between SCANA and Cobb Energy went to Cobb EMC.
- In the 2000 Annual Report Newsletter Brown falsely stated that the partnership between Cobb Energy and ProCore helped keep the cost of electricity down for the members.
- In the 2001, 2002 and 2004 Annual Reports and in the Members' Newsletter Brown was quoted saying: "The continued success of Cobb Energy's Home Vantage and Provanta products and services help make it possible to keep electric rates as low as possible." However, neither Home Vantage nor Provanta were ever profitable.
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- Cobb Energy's financial statements for the years 2002, 2003 and 2005, concealed that Cobb Energy and its subsidiaries had negative total retained earnings (LOSS) as listed below.

<table>
<thead>
<tr>
<th>YEAR ending January 31</th>
<th>AMOUNT OF LOSS</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>$3,264,000</td>
</tr>
<tr>
<td>2003</td>
<td>$5,862,000</td>
</tr>
<tr>
<td>2005</td>
<td>$5,259,000</td>
</tr>
</tbody>
</table>

Brown continued his pattern of false statements about Cobb Energy's profitability which he touted was saving the members money on their electricity in the 2003 Newsletter which stated: "In addition, the formation of Cobb Energy, our for profit affiliate, is providing additional revenues, which are having a positive impact on Cobb EMC." Brown went further in his "Letter To Our Members" saying: "In fact, since 1996 Cobb EMC members have received more than $21 million in rebates and have not experienced a rate increase since February of 1993. All of this has been due to our continued efforts to lower wholesale power costs and the success of Cobb Energy."

- Count 19 alleges a 2005 theft from Cobb EMC involving the SCANA termination expenses. Brown directed Cobb EMC to pay $3,400,000 in contract termination fees although Cobb EMC was not a party to the SCANA Contract and received no revenue from the alliance. Brown had signed the original SCANA contract with Cobb Energy and knew Cobb EMC was not a party to the SCANA Contract until October 31, 2005, when the Alliance Agreement was amended to add Cobb EMC as a party so that the contract could be terminated, and Cobb EMC would be obligated to pay the $3.4 million termination fee.

- Count 20 alleges Brown orchestrated the theft of SCANA service fee payments due to Cobb EMC that were paid to Cobb Energy in 2005. Cobb EMC should have received following service fees associated with ending the SCANA contract:
  - November 30, 2005 $1.6 million
  - December 31, 2005 $1.6 million

- Count 21 alleges Brown made false statements and writings in 2005 and to conceal the theft of $3.2 million in SCANA services fees noted in Count 20, above.

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• Count 22 alleges the theft of SCANA service fee payments from Cobb EMC in 2006 totaling $4 million. These payments should have been paid to Cobb EMC but went to Cobb Energy:
  o January 31, 2006 $1.6 million
  o February 28, 2006 $1.6 million
  o June 30, 2006 $800,000

• Count 23 alleges the 2006 theft of SCANA's $2 million in release and non-competition payments to Cobb Energy that should have been paid to Cobb EMC.

• Count 24 alleges Brown made false statements about the $4 million in service fees due to Cobb EMC from SCANA (see Count 22) and the $2 million Cobb Energy received from SCANA for the release and non-competition agreement that were made in 2006 (Count 23). Cobb Energy received these despite the fact that in 2005 Cobb EMC was added as a party to the contract with SCANA. Neither the 2006 Annual Report or the Newsletters revealed that Cobb Energy and not Cobb EMC received these payments.

• Count 25 alleges the 2007 theft of $1 million from a $2 million payment from SCANA to Cobb Energy for release and non-competition of the marketing contract. Brown, who was an officer and a fiduciary of Cobb EMC, diverted these funds which should have been paid to Cobb EMC rather than Cobb Energy.

• Count 26 alleges in 2007 Brown made false statements by concealing and failing to disclose to the members the SCANA payment of $4 million (see Count 24) for service fees and the $2 million payment by SCANA for the non-competition agreement. Specifically, during the 2007 Cobb EMC Annual Meeting Brown told the members: "I will tell you that we have never, ever, done anything without telling you. And, if you don't believe it, go back and dig out all your newsletters, all your annual reports and you will find its [sic] all there."

• Counts 27 and 28 allege a conspiracy to defraud Cobb County (Count 27) and Cobb County School District (Count 28) from 1998 – 2007 by stealing patronage capital that should have been credited to their accounts.

• Count 29 alleges the theft of meter-reading fees from Cobb EMC. In 1997 Cobb EMC entered into a contract with Bermex to read their meters. From 1999 to 2007 Cobb EMC paid $2,890,775 in meter-reading fees to Cobb
Energy on the Bermex contract. Since Cobb Energy was not a party to the Bermex contract, Cobb Energy diverted these funds from Cobb EMC.

- Count 30 alleges Brown stole $1,836,375 in Cobb Energy preferred stock dividends, and the receipt of the dividends was not disclosed to the members.

- Count 31 alleges theft involving Brown's interest-free loans from Cobb Energy and Cobb EMC. Brown initially received a $3 million loan in 2002 from Cobb Energy, which was modified in 2005 so that Cobb Energy lent $2 million and Cobb EMC lent $1 million. The forgiveness of the loans was a theft of property from Cobb EMC. Brown and his wife used the $3 million in loans to purchase the preferred stock in Cobb Energy noted in Count 30. These loans were never disclosed to the members and had not been approved or consented by the members.

- Counts 32, 33, 34 and 35 allege the attempt to influence and threaten witnesses by suing the Pounds derivative plaintiffs and their attorney, David Cohen. The Georgia Court of Appeals later dismissed these obstruction of justice charges.

b.  *Status Update State of Georgia v. Brown II*

On June 2, 2014, the Georgia Supreme Court denied the defendant Dwight Brown's challenge to the second indictment. Brown contended that members of the grand jury who were members of Cobb EMC had a conflict of interest and should have been disqualified from sitting on his case. Brown's attorneys petitioned the United States Supreme Court for a *writ of certiorari* to review. The Supreme Court denied the writ on November 3, 2014.

c.  *The Plaintiff's First Amended Verified Derivative Complaint*

As was mentioned in other portions of this report, the *Pounds* lawsuit was settled and a Fairness Hearing was held in December 2008, to provide evidence that the settlement was fair to the members and defendants.

The civil lawsuit (Complaint) alleged:

Some of Cobb EMC officers and directors seeking to remedy Defendants' violations of state law, including breaches of fiduciary duties, aiding and abetting breaches of fiduciary duties, negligence, gross
negligence and recklessness, abuse of control, gross mismanagement, waste of corporate assets, unjust enrichment, money had and received and violations of the Georgia Electric Membership Corporation Act.

Dwight Brown, and EMC’s directors Frank Boone and David McGinnis who were named as Defendants in the Complaint, participated in, approved and permitted those wrongs, participated in efforts to conceal or disguise the wrongs from EMC’s membership, and negligently and recklessly disregarded the wrongs complained of/or failed to take action to correct such wrongs as of the time of the filing of the Complaint; and

The defendants’ acts and omissions caused substantial losses to EMC as well as other damages.

The complaint focused on the breaches of fiduciary duties the officers and directors had to Cobb Energy, Cobb EMC and the members. They failed to act in good faith and with the requisite due care. The defendants did not disclose material information and facts to their constituents, the members.

In addition to the lack of material disclosures that should have been made to the members, the complaint alleged damages to the members of Cobb EMC due to related-party transactions, self-dealing by the defendants, dividends on stock transactions, transfer of the meters, payment of adder fees, failure to collect rent from Cobb Energy, and other issues.

There were 17 causes of action listed in the Pounds’ complaint that involved Dwight Brown and the various directors of both Cobb Energy and Cobb EMC.

VI. Results of Specific Areas of Inquiry

The Cobb EMC Audit Committee directed Fellows LaBriola LLP and CliftonLarsonAllen LLP to focus on three primary issues in their forensic investigation of Cobb EMC: (1) what occurred at Cobb EMC while Dwight Brown was CEO; (2) what possible claims does Cobb EMC have for acts that occurred between 1998 and 2008; and (3) what action, if any, should the Cobb EMC Board take to strengthen corporate governance and policies to ensure that Cobb EMC is not subject to fraud or crony capitalism in the future. These areas of analysis are discussed below.
a. The Establishment of Cobb Energy

On or about May 22, 1997 Dwight Brown directed his legal counsel to form a for-profit corporation that would sell ancillary services to Cobb EMC customers. A purported purpose of this corporate structure was to provide Cobb EMC with multiple links to its customers so in the event that the consumer electric market was deregulated, Cobb EMC customers would choose to stay with Cobb EMC as its power provider because they had other ties to Cobb EMC. (Exhibit No. 4, Transcript of Telephone Conference dated May 22, 1997 at 3).

Documents provided by Cobb EMC’s former legal counsel, which appear to be transcripts of recorded telephone calls, show that counsel for Cobb EMC was acting at the direction of Dwight Brown when it began setting up Cobb Energy. During Cobb EMC’s counsel’s discussions regarding formation of Cobb Energy, they discussed the following issues: (1) how Cobb Energy would be structured and who would be on the board; (2) who would own Cobb Energy; (3) how Cobb Energy would be capitalized; and (4) when Cobb Energy would likely make a profit. (See Exhibit Nos. 4-6, Telephone Conferences dated May 22, 1997-August 5, 1998). Many of the strategies discussed during these initial conference calls were ultimately borne out after Cobb Energy was formed.

1. Company Structure and Board Members

When Brown instructed Cobb EMC’s attorneys to establish Cobb Energy he did not have a detailed plan, and in fact did not even know what products Cobb Energy was going to sell. (Exhibit No. 5, Transcript of Telephone Conference dated May 23, 1997, p. 7, discussing possible delay to formation of Cobb Energy and stating, "... it allows us to allow the issues to unfold in a natural way. In a timely way... And then it seems to me when we look at it, we can look at it in the context of a real live business plan... that’s always been my beef with Dwight, is Dwight where is the business plan."

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3 During review of the physical files provided by Brock Clay, documents that appear to be transcripts of telephone calls were discovered. Many of the calls include a file path that begins "Im" and appears to indicate the calls were transcribed by Linda McIver, the legal assistant to Bonnie Wilson, Esq. After discussion with the Cobb EMC Audit Committee, Fellows LaBriola LLP and CliftonLarsonAllen LLP did not make an effort to contact Ms. McIver to verify the authenticity of the documents.

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Initially, counsel for Cobb EMC determined that Cobb Energy should be a separate company with which Cobb EMC would have no affiliation at the outset. Counsel stated, Cobb EMC “may want to just create an entity that has board members at least initially that don’t have any relationship to Cobb EMC.” They went on to suggest that one possibility was to have the Board composed of lawyers from the local firm representing Cobb EMC, or friends of that firm or Brown himself. The reasoning for choosing such individuals for the Cobb Energy board was because “what difference does it make if [the board members] have the appropriate motivation, they are going to do what they are told anyway.” (Exhibit No. 4, Transcript of Telephone Conference dated May 22, 1997, p. 1).

Brown even planned to grant at least one of his personal friends a position on the Board in exchange for their investment in Cobb Energy. (Exhibit No. 6, Transcript of Telephone Conference dated August 5, 1998). Brown stated, “I have made a verbal commitment, and I’ve talk [sic] to the board about it, I’m going to have one other entity, one person, I’m going to allow her to buy $100,000 worth of stock just to sit on the board.” (Id. at 4). He continues the discussion with counsel for Cobb Energy:

Dwight Brown: ... I’ve made a personal commitment on this one and I’m going to stick to it. And besides that, we need to get a man on the board anyway.

Counsel: You probably need to do that before we actually transfer the meters. What percentage do you want this individual to own?

Dwight Brown: No, no, no, he’s going to—we’re going to leave the stock shares just where they are and he’ll buy $100,000 worth.

During the course of the forensic audit it became apparent that Lee McKinstry is the individual referenced above. He was issued shares in 1998 prior to any other individual investor and his Class A Preferred Shares entitled him to election to the Cobb Energy Board of Directors “for so long as he holds shares in the Company...” (Exhibit No. 7, McKinstry Subscription Agreement § 5.12).
Thus, the plan from the outset was to have Cobb Energy controlled by board members who would follow the direction of Brown. The initial directors of Cobb Energy were David McGinnis, Frank Boone, and Dwight Brown. These three then chose the additional Board Members: Harold Chitwood, Lee McKinstry, David Hink, Robert Elsberry, Dean Alford, and a representative of NCSC.

2. Ownership of Cobb Energy and Potential Legal Challenges to Formation

Brown and Cobb EMC's attorneys understood that retail activity by an EMC was outside the scope of activities sanctioned by the Enabling Act. (Exhibit No. 4, Transcript of Telephone Conference dated May 22, 1997 at 3 “we can't control it and [legally] do indirectly what we can't do directly”). Therefore, they initially did not want the retail company (Cobb Energy) to be wholly (or even partially) owned by Cobb EMC. Instead, they envisioned that Cobb Energy would be “formed by and... owned by either Dwight or individuals close to Dwight.” (Id. at 3).

However, because counsel for Cobb EMC anticipated a legal challenge to the formation of Cobb Energy, they ultimately decided that it would be best to form Cobb Energy as a wholly-owned subsidiary, then dilute Cobb EMC's interest in the company so that it no longer controlled Cobb Energy. (Exhibit No. 5, Transcript of Telephone Conference dated May 23, 1997 at 2, 4 “And so we are going to sell down enough interest so that we don’t control it.”) This decision was based on the concern that Cobb Energy's retail activities might be viewed by the membership as taking a corporate opportunity from Cobb EMC. (Exhibit No. 4, Transcript of Telephone Conference dated May 22, 1997 at 2). Cobb EMC's counsel reasoned that if this challenge was raised, they would “ride in on a stead [sic] in shining white and say we have studied the matter; we’ve studied the groupings to make [Cobb Energy] successful and although some of them could be performed by Cobb EMC, many of them in our opinion could not and therefore the board of directors has decided that because most of them couldn’t, that it is in the best interest of Cobb to have this matter be done by somebody else.” (Exhibit No. 4, Transcript of Telephone Conference dated May 22, 1997 at 3).

Thus, from the outset, Brown and Cobb EMC’s counsel (acting at Brown’s direction) planned to set up Cobb Energy as a company that would eventually perform activities Cobb EMC could not legally perform pursuant to the Enabling Act, requiring that Cobb EMC dilute its interest in Cobb Energy so that it no longer controlled the company. In order to gain approval for the planned dilution of Cobb EMC’s ownership, their plan was to tell the Cobb EMC Board, “look, we can’t do this directly because of the Enabling Act restrictions, we think it is a good idea and even though we can’t control it and do indirectly what we can’t do directly, we think our
investment into the entity is good for Cobb EMC and you know provide those reasons to the board so then there’s that closer alignment and interest...” (Id. at 3).

Counsel expected that even after the dilution of Cobb EMC’s interest in Cobb Energy that someone would challenge Cobb EMC’s partial ownership as a violation of the Enabling Act. Counsel for Cobb EMC planned to “[lay] the trap correctly” so that Cobb EMC would win any legal challenge to the structure of Cobb Energy and “that suit [would then become] authority for a much wider expansion of what’s been proved and we’ve actually done.” (Id. at 4)

There was a challenge to the structure of Cobb Energy by SCANA in the early 2000’s. However, the challenge was handled in arbitration and mostly addressed the contract between Cobb Energy and SCANA. The decision of the arbitrators appears to have emboldened counsel for Cobb Energy regarding the structure of the company. (Exhibit 8, Telephone Conference Transcript dated November 7, 2001 at 1 “... they even went further to say that the activities were within the scope of the powers of the EMCs.... I think we’re in a situation where we cannot look backwards and find out what the law is because there ain’t no law, Right.”)

Unfortunately, the next challenge to Cobb EMC’s interest in, support of, and relationship to Cobb Energy did not come until 2007. By that point, Cobb Energy had drained millions of dollars from Cobb EMC.

3. How to Capitalize Cobb Energy

Prior to forming Cobb Energy, counsel for Cobb EMC also discussed how best to capitalize Cobb Energy. Brown and Cobb EMC’s counsel planned to use Cobb EMC’s assets as initial capital for Cobb Energy. The question then became “how to get money into the company from Cobb EMC.” (Exhibit No. 4, Transcript of Telephone Conference dated May 22, 1997 at 1). Counsel stated, “I think there are different ways we can [get money into Cobb Energy from Cobb EMC], we can have Cobb EMC buy preferred stock, we can have them buy subordinated debt, we can have that preferred stock in part convertible.” (Id.) Another option raised was having Cobb EMC loan Cobb Energy money, or guarantee a loan for Cobb Energy. (Id.)

Subsequent to these conference calls, counsel for Cobb EMC examined the issue of what authority the Cobb EMC Board of Directors had to transfer the assets of Cobb EMC to Cobb Energy. Counsel for Cobb Energy prepared a memorandum opinion that Cobb EMC could not sell or transfer the majority of its assets (such as the electric meters) unless it was either insolvent or it received the approval of the shareholders [sic] (“members”). (Exhibit No. 9, Memo dated June 27, 1997).
“Nothing in the case law, however, suggests that the board of director’s [sic] can blatantly violate the mandates prescribed by statute and expand the limited statutory exception. In fact, cases frequently acknowledge that shareholder approval is necessary for transactions involving the sale of a substantial portion of corporate assets.” (Id.) The conclusion of that memorandum was:

Further limiting the discretion of the board is the oft cited clause, ‘unless otherwise provided by the articles of incorporation or bylaws.’ The presence of such language in a corporation’s organizing documents places additional constraint on the board’s authority to sell assets, even if less than a substantial portion. Ultimately, the board must chose [sic] between complying with the express provision of the bylaws and articles of incorporation or obtaining the consent of informed shareholders.

(Id. at 7)

Along with capitalization, Brown and Cobb EMC’s counsel considered who would be permitted to have an ownership interest in Cobb Energy. The plan from the outset was to have Brown be a shareholder in Cobb Energy. Counsel reasoned that it would look best if he was not an initial purchaser of stock, however, but was given his stock as a part of an employment agreement with Cobb Energy. (Exhibit No. 4 at 4). Counsel imagined that Brown would not draw a salary from Cobb Energy “until the entity becom[es] operational and profitable” and therefore the stock grant would be compensation for services he would be providing. (Id.)

Brown and Cobb EMC’s counsel also discussed other individuals and entities that would be hand picked to invest in Cobb Energy by purchasing preferred stock. During a call on August 5, 1998, Brown informed Bonnie Wilson that he had made a verbal commitment to “allow [an unknown person] to buy $100,000 worth of stock just to sit on the board.” (Exhibit No. 6 at 4, Transcript of Telephone Conference dated August, 5 1998). This ultimately proved very important because each of the preferred shareholders (including Cobb EMC’s counsel and Brown’s friends) earned an 8.85% dividend on their stock.

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4 Of course this was not the case. Cobb Energy never had positive retained earnings. Despite that, Dwight Brown began drawing a salary of $280,000 from Cobb Energy effective 9/21/98.
4. **Expectations Regarding Profitability**

While Brown and his counsel may not have planned on forming a corporation that would continually leach money out of Cobb EMC, they did expect that Cobb Energy would not be profitable for some time. (Exhibit No. 4 at 5). Counsel for Cobb EMC understood that there was "no chance for profitability for the services offered by the new retail company [Cobb Energy] until [it] reached a subscription level well beyond Cobb's current membership." (Exhibit No. 5 at 10, Transcript of Telephone Conference dated May 23, 1997). They expected that at best one-third of Cobb EMC's membership would sign up for Cobb Energy's retail offers and understood that would be insufficient for Cobb Energy to produce a profit. (Id.) Thus, "if a third is not enough to make it profitable, then [Cobb Energy's] got to have a bigger service area." (Id.)

Counsel for Cobb EMC appeared unconcerned with the likelihood that Cobb Energy would not make a profit for a number of years. Instead, they viewed the time that Cobb Energy would only be serving Cobb EMC customers as an incubation period: “maybe if we can time is [sic] such that when we need to go outside the membership we'll have experience so that from a marketing standpoint they feel that they can successfully sell outside their membership and that will also support the need to divest [Cobb EMC of some of its ownership interest].... That gives us a chance... to sort of incubate these programs in a safer environment.” (Exhibit 5 at 10).

Cobb EMC's counsel devised a way that Cobb EMC could “incubate” Cobb Energy by guaranteeing that Cobb Energy would make sufficient profit to pay off any loans it incurred for startup capital from its investors (such as National Cooperative Services Corporation). Counsel proposed that, "at least one way to transfer money to [Cobb Energy] is to transfer 50% of your personnel and then enter into a management agreement with Cobb EMC and once you've done that flow, flow back enough net income to [Cobb Energy] that it creates the whatever income target you've got. I mean if [Dwight Brown's] got a payroll at Cobb EMC of $20,000,000 a year... you'd just, once you hired the employees, you would push a $20,000,000 bill back over to Cobb [EMC] and you'd add onto it $350,000... worth of profit.” (Exhibit No. 4 at 7-8). This appears to be the origin of the "adder fee."

5. **Formation of Cobb Energy**

On September 3, 1997, Brown and Cobb EMC's legal counsel officially created Cobb Energy Management Corporation, a wholly-owned, for-profit corporation of Cobb EMC. In order to capitalize Cobb Energy, Brown and his legal counsel devised a plan to work around the bylaws of Cobb EMC allowing them to transfer assets to a
wholly owned subsidiary corporation (Cobb Energy) without having to get the approval of the Cobb EMC membership. (See Exhibit No. 9 at 6, June 27, 1997, Memorandum finding that assets could not be transferred unless Cobb EMC was insolvent or the Board of Directors received the approval of the Cobb EMC membership).

On or about September 6, 1997, Cobb EMC authorized the officers of Cobb EMC or the Chairman of the Board to create Cobb Energy. (Exhibit No. 10, Cobb EMC Certificate of Resolution dated September 6, 1997). The Cobb EMC Board of Directors also approved the Bylaws of Cobb Energy, and appointed Dwight Brown, David McGinnis and Frank Boone as the "initial Directors" of Cobb Energy. (id.) The Cobb EMC Board also directed Cobb EMC to purchase 200,000 shares of Common A Stock for $10,000, and 1,000 shares of Common B stock for $1,000, making Cobb EMC the sole shareholder of Cobb Energy. (id.) On October 9, 1997, the Board of Directors of Cobb Energy approved and adopted the Bylaws and approved Cobb EMC's application for Cobb Energy shares. (Exhibit No. 11, Cobb Energy Management Corporation Certificate of Resolutions, and Exhibit No. 12, Cobb Energy Share Subscription Agreements for Cobb EMC's stock purchases dated October 9, 1997).

Shortly thereafter, Cobb EMC began transferring its assets to Cobb Energy. On November 25, 1997, Cobb EMC transferred its employees to Cobb Energy without any compensation to Cobb EMC. (Exhibit No. 13, Cobb EMC Board Minutes dated November 25, 1997). Then, on December 16, 1997, the Cobb EMC Board approved a 40-year service contract with Cobb Energy in which Cobb Energy would provide Cobb EMC with employees and bill Cobb EMC cost plus 2% (the "adder fee"). (Exhibit No. 14, Cobb EMC Board Minutes dated December 16, 1997, and Exhibit No. 15, Operating Agreement Between Cobb EMC and Cobb Energy dated December 29, 1997).

This management contract allowed Cobb Energy to simply take a 2% fee of salary and fringe benefits for base services provided to Cobb EMC ensuring that Cobb Energy would have a set amount of income. (id.) The transfer of Cobb EMC's workforce and the creation of the management contract were exactly the actions outlined by counsel for Cobb EMC in May of 1997. Moving Cobb EMC's employees to Cobb Energy and then setting up the 2% "adder fee" was supposed to ensure that Cobb Energy generated a set profit while it was developing various retail products to sell to Cobb EMC members.

Over the next several months Brown led several other efforts to add capital to Cobb Energy. Ultimately, three main actions were taken to provide Cobb Energy with additional capital: (1) Cobb Energy entered into a contract with SCANA to
market natural gas to Cobb EMC members (3.5% commission paid to Cobb Energy with an additional $20 for each customer over 50,000 that signed up); (2) Cobb Energy sold the NCSC preferred stock guaranteed by Cobb EMC; and (3) Cobb EMC approved the transfer of Cobb EMC's electric meters to Cobb Energy with a book value of $9,696,967.

6. The SCANA Contract

On or about May 29, 1998 Cobb Energy entered into a ten-year contract with SCANA Energy Marketing, Inc. to market natural gas to Cobb EMC's membership. (Exhibit No. 16, Natural Gas Retail Services Alliance Agreement). SCANA was looking for a way to gain access to customer information since the natural gas industry had recently been deregulated. Cobb Energy contracted to market SCANA gas to Cobb EMC members using the Cobb EMC customer list. Cobb Energy did not compensate Cobb EMC for the customer list, nor did it share any of the proceeds of the SCANA contract with Cobb EMC.

The contract provided that SCANA would pay Cobb Energy “three and one half percent (3.5%) of SCANA’s gross revenues from natural gas retail sales made to all firm residential and commercial customers” within Cobb EMC’s membership territory. (Exhibit No. 16 at Section 3.1(a)). Cobb Energy would also be paid a $20 per customer bonus after 50,000 customers signed up. (Id. at Section 6.1). This contract proved to be highly lucrative for Cobb Energy. From 1998-2005 Cobb Energy received a large amount of revenue from SCANA pursuant to the contract. (Exhibit No. 17, Seventh Amendment to Natural Gas Retail Service Alliance Agreement, terminating Agreement on October 31, 2005; Johnson Interview dated January 17, 2013, stating that he estimates Cobb Energy received about $9 million per year from the SCANA contract).

The income from the SCANA contract was able to cover a multitude of financial sins being committed by Cobb Energy between 1998 and 2005. This is because the SCANA revenue stream, along with the adder fee that was charged to Cobb EMC by Cobb Energy, helped cover the losses of the various subsidiaries Cobb Energy had acquired. This became apparent in 2005 when Cobb Energy terminated the SCANA contract and that revenue source dried up. (Schoonover interview January 15, 2013, noting that Cobb Energy cash flow was not a major issue until after the SCANA contract terminated; estimates that $6-10 million was lost by Cobb Energy due to the early termination of the contract; analysis of balance of Accounts Payable to Cobb EMC related to customer receipts, showing a steady increase in July 2004 and showing a balance of $6.4 million the end of 2005, and showing that interest related to customer receipts does not begin to accrue until April 2006,
indicating that only after termination of SCANA was Cobb Energy completely unable to reduce the outstanding debt to Cobb EMC balance).

7. **Investment in Cobb Energy by NCSC**

On or about January 26, 1999, Cobb Energy sold 200,000 shares of preferred Cobb Energy stock allegedly valued at $5 million to National Cooperative Services Corporation. However, NCSC’s stock purchase was not a typical investment. NCSC paid $5 million for the Cobb Energy stock, but Cobb Energy communicated to NCSC that Cobb Energy planned to pay a quarterly dividend on the stock, and that NCSC would have the right to require Cobb Energy to buy back the shares as of August 15, 2001. Further, Cobb Energy’s promise to repurchase the stock if NCSC exercised its put option on or after August 15, 2001, was guaranteed by Cobb EMC. *(Exhibit No. 18, Subscription Agreement § 8.01)*. Thus, although it was technically structured as a stock purchase agreement, NCSC’s investment functioned exactly like a short-term loan to Cobb Energy that was guaranteed by Cobb EMC.

Specifically, the “purchase price” of the stock ($5 million) was the amount of the loan; the quarterly dividend payments were the interest payments made by Cobb Energy on the funds borrowed; and Cobb EMC’s promise to purchase the stock from NCSC in the event that Cobb Energy could not do so at the end of the five-year term functioned as Cobb EMC’s guarantee of NCSC’s loan. Dwight Brown, a representative of NCSC, and Cobb Energy’s counsel, agreed to this structure for Cobb EMC and Cobb Energy. *(Exhibit No. 6 at 10-11, Telephone Conference Transcript dated August 5, 1998)*, “that is kind of the credit package...Dividends aren’t required, if any are paid, they are made to [NCSC] and [NCSC] may have a makeup on the [stock] put if dividends aren’t paid. It seems to me the credit package works pretty good”; at 14, “from [Cobb Energy’s] standpoint, they are going to treat this in effect in all respects as if it is a loan”; at 7, “what [Cobb EMC] is guaranteeing [NCSC] is the 7 1/2% return on the $5 million if they exercise the put”; at 8, “The object is... to create something... that performs as much like a debt instrument as we can make it. And a debt instrument would be payable quarterly... recognizing, however, that the ultimate security that [NCSC has] is the put, because if the dividends are declared, the way you determine your put price is the amount of money that would in effect make the poll [sic] as if they had declared dividends all along*). In the event that NCSC did not receive $110,625.00 in quarterly dividend

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5 Although the transaction occurred earlier, the guarantee was approved by the Cobb EMC Board on January 26, 1999. *(Exhibit 19, Cobb EMC Board Minutes Dated January 26, 1999)*.

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payments, that would be considered a dividend shortfall that had to be repaid pursuant to the put option. (Exhibit No. 18, Subscription Agreement § 5.10, §7.03).

8. The Sale of Cobb EMC's Electric Meters to Cobb Energy

Cobb Energy's transaction with NCSC was coordinated with the transfer of Cobb EMC's electric meters to Cobb Energy.6 Also on July 28, 1998, the Cobb EMC Board approved the transfer of Cobb EMC's meters at a book value of $9,696,967.7 (Exhibit 20, Cobb EMC Board Minutes dated July 28, 1998). Cobb Energy paid Cobb EMC for the meters by issuing it 200,000 Class A Common stock shares of Cobb Energy and paying $5 million in cash. The 200,000 shares of Cobb Energy stock were purportedly valued at $5 million, making Cobb EMC's total compensation for the meters $10 million. However, these new shares purportedly issued to Cobb EMC were never recorded or issued. (See e.g. Exhibit 18 at 57 showing Cobb EMC owned a total of 200,000 shares of Class A Common Stock as of January 26, 1999; and Exhibit 10 at 27, showing Cobb EMC already purchased 200,000 shares of Class A Common Stock on September 6, 1997).

Dwight Brown, NCSC, and counsel for Cobb Energy specifically structured the meter transfer and NCSC's stock purchase so that the funds paid by NSCS for its stock could be used by Cobb Energy to make the $5 million cash payment to Cobb EMC. (Exhibit No. 6, August 5, 1998 Telephone Transcript). Dwight Brown proposed that the money not be transferred to Cobb EMC because "[t]hey don't need $5 million" (Id.), but in the end counsel for Cobb EMC and Cobb Energy decided it was in Cobb Energy's best interest to pay the $5 million to Cobb EMC. Their reasoning was that if the money was not paid to Cobb EMC, Cobb EMC would have a higher debt priority position than NCSC and NCSC might not agree to the proposed stock purchase (if Cobb Energy went bankrupt Cobb EMC would get paid before NCSC for its stock). (Exhibit No. 6, Telephone Transcript dated August 5, 1998, at 15, "...the note and liquidation would come in ahead of their equity, plus, if the note's [sic] right, the interest would come ahead of their right to dividends.")

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6 The meters had previously been transferred to Cobb Energy on February 24, 1998. The Board resolution transferring the meters left the value of the meters blank. The Board rescinded this resolution on March 24, 1998 at the request of Dwight Brown. No discussion regarding the reasoning for the rescission was noted in the notes of the meeting. (Exhibit No. 20, Cobb EMC Board Minutes dated February 24, 1998 and March 24, 1998, and Cobb Energy Board Minutes dated March 24, 1998).

7 Notably, in December 2, 1997, Arthur Anderson valued the meters at $15,700,000. (Exhibit No. 21).
Another consideration in structuring the deal was what the respective ownership percentages of Cobb EMC and NCSC would be after the stock transactions occurred. The deal was structured so that after the additional stock issuance that both Cobb EMC and NCSC would have equal shares of stock and together their shares would total 49%. (Id. at 5 “So, what we need to find out and what [counsel] and I [Dwight Brown] have basically concluded is we’ll issue enough stock so that the diluted value of Cobb Electric and NCSC becomes 44%.”) Keeping Cobb EMC and NCSC’s shares proportional was one reason that an all-stock transaction with Cobb EMC for the meters was rejected. (Exhibit No. 6 at 15, Telephone Transcript dated August 5, 1998, discussing Cobb EMC’s investment and compensation for the meters, “The $5 million in cash I think what it really does is make sure that the ownership of stock by Cobb is more or less equal to the ownership of stock by CFC and it’s the cash that goes back that keeps it all in balance.”)

9. *The Meter Reading Contract and Maintenance Costs*

After the meters were transferred, Cobb Energy continued seeking additional funds from Cobb EMC. On or about December 17, 1998, the Cobb EMC Board approved payment to Cobb Energy of $3,165,881 for meter reading and marketing services. Counsel for Cobb EMC and Cobb Energy had also previously highlighted meter-reading services as a way “to run through a ton of expenses” to Cobb EMC. (Exhibit No. 6 at 15, Telephone Transcript dated August 5, 1998, “I’m thinking if you’ll take a look at the operating agreement... we tried to make this one sentence extremely vague and what it said is that [Cobb Energy] has the right to charge Cobb EMC any and all expenses associated with providing any of the services and we anticipated using that clause to run through a ton of expenses, operational expenses that [Cobb Energy], that Cobb EMC now incurs in conjunction with the meters and that in essence, you know, Cobb EMC would continue to absorb that.”)

Thus, by January 26, 1999, Cobb EMC only owned 200,000 shares of Cobb Energy stock (the same amount as NCSC) although it had contributed: (1) its employees; (2) its customer list; and (3) its electric meters. Further, Cobb EMC was being charged 2% to utilize the services of the employees it transferred to Cobb EMC and all the costs associated with the meters it no longer owned.\(^8\)

\(^8\) The shares issued to Cobb EMC were not properly recorded or tracked, and it is possible that Cobb EMC owned more or less stock at this point in time but based on the actions of the companies it appears that at this time management considered Cobb EMC to have a minority interest with NCSC. (*See p. 41, supra*). Notably, on October 23, 2001, the Cobb EMC Board approved a reduction in Cobb EMC’s

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In December 2000, the Cobb EMC Board renewed its meter reading contract with Bermex. (Exhibit 23). Although this contract was between Cobb EMC and Bermex, Cobb Energy charged Cobb EMC an adder fee for Bermex’s services. (Johnson Interview dated January 17, 2013, stating that he discussed the adder fee being applied to the Bermex meter-reading contract).

10. Approval of Dividend Payments for Cobb Energy Preferred Shareholders and Additional Shareholders Selected by Brown

To support the quarterly payments expected by NCSC, on August 27, 1998, the Cobb Energy Board approved amended Articles of Incorporation that provide for the payment of an 8.85% dividend to the owners of Cobb Energy preferred stock. (Exhibit 24).

On October 30, 1998, Cobb Energy also issued 4,000 Class A Preferred shares to a friend of Dwight Brown, Lee McKinstry for $100,000. (Exhibit 7). Dwight Brown planned this issuance to McKinstry prior to NCSC’s stock purchase. He stated on a call with counsel for Cobb Energy that “I have made a verbal commitment, and I’ve talk [sic] to the board about it, I’m going to have one other entity, one person, I’m going to allow her to buy $100,000 worth of stock just to sit on the board.” (Exhibit No. 6 at 4, Transcript of Telephone Conference dated August 5, 1998). Brown and counsel for Cobb EMC and Cobb Energy then discussed how many shares McKinstry would receive and when it would be best to issue those shares. (Id. at 5) This “handpicking” of friends of Brown to be shareholders of Cobb Energy continued throughout Cobb Energy’s existence.

For example, Cobb Energy’s counsel Bonnie Wilson became a preferred shareholder in Cobb Energy. However, prior to any preferred shares being issued she stated,

Bonnie Wilson: Well, the way it’s structured in terms of the ongoing dividends, and it’s to the board to declare them and I would like to make some.

Dwight Brown: I’m guarantying them enough.

ownership interest of Cobb Energy from 100% to 49% (Exhibit No. 22, Cobb EMC Board Minutes for October 23, 2001, stating that Cobb Energy would repurchase 27,087 of Class A common stock at $26.23 from Cobb EMC, but there was no actual cash flow documented on the books and records of either company).
11. Cobb Energy's Acquisition of Businesses Without Consideration of Business Plans or Financial Information

Soon after creating Cobb Energy, Dwight Brown began directing Cobb Energy to acquire businesses as subsidiaries of Cobb Energy. In total, Cobb EMC acquired or created the following entities: ProCore Solutions, LLC ("ProCore"); Cooperative Benefits and Financial Services, LLC ("CBFS"); Cooperative Business Ventures, Inc. ("CBV"); Allied Utility Network, LLC ("Allied"); Cobb Energy Pest Control, LLC ("Cobb Energy Pest"); Cobb Energy Mortgage Services, LLC ("Cobb Energy Mortgage"); Marable-Pirkle Services, LLC ("MPS"); Allied Energy Services, LLC ("Allied Energy"); Energy Consulting Group, LLC ("ECG"); and Cobb Energy Right-of-Way, LLC. During the investigation Fellows LaBriola LLP and CliftonLarsonAllen LLP found no evidence that Cobb Energy reviewed or approved any business plan for any of the businesses it acquired or created.

When Fellows LaBriola LLP and CliftonLarsonAllen LLP interviewed Cobb EMC employees regarding the process Cobb Energy used to select acquisition targets, they indicated that Dwight Brown chose the businesses and told the Cobb Energy Board that Cobb Energy would be acquiring the business. No one presented a business case to the Board on any of the acquisitions, nor did the Board discuss the company's financials, or what compensation would be provided to the employees and management of the business once it was acquired.

With the exception of CBFS and arguably ProCore, all of the entities acquired by Cobb EMC lost money, some on a grand scale. Further, it was clear to multiple employees of Cobb Energy that the businesses acquired were "losers" and were a financial drain on Cobb EMC. During interviews, witnesses indicated that they brought the financial drain to Dwight Brown's attention on multiple occasions but that each time they were rebuffed. The only time that anyone was successful in getting Brown to shut down one of the subsidiaries was in 2008 when Cobb Energy Mortgage had signed no mortgage contracts in a full month. After multiple discussions with Brown on the failing state of that business (in that month it generated no revenue and had significant expenses) Brown reluctantly agreed to shut down the business.

- Cooperative Benefits and Financial Services, LLC ("CBFS")
  - Cobb Energy acquired this subsidiary in 2000. It was an employee benefits brokerage firm and also engaged in wage/hour consulting. The company was run by Winston Tan who mainly performed wage and hour

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consulting, but also had experience as a benefits broker. The business was owned 100% by Cobb Energy and was one of the few profitable subsidiaries of Cobb EMC. Based on interviews with witnesses this success was attributed to CBFS’s sales of benefits plans to Cobb Energy employees. This was highlighted as a likely violation of ERISA by Cobb Energy’s labor and employment counsel. Further investigation would be necessary to determine if CBFS corrected the potential violation. In 2010, the Liquidating Trust sold the benefits brokerage portion of CBFS to an unrelated third-party for 50% of the revenues from CBFS’s then current book of business for a period of three years. In 2010, the Liquidating Trust sold the wage/hour consulting portion of the business to Winston Tan in exchange for $150,000 and 10% of the revenues from CBFS’s then current book of business for a period of two years. Notably, the liquidation of the consulting portion of the business was negotiated in conjunction with Mr. Tan’s Cobb Energy severance agreement.

- Cooperative Business Ventures, Inc. ("CBV")
  
  o CBV was a security company. Carroll Robertson who was a former employee of another EMC ran the company. Multiple witnesses indicated that the business was constantly losing money and that Cobb Energy had to make payments on CBV’s existing debt obligations because the company could not support itself. Witnesses also indicated that the presentations made by Ms. Robertson to the Cobb Energy Board made no sense.

- Allied Utility Network, LLC ("Allied")
  
  o Allied was a startup energy consulting business begun by Cobb Energy in 1998 with an investment of approximately $1.1 million for a 27.27% stake. Dean Alford was the company’s CEO. From 1998 – 2008, Cobb Energy contributed additional capital to Allied, and their ownership share grew to 93%. Allied was one of the affiliates assigned to the Liquidating Trust. In the Trust’s final report to the Honorable Stephen Schuster, the trustee noted Allied had no active business and a Certificate of Dissolution had been filed with the Delaware Secretary of State on July 22, 2011. Cobb Energy’s financial statements appeared to show additional investments totaling $4.8 million from 2003 to 2006.

- Allied Energy Services, LLC ("Allied Energy")
  
  o Allied Energy was another start up energy consulting business begun by Cobb Energy in 2004 with an investment of $200,000. Cobb Energy owned 100% of Allied Energy. Dean Alford was the company’s CEO. Allied Energy was sold to Mr. Alford on August 9, 2011, for $128,255.52

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with 25% down and the balance due in three quarterly installments. Cobb Energy's General Ledger showed activity in the investment in Allied Energy account for approximately $3.8 million from 2004 to 2008 that appeared to be investment from Cobb Energy but we cannot be certain due to a lack of detail in the General Ledger.

- **Cobb Energy Pest Control, LLC ("Cobb Energy Pest")**
  - Cobb Energy Pest was an existing pest control company bought by Cobb Energy in August 2005 for $315,000 from its owner, Tom Cotheran. Mr. Cotheran was the CEO of the business operation. As detailed in the Stock Purchase Agreement dated May 19, 2010, Cotheran bought the business from the Liquidating Trust on May 19, 2010, for $185,000, which he paid using funds from his severance package.

- **Cobb Energy Mortgage Services, LLC ("Cobb Energy Mortgage")**
  - Cobb Energy Mortgage was a mortgagor originator business begun by Cobb Energy in 2005 with an investment of $300,000. The business was 100% owned by Cobb Energy and operated by Dean Alford. The business had no active business when the settlement was approved and was wound down, then dissolved shortly after its transfer to the Trust. Cobb Energy's General Ledger showed activity in the investment in the Cobb Energy Mortgage account for approximately $1.1 million from 2005 to 2008 that appeared to be investment from Cobb Energy but we cannot be certain due to a lack of detail in the General Ledger.

- **Marable-Pirkle Services, LLC ("MPS")**
  - MPS was an existing Tennessee construction company owned by Messrs. Sylar and Pirkle. Cobb Energy closed a security purchase agreement in 2002, buying a 30% stake in the company for $1.5 million. Lewis "Buster" Sylar managed the company. During its operation it borrowed and repaid $500,000 in loans to Cobb Energy. When Cobb Energy transferred MPS to the Trust in 2008, it wrote the investment down by one-half to $750,000. On April 30, 2011, Cobb Energy wrote off the remaining $750,000 investment. The Trust sold its interest in MPS to Mr. Sylar on December 13, 2011, for $178,002.87, in an installment sale contract.

- **Energy Consulting Group, LLC ("ECG")**
  - ECG was an existing energy consulting business begun and owned by Anis Sherali. In 2000, Cobb Energy acquired a 25% share with an investment of $250,000. Mr. Sherali was the company's CEO. Cobb Energy's share was re-sold to Mr. Sherali on October 31, 2011, for $287,529.19.
• Cobb Energy Right-of-Way, LLC
  o Cobb Energy Right of Way was a tree service started up by Cobb Energy in 2007 for $300,000 to clear and maintain EMC’s right of ways. It appears that Cobb EMC was the Right-of-Way’s only customer and was staffed by ProCore employees. The operation was shut down in 2007.

• ProCore Solutions, LLC (“ProCore”)
  o ProCore was a Cobb Energy startup operation begun in 2000. Its CEO was Greg Steele. The business ran customer care and a call center for Cobb Energy to handle SCANA’s marketing and customer billing, Cobb EMC’s customer billings, and beginning in 2007, the customer billings for Gas South. Cobb Energy’s General Ledger showed activity in the investment in the ProCore account for approximately $2.2 million from 2006 to 2008 that appeared to be investment from Cobb Energy but we cannot be certain due to a lack of detail in the General Ledger. On February 4, 2013, the assets of ProCore Solutions, LLC, were sold to Donnelly Communications, an Atlanta-based provider of custom call centers, for a net purchase price of $1,785,000.

Another similar but unplanned business acquisition by Cobb EMC was done on Brown’s whim in 2005. According to Cobb EMC’s 2006 Annual Report, Cobb EMC signed a long-term lease for Pataula EMC’s facilities in March 2005, and paid $14.7 million. During his July 2014 interview, Mr. Nelson told investigators that while attending a co-op conference Dwight Brown told him he had just saved Pataula EMC from bankruptcy and had done a handshake deal with its CEO. No business plan or financial study was performed before this ill-advised decision yet the old Board accepted Brown’s endorsement of the deal without question.

12. **Purchase of the Naming Rights to the Convention Center**

Dwight Brown also negotiated a deal for Cobb Energy to purchase the naming rights to the Performing Arts Centre in Cobb County in 2005. He agreed that Cobb Energy would pay $20 million for the naming rights. This amount was reduced to $12.7 million in exchange for an accelerated payment schedule. Here again, no consideration was given to whether Cobb Energy had the financial capability to handle such a large payment obligation, or if it would receive value for the investment. Instead, Brown simply directed that this was something that Cobb Energy was going to do and the Cobb Energy Board approved a resolution allowing the deal to move forward.
The accounting staff at Cobb Energy was highly concerned about Cobb Energy's payment obligations under the naming contract and did not know how they were going to be able to make the payments due to the large losses that were already being experienced by Cobb Energy. Ultimately, in order to timely make the payments, Cobb Energy held onto funds that were due to Cobb EMC and used the cash ("float") as an informal, unsecured line of credit with Cobb EMC. Neither board approved this financial agreement.

In order to cover the additional expense of the Cobb Energy Performing Arts Centre naming rights, on or about February 22, 2005, the adder fee received by Cobb Energy was increased from 6% to 11%. The Cobb EMC Board did not vote on this increase.


In 2005 Dwight Brown renegotiated his employment agreement with Cobb EMC and Cobb Energy. Counsel for Cobb EMC and Cobb Energy negotiated two separate employment agreements for Dwight Brown. Neither agreement sets forth a specific salary amount, but both contain provisions regarding the loans provided to Brown. It is apparent from the communications regarding negotiation of his contract that the objective was to conceal the amount of compensation he was receiving from the Cobb EMC membership. (Exhibit No. 25 at 1, Email from Bonnie Wilson to Frank Layson dated September 7, 2005 stating that she “was trying to eliminate all references to the other entity to the extent possible.”) The Cobb Energy Board also discussed with counsel the possibility of withholding minutes of the meeting approving Brown's employment agreements. (Exhibit No. 26, Email dated November 12, 2007 from Lonnie Hale to Scott Gregory stating, “Please look over and let's talk about whether we want to try to protect the minutes of this meeting since it contains the employment contract for D. Brown between both Cobb Electric and Cobb Energy”). Additionally, the parties were aware that even if Brown's compensation came in large part from Cobb Energy, that the funds used to pay Brown's compensation would ultimately come from Cobb EMC because that was the source of Cobb Energy's revenue. (Exhibit No. 27, Email from Glenn Brock dated September 15, 2005).

Specifically, Glenn Brock, Esq., a lawyer on the Cobb EMC Board, and whose law firm—Brock Clay, represented Cobb Energy in 2005, referred the drafting of Dwight Brown's 2005 employment agreement to the law firm employing Brock's wife. In the email communications referring the work, Mr. Brock notes that Cobb Energy is a for profit corporation and that Cobb EMC and Cobb Energy will pay for the legal work to draft the agreement but the companies want most of Brown's compensation to be paid by Cobb Energy because "emc is a coop and has a public

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relations issue about paying a big contract.” (Id.) He also states that Cobb Energy "gets most of its operating capital" from Cobb EMC. (Id.)

During the negotiation of the employment contract, Bonnie Wilson, Esq., an attorney who previously served as counsel for Cobb EMC, and was heavily involved in the formation of Cobb Energy, acts as a personal representative of Dwight Brown and communicates with the attorneys for both Cobb EMC and Cobb Energy ("Brown's Counsel"). (Exhibit No. 25)

The 2005 employment agreements approved by Cobb EMC and Cobb Energy ultimately provide that Brown will be paid amounts set at the discretion of each of the respective Board of Directors, and will receive a $1 million “loan” from Cobb EMC and a $2 million “loan” from Cobb Energy neither of which require repayment. Brown's employment agreements also provide that the interest on the loans will be forgiven, and that he will be paid additional compensation to “true up” any tax consequences for the loan forgiveness. The purpose of the loans is to provide Brown with capital to acquire preferred shares of Cobb Energy stock. As noted above, all preferred shares of Cobb Energy stock were paying dividends of 8.85% regardless of the cumulative deficit by Cobb Energy. Thus, on his and his wife’s $3.1 million in preferred shares, the Browns received $265,500 per year for a total of $1.7 million in total dividends.

The “forgiveness” of the loans was negotiated to be airtight for Brown. Specifically, the agreement provided that the loans would be forgiven and that Brown would owe nothing (including interest) if he was terminated or died before the expiration of the loan term. This provision was pushed by Brown’s Counsel despite the fact that it was not in the best interests of Cobb EMC or Cobb Energy. Counsel for Cobb Energy, Ogletree Deakins, pointed out during the negotiations that it was not in the company’s best interest to include such a provision because the point of the loan forgiveness was to give Brown an incentive to stay with the company, and that incentive would be gone if the deal was structured so that if Brown was terminated the loans would still be forgiven. (Exhibit No. 28, Broxterman note to file dated October 14, 2005).

Despite this point raised by counsel for Cobb Energy, the provision regarding loan forgiveness for Brown became a part of the final agreement. Further, the agreement also provided that Brown would receive additional compensation to cover any tax liabilities associated with the loan forgiveness ("tax gross up") and would be made whole by Cobb EMC and Cobb Energy in the event that the IRS determined the loans were phantom income.
14. **Cobb Energy as a Financial Drain on Cobb EMC**

During the time that Cobb Energy was in existence, it completely relied upon Cobb EMC for financial support. As discussed above, Cobb EMC was the source of Cobb Energy’s capital in the form of its transfer of the electric meters for shares of Cobb Energy. It then became the key cash flow stream for Cobb Energy through the adder fee, meter reading contract, and finally through the “float.”

From 1998 through 2008, Cobb Energy billed Cobb EMC customers for their electric service. Cobb EMC customers would then make payments to Cobb Energy, and Cobb Energy would “net” the amount Cobb EMC owed Cobb Energy for the adder fee, and submit the remaining funds to Cobb EMC. During interviews, the Cobb EMC and Cobb Energy accounting staffs used the term “float” to reference unpaid amounts due to Cobb EMC from Cobb Energy related to these electric customer payments for power services. The Accounts Payable account at Cobb Energy was titled “A/P- Cobb EMC Wachovia Deposits” and the Cobb EMC Accounts Receivable account was titled “Due from CEMC-Wachovia.” Although these accounts appeared on the companies’ trial balance, they were not clearly identified on Cobb EMC’s Interim Quarterly Financial Statements but instead were listed as “Other AR.” Thus, although it was clear to the accounting staffs, and Dwight Brown, that a huge cash “float” Cobb Energy was relying upon and was not remitting to Cobb EMC in a timely manner, the way it was described in the financials was not apparent.

Initially, Cobb Energy remitted the electric receipts to Cobb EMC in a timely manner (1-2 days), but over time the float began to creep up. (Interviews with Cobb Energy accounting personnel). When the accounting staff was questioned regarding how the float occurred, they indicated that Cobb Energy simply did not have sufficient cash flow. Since Cobb EMC was a related entity, it was the last to get paid. Thus, if Cobb Energy ran out of money before paying Cobb EMC, then the unpaid amount was listed as a “due to” Cobb EMC. By April 2006, the outstanding balance associated with the customer receipts that Cobb Energy owed to Cobb EMC had grown to $9.8 million. At this time, the Cobb EMC accounting staff demanded that the balance begin to bear interest since it was clear the amount was growing and could not be repaid.

Accordingly, interest began to accumulate on the outstanding balance, and from April 2006 to December 2008, a total of $1.7 million in interest was recorded on both Cobb Energy and Cobb EMC’s books. By December 2006, the account balance owed for customer receipts had decreased to $7.7 million; however, the monthly balance only increased thereafter, indicating Cobb Energy’s inability to support itself without taking money from Cobb EMC. Based on the general ledger activity recorded, the balance at the end of January 2007 was $12.2 million. The
April year-end balances in 2007 and 2008 were $21.4 million and $26.9 million respectively. In December 2008, the time of the Fairness Hearing, the balance in this account was approximately $29 million.

Cobb Energy’s non-payment of the electric receipts also impacted Cobb EMC’s financial viability. Cobb Energy was already taking the “adder fee” from Cobb EMC, and withholding the money paid by customers for their Cobb EMC power bills. Thus, Cobb EMC could not pay its power costs out of revenue (because those amounts were not being transferred from Cobb Energy) and instead had to rely upon its credit lines in order to continue paying power suppliers. This is supported by the steady increase in Cobb EMC’s credit lines.

Specifically, on August 28, 2007, “Acting Chairman Chadwick reported due to continued growth and higher power bills in summer months, management recommended increasing the CFC and CoBank line of credit to $125 million to ensure adequate funds would be available.” (Exhibit No. 29, Cobb EMC BOD minutes dated August 28, 2007). A motion to increase the line of credit was made and carried. Prior to 2007, Cobb EMC had a line of credit balance with CoBank of $76.3 million with an additional balance with Regions Bank of $12.5 million; a total line of credit balance of $88.8 million. (Exhibit No. 30, Cobb EMC 2007 Annual Report; Exhibit No. 31, April 2007 Cobb EMC financial statements). By April 2008, the balance with CoBank decreased to $65 million, and Cobb EMC had lines of credit balances of $12.5 million each with Regions Bank and Georgian Bank. The total balance for these three lines of credit was $89.9 million. (Exhibit No. 32 at 3, April 2008 financial statements). By December 2008, there was an additional line of credit balance of $35 million added related to CFC. (Exhibit No. 33, December 2008 trial balance). The December 2008 balance related to the above lines of credit totaled approximately $100 million.

By the time of the settlement it is unclear exactly how close Cobb EMC came to its credit limit, but according to witness interviews Cobb EMC was “bumping up against” the $125 million limit about the time of the settlement in October 2008.
15. Termination of the SCANA Contract and the Financial Windfall to Cobb Energy

On or about October 31, 2005, Cobb Energy's contract with SCANA was terminated. The catalyst for the termination was Brown's decision that he wanted Cobb EMC to purchase Gas South (formerly Southern Company Gas, LLC). Since Cobb EMC owned stock in Cobb Energy, if Cobb EMC bought Gas South then Cobb Energy would be in violation of the terms of its contract with SCANA. Thus, even though the SCANA contract was highly lucrative and one of the only things keeping Cobb Energy afloat financially, because Brown wanted to purchase Gas South he demanded that Cobb Energy terminate the SCANA contract.

Upon termination of the contract, SCANA paid $8 million to the multiple members of the contract (there were other EMCs that also marketed SCANA gas to their respective members). Cobb Energy's portion of the $8 million was $6,488,291. SCANA also agreed to pay Cobb Energy $2,341,650 for Cobb Energy to refrain from natural gas services until April 30, 2008 under a non-compete agreement. (Exhibit No. 33, Cobb Energy 2006 Consolidated Financial Statement, Note 11). In total, SCANA paid Cobb Energy $8,829,941 upon termination of the contract. Cobb Energy was also paid $3,090,855 by Cobb EMC to cover the “tail costs” of wrapping
up the SCANA contract. (Exhibit No. 34 at 2, Cobb Energy Invoice to Cobb EMC dated April 12, 2006). This payment was made despite the fact that Cobb EMC was not a party to the SCANA contract. There is also no record of this payment being approved by the Cobb EMC Board.

One reason that the “tail costs” of the SCANA contract were so high was that a number of ProCore employees that had been servicing SCANA customers and billing for SCANA would be without anything to do for several months. According to witness interviews, Cobb Energy management recommended to Brown that the surplus workforce should be laid off. Brown rejected this request and demanded that the same staffing level be maintained because the employees would be needed to service Gas South after it was up and running.

b. Cobb EMC’s Power Purchases and Involvement with Power4Georgians, LLC (“P4G”)

During Brown’s tenure he focused on getting Cobb EMC (via Cobb Energy) into business areas not associated with electric power. However, he also supervised Cobb EMC entering into new power purchasing agreements, as well as working with other EMCS to develop a coal-fired power plant through Power4Georgians.

1. Power Purchases by Cobb EMC through 2011

After Cobb EMC was no longer required to purchase all of its power requirements from Oglethorpe Power Corporation, Cobb EMC retained Energy Consulting Group, LLC (“ECG”) to make power purchases and schedule power on behalf of Cobb EMC. During this time, a number of EMCS banded together as a single “scheduling member group” to give them more negotiating power in terms of purchasing power from third parties and entering into firm resources agreements. The group was identified by ECG as “SMG1.”

Although ECG was making the purchases for Cobb EMC and the other SMG1 EMCS, all the purchases relied on Cobb EMC’s credit. Thus, Cobb EMC was the party initially paying each counterparty for the power purchases. As the power cost for all of the EMCS were being run through Cobb EMC’s credit, that prevented Cobb EMC from meeting the “85/15” rule which allows electric co-ops an exemption from federal income tax: the exemption is permitted as long as 85 percent of an EMC’s income comes directly from their members. (IRC 501(c)(12)).
In January 2008, however, during the midst of the Pounds’ Derivative Action, Cobb EMC decided that it should go back to not-for-profit tax status for tax and transparency purposes. In order to do so it had to meet the 85/15 rule. Thus, the energy purchases of the other EMCS could no longer be run through Cobb EMC’s books. In order to continue negotiating as a group for power purchases, the members of SMG1 used CEI (which previously existed) to purchase power.

From 2008 through February 28, 2011, the transactions were run through CEI but still utilized Cobb EMC’s credit line. It was not until February 28, 2011 when CEI secured a credit line through its Scheduling Agreement with EDF Trading North America, LLC that Cobb EMC really broke away from SMG1 and demanded that ECG negotiate separate credit for the SMG1 power purchases.

2. Cobb EMC’s relationship with ECG

ECG was formed about the same time that Brown became CEO of Cobb EMC. Based on interviews with witnesses it is clear Brown had a close relationship with Anis Sherali, the CEO of ECG. Sherali was also heavily involved as an investor in Dwight Brown’s personal real estate development projects—the Retreat at White Oak and The Homes at Grove Hills. Brown contracted with ECG to make power purchases on behalf of Cobb EMC and to schedule power. On August 1, 2000, Cobb Energy made a payment to Anis Sherali for $250,000 in exchange for 25% ownership stake in ECG. From 2001 to 2003 Sherali was paid as an employee of Cobb Energy. He and his employees also received benefits and insurance through Cobb Energy. It is unclear if ECG was billed for the benefits services, but it appears likely that was the case. ECG also entered into a contract with Cobb Energy’s Human Resources Department whereby Cobb Energy handled ECG’s HR issues on an hourly basis and was to be charged for those services.

ECG was also housed at Cobb Energy. The rent paid by ECG for its space as of 2008 was $12,000 per month. Witnesses also indicated that ECG utilized Cobb Energy for its accounting services, and information technology services including email hosting. Sherali even used furniture from the Cobb EMC warehouse to furnish ECG’s offices.

In order to purchase short-term power on the market Sherali needed to go through a separate scheduling agent. It is unclear what process, if any, was used to select Cobb EMC’s scheduling agent Eagle Energy Partners, Inc. (“Eagle”). However, what CliftonLarsonAllen and Fellows LaBriola LLP did discover is that Cliff Hare, a personal friend of Brown, was the president of Eagle. Eagle was Cobb EMC’s scheduling agent from June 27, 2003, to January 1, 2008 (after which Cobb EMC used ECG which had a Scheduling Agreement with Eagle until it was purchased by
EDF Trading North America, LLC in September 2008). During that time, there was some dispute regarding the services provided by Eagle and if it was abiding by its agreement with Cobb EMC and the other members of SMG1 to split any profits made on trades utilizing Cobb EMC’s Network Integration Transmission Service Agreement ("NITSA"). Specifically, under the original agreement, Eagle could use the EMCs’ NITSA capacity to route power to other buyers, so long as the NITSA was first used to serve the EMCs’ loads. In exchange for this privilege, Eagle was required to split any profits made on third-party sales 50/50 with the EMCs. (Exhibit No. 35 at 15-16, Sherali Deposition). There are several emails where Sherali voices his concern that all the “profit pool” deals are not being reported by Eagle and thus, Cobb EMC is missing out on profit that Eagle is making by using Cobb EMC’s NITSA. (See e.g. Exhibit No. 36, email from Cody Moore to Anis Sherali dated July 28, 2005). Subsequently, because Cobb EMC was not able to verify what deals flowed on Cobb EMC’s NITSA that were not being added to the profit pool, ECG decided it was best to move to a fixed-fee arrangement.

In CEI’s Scheduling Agent Agreement with EDF Trading, EDF agreed to pay CEI “Monthly Transmission Rights Consideration” for use of the EMCs’ excess NITSA. The consideration was a fixed monthly payment of $100,000. (Exhibit No. 37 at § 2.3.2(d), CEI/EDF Scheduling Agent Agreement dated February 28, 2011).

CliftonLarsonAllen and Fellows LaBriola LLP tried to locate records showing the hourly purchases made by Eagle and/or EFD on behalf of SMG1 in order to evaluate the work performed by Eagle, EDF, and ECG. However, those documents were never provided to Cobb EMC and EDF, ECG, and CEI refused to make any such documents available despite Cobb EMC’s contractual right to access the documents. Based on interviews with witnesses, this was a normal course of practice for Sheri in his role with ECG and CEI. Specifically, one witness indicated that he went to Sheri’s office and demanded certain documentation related to energy purchases. Sheri refused, despite the fact that directors of two other EMCs (that were also members of CEI) were present. The witness then sat in Sheri’s office for an hour in an attempt to force him to provide the information. Sheri simply ignored the witness. When this information was taken to Dwight Brown, Brown said he would look into it and later told the witness that he did not need the documentation that had been requested.

As part of a 2009 CEI Deficiency Analysis, Frazier & Deeter ("F&D") did a critical review of ECG’s management of energy trading activities. The review was required for CEI to stop using Cobb EMC’s credit lines and obtain independent credit. F&D stated in their report, “[t]he objective of our overall project is to provide
Cooperative Energy, Incorporated ("CEI") (the "Company") management with a strategic plan to develop and maintain sound policies and procedures related to financial accounting, risk management, and regulatory compliance. (Exhibit No. 38 at 1). The main deliverable from our work is a Deficiency Analysis detailing the deficiencies noted in our review of the trading lifecycle processes and control activities identified by management and identifying considerations to improve the overall control environment for CEI." (Id. at 1).

During the course of its review, F&D found numerous "design and operating control deficiencies in the current business processes." (Id. at 2). Specifically F&D noted the following:

- Lack of standardization or appropriate control procedures for deal entry, confirmation, and contract review processes. Such inconsistencies included ECG's failure to use taped phone conversations to capture trade activity; lack of a standardized process to monitor incoming confirmations, review confirmation templates and authorization limits; and lack of proper personnel to review contract details for tax and accounting implications.

- Lack of appropriate procedures to ensure compliance with applicable accounting guidance and sound business risk management practices. This includes a failure to ensure that members at each EMC were performing accounting activities necessary to ensure that transactions are characterized appropriately; and failure to maintain a formal payment resolution process to ensure that their financial activity is properly reflected in their records. Additional issues included a lack of a standardized process for the origination, structure, and pricing of complex deals. F&D also noted a lack of an internal audit function at ECG that would reduce the business risk profile of the trading operation and assist in monitoring compliance with regulatory matters.

- F&D found that ECG's use of excel spreadsheets to process trade data and evaluate trade activity (instead of a package software specifically designed to process and track trading transactions and automate the Risk Management function) was a control deficiency. F&D highlighted this issue because there are many inconsistencies and inefficiencies that can occur through the use of various spreadsheets. Such inconsistencies include the lack of a formal change log/deal discrepancy database to effectively track and monitor all changes, an inefficient daily risk monitoring function, and the resulting delays in ECG's ability to provide each member with timely reports and data in order to ensure that their books of record are accurate and complete.
• ECG lacked a formal plan to aid in the future transition of the oversight and administration functions of the trading activity from ECG to CEI. F&D noted that the plan should include procedures to govern the contract management function, procedures for managing counterparty information, the scheduling function, and the document retention function including oversight to ensure compliance with regulatory guidelines. F&D found that CEI needed to develop a formal Risk Oversight Committee and Board of Directors to perform the necessary risk management and oversight functions.

• ECG lacked consistency in documenting and maintaining evidence of its review procedures, including lack of evidence that management reports were adequately and timely reviewed and key control activities were performed. F&D found that ECG did perform the review activities, however, ECG failed to document the activities so there was no way to tell how often or thoroughly these activities were performed.

• F&D also found that no controls existed around the use of critical spreadsheets. During the review F&D noted that ECG does not maintain an inventory of critical spreadsheets, and that it did not have proper protections in place to prevent unauthorized changes to critical elements of the spreadsheets used. Further, F&D noted that ECG lacked a formalized access review process for the spreadsheets. Thus, the information was not protected from modification, accidentally or otherwise, once the critical information was inputted.

In total, F&D came up with 46 specific deficiencies, along with recommended solutions for these deficiencies. ECG “refuted” all but two of these deficiencies. (Exhibit No. 39, Email from Sherali addressing alleged control deficiencies). Some of the more serious deficiencies highlighted by F&D were consistent with the whistleblower allegations regarding lack of documentation supporting trades:

The various EMC’s do not have visibility into the supporting data for each invoice. This information is utilized to record the appropriate journal entries on each EMC’s books. EMC’s do not have any way of challenging the information nor do they have adequate information to support their journal entries. Also, providing the EMC’s with the appropriate visibility into the financial information could result in a more timely process of booking and reviewing their journal entries.
(Recommendation 30). Likewise, Recommendation 40 also touched on ECG’s failure to provide information to the EMCs:

The various EMC’s do not have the access or capability to review the activities performed by ECG on behalf of the EMC’s in a timely fashion. The EMC’s receive month-end reports which are not very detailed and do not provide the EMC’s with the detailed information required in order to perform the appropriate derivative oversight as required by various regulatory authorities.

(Recommendation 40). F&D noted the problems that this can cause for the EMCs, “[t]he various EMC’s do not have access to review their daily positions and must rely on month-end reports for this information” (Recommendation 41).

Although the report of deficiencies appeared accurate, after reviewing the responses from Anis Sherali, F&D appeared to back off their findings and did not take further action to pursue them. For example, on January 15, 2009, Shane Hester responded to Sherali’s comments:

I have attached the updated version of our report based on responses received from Anis. Also, it appears as though some of the deficiencies noted in the report have already been remediated by ECG or are in the process of remediation by ECG. Also, keep in mind that some of the items that appear in this report as a deficiency are merely things that will need to change as CEI progresses and may not truly be a deficiency at this time (mainly those areas where we note that functions will need to transition to CEI). We can discuss these further when we meet and determine whether we want to remove some of these items or leave them on the report for reference.


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3. Gas Hedges

On or about March 4, 2008, the members of CEI entered into a contract with ECG to act as its consultant in managing their relationship with their scheduling agent and performing other power purchase related tasks. (Exhibit No. 41, Consulting Services Agreement between CEI and ECG dated March 4, 2008). Pursuant to that contract, ECG was allowed to enter into certain power "hedges" on behalf of the members of CEI. (Section 1(C), Consulting Services Agreement). A "hedge" is when a party pre-buys power well in advance to ensure a steady price. It is similar to a party buying a future in the commodities market, and is in essence a bet that the price they are currently paying for the hedge will be better or similar to the market price of the power at the time it is consumed.

Generally, a party will consistently hedge a certain amount of power purchases to ensure that power costs are not completely subject to the ups and downs of the short-term market. This insulates a power provider from the risk that its set rate schedule will not cover its power costs. For example, a power supplier will generally set its rate schedule based on the expected cost of power. However, if something unforeseen occurs, like a hurricane damages a power plant that would have otherwise supplied power at a reasonable cost, the power supplier may be forced to buy power on the market at a higher price (especially because the amount of available power will be less since some of the generation plants have been damaged). A party will not typically hedge a majority of its power because if it does so, it runs the risk that the hedge price it paid for power will be higher than the market cost, and thus it will be forced to either absorb the loss or to raise the rates it charges consumers higher than the market rate.

In 2007, when natural gas costs were very high, and had been rising for a year, ECG decided to hedge 100% of natural gas electric power for CEI for five years. Natural gas is used to produce electric power very quickly (as opposed to coal and nuclear power that must be scheduled further in advance) and is typically used to meet unexpected surges in power need. For example, at 4 p.m. on a day that is hotter than expected when many customers will be using their air conditioning and kids are getting home from school.

Shortly after ECG hedged 100% of gas for five years, the price of natural gas dropped dramatically. This was due in part to the rediscovery of natural gas in the Marcellus Shale region. Thus, the market was flooded with supply and the price of gas dropped.
However, despite the change in price CEI was locked into its hedge pricing contracts for the next five years. The total financial loss by the members of CEI totaled roughly $40 million over five years, with 46.9% of that loss falling on Cobb EMC. (Exhibit No. 35 at 42, Sherali deposition November 3, 2008). Further, since the hedge price was much higher than the market price, the suppliers demanded that CEI make periodic prepayments or "capital calls." Based on interviews with Cobb EMC employees these capital calls put a large financial burden on the members of CEI. Despite the large losses that the CEI members suffered as a result of the five-year gas hedge, CEI continued to use ECG as its power scheduler.

4. Power4 Georgians, LLC ("P4G")

Another power project championed by Brown during his time as CEO of Cobb EMC was P4G. When the project was started, the goal was to develop a coal-fired power plant in Georgia to supply the needs of Cobb EMC and other EMCS once their agreements with other power suppliers expired (Cobb EMC had several long term power supply contacts that they expected would not be renewed on favorable terms).

P4G is a partnership formed on January 15, 2008, by ten Georgia electric membership coops – Snapping Shoals, Cobb EMC, Diverse Power, Excelsior, Central Georgia, Upson Electric, Washington Electric, Jackson Electric, Pataula Electric and GreyStone Power. C. Dean Alford filed the name-reservation for P4G on January 9, 2008, and its initial principal office address was Alford’s office in Conyers, Georgia. The entity was active and in compliance with the Georgia Secretary of State’s Office as of January 12, 2015. P4G’s announced goal was to develop Plant Washington, an 850-megawatt power plant near Sandersville, Georgia by 2016; and a combustion plant - Plant Ben Hill, located in Ben Hill County. Senior Cobb EMC officers interviewed during the investigation advised that Plant Ben Hill was a “decoy” designed as a subterfuge to keep land prices lower in Washington County.

Plant Washington would be a supercritical, pulverized coal-fired boiler, touted by P4G’s press releases as being a highly efficient plant that produces more energy with less coal with state of the art scrubbers designed to reduce emission. The projected cost of the plant was estimated at $2.1 billion. P4G hired Allied Energy Services (“Allied”), a subsidiary owned by Cobb Energy, and run by Dean Alford to develop Plant Washington. Allied was hired by P4G without a Request for Proposal or competitive bidding process to develop the project. Prior to being hired by P4G, neither Allied nor Alford had any experience building or developing coal-fired power plants, and witnesses indicated he was hired on the basis of a recommendation by Dwight Brown.
Senior Cobb EMC management officers interviewed during the investigation indicated there was neither a business plan nor pro forma written to justify Cobb EMC’s involvement in P4G, and they are unaware of any documented due diligence prior to Cobb EMC’s decision to join P4G. Additionally, Cobb EMC’s officers told CliftonLarsonAllen LLP and Fellows LaBriola LLP that the EMCs involved in P4G lacked the credit to borrow the hundreds of millions of dollars required to build Plant Washington.

From 2008-2009, P4G bought options to purchase land or purchased parcels of land in Washington and Ben Hill Counties for the project. Only five of the P4G members participated in the Washington and Ben Hill projects:

- Cobb Electric Membership Corporation, Central Georgia Electric Membership Corporation, Snapping Shoals Electric Membership Corporation, Upson Electric Membership Corporation and Washington Electric Membership Corporation

The land and options were bought by several entities to conceal P4G’s intentions to assemble tracts of land for the power plants. These affiliates were Diverse Hunting Club and Huntington, LLC; Washington Timberland, LLC; Ben Hill Timberland, LLC; Cripple Creek Timberland, LLC; Paul Creek Energy Center, LLC; and Timberland Investment Company, LLC. A broker - Due South, received commissions of over $257,000 to purchase or transfer land purchased for the Ben Hill project.

Notably, prior to P4G’s formation, CEI had an ownership interest in two hunting clubs. Diverse Hunting Club and a second club were formed as early as 2007, and on or before December 2007 had purchased land options in connection with what would become P4G’s land development project. Hunting Club Management Co. was the sole member of each club, and CEI was the sole member of Hunting Club Management. Darren Meadows is identified as the Manager/Operating Manger for the two hunting clubs and for Hunting Management Co. Additionally, Diacom was involved in providing financing for the land options. (Exhibit No. 42, Email from Ms. Doris Rodriguez at Andrews Kurth to Chip Nelson).

As of December 31, 2011, Cobb EMC held a 39.4% interest in P4G, and had advanced approximately $13.7 million for development costs.9 (Exhibit No. 43,  

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9 The draft settlement agreement for Cobb EMC’s withdrawal from P4G, states: “Whereas, Cobb paid certain amounts to P4G and its affiliates for the acquisition and development of the Washington Plant in an aggregate total amount of $9,845,951,

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on January 24, 2012. Cobb EMC’s Board of Directors voted against approving any additional funding to the P4G project. (Exhibit No. 43, Note 5, McNair, McLemore, Middlebrooks & Co.’s draft audit report dated March 6, 2012). As of that date, Cobb EMC had $4.3 million in notes receivable due from P4G. (Id.) The corporation elected to “impair the value of its notes receivable from P4G to its allocable portion of the original appraised value of the land.” (Id.) This impairment resulted in a charge to operations of $4.3 million, and the difference ($4,848,286) was recorded as a component of other assets in the consolidated balance sheet. (Id. at notes 5 and 7). Thus, Cobb EMC wrote off $4.3 million related to P4G.

Cobb EMC’s withdrawal from P4G excused Cobb EMC from making any additional capital contributions to P4G and recognized Cobb EMC’s rights to a prorata portion of the proceeds of timber harvested from the P4G landholdings as well as from any land sold by P4G. Cobb EMC accounting officials interviewed during the investigation indicated that Cobb EMC held these rights, which is confirmed by Cobb EMC’s accounting records.

Senior Cobb EMC officers interviewed advised that Plant Washington is now dormant.

c. Settlement of the Derivative Action and Identification of Any Potential Recovery for Cobb EMC

After being retained by Cobb EMC, one of the first things Fellows LaBriola LLP examined was the settlement of the derivative action. On December 3, 2008, Judge Schuster, Superior Court, Cobb Judicial Circuit, entered a Final Order and Judgment in Pounds v. Brown, Civil Action No. 07-1-9408-48 (Exhibit No. 46, the “Settlement Agreement”). The Order adopted the Joint Proposal for Resolution of Derivative Litigation filed with the Court on October 30, 2008, (Exhibit No. 47, “Joint Settlement”), which includes the “Amended Letter of Intent” of Cobb Energy signed which amount was used both for acquisition of the Washington Land and other development costs ...” (Exhibit No. 45).
by Sarah Brown, Vice-Chairman of the Board of Directors, and David B. Johnson, C.O.O. (Exhibit No. 48, “Letter of Intent”).

1. Persons and Entities Released by the Settlement Agreement

The Settlement Agreement released the “Derivative Defendants” (Exhibit No. 46, Joint Settlement ¶ 1.3) and “Related Persons” (Id. ¶ 1.8) from all “Claims” (Id. ¶ 1.1, 1.9), including known and unknown claims (Id. ¶ 1.12) and hidden and concealed claims. The only “Non-Released Claims” (Id. ¶ 1.6) were those relating to the breaches of obligations and agreements contained in the Settlement Agreement.

Specifically, the Settlement Agreement released Cobb EMC, Cobb Energy Management Corporation, Dwight Brown, Larry Chadwick, Frank Boone, Kay Anderson, Donald Barnett, Henry Balkcom, Sarah Brown, Al Fortney, Jr. and David McGinnis. (“Derivative Defendants,” Exhibit No. 46 ¶ 1.3). The Settlement Agreement also released a host of professionals who may have advised plaintiffs, Cobb EMC, Cobb Energy, and/or the individual defendants as “Related Persons.” The Settlement Agreement defined this category of released individuals and entities very broadly. It encompassed family members, advisors, employees, attorneys, advisors, accountants and auditors, directors and officers, joint ventures and venturers, and “and any Person in which any Related Person has or had a controlling interest directly or indirectly or which is or was related to or affiliated with any Related Person, and any trust of which any Defendant is the settlor or which is for the benefit of any Defendant and/ or member of a Defendant’s family.” (Exhibit No. 46 ¶ 1.8, Joint Settlement). Thus, the parties released pursuant to the Settlement Agreement also include the corporations owned and/or controlled by Cobb Energy as “Related Persons.”

The Settlement Agreement defines “Related Persons” to include “any Person in which any Related Person has or had a controlling interest directly or indirectly or which is or was related to or affiliated with any Related Person...” (Id. ¶ 1.8). This definition would encompass: (1) Energy Consulting Group, LLC; (2) Marble-Pirkle Services, LLC; (3) Cooperative Business Ventures, Inc.; (4) Allied Utility Network, LLC; (5) Allied Energy Services, LLC; (6) Alamo Pest Control, Inc.; (7) Cobb Energy Mortgage Company; (8) ProCore Solutions, LLC; (9) Cobb Energy Right-of-Way, LLC; and, (10) Cooperative Benefits and Financial Services, LLC, because they are all “related to or affiliated with” Cobb Energy. (See Exhibit No. 42, Letter of Intent, ¶ 4).

Further, the directors of and investors in the corporations in which Cobb Energy had an interest would also be released. The definition of “Person” includes legal entities and “... their spouses, heirs, predecessors, successors, representatives,
and assignees." Thus, all individual representatives of any corporation which is "related to or affiliated with" any of the employees, agents, subsidiaries, family members, etc. of the Derivative Defendants are released. Additionally, because the investors individually constitute a "Person" that is "related to or affiliated with" Cobb Energy through the corporation, they are also released pursuant to the Settlement Agreement.

The Settlement Agreement also releases Persons related to the pre-settlement real estate investments made by Cobb Energy through Power4Georgians. The purchase of options and property in Washington County, Georgia and Ben Hill County, Georgia were made through Cobb Energy, making the individuals involved in that purchase released "Related Persons" because they are "related to or affiliated with" Cobb Energy.

2. Potential Avenues for Recovery not Released by the Settlement Agreement

After reviewing the Settlement Agreement, Fellows LaBriola LLP determined what possible avenues for recovery Cobb EMC could have related to the misconduct during Brown's tenure as CEO of Cobb EMC and Cobb Energy. Although any possibility of financial recovery was severely limited by the Settlement Agreement, Fellows LaBriola LLP found two relevant areas: (1) actions of the Trustee of the Liquidating Trust; and (2) actions of Cobb Energy's counsel in the derivative action related to discovery.

i. Actions of the Liquidating Trustee

Fellows LaBriola LLP determined that the Settlement Agreement did not release any claims arising out of actions occurring after December 3, 2008, the date of the Final Order. Because the Liquidating Trust was created at the time of the settlement and the liquidation of its assets occurred after the Final Order, Cobb EMC would be able to recover for any misconduct by the Trustee, as Cobb EMC was the beneficiary of the Liquidating Trust.

The Letter of Intent, which is a part of the Settlement Agreement includes a provision that a condition to the Closing of the Agreement will include the "transfer by Cobb Energy, on terms satisfactory to, and for the sole benefit of, Cobb Electric, to a 'liquidating trust' or other appropriate liquidating entity not affiliated with, or controlled by, Cobb Electric or Cobb Energy, for liquidation, in accordance with the liquidating trustee's fiduciary duties, of all of Cobb Energy's interest in [the other corporations owned or controlled by Cobb Energy]." (Exhibit No. 48 ¶ 4, Letter of Intent) (Emphasis added). Additionally, the Settlement Agreement specifies that the
“Non-Released Claims” include “any and all claims related to breaches of obligations and agreements entered into in connection with this Settlement.” (Exhibit No. 47 ¶ 1.6, Joint Settlement). Thus, if the liquidation of those corporations was not “for the sole benefit of” Cobb EMC then the Trustee might be liable.

The indemnification agreement with the Trustee, J.W. Rayder, indemnifies him for any action other than gross negligence, willful malfeasance, or reckless disregard of his duties. (Exhibit No. 49). Further, pursuant to the contract, Cobb EMC would be required to pay all Mr. Rayder’s legal fees in the event that there was litigation regarding the liquidation. (Agreement, Section 1). Accordingly, Fellows LaBriola LLP determined that pursuing any possible avenue of recovery from Mr. Rayder would be impractical as Cobb EMC would first have to litigate with Mr. Rayder to obtain documentation showing that gross negligence was committed in liquidating the corporations (i.e. no efforts made to find buyers, selling at a fraction of the value to interested parties, etc.) and would be paying Mr. Rayder’s legal fees during that suit. Afterward, if Cobb EMC was able to establish gross negligence, Mr. Rayder was also indemnified. (Id.) Therefore, Cobb EMC would be trying to recover from itself.

ii. Actions of Counsel for Cobb Energy During Discovery in the Derivative Action

During the course of Fellows LaBriola LLP and CliftonLarsonAllen LLP’s investigation of governance and oversight, past legal actions, and whether there are any potential way for Cobb EMC to recover for wrongdoing in spite of the broad Release and Settlement Agreement approved in the Derivative Action, they discovered several documents that were responsive to the Interrogatories and Requests for Production served on Cobb Energy by the derivative plaintiffs, which were not disclosed in the litigation. In particular, Fellows LaBriola LLP and CliftonLarsonAllen LLP discovered that neither Cobb EMC nor Cobb Energy provided the derivative plaintiffs with the pledge of the electric meters by Cobb Energy to Cobb EMC dated June 24, 2008 (“the Pledge,” Exhibit No. 50).10 Additionally, Fellows LaBriola LLP and CliftonLarsonAllen LLP discovered numerous documents related to Alumni Properties, LLC and Buster & Brown Properties that were in the possession, custody, or control of Cobb Energy but were not disclosed in the litigation.

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10 Fellows LaBriola LLP contacted counsel for the derivative plaintiffs on April 3, 2013, and confirmed that the Pledge had never been produced.
Fellows LaBriola LLP and CliftonLarsonAllen LLP determined that these documents were within the scope of Plaintiffs' discovery requests, were material to the settlement of the Derivative Action, and raise the issue of whether fraud was perpetrated on the Plaintiffs' counsel, the membership, and Court. The basis for this finding is discussed below.

A. The Pledge Was Covered by Plaintiffs' Continuing Discovery Requests

Fellows LaBriola LLP and CliftonLarsonAllen LLP determined that the Pledge was expressly covered by the continuing discovery requests the derivative plaintiffs served upon Cobb Energy during the Derivative Action. Specifically, on March 3, 2008, the derivative plaintiffs served Plaintiffs' First Interrogatories to Cobb Energy Management Corporation ("Cobb Energy"), Interrogatory Number 20 states:

For the period January 1, 1997 to the present please state the date, amount, interest rate and collateral securing all loans made by Cobb EMC to Cobb Energy or any affiliated entity of Cobb Energy in which Cobb Energy has an ownership interest.

(Exhibit No. 51, Plaintiffs' First Interrogatories to Cobb Energy). Also on March 3, 2008, the derivative plaintiffs served Plaintiffs' First Request to Produce to Defendant Cobb Energy. Request Number 60 states:

For the period January 1, 1997 to the present, please produce all contracts and agreements between Cobb Energy (and any affiliated entities of Cobb Energy in which Cobb Energy has an ownership interest) and Cobb EMC, other than the Operating Agreements already produced by Cobb Energy.

(Exhibit No. 52, Plaintiffs' First Requests to Produce to Cobb Energy).

On April 14, 2008, Cobb Energy responded to Plaintiffs' First Interrogatories and only identified a loan from Cobb EMC to Cobb Energy for the purchase of a building for ProCore. (Exhibit No. 53, Cobb Energy's Responses to Plaintiffs' First Interrogatories). Cobb Energy's responses to Plaintiffs' First Interrogatories were signed by the attorneys for Cobb Energy including Mr. H. Scott Gregory, Esq. (Id.)
On June 24, 2008, Cobb EMC and Cobb Energy entered into the Pledge, which provides in pertinent part:

This joint letter signed by Cobb Energy and Cobb EMC (the ‘Parties’) memorializes the understanding between the Parties regarding repayment of a debt of up to $12,945,632.61 by Cobb Energy to Cobb EMC.... Upon request by Cobb EMC, Cobb Energy will file documentation necessary to create a lien on the electricity meters and related equipment to secure the repayment of this indebtedness, and Cobb Energy agrees not to create or grant any liens or other encumbrances with respect to the meters until January 1, 2010 without prior written consent of Cobb EMC.

(Exhibit No. 50, June 24, 2008 Pledge Agreement).

Thus, as both Plaintiffs’ Interrogatory Request No. 20, and Plaintiffs’ Request to Produce No. 60 cover the Pledge, Cobb Energy was required by O.C.G.A. § 9-11-26 to supplement its responses and make the derivative plaintiffs aware of the Agreement. Counsel for the derivative plaintiffs confirmed that Cobb Energy never supplemented its interrogatory responses to include the Pledge, nor did it produce a copy of the Pledge.

Fellows LaBriola LLP and CliftonLarsonAllen LLP also discovered emails surrounding the creation of the Pledge. The emails are between counsel for Cobb Energy, Mr. H. Scott Gregory, Esq.; an associate at his firm; and Mr. J.W. Rayder—who was an advisor to Dwight Brown, and was actively involved in the settlement negotiations. Rayder is a C.P.A. and a law school graduate. The emails show that Mr. Gregory, who acted as counsel for Cobb Energy, was aware of the Pledge and took copies of the Pledge to a meeting of the Board of Directors of Cobb Energy. Also, an email from Mr. Rayder states to Mr. Gregory “Certainly the letter can’t effectuate a pledge and I don’t think we want to file anything at this time...” (Exhibit No. 54, Email from Rayder to Gregory dated June 18, 2008).

Based on the investigation performed by Fellows LaBriola LLP and CliftonLarsonAllen LLP, it appears the Pledge was created in response to a demand by BDO Seidman, LLP (“BDO”) that for BDO to issue a clean audit report, Cobb Energy had to convert roughly $12 million dollars of its debt to Cobb EMC from short-term debt to long-term debt. Fellows LaBriola LLP and CliftonLarsonAllen LLP’s interviews of members of Cobb Energy’s accounting staff confirmed this information. Cobb Energy accomplished this through the Pledge. Cobb Energy
needed to get BDO to issue a clean audit report for the Court to approve the settlement whereby Cobb EMC purchased all the outstanding stock of Cobb Energy.

Mr. Gregory and Mr. Rayder were able to satisfy BDO without alerting the derivative plaintiffs to the existence of the Pledge by drafting the document so that the Pledge would not be recorded unless Cobb EMC demanded it. However, we have not located any documents showing that the Pledge was ever provided to the Cobb EMC board or to Cobb EMC’s counsel. Likewise, counsel for the derivative plaintiffs confirmed that the Pledge was never disclosed to the derivative plaintiffs.

The Pledge was disclosed to BDO and referenced in the Consolidated Financial Statements for Cobb Energy Management Corporation for Years Ended December 31, 2007 and 2006 (“Cobb Energy 2007 Audited Financials” or “Audited Financials”) issued by BDO on December 1, 2008. (Exhibit No. 55, Note 8). On page 25 of the Audited Financials, it states:

Cobb EMC advanced approximately $12,946,000 to [Cobb Energy] to fund the development of [Cobb Energy’s] billing software. In June 2008, [Cobb Energy] and Cobb EMC signed an agreement to defer payment on this balance until December 31, 2009.... [Cobb Energy] has pledged the electric meters as collateral.

Email correspondence shows that the Cobb Energy Board of Directors approved the Cobb Energy 2007 Audited Financials on December 2, 2008, the day of the Fairness Hearing. (Exhibit No. 56, Email from Robert Steele, CFO of Cobb Energy, dated December 2, 2008 at 11:03 a.m.). The transcript of the December 2, 2008 Fairness Hearing which took place at 1:30 p.m. shows that the final Audited Financials were first provided to counsel for Cobb EMC at 10:00 a.m. on December 2, 2008. At the hearing Mr. Flint stated: “... just shortly before I came up here this afternoon, I obtained the audited opinion of BDO Seidman.” (Exhibit No. 57 at 8, Fairness Hearing).

Mr. Flint (Cobb EMC’s counsel, who appears not to have been informed of the existence of the Pledge by Cobb Energy’s counsel) requested that the Court enter the Audited Financials as an exhibit to the record stating, “... I will point out to your Honor this audited opinion is without qualification and it contains the same information that was reviewed by the Houlihan Lokey firm who issued the fairness opinion. And it has no reservations as far as—no qualification as far as going concern or solvency and so forth.” (Id.) (See also Exhibit No. 58). Mr. Hannan also states, “...I just wanted to add one thing on behalf of Cobb Energy, my client. This
BDO audited report does contain the same information that was made available to the plaintiffs earlier. There is no additional information." (Exhibit No. 57 at 7-8).

Based on Fellows LaBriola LLP and CliftonLarsonAllen LLP's investigation and the statements of counsel for the derivative plaintiffs to Fellows LaBriola LLP on April 3, 2013, the representation that the Audited Financials contain "no additional information" was inaccurate because the Pledge was never produced to the derivative plaintiffs and because the Houlihan Lokey report dated October 28, 2008, does not reference the Pledge. Mr. Gregory, counsel for Cobb Energy, was present and did not clarify that the Audited Financials included the previously undisclosed Pledge.

B. Cobb Energy Had In Its Possession, Custody, and Control Documents Related to Alumni Properties, LLC and Buster & Brown Properties, LLC

During the course of Fellows LaBriola LLP and CliftonLarsonAllen LLP's investigation they also located documents related to Alumni Properties, LLC and Buster & Brown Properties, LLC that should have been disclosed to the derivative plaintiffs. A complete description of Dwight Brown's real estate ventures is set out below. The documents should have been disclosed because they are covered by the continuing discovery requests the derivative plaintiffs served upon Cobb Energy during the course of the Derivative Action.

Specifically, on March 3, 2008, counsel for the derivative plaintiffs served Plaintiffs' First Request to Produce to Defendant Cobb Energy. (Exhibit No. 52). Request Number 56 states:

Please produce all documents concerning Alumni Properties, LLC and Buster & Brown Properties.

On April 14, 2008, Cobb Energy responded stating, "No documents responsive to this request." (Exhibit No. 53). This is an inaccurate statement.

As discussed above, former counsel for Cobb Energy, Bonnie Wilson, (who also was a preferred shareholder in Cobb Energy), negotiated Dwight Brown's employment contract in 2005 which provided that Dwight Brown would receive a $3 million dollar "loan" from Cobb EMC and Cobb Energy which never had to be paid back.

The documents show that Brock Clay lawyers H. Scott Gregory (through HSG Management, LLC), Glenn Brock, and Bonnie Wilson were investors in outside real estate ventures with Dwight Brown, and that those ventures were secured by Cobb
Energy stock held by Dwight and Mary Ellen Brown. Specifically, Cobb Energy stock was used as collateral for: (1) a line of credit for Alumni Properties (Exhibit No. 59, Collateral Receipt for NorthSide Bank of Adairsville); (2) to secure a bond to the City of Oxford, Mississippi, related to the Alumni Properties development (Exhibit No. 60, Commercial Pledge Agreement from Georgian Bank); and (3) as collateral for a $4.7 million dollar loan made to Buster Brown Properties (Exhibit No. 61, Letter Agreement with Georgian Bank dated August 30, 2007). Further, the documents show that Scott Gregory prepared the documents that permitted Mary Ellen Brown to collateralize her stock and advised Dwight Brown that he could sign the documents on behalf of Cobb Energy without additional consent by the Cobb Energy Board. (Exhibit No. 62, Email from Scott Gregory to Peggy Ledford, Brown’s assistant dated April 25, 2006 and attachment thereto). Scott Gregory was also jointly and severally liable for loans made to Buster Brown Properties with an original principal balance totaling at least $11,700,000, which were secured in part by the Cobb Energy stock collateralized by Ms. Brown.

Documents also show that following the settlement of the Derivative Action, Mr. Gregory entered into a Custodial Agreement with Northside Bank and his firm facilitated the payment to Northside Bank of $500,000.00 from the proceeds of the sale of 40,000 of Mr. Brown’s Cobb Energy shares to Cobb EMC pursuant to the Settlement Agreement. (Exhibit No. 63, Email from Jennifer Davis of NorthSide Bank to George Kleeman of Brock Clay dated December 5, 2008).

Thus, the undisclosed documents show that the settlement of the Derivative Action benefited certain counsel for Cobb Energy personally because the settlement provided for a $3 million payment to preferred shareholders Mary Ellen and Dwight Brown, whose shares were cross collateralized to the banks for the Alumni Properties and Buster & Brown Properties developments. If the settlement had not provided for payment to the shareholders, the investors in the real estate projects including Mr. Brock, Mr. Gregory and Ms. Wilson would have had additional personal exposure on the outstanding loans. Fellows LaBriola LLP and CliftonLarsonAllen LLP determined that Cobb Energy’s failure to disclose the attached documents may have misled Plaintiffs’ counsel and the membership, and impacted the Court’s evaluation of the Settlement Agreement and whether it was in the best interests of the Cobb EMC members.

Specifically, Fellows LaBriola LLP and CliftonLarsonAllen LLP found the following documents of particular importance:

1. July 25, 2006, email correspondence from Scott Gregory to Dwight Brown and attachments. (Email, Exhibit No. 64).

Final Report
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a. Attachment styled “PROMISSORY NOTE” which states “BUSTER & BROWN PROPERTIES, LLC... promises to pay to the order of Dwight Brown... the principal sum of ONE MILLION DOLLARS...”" (Exhibit No. 64A).

b. Attachment styled “PROMISSORY NOTE” which states “BUSTER & BROWN PROPERTIES, LLC... promises to pay to the order of H. Scott Gregory, Jr. ... the principal sum of ONE HUNDRED & TWENTY FIVE THOUSAND DOLLARS ($125,000)...”" (Exhibit No. 64B).


   a. The letter provides “commitment for acquisition financing to Buster & Brown Properties, LLC for property located in Ooltewah, Tennessee.” (Id. at 1).

   b. The “Loan Amount & Purpose” is listed as “... not to exceed $4,700,000, carrying a 12-month maturity, to be used to pay offf existing financing on approximately 200 acres of land adjacent to and contiguous with approximately 75 acres which you are now developing into 175 single family residential building lots. This subdivision is to be known as The Retreats at White Oak. Proceeds from this loan will be used to pay off existing financing against this property held by Regions Bank.” (Id.)

   c. The “Personal Guaranty” states “Each one of the following individuals will provide his/her 100% unconditional, joint and several, personal guarantee for this loan: Dwight T. Brown, Mary Ellen Brown, C. Dean Alford, James P. Winchester, Anis Sherali, and Bonnie L. Wilson, Dan Alford, Lonnie Haley, Ralph Livingston, Scott Gregory, Bob Elsberry, James Abbott, Tommy Carroll, Peter Cerny, Randall Meadows, Harry Collins, and David Sparks will each execute and deliver joint and several, absolute and unconditional personal guarantee agreements, guaranteeing repayment of the entire indebtedness of the borrower under the documents evidencing and securing this loan.” (Id.)

   d. The “Additional Terms” of the loan state: “As additional collateral for the requested loan, Manager/Guarantor Dwight Brown, has agreed to assign 60,000 shares of Cobb Energy Management Corporation Stock, held in the name of Mary Ellen Brown, to Georgian Bank to serve as additional security for the loan. Georgian Bank presently holds this stock as collateral for a letter for the benefit of Alumni Properties, LLC in the amount of $407,000. Once this letter of credit is either modified and/or released, the full number of shares and their full value will be available to support the collateral requirements of this loan. These hypothecated shares of stock will continue to be assigned to Georgian Bank until this loan balance is paid in

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full. As owner of this stock, Mary Ellen Brown will also provide her personal guaranty for this loan.” (Id. at 3)

3. October 8, 2008 email correspondence (Exhibit No. 65) from “Dwight” at “dwbrown11@comcast.net” to “James Abbott,” “Dan Alford,” “Dean Alford,” “Dwight Brown,” “Drew Brown,” “Tommy Carroll,” “Pete Cerney,” “Harry Collins,” “Bob Elsberry,” “Scott Gregory,” “Lonnie Hale,” “Wayne Livingston,” “Randall Meadows,” “Anis,” “David Sparks,” “Bonnie Wilson,” and “Pat Winchester,” states “we are renewing the loan at Northwest Georgia Bank in Ringgold. I have attached guarantees that need to be signed by each of you.” (Id. at 1).

a. The attached document (Exhibit No. 65A) is titled, “First Amendment to Promissory Note, Construction Loan and Security Agreement and Other Loan Documents,” and states that it is “by and between BUSTER & BROWN PROPERTIES, LLC, a Georgia limited liability company (‘Borrower’), and NORTHWEST GEORGIA BANK (‘Lender’)…” (Id.)

b. The “Background” section states: “Borrower and Lender entered into that certain Construction Loan and Security Agreement dated September 28, 2007, (the ‘Loan Agreement’), pursuant to which Lender extended to Borrower a loan in the original principal amount of Seven Million and 00/100 Dollars ($7,000,000) (the ‘Loan’).” It further states: “Borrower executed, in conjunction with the Loan, a Promissory Note dated as of September 28, 2007, (the ‘Note’), which Note matured by its terms on September 28, 2008.” The document also states: “The Loan is also secured or otherwise impacted by certain other Loan Documents (as that term is defined in the Loan Agreement), which include those certain Guaranty Agreements dated September 28, 2007, and individually signed by James Abbott, Jr., Calvin Dan Alford, Clarence Dean Alford, Dwight T. Brown, Thomas A. Carroll, Otto P. Cerney, Harry R. Collins, Robert L. Elsberry, H. Scott Gregory, Richard L. Hale, Ralph Wayne Livingston, Randall G. Meadows, Anis D. Sherali, David N. Sparks, Bonnie L. Wilson, and James P. Winchester (the ‘Guarantors’).”

4. Email correspondence from the Brock Clay firm dated December 5, 2008, (Exhibit No. 63) including:

a. A “COLLATERAL RECEIPT” from NorthSide Bank of Adairsville. The document lists the “Borrower” as “Alumni Properties, LLC” and the “Grantor” as “Dwight Brown.” The “Loan Date” is listed as “09-12-2008” and the “Maturity” date is listed as “09-12-2009.” The “Description of Collateral” is listed as four separate entries of “10,000 Shares of COBB ENERGY MANAGEMENT CORPORATION Stock.”

c. A letter from Northside Bank to Scott Gregory (Id.), stating: Pursuant to the Custodial Agreement... I deliver to you in trust and pursuant to the Custodial Agreement, the following original share certificates:

<table>
<thead>
<tr>
<th>Issuer</th>
<th>Owner Certificate No.</th>
<th>Shares</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cobb Energy Management Corp.</td>
<td>Brown No. 14</td>
<td>10,000</td>
</tr>
<tr>
<td>Cobb Energy Management Corp</td>
<td>Brown No. 15</td>
<td>10,000</td>
</tr>
<tr>
<td>Cobb Energy Management Corp</td>
<td>Brown No. 16</td>
<td>10,000</td>
</tr>
<tr>
<td>Cobb Energy Management Corp</td>
<td>Brown No. 17</td>
<td>10,000</td>
</tr>
</tbody>
</table>

d. Email correspondence from Northside Bank to an associate at the Brock Clay firm stating the "payoff for Alumni Properties, LLC" and the bank's "wiring instructions."

e. Email correspondence from Northside Bank to an associate attorney at the Brock Clay firm stating, "[w]e just received the wire and processed it. Since we received it today, Alumni Properties, LLC will be getting a refund check for the payoff overpayment..." (Id.)

5. Email correspondence from the Georgian Bank dated June 18, 2009, (Exhibit No. 60), including:

a. A document titled "CHANGE IN TERMS OF AGREEMENT." The document lists the "DESCRIPTION OF COLLATERAL" as "60,000 shares of Cobb Energy Management Corporation stock."

b. The document lists "DESCRIPTION OF CHANGE IN TERMS" as "Effective 12/5/08 60,000 shares of Cobb Energy Management Corp. stock is replaced with 500 shares of Capitol Securities which is also collateral on Buster and Brown loan #4001037600 with all other terms remaining the same."

6. Email correspondence from Scott Gregory to Peggy Ledford, Dwight Brown's assistant, dated April 25, 2006, including attachments. (Exhibit No. 62).

a. The email states: "Peggy: Attached are the documents needed to pledge Mary Ellen's stock that Dwight requested. The basic information needs to be filled in to the blanks. Dwight can sign for Cobb Energy Management Company or have the Vice Chair sign if he is not comfortable. Let me know if you have any questions."

b. The attachments include:

i. An "ADDENDUM TO PUT/CALL AGREEMENT" related to Ms. Brown's shares;
ii. An “AGREEMENT” between Cobb Energy Management Corporation, Mary Ellen Brown, and “BANK” related to the collateralization of Ms. Brown’s shares;

iii. An “AGREEMENT” between Cobb Energy Management Corporation, Mary Ellen Brown, and “SOUTHERN NATIONAL BANK” related to the collateralization of Ms. Brown’s shares.

C. The Failure to Disclose and Materiality

Fellows LaBriola LLP and CliftonLarsonAllen LLP advised the Cobb EMC Board that the above non-disclosures raised the issues of whether the settlement was materially influenced by Cobb Energy’s failure to disclose the documents, whether there was fraud on the Court, and whether a discovery violation occurred. Since Cobb Energy failed to disclose the Pledge and the Alumni Properties and Buster & Brown documents, the Court did not have full information to evaluate the fairness of the settlement to the members. See Stephens v. McGarrity, 290 Ga. App. 755, 762-63 (2008).

The purpose of the notice of settlement provided to the Cobb EMC members pursuant to O.C.G.A. § 14-2-745, and the subsequent December 2, 2008, Fairness Hearing, was to notify all Cobb EMC members affected by the settlement of its terms and allow the members a meaningful opportunity to be heard. Id. Since the Cobb EMC members were not aware of the Pledge of the electric meters to Cobb EMC or the other documents that were apparently deliberately withheld by Cobb Energy in discovery, the Cobb EMC members’ procedural and substantive due process rights may have been violated since they were not able meaningfully to evaluate the settlement.

Additionally, Cobb Energy’s failure to produce the Pledge as well as the Alumni Properties, LLC and Buster & Brown Properties documents obscured the true position of Cobb EMC in the litigation with regard to the meters, and obscured the true interests served by the settlement and accompanying releases. Stephens, 290 Ga. App. at 762-63. The Court in Stephens rejected the settlement of a derivative action reasoning that “minority shareholders facing the settlement of a derivative action are ‘entitled to more than assurances that management’s negotiating prowess has led to a desirable outcome.” Id. (quoting Batur v. Signature Properties of Nw. Florida, Inc., 903 So. 2d 985, 995 (Fla. Dist. Ct. App. 2005), and citing In re Oracle Securities Litigation, 829 F.Supp. 1176, 1184-1187 (N.D. Cal. 1993) (disapproving derivative settlement which denies corporation a financial award and releases defendants from any claims the corporation might have against them; directors approving settlement had failed to act with independence and in good faith)). The court went on to note: “...because the law
has long been suspicious of leaving the determination whether a derivative suit should be dismissed to interested insiders ...we cannot draw conclusions about the merits of the settlement without examining its specific benefits to [the company].”  
*Id.*

Cobb Energy, which was represented by Scott Gregory in the Derivative Action, withheld documents showing that Mr. Gregory, his law partner and former Cobb EMC Board Member Glenn Brock, and his former law partner Bonnie Wilson had something to be gained or lost by the payout that Dwight Brown and his wife, Mary Ellen, received for their preferred shares of Cobb Energy. Further, Cobb Energy withheld documents showing that Mr. Gregory was jointly and severally liable with Dwight Brown on loans with an original principal balance totaling approximately $11.7 million dollars, and showing his personal exposure increased if Dwight and Mary Ellen Brown's Cobb Energy stock became valueless. The Court did not have the opportunity to evaluate the “benefit” Cobb EMC was to receive as a result of the settlement since the failure to disclose the documents obscured the settlement’s “...specific benefits to [the company].”  
*Id.*

In reviewing the above identified documents and researching whether any legal action could be taken in response to Cobb Energy’s failure to disclose the documents, Fellows LaBriola LLP located case law that supports a possible motion for discovery violations against counsel for Cobb Energy for their failure to disclose documents material to the settlement: *In re E.I. du Pont de Nemours & Co.,* 918 F. Supp. 1524, 1540 (M.D. Ga. 1995), and the Eleventh Circuit opinion on the appeal of the District Court case, *In re E.I. DuPont De Nemours & Co.-Benlate Litig.*, 99 F.3d 363 (11th Cir. 1996).

Fellows LaBriola LLP determined that although the derivative action was settled, the Court retained jurisdiction to hear a motion for discovery violations. This is because every Court “has the power to conduct an independent investigation in order to determine whether it has been the victim of fraud.”  
*In re E.I. du Pont,* 918 F. Supp. at 1540, 99 F.3d at 368. “The power to punish for contempt is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice.”  
*In re E.I. du Pont de Nemours & Co.,* 918 F. Supp. at 1541 (quoting *Ex parte Robinson,* 86 U.S. 505 (1873)). Thus, if a court finds that it has been defrauded, the court is “free to vacate its earlier judgment, in whole or in part, and to resume proceedings on the same jurisdictional basis as it possessed in the underlying case.”  
*In re E.I. du Pont,* 918 F. Supp. at 1540, 99 F.3d at 368.
The Court’s power to punish is not limited in time. *In re E.I. du Pont de Nemours & Co.*, 918 F. Supp. at 1541. However, if there is any such limitation, “arising out of laches...Certainly [an action] is not unreasonably delayed if a proceeding for punishment is begun as soon as the misbehavior is discovered, particularly if the misbehavants, by concealment and fraud, have prevented the discovery.” *Id.* Thus, despite the settlement and dismissal of the Derivative Action, the Superior Court of Cobb County would still have jurisdiction to impose sanctions upon parties and their counsel for “misbehavior committed in the presence of the court” which had just been discovered. *Id.*

Fellows LaBriola LLP also determined that this power was not limited by the settlement. The Court in *In re E.I. du Pont* held, “[n]either the releases nor the pre-release agreement put in evidence by DuPont bar the Court from considering the fraud on the Court alleged in the petition. No agreement between private parties can deprive the Court of its power to conduct an investigation into and rendering rulings on an alleged fraud upon this Court. See *Hazel–Atlas Glass Co. v. Hartford–Empire Co.*, 322 U.S. 238 (1944); *Universal Oil Products Co. v. Root Refining Co.*, 328 U.S. 575 (1946). See also *Glover v. Southern Bell Telephone & Telegraph Co.*, 229 Ga. 874 (1972) (release only effective absent fraud).” *Id.*, 918 F. Supp. at 1551. Thus, despite the Settlement Agreement in the Derivative Action, the Superior Court of Cobb County would still be able to impose civil sanctions on Energy’s counsel, and others, to compensate the Cobb EMC members for the loss suffered as a result of the fraud, or issue criminal sanctions to them for committing fraud on the Court by withholding the Pledge and other documents.

As observed by the Court in *In re E.I. du Pont*, “[a]ttorneys have a continuing duty to advise their clients of their duty to make honest, complete, non-evasive discovery disclosures, as well as the spectrum of sanctions they face for violating that duty.” *Id.* Counsel is required to “make a reasonable investigation and effort to assure that the client has provided all information and documents available to it which are responsive to the discovery request. It is also required that counsel certify that the responses to discovery requests are complete and correct, and that objections are well grounded in fact and law and not interposed for delay or other improper purpose.” *Id.* While the Court in *In re E.I. du Pont*, is applying the Federal Rules of Civil Procedure, the Georgia Civil Practice Act also requires oversight by counsel. O.C.G.A. § 9-11-26

“The courts do not have the time to micro-manage discovery in every case. They must depend on their officers, the lawyers, to keep faith with their primary duty to the court as its officers, and so make the discovery system work by voluntarily making the required disclosures. Counsel should not be allowed to ‘sell out’ to their clients.” *In re E.I. du Pont de Nemours & Co.*, 918 F. Supp. at 1541. This
is remedied by making it apparent that “the cost of ‘stonewalling’ will be greater than the benefits.” Id. “Only by imposing harsh sanctions against a willfully deceitful and evasive litigant do the courts take the advantage out of such misbehavior and turn it into a decided disadvantage. Only by doing so can the courts empower their officers to refuse involvement in such misconduct, and give them the power to persuade their clients that such is not in their best interests. There will be no point in paying lavish litigation fees and costs to a lawyer to suppress the truth if the swift and certain punishment will follow. The choice can and should be made simple and clear: Litigate in our courts honestly and by the rules, or suffer the consequences. The public expects and deserves no less if confidence in our judicial system is to be preserved, as it must be.” In re E.I. du Pont de Nemours & Co., 918 F. Supp. at 1543.

A Court could conclude that “stonewalling” occurred in the Derivative Action when certain counsel for Cobb Energy failed to disclose the Pledge and the Alumni Properties and Buster & Brown Properties documents. The fact that the Pledge was only created after defendants initially responded to plaintiffs’ discovery requests is immaterial to the analysis. This is because Cobb Energy had a duty under the express terms of the requests and the Civil Practice Act to supplement its disclosures. In re E.I. du Pont de Nemours & Co., 918 F. Supp. at 1544; O.C.G.A. § 9-11-26.

Further, “[i]t is well recognized that complete and accurate responses to discovery are imperative to the functioning of the modern trial process.” Id. at 1549. The above-identified documents raise the question of whether certain counsel for Cobb Energy ensured that “complete and accurate responses to discovery” were provided or whether the Pledge and documents related to the real estate investments were withheld. A Court could conclude that the Pledge was withheld “consciously, deliberately, and with purpose” to protect the personal interests of certain counsel for Cobb Energy, his current and former business partners, and the CEO of Cobb Energy and Cobb EMC. Id. at 1556; O.C.G.A. § 9-11-26.

The Court in In re E.I. du Pont held “[p]ut in layperson’s terms, DuPont cheated. And it cheated consciously, deliberately, and with purpose,” and that it “should be, indeed must be, severely sanctioned if the integrity of the Court system is to be preserved.” Id. at 1556. The Court then imposed sanctions of $115 million dollars.
d. **Insolvency of Cobb Energy and Impact on the Settlement of the Derivative Action**

Prior to the approval of the settlement of the Pounds litigation in 2008, the auditors, BDO, stated that they were considering issuing a "going concern" opinion on Cobb Energy's financial statements. The going concern issue and the related insolvency due to insufficient cash flow as discussed below raised the specter of Cobb Energy filing for protection under the Bankruptcy Code. This created a flurry of activity that led, in part, to the eventual settlement of the derivative action.

On September 26, 2007, George Kleeman emailed Cobb Energy and Gas South officials' terms for Gas South's pre-payment of $1.8 million for customer billing and call center services in November and December 2007. Mr. Rayder, Mr. Griner and Mr. Gregory received the email. (Exhibit No. 66). The emails show that the amount of the prepayment was increased to $1,940,951.97, and the funds were wired from Gas South to Cobb Energy on September 27, 2007. (Exhibit No. 67). The prepayment significantly assisted Cobb Energy's cash flow.

Cobb Energy's Board and its senior managers knew as early as October 1, 2007, that BDO had discovered Cobb Energy was charging an 11% adder fee for several years, but under the Cobb Energy- Cobb EMC Labor Agreement was only entitled to a 6% fee. (Exhibit No. 68, Minutes of the October 1, 2007 Cobb Energy Board Meeting). The Special Litigation Committee's Report confirmed this overcharge.

According to Cobb EMC officers interviewed during the investigation, Cobb Energy's auditors—BDO Seidman—had advised them as early as late 2007 or early 2008 that Cobb Energy was in serious financial difficulty and asked how management planned to correct the problem.

One of the witnesses interviewed by Fellows LaBriola LLP and CliftonLarsonAllen LLP recalled a discussion on the going concern issues. The witness explained that the only way Cobb Energy was going to get BDO to not issue a "going concern" was to find a way to reclassify debt. Thus, Cobb Energy and its counsel drafted an agreement preventing Cobb EMC from demanding the balance due on a note. He further stated that in his opinion, if the settlement had not occurred, then Cobb Energy would have gone bankrupt, a receiver would have been put into place, and all the employees of Cobb EMC and Cobb Energy would have been laid off. (Interview with Robert Steele).
On June 4, 2008, Jason Cuda, an audit manager with BDO, issued a memo to Bob Schoonover entitled “Going Concern Discussion.” (Exhibit No. 69). Cuda started his memo to Schoonover stating: “Due to Cobb Energy Management Corp’s cash flow, debt structure, pending lawsuit, and other various items, we wish to discuss the Company’s ability to continue as a going concern.” Cuda’s memo discusses how management will need to respond to a number of questions (11 in all) in order for them to issue a clean opinion. Three of the questions management needed to answer were:

- Current financial position of the Company.
- Ability to timely pay creditors (including Cobb EMC).
- Status of debt repayments, status of debt covenants and the ability of creditors to call the loans.

John Fenton, a BDO audit partner who was Cobb Energy’s auditor, was deposed five months later on November 3, 2008, and stated that the cash flow in the financial statements for the period ending 12-31-07 (the year under audit) showed that projected cash flow for the years 2008 and 2009 would not cover current liabilities, and the company was short by $10 million. Fenton advised that the Special Litigation Committee noted an additional liability between $10-13 million for overcharging Cobb EMC for unauthorized adder fees, meaning Cobb Energy was short by a minimum of $20-23M at the time of the deposition.

In a letter dated November 17, 2008, Johnny Gresham, the chairman of the Affiliated Transactions Committee stated that with respect to the upcoming merger between Cobb EMC and Cobb Energy: “In light of this planned merger, and in recognition of the continued importance of the relationship between the two companies we hereby certify that Cobb EMC will not demand collection of any amounts due from Cobb Energy which would cause Cobb Energy to default on payments to any of its third-party lenders, vendors, employees or other creditors.” (Exhibit No. 70). At the “Fairness Hearing” attorneys for both sides presented evidence through experts that the settlement of the dispute between the derivative plaintiffs led by Edgar “Bo” Pounds and the Cobb EMC defendants was fair to Cobb EMC and in the “best interests” of the members.

Pitts Carr, counsel for the Derivative Plaintiffs, stated at page 12-13 the Fairness Hearing that based on the testimony of Mr. Kenneth Neil, who was retained to provide accounting advice, the total value of Cobb Energy and its components would be $112 million. (Exhibit No. 57 at 12-13). He stated that Cobb EMC would be receiving $112 million in value from this settlement. This amount was comprised of the following components:
Termination of the 40-year management agreement was valued at $46 million
- The value of the meters $18 to $19 million (he used $19 million)
- The computer system $20 million
- The naming rights at the Cobb Center $11 million
- ProCore Solutions $15 million

Mr. Carr stated there would be liabilities associated with the transaction such as the payment of $12 million to the preferred and the common shareholders, as well as assumption of a line of credit with NCSC of $18 million. He also noted that Cobb Energy owed Cobb EMC $12 million on a line of credit, as well as a debt of $3 million related to a long-term benefit pension plan. Mr. Carr stated that the total of assumed liabilities was $47 million. Notably, the numbers presented by Mr. Carr at the hearing misstated the correct balance of the line of credit (the amount owed to the common shareholders was $18 million). However, based on the numbers he presented, Mr. Carr stated that the net value of the settlement to Cobb EMC was $65 million. (Exhibit No. 57 at 13-14).

During Fellows LaBriola LLP and CliftonLarsonAllen LLP’s interviews of current Cobb EMC management, multiple witnesses stated that the value of the settlement to Cobb EMC as identified by Mr. Carr (and others) at the Fairness Hearing did not make any sense. Fellows LaBriola LLP and CliftonLarsonAllen LLP asked the witnesses whether the 40-year management agreement was worth $46 million, and they all said no. Likewise, they disagreed with the values presented to the Court for the electric meters, the computer system, the performing arts center naming rights, and ProCore Solutions.

It was only hours before the Fairness Hearing that BDO signed off on the 2007 Audit of Cobb Energy, giving Cobb Energy a so-called “clean opinion.” (Exhibit No. 56). At the Fairness Hearing, Houlihan Lokey ("HL"), an investment-banking firm hired to investigate the financial affairs of Cobb Energy, relied upon the audit in giving the opinion that the value of the settlement to Cobb EMC was appropriate. Andrew J. Stahl, a senior consultant with HL was hired by Rogers & Hardin and the Cobb EMC Board, was called as a witness at the Fairness Hearing to testify regarding his findings. Stahl responded to questions raised by David Flint, an attorney representing Cobb EMC, as follows:

Q: Now, did you reach an opinion that this transaction merger of Cobb Energy and Cobb EMC was fair from a financial point of view?
A: We reached a conclusion that the consideration paid in the transaction is fair to Cobb EMC from a financial point of view.

(Exhibit No. 57 at 68, Fairness Hearing).

CliftonLarsonAllen LLP reviewed the financial information prepared by Stahl. Specifically, CliftonLarsonAllen LLP investigated the following issue: “Does the financial information prepared by Houlihan Lokey as presented in the Discussion Materials Prepared for the Board of Directors of Cobb Electric Membership Corporation ("HL Report," Exhibit No. 58) provide evidence that Cobb Energy was insolvent?” CliftonLarsonAllen LLP found that based on the forecast of earnings for Cobb Energy Core Business excluding the synergistic adjustments, the Unlevered Free Cash Flow ("UFCF") was insufficient to service Cobb Energy’s debt without incurring additional debt.

CliftonLarsonAllen LLP first considered the earnings and UFCF for the Cobb Energy Core Business. (Exhibit No. 71, Schedules A and B). In addition, CliftonLarsonAllen LLP considered the earnings and UFCF for Cobb Energy Core Business and the retained subsidiaries both excluding ECG (Id., Schedule C) and including ECG (Id., Schedule D). Based on the forecast of earnings for Cobb Energy Core Business, ProCore Solutions, LLC ("ProCore"), Cobb Energy Right of Way, LLC ("ROW") and ASP (earnings from ASP expected to begin in 2010 from marketing Cobb Energy’s billing system to third parties), excluding the synergistic adjustments disclosed in the HL Report, CliftonLarsonAllen LLP found that the UFCF was insufficient to service Cobb Energy’s debt without incurring additional debt. (Id., Schedule C). Additionally, based on the forecast of earnings for Cobb Energy Core Business, ProCore, ROW, ASP and ECG, excluding the synergistic adjustments disclosed in the HL Report, CliftonLarsonAllen LLP found that the UFCF was insufficient to service Cobb Energy’s debt without incurring additional debt (Schedule D). Accordingly, CliftonLarsonAllen LLP concluded that Cobb Energy was insolvent at the time of the Fairness Hearing.

1. Definition of Insolvency

Insolvency may be defined in many ways. Insolvency is defined in the Bankruptcy Code under Title 11 United States Code ("USC") Section 101(32)(A) as follows: “with reference to an entity other than a partnership and a municipality, financial condition such that the sum of such entity’s debts is greater than all of such entity’s property, at a fair valuation, exclusive of property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity’s creditors; and
property that may be exempted from property of the estate under section 522 of this title (Section 522 discusses exemptions)."

Under 11 USC Section 548 (a)(1)(B) (i), the Code discusses the criteria for a constructively fraudulent transfer (frauds with actual intent are covered under 11 USC 548 (a) (1)(A)). Constructively fraudulent transfers are voidable (recoverable) if less than reasonably equivalent value was obtained and the debtor was insolvent at the time of the transfer. They added two other types of insolvency being unreasonably small capital (11 USC Section 548 (a)(1) (B)(ii)(II)) and the inability to pay debts as they became due (548 (a)(1) (B) (ii)(III)).

2. Cobb EMC and Cobb Energy Employees Knew Cobb Energy was Insolvent at the Time of the Settlement of the Derivative Action

During the investigation, CliftonLarsonAllen LLP and Fellows LaBriola LLP interviewed senior Cobb EMC financial and operations managers who had knowledge regarding the financial situation of Cobb Energy at the time of the settlement of the Derivative Action. We explored whether these witnesses understood Cobb Energy was insolvent at the time of the settlement. Based on the above definitions, all of the witnesses stated that they knew Cobb Energy was insolvent.

Specifically, the witnesses stated that Cobb Energy was not paying its debts as they matured. Cobb Energy was delaying paying Cobb EMC its customer receipts for the electricity supplied by Cobb EMC. The "float," (as discussed above) allowed Cobb Energy to operate even though its cash flow was insufficient to support its operation. The float started with a short delay and then grew into an ever-larger debt on which only interest was paid.

The witnesses stated that prior to 2006, Cobb Energy also relied upon the receivables from the SCANA gas customers to assist with cash flow deficiencies. Specifically, SCANA funds were held for a period of up to three business days before being submitted to SCANA. During that three-day delay (which occurred for different customers at different times of the month) Cobb Energy had the beneficial use of SCANA funds, interest-free, to support its operations.

On July 2, 2007, David Johnson, Cobb Energy's Chief Operating Officer, hand-wrote a memorandum summarizing his knowledge that Cobb Energy was holding Cobb EMC electric receipts. (Exhibit No. 72, Johnson Memorandum dated July 2, 2007). In the memo Johnson noted that he became aware of Cobb Energy's debt in April or May of 2007 through conversations with Robert Steele. By July 1, 2007,
Cobb Energy’s debt had risen to $20+ million, and he, Nelson, Steele and Schoonover met with Brown to discuss the problem of the outstanding debt.

The witnesses all stated that they knew as early as the middle of 2007 that Cobb Energy did not have sufficient cash flow from operations to cover its debt obligations as they came due. The witnesses stated that without the income from the “adder fee” attached to the Cobb EMC management contract, and the cash advances by Cobb EMC to Cobb Energy (which in turn increased the draw on Cobb EMC’s line of credit), Cobb Energy could not have paid its debts. As previously discussed, the trial balance showed a payable to “Wachovia,” which some witnesses stated they thought was intended to conceal the true nature of the obligation from the Board. The balance of the “Wachovia” account (“the float”) at the time of the Fairness Hearing was approximately $29 million. (Exhibit No. 32).

Further, when CliftonLarsonAllen LLP and Fellows LaBriola LLP questioned the witnesses whether the testimony offered at the Fairness Hearing regarding assets being transferred to Cobb EMC would change their opinion on the value of Cobb Energy, the interviewees stated that they did not believe the value of the transferred assets was adequate to cover the debts assumed by Cobb EMC as part of the settlement.

3. BDO’s Possible Issuance of a Going Concern Audit Report for Cobb Energy and the Undisclosed Lien on the Electric Meters

On June 5, 2008, BDO Seidman, Cobb Energy accounting staff and counsel for Cobb Energy had a conference call to discuss the release of the Cobb Energy Audit Report for the Year Ending December 31, 2007. On June 4, 2008, Jason Cuda, BDO Assurance Manager, sent an agenda of the meeting to Bob Schoonover, Robert Steele, J.W. Rayder, John Fenton of BDO, and Scott Gregory of Brock Clay. (Exhibit No. 73). The BDO agenda was a memo regarding “Going Concern Discussion”. The memo stated that BDO wanted to discuss Cobb Energy’s “ability to continue as a going concern” and that “[d]ocumentation supporting management’s assertion will need to be completed prior to completion of [BDO’s] analysis.”

On June 24, 2008, Cobb EMC and Cobb Energy entered into an agreement regarding “the repayment of a debt of up to $12,945,632.61 by Cobb Energy to Cobb EMC associated with the cost of developing and implementing the new billing software platform”. (Exhibit No. 50, June 2008 Pledge Agreement). The agreement stated the following:

Upon request by Cobb EMC, Cobb Energy will file documentation necessary to create a lien on the
electricity meters and related equipment to secure the repayment of this indebtedness, and Cobb Energy agrees, not to create or grant any liens or other encumbrances with respect to the meters until January 1, 2010 without the prior written consent of Cobb EMC. Cobb EMC agrees not to demand full payment of the outstanding principal balance prior to December 31, 2009.

Larry Chadwick on behalf of Cobb EMC, and Dwight Brown on behalf of Cobb Energy signed the agreement, referred to in the Report as “the Pledge.”

Prior to this agreement, J.W. Rayder, Scott Gregory, and an associate at Gregory’s firm discussed via email what language should be included in the agreement. In an email dated June 18, 2008, J.W. Rayder asks Scott Gregory, “Are we sure the meters have not been pledged as collateral to NCSC?” [Exhibit No. 74, Rayder email to Gregory dated June 18, 2008]. Counsel for Cobb Energy responds that they reviewed the NCSC loan documents and the only collateral pledged is the Operating Agreement between Cobb EMC and Cobb Energy, and the Services Agreement between Cobb Energy and Gas South. In addition, they reviewed Cobb Energy’s Uniform Commercial Code filings (“UCCs”) and no pledge of the electric meters was found.

Continuing this discussion J.W. Rayder writes, “Certainly the letter can’t effectuate a pledge and I don’t think we want to file anything at this time. A suggestion – why don’t we say that upon Cobb EMC’s request it will file the documentation necessary to create a lien on the meters to secure the repayment of the indebtedness and that it agrees that it will not create any liens or other encumbrances with respect to the meters without the prior written consent of Cobb EMC.” [Exhibit No. 54, Rayder email to Gregory dated June 18, 2008]. On June 19, 2008, Scott Gregory replies, “I think that suggestion better represents what has been agreed to and is a good edit.” (Id.) On June 24, 2008, counsel for Cobb Energy emails a copy of the “Letter Agreement” to Robert Steele, J.W. Rayder and Scott Gregory. The email states that the attached letter “includes all of the suggested changes we received last week from you, Bob, and JW”. [Exhibit No. 75, Kleeman email to Steele dated June 24, 2008].

The purpose of drafting the Pledge permitting Cobb EMC to file a UCC and thereby secure its interest in the meters, but not actually filing a UCC or producing it to counsel for the derivative plaintiffs, appears to be to conceal the transaction. Mr. Rayder’s comment that “I don’t think we want to file anything at this time” buttresses this understanding. Given the timing of the Pledge, and the need for Cobb
Energy to receive a “clean opinion” on its 2007 audit prior to the Fairness Hearing, appears to indicate that counsel for Cobb Energy were working to placate BDO while at the same time conceal Cobb EMC’s new right to the meters from the derivative plaintiffs. An agreement that Cobb EMC could file a UCC, without actually filing a UCC, provides no creditor preference for Cobb EMC in the event that Cobb Energy’s assets are liquidated.

On August 21, 2008, counsel for Cobb Energy emailed Robert Schoonover, Vice President of Affiliate Accounting at Cobb Energy, a schedule of Cobb Energy’s negative retained earnings. (Exhibit No. 76, Kleeman email to Schoonover dated August 21, 2008). The schedule shows negative retained earnings (“deficits”) for every year of Cobb Energy’s existence, beginning in 1999. Mr. Schoonover forwarded the information to Mr. Steele, and, after a conference call with Cobb Energy’s counsel, determined that Cobb Energy could not legally pay dividends on preferred Cobb Energy shares for the third quarter of fiscal year 2008.

The decision to suspend paying dividends to Cobb Energy’s preferred stockholders directly impacted Dwight and Mary Ellen Brown who were due to receive quarterly dividends of $66,375 from their investment.

By October 2008, BDO had still not issued a clean Audit Report for Cobb Energy. On October 10, 2008, Mr. Cuda emailed Bob Schoonover and Robert Steel a list of open items to discuss related to the 2007 audit. (Exhibit No. 77, Cuda email to Schoonover dated October 10, 2008). The first item states, “Cash flows from 2008 and 2009 do not cover the current liabilities at 12/31/07. Short by about $10 million. How does the Company intend to repay these liabilities?” (Id.) Mr. Schoonover responds, “We are still working on our response to this item.” (Exhibit No. 78, Schoonover email to Cuda).

On October 28, 2008, Cobb EMC, Cobb Energy, and CMS Acquisition Corp. entered into an Agreement and Plan of Merger. This agreement formed a part of the basis of the settlement of the Derivative Action. (Exhibit No. 79). The agreement provided for Cobb Energy to transfer its interests in its multiple subsidiaries to a Liquidating Trust. However, the parties knew that the Court still needed to approve the settlement and conduct a Fairness Hearing. Cobb Energy indicated that its 2007 Audit Report would be produced prior to the Fairness Hearing.

On November 5, 2008, Mr. Cuda sends another open items list with the response to the first item now stating, “The balance of the payable to EMC will need to be termed out.” (Exhibit No. 80 at 3, Cuda email to Schoonover dated November 5, 2008). In addition, in the email to Mr. Schoonover, Mr. Cuda states that he
"looked for a template to use for the letter from Cobb EMC on the remaining payable to them, but we don’t have a template for that.” (Id. at 1).

On November 7, 2008, Bob Schoonover sent an email to Mr. Cuda requesting that he review a non-collection certification to be submitted to “the Affiliate [sic] Transaction Committee of the Cobb EMC Board of Directors.” (Exhibit No. 81, Schoonover email to Cuda dated November 7, 2008). Mr. Schoonover asked if the letter would “satisfy all BDO’s concerns about Cobb EMC demanding payment from Cobb Energy.” The attached letter, addressed to BDO and dated November 10, 2008, was to “certify that Cobb EMC will not demand collection of any amounts due from Cobb Energy which would cause Cobb Energy to default on payments to any of its third-party lenders, vendors, employees or other creditors.” (Id.) This draft of the letter was to be signed by Larry Chadwick. Mr. Cuda replies to the email on the same day saying, “This letter will be fine.” (Exhibit No. 82, Cuda email to Schoonover).

On November 17, 2008, the Affiliated Transaction Committee of Cobb EMC met. During the meeting the “certification letter” was read by Dwight Brown. Per the minutes of the meeting, “CEO Brown reported the purpose of the letter was to get the Cobb Energy audit out to the public as part of the settlement agreement before the December deadline.” (Exhibit No. 83, Cobb EMC Affiliated Transaction Committee Minutes dated November 17, 2008). On November 17, 2008, Mr. Schoonover emails a signed copy of the letter to Mr. Cuda. (Exhibit No. 84). The letter is dated November 17, 2008 and is signed by Johnny Gresham. (Id.)

On November 25, 2008, the Cobb EMC Board of Directors met. Per the minutes to the meeting, Mr. Gresham reported that the Affiliated Transactions Committee had met on November 17, 2008, and that “[a] letter was requested by BDO Seidman to finish the Cobb Energy audit.” (Exhibit No. 85). The language from this letter is included in Note 8, Related Party Transactions, of Cobb Energy’s consolidated financial statements for the years ended December 31, 2007 and 2006. (Exhibit No. 55). Note 8 states the following, “In November 2008, the Company entered into an agreement with Cobb EMC whereby Cobb EMC will not demand any collection of any amounts due from the Company which would cause the Company to default on payments to any of its third-party lenders, vendors, employees, or other creditors.” (Id.)

Also on November 25, 2008, John Fenton of BDO, prepared a memorandum summarizing the meetings he has had with Robert Steele, J.W. Rayder, David Flint, and George Kleeman to discuss the derivative lawsuit, the report of the Special Litigation Committee and other related matters. (Exhibit No. 86). Per this BDO summary, “[o]n October 28, 2008, the Agreement and Plan of Merger was executed
between the companies providing for Cobb EMC to acquire for cash the outstanding stock, common, and preferred, of Cobb Energy. The transaction is to be completed no later than January 31, 2009." (Id.) Additionally, in regards to the acquisition of Cobb Energy by Cobb EMC, he stated "[t]here are no contingencies, conditions or pending approvals necessary to complete the transaction. The agreement does call for the release of the final written fairness opinion of Houlihan Lokey Howard & Zukin Financial Advisors, Inc. (Note: The fairness opinion was filed with the court on November 24, 2008)." (Id.) The opinion of Houlihan Lokey was that, "as of the date hereof, the Aggregate Considerations to be paid by the Acquirer in the Transaction pursuant to the Agreement is fair to the Acquirer from a financial point of view." (Exhibit 58).

On December 1, 2008, BDO Seidman ("BDO") issued its audit opinion on the Cobb Energy financial statements for the years ended December 31, 2007, and 2006. (Exhibit No. 55). Note 14, Liquidity, Management's Plans and Pending Merger, to the consolidated financial statements discuss the sale of Cobb Energy to Cobb EMC. BDO states, "an agreement was reached with Cobb EMC concerning approximately $12.9 million owed by [Cobb Energy] extending repayment until December 31, 2009"; this appears to be a reference to the June 24, 2008, agreement between Cobb EMC and Cobb Energy. Note 14 also states that "a commitment was received from Cobb EMC that it will not demand repayment of other amounts due from Cobb Energy which would cause Cobb Energy to default on its other obligations." On this same day, Cobb Energy issued its management representation letter to BDO. (Exhibit No. 87). The letter was signed by Dwight Brown, Chief Executive Officer; Robert Steele, Senior Vice President, Product & Business Development; and Bob Schoonover, Associate Vice-President, Affiliate Accounting. Item 14 of this letter stated: "[Cobb Energy] has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset been pledged as collateral, except as disclosed in the financials."

On December 2, 2008, Robert Steele emailed a copy of the BDO audit report to J. W. Rayder, Scott Gregory and George Kleeman of Brock Clay, and David Flint of Schreeder, Wheeler & Flint, LLP. The email states that the Cobb Energy board of directors approved the report that morning by conference call. (Exhibit No. 56, Email from Robert Steele, CFO of Cobb Energy, dated December 2, 2008 at 11:03 a.m.). Thus, counsel for Cobb EMC and the derivative plaintiffs had not seen the report until the time of the Fairness Hearing. Specifically, the transcript of the December 2, 2008, Fairness Hearing that took place at 1:30 p.m. shows that the final Audited Financials were first provided to counsel for Cobb EMC at 11:00 a.m. on December 2, 2008. At the hearing Mr. Flint stated: "...just shortly before I came up here this afternoon, I obtained the audited opinion of BDO Seidman." (Fairness Hearing Transcript at 7-8). Likewise, counsel for the derivative plaintiffs indicated
that he first received a copy of the report in court that day. (Fairness Hearing at 9-10).

Accordingly, although the Pledge is mentioned in a footnote in BDO's audit opinion on the Cobb Energy financial statements for the years ended December 31, 2007 and 2006, neither counsel for Cobb EMC nor counsel for the derivative plaintiffs had an opportunity prior to the Fairness Hearing to discover the citation buried in the report.

4. Cobb EMC's "Repurchase" of the Meters from Cobb Energy

Per a May 21, 2009, memo by Julia Truss, Utilities Analyst, with the Georgia Public Services Commission ("PSC"), on April 3, 2009, Cobb EMC filed a request for financing authority related to a loan from the National Rural Utilities Cooperative Finance Corporation ("CFC") in the amount of $20 million. "The loan proceeds will be used by Cobb EMC to purchase retail electric meters from Cobb Energy...Also, loan funds will be used to purchase additional ownership interest in the joint venture between Cobb EMC and Cobb Energy relating to the design, licensing, development and operation of certain software and related computer equipment. Cobb Energy will, in turn, use the proceeds for repayment of short-term debt." (Exhibit No. 88).

Per the June 23, 2009, minutes of the Cobb EMC Board of Directors meeting, the Affiliated Transactions Committee ratified the actions of the Board regarding "the CFC/Regions financing for the $20 million CFC loan to buy back the electric meters and 21% of the joint venture computer system from Cobb Energy. The $20 million would be used to pay off Cobb Energy's notes with NCSC." (Exhibit No. 89 at 4).

On June 18, 2009, Cobb EMC recorded the receipt of $20 million related to the loan from CFC. On June 24 and June 25, 2009, Cobb EMC recorded a cash distribution of $984,499.56 and $18,279,885.61, respectively. On June 25, 2009, Cobb Energy recorded cash receipts related to the previously mentioned distributions by Cobb EMC. Cobb Energy applies these payments as reductions to "A/R Cobb EMC" of $12,994,126.05 and "Investment in Software Joint Venture" of $6,270,259.12. Cobb EMC recorded the payments to Cobb Energy as an increase to "Investment in Software Joint Venture" and a decrease to "Due to Cobb Energy." Cobb Energy used $18,279,885.61 of the proceeds from Cobb EMC to pay off debt to NCSC.
On June 30, 2009, Cobb EMC and Cobb Energy recorded the transfer of the meters at a net value of $12,012,626.49. The transferring of the meters, in addition to the related journal entries, had the net effect of creating a payable for Cobb EMC and a receivable for Cobb Energy. The obligations related to the meter transfer were satisfied when Cobb EMC made the June 25, 2009, payment to Cobb Energy in the amount of $18,279,685.61; the balance of $6,267,259.12 is related to Cobb EMC purchasing additional ownership in the software joint venture.

Per the July 28, 2009, minutes of the Cobb EMC Board of Directors meeting, the Cobb EMC payment of $18.1 million for transfer of the meters and a portion of the joint software venture payment allowed Cobb Energy to pay off its NCSC line of credit. (Exhibit No. 90 at 2).

e. Disbursements of Funds to Persons and Entities of Interest

1. Disbursements by Cobb EMC and Cobb Energy to Third Parties

CliftonLarsonAllen LLP also summarized disbursements from the two accounting systems, Orcom and Lawson, by vendor. Cooperative Energy Inc. ("CEI"), was the vendor receiving the largest amount of payments from Cobb EMC. It received over $1.24 billion between 2008 and 2012, for power purchases by CEI on behalf of Cobb EMC. The table below summarizes the total disbursements made to the top 20 third party vendors. As shown below, these amounts are primarily to power suppliers, for tax liability, and for repayment of debt.
### Summary of Accounts Payable Disbursements - Top 20

<table>
<thead>
<tr>
<th>Company</th>
<th>Amount</th>
<th>% of Total AP Disbursements</th>
</tr>
</thead>
<tbody>
<tr>
<td>COOPERATIVE ENERGY INC</td>
<td>$1,241,820,676.70</td>
<td>17.56%</td>
</tr>
<tr>
<td>EDF TRADING NORTH AMERICA LLC</td>
<td>$381,624,432.46</td>
<td>5.40%</td>
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<tr>
<td>OGLETORPE POWER CORPORATION</td>
<td>$358,558,413.52</td>
<td>5.07%</td>
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<tr>
<td>NRUCFC</td>
<td>$274,225,044.95</td>
<td>3.88%</td>
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<tr>
<td>GEORGIA TRANSMISSION CORP</td>
<td>$163,883,204.41</td>
<td>2.32%</td>
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<tr>
<td>GA DEPT OF REVENUE</td>
<td>$155,119,737.91</td>
<td>2.19%</td>
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<tr>
<td>NRG POWER MARKETING INC.</td>
<td>$121,567,888.58</td>
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<tr>
<td>PIKE ELECTRIC INC</td>
<td>$108,722,705.86</td>
<td>1.54%</td>
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<tr>
<td>INTERNAL REVENUE SERVICE</td>
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<td>SCANA ENERGY MARKETING CO</td>
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<tr>
<td>CARGILL POWER MARKETS LLC</td>
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<td>MASS MUTUAL</td>
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<td>HD SUPPLY POWER SOLUTIONS</td>
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<td>CONSTELLATION ENERGY COMMOD</td>
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<td>GEORGIA POWER COMPANY</td>
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<td>TRI-STATE UTILITY PRODUCTS</td>
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<td>DUKE ENERGY CAROLINAS</td>
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<tr>
<td><strong>Total Top 20</strong></td>
<td><strong>$3,595,482,465.21</strong></td>
<td><strong>50.83%</strong></td>
</tr>
</tbody>
</table>

#### Disbursement Categories:
- Energy/Gas
- Loans/Line of Credit
- Tax
- Power Line Maintenance
- Insurance
- Equipment

2. **Disbursements by Cobb EMC and Cobb Energy to Dwight Brown.**

CliftonLarsonAllen LLP summarized all the disbursements made to Dwight Brown and his wife between 1996 and 2011. The disbursements made to Dwight and Mary Ellen totaled $21.3 million. Payroll payments accounted for $16.2 million of the total disbursements, which included a payout of approximately $2.9 million for the “Top Hat” program. The Cobb Energy Management Corporation's...
Supplemental Executive Retirement Plan, referred to as the “Top Hat” program, was created to retain and reward long service personnel, and to attract and retain management employees and to provide those designated key management employees with supplemental retirement income. Brown also received $5.6 million in loan forgiveness and a tax gross up for any income that Brown needed to recognize related to the loan forgiveness; $746,653.78 for Cobb Energy’s executive contract buyout; and $6.8 million in salary payments. Salary payments included a payment of $527,895.84 for deferred compensation. Regarding the loan forgiveness payments, Brown was receiving disbursements through payroll to cover the tax liabilities associated with the forgiveness of the loans.

The non-payroll disbursements made to Dwight Brown and Mary Ellen Brown individually totaled $2.7 million and $2.4 million, respectively. The majority of these disbursements were dividend payments and stock settlements related to the Browns’ preferred shares in Cobb Energy. The disbursements related to the stock settlement also included a $3 million buyout of the Brown’s preferred shares in Cobb Energy ($1.5 million to Dwight, and $1.5 million to Mary Ellen) as a part of the settlement of the Derivative Action.

To capture all the income received by the Browns from Cobb EMC and Cobb Energy, CliftonLarsonAllen LLP included payments to “DTB Consulting LLC.” Upon discussion with accounting staff at Cobb EMC, CliftonLarsonAllen LLP learned that “DTB Consulting LLC” was the corporation that received Brown’s “consultant” compensation from Cobb EMC in 2011. Instead of creating a new payee in the Lawson system, the Cobb EMC accounting staff merely renamed the vendor “Dwight Brown” to "DTB Consulting LLC” while maintaining the same vendor ID number.

The following chart and table below summarizes total annual disbursements to Dwight and Mary Ellen Brown.
3. **Cobb Energy's Donation to Cobb Schools**

On May 26, 1999, Dwight Brown, as President and CEO of Cobb Energy wrote a letter to Mr. Roger Kubler, Assistant Superintendent of the Cobb County School District, pledging a donation of $1.65 million. $1 million of this donation was dedicated to building new high school football stadiums and to pay for existing high school stadiums, and $650,000 was to go towards the Lassiter High School Foundation. (Exhibit No. 91). Also noted on the letter as an offer by Brown, "CEMC
will have exclusive right to provide electrical service to the next twelve (12) schools...” At the time, Cobb Energy was not making a profit, and as noted below, was totally dependent on Cobb EMC for the donated funds.

Cobb Energy paid the full $1.65 million pledge. Cobb Energy wrote checks totaling $650,000 in September 1999 and February 2000 to the Lassiter Foundation, Inc. Cobb Energy paid an additional $1 million to the Cobb County Public Schools in November 1999 and February 2000.

In the February 23, 1999, minutes of Cobb EMC’s board meeting, (Exhibit No. 92 at 7-8), there was discussion regarding a proposal Cobb Energy would make on behalf of Cobb EMC to serve the 12 new Cobb County schools. Cobb EMC and SCANA would donate $1.5 million; $1 million would be used for sports facilities at two new schools and $500,000 for Lassiter. In exchange for the donations, ad rights would be negotiated with the schools for signage at the sports venues. The proposal was approved at the Cobb EMC board meeting. The Cobb EMC board also approved a loan to Cobb Energy, not to exceed $1.3 million, for the funds to make these donations. Cobb Energy later repaid the loan.

The September 11, 1999, Cobb EMC board minutes (Exhibit No. 93), note: “CEO Brown read the decision of the Cobb County Grand Jury regarding the contribution to the Cobb County Schools.” In January 2000, Cobb EMC made a payment to Cobb Energy in the amount of $825,000 that appears related to the September and November 1999 Cobb Energy donations. CliftonLarsonAllen LLP noted that the description in the general ledger for Cobb EMC related to this transaction was “83668 Reimburse for Lassiter Donatio[n]”. It is unclear if the ad rights were ever negotiated.

In March 2005, another $440,000 was donated to the Cobb County Public Schools by Cobb Energy. There was also a total of approximately $30,000 donated by Cobb Energy to: the Lassiter Baseball Booster Club, the Lassiter Football Booster Club, and the Lassiter Touchdown Club from 2001-2012. One of Brown’s sons, Patrick, was then the star quarterback at Lassister High School. As early as 2006, Brown extended an invitation to Tommy Carroll, a Lassister assistant coach to become a member of one of Brown’s real estate development groups, Buster & Brown Properties, LLC. The real estate project—The Retreat at White Oak, is discussed later in this report.
4. **Disbursements to Anis Sherali**

CliftonLarsonAllen LLP summarized all the disbursements made to Anis Sherali between 2000 and 2011, which totaled $13.6 million. The majority of these payments were related to earning distributions from ECG totaling $10.5 million. Sherali also received approximately $340,000 in total expense reimbursement from both ECG and Cobb Energy, and payroll payments from Cobb Energy totaling approximately $751,000. Sherali received payroll from 2001 to January 9, 2004, from Cobb Energy. According to the accounting staff at Cobb EMC this is because Sherali was an employee of Cobb Energy. However, in 2000 Cobb Energy bought a 25% stake in ECG. Thus it appears likely that either ECG payroll was being run through Cobb Energy, or Sherali was being paid directly by Cobb Energy for the work he performed as an employee of ECG. Payments to Sherali through Cobb Energy payroll ended in 2004.

Sherali also owned preferred shares of Cobb Energy stock and received roughly $443,000 in dividend payments and $1.4 million when the stock was repurchased in 2008. Additionally, Sherali received $250,000 from Cobb Energy in August of 2000 as an investment in ECG in return for a 25% ownership stake.

The following chart and table below summarizes total annual disbursements to Anis Sherali from Cobb EMC, Cobb Energy, and ECG (this does not include any compensation he may have received from CEI, or P4G).
## Payroll vs. Accounts Payable

<table>
<thead>
<tr>
<th>Disbursement Type</th>
<th>Anis Sherali</th>
<th>ECG</th>
<th>Anis Sherali</th>
<th>Cobb Energy</th>
<th>TOTALS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary Payments</td>
<td>$ 751,159</td>
<td></td>
<td></td>
<td></td>
<td>$ 751,159</td>
</tr>
<tr>
<td>Earnings Distributions from ECG</td>
<td></td>
<td></td>
<td>$ 10,452,623</td>
<td></td>
<td>10,452,623</td>
</tr>
<tr>
<td>Investment in ECG</td>
<td></td>
<td>$ 250,000</td>
<td></td>
<td></td>
<td>250,000</td>
</tr>
<tr>
<td>Dividend Payments</td>
<td></td>
<td></td>
<td>$ 443,496</td>
<td></td>
<td>443,496</td>
</tr>
<tr>
<td>Stock Settlement</td>
<td></td>
<td></td>
<td>$ 1,370,206</td>
<td></td>
<td>1,370,206</td>
</tr>
<tr>
<td>Expenses</td>
<td>$ 334,606</td>
<td></td>
<td>$ 5,900</td>
<td></td>
<td>340,506</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$ 751,159</td>
<td></td>
<td>$ 10,787,229</td>
<td>$ 2,069,601</td>
<td>$ 13,607,988</td>
</tr>
</tbody>
</table>

### 5. Disbursements to Former Cobb EMC and Cobb Energy Board Members

CliftonLarsonAllen LLP was able to extract all disbursements to former Cobb EMC and Cobb Energy board members and summarize the transactions by individual. From 1997 to 2012, there were a total of approximately $4 million of disbursements made to former board members. The majority of these disbursements were related to per diem reimbursements for meeting attendance. These per diem amounts ranged from $400 to $600 for each meeting attended. Additionally, board members would receive reimbursement for expenses associated with attending meetings, as well as insurance and retirement benefits. The table below summarizes disbursements to former Cobb EMC and Cobb Energy Board Members.
### Summary of Payments to Former Board Members

<table>
<thead>
<tr>
<th>Name</th>
<th>Cobb Energy Board</th>
<th>Cobb EMC Board</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Per Diem</td>
<td>Insurance</td>
<td>Minto</td>
</tr>
<tr>
<td>Al Fortney</td>
<td>$279,900</td>
<td>$51,874</td>
<td>$120,670</td>
</tr>
<tr>
<td>Frank Boone</td>
<td>$279,950</td>
<td>57,300</td>
<td>30,065</td>
</tr>
<tr>
<td>Sarah Brown</td>
<td>262,300</td>
<td>74,729</td>
<td>35,674</td>
</tr>
<tr>
<td>Larry Chadwick</td>
<td>272,050</td>
<td>67,959</td>
<td>29,117</td>
</tr>
<tr>
<td>David Herndon</td>
<td>305,600</td>
<td>32,934</td>
<td>23,746</td>
</tr>
<tr>
<td>William Gresham</td>
<td>165,150</td>
<td>40,524</td>
<td>130,247</td>
</tr>
<tr>
<td>David McGinniss</td>
<td>182,250</td>
<td>69,209</td>
<td>20,125</td>
</tr>
<tr>
<td>Donald Barnett</td>
<td>229,700</td>
<td>18,347</td>
<td>68,803</td>
</tr>
<tr>
<td>Henry Balkcom</td>
<td>116,650</td>
<td>6,143</td>
<td>123,061</td>
</tr>
<tr>
<td>Carl Hames</td>
<td>137,400</td>
<td>29,154</td>
<td>40,192</td>
</tr>
<tr>
<td>Glenn Brock</td>
<td>68,700</td>
<td>8,725</td>
<td>65,382</td>
</tr>
<tr>
<td>Catherine Anderson</td>
<td>25,950</td>
<td>-</td>
<td>107,305</td>
</tr>
<tr>
<td>Tom Day</td>
<td>47,900</td>
<td>18,760</td>
<td>16,000</td>
</tr>
<tr>
<td>Ranjane Patel</td>
<td>49,550</td>
<td>8,046</td>
<td>-</td>
</tr>
<tr>
<td>Harold Chitwood</td>
<td>51,300</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Lee McKinstry</td>
<td>50,740</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Paul Lovinggood</td>
<td>17,100</td>
<td>6,891</td>
<td>19,489</td>
</tr>
<tr>
<td>Cheryl Meadows*</td>
<td>39,050</td>
<td>105</td>
<td>-</td>
</tr>
<tr>
<td>David Hink</td>
<td>35,200</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bob Elsberry</td>
<td>27,500</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Michael Samples</td>
<td>6,400</td>
<td>6,268</td>
<td>-</td>
</tr>
<tr>
<td>Dean Alford</td>
<td>8,200</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$268,440</strong></td>
<td><strong>$2,485,600</strong></td>
<td><strong>$829,875</strong></td>
</tr>
</tbody>
</table>

*Ms. Meadows was elected to the board in 2011*

6. **Disbursements to Cobb Energy Preferred Shareholders**

CliftonLarsonAllen LLP isolated all disbursements to preferred shareholders of Cobb Energy stock. Cobb Energy paid a total of approximately $6.4 million in dividends from 1999 to 2008 to approximately 166 preferred shareholders. Each shareholder received a $0.553125 dividend per share, per quarter. The table below summarizes the distributions to the top 20 preferred shareholders, which accounts for roughly 92% of the total preferred dividends that were disbursed. The table also summarizes the stock settlement disbursements made to these 20 individuals upon the dissolution of Cobb Energy.
It should be noted that Larry Chadwick redeemed his stock on September 13, 2007, which was shortly after the September 6, 2007 annual meeting.

**Summary of Preferred Dividend Recipients - Top 20**

<table>
<thead>
<tr>
<th>Dividend Recipient</th>
<th>Dividends</th>
<th>Stock Settlement</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>DWIGHT &amp; MARY ELLEN BROWN/DTB CONSULTING LLC</td>
<td>$1,702,292</td>
<td>$3,087,130</td>
<td>$4,789,421</td>
</tr>
<tr>
<td>NATIONAL COOPERATIVE SERVICES</td>
<td>1,969,125</td>
<td>-</td>
<td>1,969,125</td>
</tr>
<tr>
<td>ANIS D SHERALI</td>
<td>443,496</td>
<td>1,370,206</td>
<td>1,813,701</td>
</tr>
<tr>
<td>LEE MCKINSTRY</td>
<td>395,404</td>
<td>1,022,125</td>
<td>1,417,529</td>
</tr>
<tr>
<td>DEAN ALFORD</td>
<td>465,352</td>
<td>766,594</td>
<td>1,231,946</td>
</tr>
<tr>
<td>BRIAN D WRIGHT</td>
<td>216,825</td>
<td>715,488</td>
<td>932,313</td>
</tr>
<tr>
<td>D ELLIS SCARBROUGH</td>
<td>108,413</td>
<td>357,744</td>
<td>466,156</td>
</tr>
<tr>
<td>ROBERT L ELSBERRY</td>
<td>95,099</td>
<td>330,233</td>
<td>425,332</td>
</tr>
<tr>
<td>LARRY CHADWICK</td>
<td>70,622</td>
<td>260,000</td>
<td>330,622</td>
</tr>
<tr>
<td>TERESA HARLAN</td>
<td>54,394</td>
<td>235,600</td>
<td>289,994</td>
</tr>
<tr>
<td>CARL O'NEAL GAMBLIN</td>
<td>60,721</td>
<td>204,425</td>
<td>265,146</td>
</tr>
<tr>
<td>R L HALE</td>
<td>59,081</td>
<td>208,712</td>
<td>262,794</td>
</tr>
<tr>
<td>R WARREN OLDHAM</td>
<td>46,513</td>
<td>185,000</td>
<td>231,513</td>
</tr>
<tr>
<td>PATRICIA BALDWIN</td>
<td>47,003</td>
<td>153,319</td>
<td>200,322</td>
</tr>
<tr>
<td>DELLA JACKSON</td>
<td>45,666</td>
<td>137,641</td>
<td>183,307</td>
</tr>
<tr>
<td>WANDA LEE</td>
<td>36,506</td>
<td>112,655</td>
<td>149,161</td>
</tr>
<tr>
<td>WADE PATTERSON</td>
<td>28,209</td>
<td>76,659</td>
<td>104,869</td>
</tr>
<tr>
<td>TRUST OF PAUL J GRUBB AND BEVERLY E GRUBB</td>
<td>26,550</td>
<td>76,659</td>
<td>103,209</td>
</tr>
<tr>
<td>ROBERT M BALDWIN</td>
<td>23,780</td>
<td>76,659</td>
<td>100,439</td>
</tr>
<tr>
<td>TERRY DEWAYNE SUTPHIN</td>
<td>23,231</td>
<td>76,659</td>
<td>99,891</td>
</tr>
<tr>
<td><strong>Total Top 20</strong></td>
<td><strong>$5,918,283</strong></td>
<td><strong>$9,448,508</strong></td>
<td><strong>$15,366,791</strong></td>
</tr>
</tbody>
</table>

7. **Disbursements to Law Firms**

In its review of Cobb EMC and Cobb Energy's accounting records, CliftonLarsonAllen LLP noted that the Cobb entities made approximately $59.8 million in disbursements to law firms between 1996 and 2012. Cobb EMC and Cobb Energy accounted for $49.4 million and $9.1 million, respectively, of those payments. The chart below summarizes payments made to law firms on an annual basis.

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The top 10 law firms receiving payments from Cobb EMC, Cobb Energy and its subsidiaries totaled approximately $47.5 million, which accounts for 79% of the legal fees paid between 1996 and 2012. The table below summarizes payments to the Top 10 law firms. (Ashby Consulting is not a law firm but is included in the listing below.)

### Summary of Disbursements to Consultants & Law Firms - Top 10

<table>
<thead>
<tr>
<th>Law Firm</th>
<th>Total</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>AWTREY &amp; PARKER</td>
<td>$8,621,654</td>
<td>14.41%</td>
</tr>
<tr>
<td>KING &amp; SPALDING LLP</td>
<td>7,914,427</td>
<td>13.23%</td>
</tr>
<tr>
<td>BROCK CLAY CALHOUN &amp; ROGERS PC</td>
<td>6,596,461</td>
<td>11.03%</td>
</tr>
<tr>
<td>PAUL HASTINGS JANOFSKY</td>
<td>5,956,496</td>
<td>9.96%</td>
</tr>
<tr>
<td>ASHBY CONSULTING LLC - JW Rayder</td>
<td>4,703,562</td>
<td>7.86%</td>
</tr>
<tr>
<td>VINSON &amp; ELKINS - Don Howell</td>
<td>4,224,515</td>
<td>7.06%</td>
</tr>
<tr>
<td>ANDREWS KURTH LLP - Don Howell</td>
<td>3,722,152</td>
<td>6.22%</td>
</tr>
<tr>
<td>SCHREEDER WHEELER &amp; FLINT LLP</td>
<td>2,211,599</td>
<td>3.70%</td>
</tr>
<tr>
<td>SUTHERLAND</td>
<td>1,990,250</td>
<td>3.33%</td>
</tr>
<tr>
<td>ROGERS &amp; HARDIN</td>
<td>1,529,281</td>
<td>2.56%</td>
</tr>
<tr>
<td><strong>Top 10 Total</strong></td>
<td><strong>$47,470,397</strong></td>
<td><strong>79.36%</strong></td>
</tr>
</tbody>
</table>
Of the Top 10 law firms paid, Cobb Energy paid more than Cobb EMC to Brock Clay Calhoun & Rogers PC ($4.2 million compared to $2.0 million) and Paul Hasting Janofsky ($3.2 million compared to $2.8 million). The roles of the above-listed firms and consultants are as follows: (1) Awtrey & Parker was corporate counsel for Cobb EMC from 1996 to 2012; (2) King & Spalding was counsel to the Cobb EMC Board following the settlement of the derivative action and addressed issues such as voting by proxy, the Board’s right to hire Brown as a consultant, and the SLAPP suit; (3) Brock Clay Calhoun & Rogers PC was counsel for Cobb EMC immediately prior to the formation of Cobb Energy, and thereafter acted as counsel for Cobb Energy through 2011; (4) Paul Hastings was counsel for Cobb Energy during the SCANA Arbitration; (5) Ashby Consulting LLC was the name of J.W. Rayder’s corporation, J.W. consulted for Cobb Energy on a number of matters including power supply, and was the Trustee of the Liquidating Trust; (6) Vinson & Elkins was one of the firms Don Howell worked for, and he was counsel for Cobb EMC immediately prior to the formation of Cobb Energy and thereafter appeared to work for both entities on power supply and other issues; (7) Andrews Kurth LLP was the other firm that Don Howell worked for; (8) Schreeder Wheeler & Flint LLP was counsel for Cobb EMC during the derivative action; (9) Sutherland was originally counsel for Cobb EMC during the derivative action (Brown fired Sutherland and retained Schreeder Wheeler & Flint LLP); and (10) Rogers & Hardin performed work related to the settlement including drafting the merger agreements and revising Cobb EMC’s bylaws.

8. Payroll to Select Individuals

The following individuals received the largest payroll distributions.
Chip Nelson received a large payroll disbursement on February 9, 2009, for $1,006,432 relating to a payout for the “Top Hat” program. This was not his choice but a result of Dwight Brown unilaterally terminating the program because he wanted to withdraw his funds from the program. Additionally, Chip Nelson received a salary payment of $41,961 on August 3, 2011, which included $32,667.60 of retroactive pay relating to his promotion to CEO of Cobb EMC.

Brian Brockel received a payroll disbursement on March 12, 2009, for $57,369 relating to a payout for the “Top Hat” program unilaterally terminated by Brown. After Brockel’s termination from Cobb Energy in April 2010, Brockel received related disbursements totaling $890,366. These disbursements included $32,481 related to accrued vacation, $85,391 related to nonqualified deferred compensation and retirement balances, and eight payments of $96,076 totaling $768,608 as severance.

Clarence “Dean” Alford received a payroll disbursement on February 9, 2009, for $115,813 relating to a payout for the “Top Hat” program unilaterally terminated by Brown. After his termination from Cobb Energy in October 2010, Alford received related disbursements totaling $314,825. These disbursements included $103,902 related to accrued vacation and $210,923 related to nonqualified deferred compensation.

<table>
<thead>
<tr>
<th>Year</th>
<th>Nelson, Willie T</th>
<th>Brockel, Brian A</th>
<th>Alford, Clarence D</th>
<th>Tan, Winston L</th>
<th>Robertson, Carol A</th>
<th>Cothran, Thomas H</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>$192,659</td>
<td>$142,446</td>
<td>$78,893</td>
<td>$115,649</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2002</td>
<td>203,271</td>
<td>214,322</td>
<td>129,040</td>
<td>122,216</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td>218,428</td>
<td>222,478</td>
<td>137,272</td>
<td>137,296</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2004</td>
<td>237,978</td>
<td>276,693</td>
<td>141,646</td>
<td>153,931</td>
<td>$63,111</td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>278,287</td>
<td>300,157</td>
<td>153,398</td>
<td>165,502</td>
<td>176,088</td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>316,022</td>
<td>324,423</td>
<td>167,565</td>
<td>201,721</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>343,191</td>
<td>364,190</td>
<td>192,087</td>
<td>220,920</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2008</td>
<td>377,704</td>
<td>395,358</td>
<td>211,993</td>
<td>227,099</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td>1,393,571</td>
<td>520,900</td>
<td>223,872</td>
<td>632,986</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td>394,519</td>
<td>996,618</td>
<td>706,622</td>
<td>5,521,924</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>469,277</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2012</td>
<td>411,853</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total $4,836,759 $3,076,713 $2,806,921 $2,142,388 $1,744,362 $1,521,924
Winston Tan received disbursements totaling $539,338 after his termination from Cobb Energy in October 2010. These disbursements included $65,280 related to nonqualified deferred compensation and $471,055 as severance. It appears Tan used $150,000 of his severance to purchase the wage and consulting portion of CBFS, the subsidiary of Cobb Energy that he managed.

Carol Robertson received disbursements totaling $635,478 after her termination from Cobb Energy in July 2008. These disbursements included $42,145 related to accrued vacation, $267,634 related to nonqualified deferred compensation and retirement balances, and $321,292 as severance. In calculating her severance she was given “credit” for her years of service working for other EMCs before managing CBV, the security company that she managed.

Thomas Cothran received disbursements totaling $546,319 after his termination from Cobb Energy in May 2010. These disbursements included $19,406 related to accrued vacation, $61,526 related to nonqualified deferred compensation and retirement balances, and $462,460 as severance. Cothran managed the Pest Control subsidiary owned by Cobb Energy.

9. Direct and Indirect Payments to Individuals and Entities with a Close Relationship to Dwight Brown

The following individuals and entities received roughly $86 million from Cobb EMC, Cobb Energy and related subsidiaries for payroll, employment benefits, dividends and stock related settlements, board service and other payments. These individuals were employees, attorneys, consultants, shareholders, board members, real estate owners/partners and principals of Cobb Energy subsidiaries. It should be noted that Dwight Brown, his wife and his firm DTB Consulting, received the largest amount totaling over $21 million. Dean Alford who served as a board member, shareholder and principal of Allied Utility Network received the next most at $18 million. Anis Sherali (employee, Cobb Energy shareholder), and his company ECG, received approximately $13.6 million. The law firms of Andrews Kurth LLP and Vinson Elkins, which employed Don Howell, Esq., received about $7.9 million. The law firm Brock Clay with Glenn Brock (board member and Cobb Energy shareholder), Bonnie Wilson (Cobb Energy shareholder) and Scott Gregory received $6.8 million. J.W. Rayder (Ashby Consulting) received the 6th most of the group with payments totaling $4.7 million.

Since all of these individuals and entities profited from their relationship with Dwight Brown and the formation of Cobb Energy, there was a potential for conflicts of interest.

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### Payroll/Severance / Tax Gross  
<table>
<thead>
<tr>
<th>Name/Entity</th>
<th>Payroll/Severance</th>
<th>Tax Gross</th>
<th>&quot;Top Hat&quot; Program</th>
<th>Legal/Consulting Fees</th>
<th>Board Payments</th>
<th>Other AP</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dwight Brown/</td>
<td>13,244,574</td>
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### Results of Review of Financial Audit Work Papers and Interview of Auditors

CliftonLarsonAllen LLP reviewed the audit work papers for the audits performed by McNair, McLemore and Middlebrooks & Co., LLP ("MMM") for Cobb EMC. Specifically, CliftonLarsonAllen LLP examined the audit of Cobb EMC's consolidated financial statements for the year ended April 30, 2009, (Exhibit No. 94), and for the single audit of consolidated financial statements for the year ended April 30, 2011. (Exhibit No. 95). As part of the review of the MMM work papers, CliftonLarsonAllen LLP and Fellows LaBriola LLP interviewed Randall Nichols, the current audit partner from MMM who has conducted the audits of Cobb EMC since 2009. Upon review of the work papers and discussion of the audits with Mr. Final Report
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Nichols, CliftonLarsonAllen LLP is concerned that MMM may not have met generally accepted auditing standards in documenting and confirming Cobb EMC management’s understanding of internal controls the financial reporting system and in reporting internal control issues to Cobb EMC management.

MMM’s audit of the year ended April 30, 2011 was required to be conducted under Government Auditing Standards (“GAS”), and those standards are more stringent than generally accepted auditing standards (“GAAP”). GAS also requires communication of fraud and abuse that is, or could be, consequential. We are concerned that search warrants had been served at Cobb EMC, and the homes of two board members and Brown; Dwight Brown was indicted by a grand jury; and the contract for the CEO of Cobb EMC at the time, were not reported in the audited financial statements in accordance with GAS. CliftonLarsonAllen LLP’s observations regarding MMM’s failure to meet the GAS standards are based on its combined audit experience. The judgment of auditors differs based on a number of factors, and auditors may arrive at different conclusions for the same set of facts. These comments do not address the quality or sufficiency of audit procedures.

1. MMM’s Ability to Serve as an Unbiased Independent Auditor

One issue examined by CliftonLarsonAllen LLP is whether MMM and Mr. Nichols have the necessary independence to serve as auditors for Cobb EMC. During the audit, CliftonLarsonAllen LLP learned that MMM serves as the auditors for most of the Rural Electric Cooperatives (“RECs”) in Georgia, as well as for other RECs in South and North Carolina. Mr. Nichols, the audit partner on the engagement, has over 35 years of experience serving the REC industry, and has no personal relationships with any Cobb EMC executives, but knows many through his involvement in Annual Meetings of RECs. Cobb EMC is the largest REC client for MMM.

The audit approach selected by MMM for the 2009 audit year negated consideration of many risks and potential internal control issues through reliance on the belief that consolidation of Cobb EMC and Cobb Energy would eliminate many of the conflict of interest and management override of internal control issues. The audit plan focused on the financial consolidation of Cobb EMC and Cobb Energy, and disclosure of the ongoing litigation, commitments and contingencies. The audit plan also included detailed tests of ending consolidated balances due to lack of internal controls over financial reporting. Mr. Nichols was comfortable with the segregation of duties in accounting and had no concerns with the integrity of any Cobb EMC executive beyond Mr. Brown, and noted that Mr. Brown kept “a legal trail of actions to protect himself.” Mr. Nichols expressed the belief that having one CEO and Board members serving both Cobb Energy and Cobb EMC was not a conflict of
interest because of the consolidation. In addition, because of the consolidation of the financial statements for the year ended April 30, 2009, there was not a concern with management override of internal controls.

Mr. Nichols stated that he does not consider it the auditors’ responsibility to determine if business decisions make sense. He also admitted that in 2009 he had heard negative information about Cobb EMC’s attorneys indicating that they would do whatever Cobb EMC wanted. These same attorneys reviewed the financial statements and disclosures for the year ended April 30, 2009, and made suggested changes, but none were so significant as to cause the auditor discomfort such that the firm would withdraw from the audit.

CliftonLarsonAllen LLP directly questioned why there was such a short management letter delivered to communicate internal control issues to the Board when there were multiple documented weaknesses and other opportunities to point out operational and administrative efficiencies that MMM would know from REC experience. Mr. Nichols responded that he did not believe the Board would be receptive to a list of 21 points, so he made comments that he thought would deal with the issues.

Regarding segregation of duties within the accounting department, Mr. Nichols noted that Cobb EMC had segregation of duties “beyond what you normally see for accounting.” He was comfortable with the accounting system in 2009, making the assumption that Dwight Brown “wasn’t involved” except from a business perspective.

Mr. Nichols also stated that he believed Cobb EMC had controls to detect fraud based on the fraud inquiries. The auditors’ brainstorming session in planning addressed board oversight. Mr. Nichols’ opinion was that it was “easy to say they had a lot of confidence in Dwight.”

2. CliftonLarsonAllen LLP’s Observations Regarding the Audits by MMM

In CliftonLarsonAllen LLP’s professional judgment, the internal control deficiencies related to the internal control environment of Cobb EMC for the fiscal years ended April 30, 2009, and April 30, 2011, should have been evaluated at least in the aggregate, as a material weakness and conveyed to the Board. The indictment of the former CEO should have been reported as an instance of fraud or illegal act that could have more than an inconsequential effect on the audited financial statements of Cobb EMC for the year ended April 30, 2011. The basis for CliftonLarsonAllen LLP’s observations by fiscal year is further detailed below.
For the Year Ended April 30, 2009:

1. MMM's work papers for the year ended April 30, 2009, documented several internal control deficiencies that required a highly substantive approach to testing accounting records. A highly substantive approach is required whenever internal controls cannot be relied upon.

2. There was no documentation of MMM's evaluation of these internal control deficiencies as either material weaknesses or significant deficiencies. Both are required to be reported to those charged with governance in writing within 60 days of the issuance of the audited financial statements by Statement on Auditing Standards ("SAS") No. 115, Communicating Internal Control Related Matters Identified in an Audit, and previously by SAS No. 112.

3. A material weakness is a deficiency or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the financial statements will not be prevented, or detected and corrected on a timely basis. A significant deficiency is a deficiency or combination of deficiencies in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

4. The internal control weaknesses specifically identified related to the control environment upon which all other internal controls depend include:
   a. Fraud risk related to management override of internal controls;
   b. The board apparently did not appropriately weigh the risks and benefits when entering into many of the Cobb Energy subsidiary businesses;
   c. Reporting lines and flow of information between the two entities and those responsible for them are not currently cohesive;
   d. The transparency and definition of those conducting business on behalf of Cobb Energy and/or Cobb EMC do not appear to be clearly defined; and
   e. Indications of issues with the CEO and some Board members' integrity based on a search warrant maintained in the audit work papers.

5. There was also a significant contradiction between information gathered during the fraud interviews with management and the documentation of controls. The fraud interview documentation indicated that certain members of Cobb EMC's management were unaware how fraud could occur at Cobb EMC. The internal control
documentation indicated these same individuals discuss fraud risk assessments, monitor for misappropriation of assets and implement procedures to mitigate those risks. Such a contradiction is an indicator that an internal control is not functioning, and the issue should be evaluated for communication to the Board.

The communication of internal control deficiencies to the Board of Directors on August 24, 2009 included only the following three significant deficiencies, obtained directly from that communication, and no material weaknesses were mentioned:

The Corporation did not have a documented month-end reconciliation process for many balance sheet accounts. During the course of [MMM's] fieldwork, management began the implementation of a reconciliation process.

The Corporation did not prepare internal consolidated financial statements with elimination journal entries. The Corporation is now preparing monthly consolidated financial statements, with the exception of Gas South, LLC.

The electric consumer accounts receivable aging was not reviewed in a timely manner. Audit confirmations and other substantive procedures revealed several electric accounts, which continued to receive service but were outstanding in excess of 90 days. During our fieldwork, management clarified its aging review process and procedures for monitoring past due accounts.

Part of the results of the audit is the required communication of internal control weaknesses the Board may or may not be aware of that put the organization at risk of materially misstating the financial statements whether by error or by fraud. This communication is required under auditing standards.

For the Year Ended April 30, 2011:
1. MMM’s work papers that CliftonLarsonAllen could review did not include updated internal control documentation for the audit performed for the consolidated financial statements for the year ended April 30, 2011. CliftonLarsonAllen was unable to determine, which, if any, of the prior issues had been corrected.
2. This audit was a financial and compliance audit that was performed under GAS and the requirements of Office of Management and Budget's Circular A-133, Audits of States, Local Governments and Non-Profit Organizations because of the Federal Smart Grid program that Cobb EMC expended funds under during the year ended April 30, 2011. GAS added additional reporting requirements for the audit.

3. MMM would have been required to report:
   a. All significant deficiencies in internal control, identifying those considered to be material weaknesses;
   b. All instances of fraud and illegal acts that could have an effect on the financial statements that is more than inconsequential; and
   c. Violations of provisions of contracts or grant agreements and abuse that could have a material effect on the financial statements.

4. The former CEO was indicted during the year ended April 30, 2011, and continued working for Cobb EMC on a contractual basis during this year.

5. Reporting the indictment that did have a material effect on the financial statements would be required under GAS.

6. It is also doubtful that all unreported internal control deficiencies noted during the year ended April 30, 2009, had been mitigated. We are unsure how MMM determined that these issues did not need to be reported.

MMM was under the impression that the Cobb EMC Board was not interested in receiving a robust communication of the internal control deficiencies noted during the audit process. Further, MMM sees making suggestions for improvements as possibly impairing its independence by participating in making management decisions.

3. **Recommended Actions by the Cobb EMC Board**

CliftonLarsonAllen LLP recommended that the Cobb EMC Board of Directors immediately talk to MMM about the Board's commitment to ensuring an appropriate internal control environment. The Cobb EMC Board should encourage MMM to advise them on suggested operating and administrative improvements as well as any internal control deficiencies that expose the organization to business risks.

The Board should also ensure that MMM understands that the Board assumes the responsibility for making management decisions based on the suggestions made by the auditor. MMM should have a deep knowledge of Cobb EMC's industry and an awareness of the opportunities and risks it faces. The
management letter is an opportunity for the auditor to demonstrate the depth of its knowledge and offer the insight and objective perspective that is only available to someone not involved in daily operations. The Board should embrace management letter comments. Such comments are assessments from professionals who are committed to the Board’s success. CliftonLarsonAllen LLP discussed all the above recommendations with the Board and understands that the Board spoke to MMM regarding the same.

\textit{g. Real Estate Transactions}

Dwight Brown was personally involved in two real estate development projects while employed at Cobb EMC and Cobb Energy: The Homes at Grove Hill, located in Oxford, Mississippi, and The Retreat at White Oak, located in Ooltewah, Tennessee. As detailed below, Brown recruited senior management officials of Cobb EMC and Cobb Energy, as well as outsiders with close business ties to Cobb EMC and Cobb Energy to make personal investments in these projects. These real estate developments are the source of numerous conflicts with Brown’s fiduciary duties to Cobb Energy and Cobb EMC. Specifically, Brown took advantage of Cobb EMC’s banking relationship with Georgian Bank and Northwest Bank to secure financing for his personal businesses, used the services of Cobb Energy affiliate (Marable-Pirkle Services) to perform major-infrastructure work at the Tennessee project, and used Cobb Energy’s law firm (Brock Clay) to provide an opinion letter to support a construction loan for the Tennessee project. CliftonLarsonAllen LLP and Fellows LaBriola LLP’s review of Brown’s email communications during the relevant time period also showed he devoted a substantial amount of time during Cobb EMC and Cobb Energy business hours to these outside activities, and used his personal assistants as though they worked for his real estate development companies. All of these events or relationships wove a tapestry of conflict of interests that either financially harmed Cobb Energy and/or Cobb EMC, or deprived the company’s managers and key professional advisors of the objectivity required to provide independent advice to Cobb Energy and Cobb EMC on important business matters.

\textit{1. The Homes at Grove Hill}

Dwight Brown formed Alumni Properties, LLC (“Alumni”) in Alabama on June 23, 2005. The members of the LLC were: Dwight Brown, Mary Ellen Brown, Glenn Brock & Alice Brock, Bonnie Wilson, James Winchester, Dean Alford, Anis Sherali through Bombay Real Estate Holdings, Inc., Roy Andrew Brown, and Patrick Michael Brown. Mr. Brock was then a Director at Cobb Energy, and was the senior partner at Brock Clay, Cobb Energy’s legal counsel. Bonnie Wilson was a former attorney at Brock Clay and advised Brown on Cobb Energy’s formation and during the negotiations for his employment contracts. James Winchester was an employee of

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CBIZ, Inc. a vendor that was utilized by Cobb EMC to manage its “Top Hat” program; and, along with Dwight Brown was part owner of a luxury condominium in Panama City Beach, FL. Dean Alford was a Cobb Energy Director and held over $750,000 in Cobb Energy’s preferred stock. Alford was also a Cobb Energy Vice-President running Allied Utility Network, LLC and Allied Energy, LLC. In 2008, Allied and Alford received a contract to be the developer of Power4Georgians a joint venture involving several other Georgia electrical membership cooperatives that planned to build Plant Washington, a $2.1 billion coal-fired plant. Bombay Real Estate was a company owned by Mr. Anis Sherali to handle his personal investments. Sherali headed ECG and CEI – both critically involved in power purchases for Cobb Energy and Cobb EMC, and later was involved in P4G. Finally, Mary Ellen, Patrick Michael and Roy Andrew Brown are Dwight’s wife and two sons.

In July 2005, Alumni filed for registration as a Foreign Limited Liability Company in Mississippi. Alumni developed The Homes at Grove Hill, a 131-condominium unit constructed on the outskirts of the University of Mississippi campus in Oxford, Mississippi. These were luxury condos consisting of four private suites with access to a common living area and kitchen consisting of approximately 1900 square feet.

A Marietta-based bank, Georgian Bank, approved a loan, which was personally guaranteed by Dwight Brown, Dean Alford, Glenn Brock, Anis Sherali, Bonnie Wilson and Pat Winchester. The homes were built in 2007 and 2008.

2. The Retreat at White Oak

Dwight Brown formed Buster & Brown Properties, LLC in Georgia on April 3, 2006. On September 28, 2007, Buster & Brown Properties closed a seven million dollar construction loan financed by Northwest Georgia Bank ($5 million) and Northwest Bank & Trust ($2 million). Dwight and Mary Ellen Brown, Dean Alford, Dean Alford’s brother – Dan Alford, Anis Sherali, Bonnie Wilson, James Winchester, Ralph Livingston, Robert Elsberry, Richard “Lonnie” Hale, Randall Meadows, Scott Gregory, Otto Cerney, Harry Collins and David Sparks all signed personal guarantees in favor of Northwest Georgia Bank, agreeing to be jointly and severely liable for the entire amount. (Exhibit No. 96). The HUD-1 of the closing indicates that Regions Bank and Georgian Bank received disbursements of $4.45 million and $1.24 million respectively from the closing. This suggests that Regions Bank and Georgian Bank had previously lent Buster and Brown the funds to necessary to purchase the property. (Exhibit No. 97).
The relationships between Dwight Brown and Dean Alfard, Anis Sherali, Glenn Brock, Bonnie Wilson, Patrick Winchester are noted above in the discussion of The Homes at Grove Hill. Investigation revealed Ralph Livingston was the President/CEO of Diverse Power, a Georgia EMC operating in West Georgia that later became involved in CEI and P4G. Messrs. Elsberry and Hale were senior officers of Cobb EMC who are now retired. Elsberry was then a Senior Vice-President at Cobb Energy; and Hale was Senior Executive Vice-President at Cobb Energy. Randall Meadows was President of Snapping Shoals EMC, that later became involved in CEI and P4G. Dan Alfard was the Chief Financial Officer for Allied Utility Network, LLC, a Cobb Energy affiliate. Scott Gregory was an attorney at Brock Clay and along with Mr. Hale, was involved in negotiating Dwight Brown’s 2007 employment contract with Cobb Energy; and represented Cobb Energy in the Pounds derivative civil case.

In anticipation of developing The Retreat at White Oak, Buster and Brown signed an agreement with Marable-Pirkle Services ("MPS") for utility construction on the property under a contract providing a schedule of rates for employees and equipment for all jobs assigned by Buster and Brown and accepted by MPS. (Exhibit No. 98). Additional investigation showed the project was never finished.

Sometime after the September 28, 2007, closing of the $7 million loan to Buster & Brown Properties, LLC, three additional investors joined as members. The new investors all had relationships to Brown. James Abbott and Harry Collins were Cobb EMC vendors, and Tommy Carroll was a Lassister High School football coach. (Brown’s sons attended Lassister). All three investors made an initial contribution of $97,500 for a 6.52% share in Buster and Brown. When the project began to fail, all the investors made additional capital contributions: Abbott and Collins each contributed $58,500, and Carroll contributed $40,000.

h. Cobb EMC’s Purchase of Property Owned by a Board Member

The White Circle property is located a short drive from Cobb EMC’s headquarters, and functions as a backup power center in the event of an emergency. It was brought to CliftonLarsonAllen LLP’s attention that the White Circle property was previously owned by an individual related to a Cobb EMC senior executive. As a result, CliftonLarsonAllen LLP performed analyses and background searches to help better understand the property and its origin.

On December 20, 1991, Lee A. McKinstry, D. Ellis Scarbrough, Brian D. Wright and Eric K. Batten, as Tenants in Common, purchased the White Circle property ("the property" or "White Circle") at 863 White Circle Court NW, Marietta, Georgia 30060 for $480,000. On August 27, 1998, Lee McKinstry was approved by the Cobb
EMC Board to be a Cobb Energy Board Member. (Exhibit No. 99, Cobb EMC Special Called Board Meeting Minutes dated August 27, 1998). On October 30, 1998, Lee McKinstry became a preferred stock shareholder of Cobb Energy. (Exhibit No. 100). D. Ellis Scarbrough, Brian D. Wright and Eric K. Batten also became preferred stock shareholders of Cobb Energy. CliftonLarsonAllen LLP analyzed the accounting records of Cobb Energy and determined that all four owners of the property were paid dividends from Cobb Energy: Lee A. McKinstry was paid $395,404.06 (2005-2008); D. Ellis Scarbrough was paid $108,412.50 (2005-2008); Brian D. Wright was paid $216,825.00 (2005-2008); and Eric K. Batten was paid $2,444.45 (2005-2006).

On October 26, 2004, Dwight Brown brought up the White Circle property during the Cobb Energy Board of Directors Meeting and stated that he “would prefer Cobb Energy purchase the property.” (Exhibit No. 101 at 2, Cobb Energy Board of Directors Meeting Minutes dated October 26, 2004). Lonnie Hale described the property and posited, “it could be used for the meter shop, safety training yard, radio shop and a disaster recovery back up for Power Control.” (Id.) The Board Minutes indicate that “Lee McKinstry abstained from the discussion and voting.” (Id.) On October 26, 2004, the Cobb Energy board approved the purchase of the property for $1.5 million. There was no indication in the minutes that Mr. McKinstry’s ownership interest in the property was disclosed. This non-disclosure created a conflict of interest despite the fact that Mr. McKinstry abstained from voting.

On December 15, 2004, Lee McKinstry sold the property to Cobb EMC for $1,500,000. This payment corresponds with Cobb EMC’s accounting records. Specifically, a Cobb EMC Cash Disbursement summary for December 31, 2004, lists a $1,478,323.11 ACH/Fed Wire with the description “Awtrey & Parker – White Circle Property.”

Per the Cobb County Assessor’s Office, the appraised value of the property in 2004 was $815,808. Per the Restricted Appraisal Report prepared by Marlene S. Poole dated September 2, 2004, the appraised value of the property as of September 2, 2004, was $1,500,000 to $1,600,000. Per the Change of Assessment Notice from the Cobb County Board of Tax Assessors dated April 20, 2005, the property’s appraisal (fair market value) changed from $815,808 to $914,790. The reasons for the change in value were related to the adjustment of land value to reflect the current market and the adjustment of structure value to reflect the current market. Cobb Energy’s purchase price was 1.6 times the newly appraised value. Per review of Cobb EMC minutes, its general ledger, and its disbursement records, it appears that Cobb EMC also paid for all or most of the renovations on the property after the purchase.
On Cobb County's 2008 Property Tax Return, the fair market value for the land and improvements for the White Circle property was $605,323 and $900,000, respectively, totaling $1,505,323. Per Cobb EMC's general ledger, the improvements to the property, totaling approximately $3.3 million appeared to have been made from 2005 to 2007. These improvements were recorded to “Other WIP – 863 White Circle Court” from September 7, 2004 to December 11, 2007. Thus, it appears that although Cobb Energy approved the purchase, and Cobb EMC did not, that Cobb EMC actually made the purchase of the White Circle property.

i. DOE Form 270 – (Federal Reimbursement Form)

Cobb EMC participated in a Department of Energy (“DOE”) program where it was entitled to reimbursement for costs and expenses under the federal “Assistance Agreement” (Grant). The total amount of the Grant was $33,787,672 of which the DOE would reimburse 50% of Cobb Energy’s costs and expenses. Cobb Energy sought reimbursement for direct costs and expenses, including legal fees that were expended pursuant to the DOE’s Advanced Metering Infrastructure program.

Cobb submitted 29 individual “Request for Advance or Reimbursement” (DOE Form 270) to the DOE. After the 29th submission, there was a remaining total balance of $2,048,000 (of which Cobb could be reimbursed 50% or $1,029,000) on the original grant. At that time, Cobb had been reimbursed for their 50% share of the project cost for a total of $14,845,836. The project was complete, but Cobb Energy found out that since there were grant funds still available, it could go back and seek reimbursement for costs and expenses incurred since 2010. After reviewing its records for additional expenses, Cobb Energy filed its 30th DOE Form 270. Cobb Energy’s 30th submission totaled $811,487 and was filed on July 11, 2012.

Based on CliftonLarsonAllen LLP’s initial review of the 30th submission they questioned whether some of the expenses included in the reimbursement request were justified under the original “Assistance Agreement.” More specifically, CliftonLarsonAllen LLP looked at the legal and contract review fees submitted by two firms totaling $214,265. The lead attorneys from both firms were, and had been, consultants to Cobb EMC even before Cobb Energy was formed. We were initially concerned by the handwritten entries on the invoices that were submitted by J.W. Rayder, an attorney/consultant.

During the investigation CliftonLarsonAllen LLP asked several Cobb EMC employees whether the handwritten notations on the invoices were contemporaneously made. Since many of the invoices submitted with Cobb Energy’s 30th submission were for time entries made in 2010 and later,
CliftonLarsonAllen LLP wanted to determine whether the handwritten notes were made before sending the invoices to Cobb Energy or after Cobb Energy discovered in 2012 that the expense might be reimbursable through the Smart Grid ("MDM") Grant.

CliftonLarsonAllen LLP was also concerned that time entries where Cobb EMC was seeking to be reimbursed, were inappropriately categorized to meet the specific requirements of the Assistance Agreement. If Cobb EMC had submitted invoices from these and other professionals that were inappropriately coded to the Smart Grid Program then there would have been false statements made to the DOE, a federal agency. Any false statements made to a federal agency, if relied upon, and reimbursement was made to Cobb EMC, would be a criminal violation under Title 18 of the United States Code under section 1001 (there are others that could apply as well). CliftonLarsonAllen LLP also observed invoices for two "affiliated" parties that were submitted by Cobb EMC for reimbursement to the DOE totaling $410,558. According to a cover letter submitted to the DOE, these expenses were originally not claimed because Cobb EMC did not think they were entitled to reimbursement. This issue was discussed in the cover letter as well as other reasons Cobb EMC believed the DOE could reimburse them. These reasons are listed below:

- Cobb EMC initially did not submit legal fees thinking it would use all funds in other areas of the project, but once the project was left with excess funds it was decided to submit these applicable expenses.
- While the CC&B upgrade was not part of the original scope during the project it was determined that additional components were required in the CC&B Upgrade to support the MDM implementation. The version of CC&B when the project started was not compatible with the MDM 2.0 version being installed.
- Cobb EMC initially did not submit the labor costs for Cobb EMC affiliates thinking it would use all funds in other areas of the project, but once the project was left with excess funds it was decided to submit these applicable expenses.
- Invoices related to the project were initially missed and found during the final review process.

The DOE apparently accepted these reasons and therefore reimbursed Cobb EMC the amount requested totaling $811,487.

During CliftonLarsonAllen LLP and Fellows LaBriola LLP’s interviews of key management personnel, they indicated that the Form 270, submission number 30, was accurate and that the expenses listed for reimbursement were proper. They also stated that the handwritten notes were contemporaneously added to the
professional's invoices prior to being submitted to Cobb EMC. As CliftonLarsonAllen LLP and Fellows LaBriola LLP were not in a position to interview the professionals who submitted the invoices in question we accepted these explanations.

\[ j. \quad \text{Cothran and Tan Severance Agreements and Use of the Proceeds} \]

On May 19, 2010, Cobb Energy and Thomas H. Cothran, entered into a Confidential Separation Agreement and Full and Final Release of all Claims ("Cothran Separation Agreement", Exhibit No. 102). Cothran ran Alamo Pest Control—a Cobb Energy affiliate, and was a Senior Vice-President. In the agreement, Mr. Cothran was to receive a total of $462,460 as separation pay, health coverage cost and accrued paid leave. CliftonLarsonAllen LLP noted in the payroll data that the $462,460 was paid to Mr. Cothran with a check date of May 18, 2010, and an additional $88,192 was paid to him through August 11, 2010, totaling $550,652.

On May 19, 2010, the same date as the above-mentioned Cothran Separation Agreement, a Stock Purchase Agreement was executed between Thomas Cothran ("Purchaser"), (Exhibit No. 103), and J.W. Rayder, as Trustee of the Cobb Energy Management Corporation Liquidating Trust ("Seller"), whereas Mr. Cothran purchased 100% of all shares of stock of Cobb Energy Pest Control, LLC d/b/a Alamo Pest Control ("Alamo Pest Control") for $185,000.

In June 2010, Cobb Energy’s consolidated group reported a net loss of $1.2 million for the month due to severance paid to the CBF&S and Alamo Pest executives. (Exhibit No. 104, Cobb EMC Finance Committee minutes dated June 21, 2010). In order to finance these severance payments, Cobb Energy again had to borrow money from Cobb EMC. Dwight Brown and Robert Steele reported to the Cobb EMC Affiliated Transactions Committee that it was management's recommendation that a $2 million capital investment to Cobb Energy from Cobb EMC was needed, primarily due to expenses associated with certain staff severances. (Exhibit No. 105 at 2, Cobb EMC Affiliated Transactions Committee minutes dated June 22, 2010). The committee approved the capital investment. On June 28, 2010, Cobb Energy received the $2 million from Cobb EMC and classified it as "Miscellaneous Paid-In Capital"; Cobb EMC recorded the payment as an "Investment in Cobb Energy Management Corp."

On October 1, 2010, Mr. Winston Tan, who worked as a Senior Vice-President on behalf of Cooperative Benefits and Financial Services, LLC, tendered his resignation and entered into the Confidential Severance Agreement and Full and Final Release of All Claims with Cobb Energy Management Corporation ("Tan Severance Agreement", Exhibit No. 106). According to the Tan Severance
Agreement, Mr. Tan was to be paid a total of $471,055 as severance pay, accrued paid leave and continued health coverage for 18 months. CliftonLarsonAllen noted in the payroll data that $471,055 was paid to Mr. Tan with a check date of October 1, 2010, and an additional $68,283 was paid to him through October 27, 2010, totaling $539,338.

On September 2, 2010, approximately one month before the Cooperative Benefits and Financial Services, LLC’s Asset Purchase Agreement, Winston Tan emailed David Johnson with the subject “Asset purchase agreement and severance.” Mr. Tan wrote, “The severance agreement is supposed to be executed simultaneously and will fund the purchase.” (Exhibit No. 107).

On October 1, 2010, the same date as the Tan Severance Agreement, an Asset Purchase Agreement was made between Mr. Winston Tan and Cooperative Benefits and Financial Services, LLC and J.W. Rayder, as Trustee of the Cobb Energy Management Corporation Liquidating Trust. (Exhibit No. 108). The salary, wage and benefit consulting services portion of Cooperative Benefits and Financial Services, LLC was sold to Mr. Tan for $150,000 plus 10% of the net monthly revenue of the business, payable for a period of 24 months.

On September 26, 2011, or over one year after the sale of Alamo Pest Control and the salary, wage and benefit consulting services portion of Cooperative Benefits and Financial Services, LLC, Dwight Davis emailed J.W. Rayder his “revised liquidation report.” (Exhibit No. 109). Attached to the email is a memorandum Re: Report of Cobb Energy Management Corporation Liquidating Trust Pursuant to Court Order dated September 8, From: Cobb EMC, To: Judge Stephen Schuster. On the memorandum, Mr. Davis listed “05/19/10 – sold 100% of membership interests in Cobb Energy Pest Control to third-party purchaser for $185,000.” (Id.) (emphasis added). Mr. Cothran, was a Cobb Energy employee and was directly related to Alamo Pest Control, d/b/a Cobb Energy Pest Control. Mr. Davis also listed “10/01/10 – sold wage/hour consulting portion of Cooperative Benefits & Financial Services to third-party...” Mr. Tan was a former employee of Cooperative Benefits & Financial Services. As of 9/30/2008, both Mr. Cothran and Mr. Tan were Cobb Energy’s preferred stock B holders and received dividends. Thus, the sales were not really to “third parties” but to related parties who had been running the corporations, and who received severance funds in excess of the purchase price to finance their purchases of the respective ventures.
The diagram below summarizes the pertinent dates and disbursements.\textsuperscript{11}

\textbf{Cothran and Tan Severance Agreements, and Use of Proceeds}

\begin{itemize}
  \item May 13, 2010: Thomas Cothran severance agreement totaled $40,400.
  \item June 10, 2010: Per the 6/10/10 Cobb EMC Finance Committee minutes, Cobb Energy’s consolidated group reported net losses of $1.3 million due to severance paid to Cooperative Benefits and Financial Services, and NutraPoint executives.
  \item June 22, 2010: For the 6/22/10 Cobb EMC Affiliated Transactions Committee minutes, Dwight Brown and Robert Jinks reported a $2 million capital investment by Cobb EMC to Cobb Energy was needed, primarily due to expenses associated with certain staff’s severance.
  \item June 22, 2010: Cobb Energy received a $2 million payment from Cobb EMC, classified as miscellaneous paid-in-capital.
  \item June 30, 2010: Cobb Energy Post Control (Alamo Net) sold to Cothran for $188,000.
  \item August 20, 2010: Cobb EMC represented that the $2 million payment is an investment in Cobb Energy.
  \item October 1, 2010: Winston Tan severance agreement totaled $79,000. Following the severance payment, he received 2 additional payments through 10/17/10 totaling $68,783.
  \item September 2, 2010: E-mail from Winston Tan to David Jordan stating, "The severance agreement is supposed to be executed simultaneously and will fund the purchase."
  \item October 1, 2010: The salary, wage, and benefit consulting portion of the Cooperative Benefits & Financial Services was sold to Winston Tan. (From Oct to Dec 2010, Cobb EMC received 3 payments totaling $380,000, which were recorded in the QL as related to the said.
\end{itemize}

\textit{k. Tracing Analysis- Debt taken by Cobb EMC and Distributed to Cobb Energy}

CliftonLarsonAllen LLP noted instances where disbursements made by Cobb EMC to Cobb Energy occurred as a result of Cobb EMC acquiring debt in order to make the payment. CliftonLarsonAllen LLP identified eight such instances in which the amount paid to Cobb Energy was the exact amount borrowed by Cobb EMC. An additional transaction was also noted where the exact disbursement and receipt

\textsuperscript{11} It appears that Brown treated other employees that were separating from Cobb Energy and Cobb EMC similarly. For example, in addition to his severance payout, Dean Alford was treated as a long-time employee and treated to post-separation insurance benefits. Similarly, after the Pataula EMC left Cobb EMC, its directors received similar benefits. We were not able to research the co-op’s files to determine the accuracy of these allegations or to document the cost to Cobb EMC of Brown’s generosity.

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amount were not identical, however the transactions were clearly related. For this disbursement, the main source of the funds paid to Cobb Energy was the result of Cobb EMC obtaining additional debt. For the identified transactions, Cobb EMC would assume the debt and then disburse the funds to Cobb Energy typically on the same day. The debt assumed by Cobb EMC related to these nine transactions totaled $47.9 million dollars and relates to transactions occurring between June 2005 and June 2009. Of the $47.9 million of debt, $28 million was borrowed from CFC and $19.9 million was borrowed from CoBank.

1. On June 30, 2005, Cobb EMC borrowed $8 million from CFC to pay Cobb Energy for an increased investment in the software joint venture. This joint venture referred to the design, licensing, development and operation of certain software and related computer equipment. Cobb EMC recorded the transaction as an “Investment in Software Joint Venture.” On the same day, Cobb Energy recorded a transaction increasing its cash by $8 million and decreasing the account “Investment in Software Joint Venture” by the same amount.

2. On March 31, 2007, Cobb EMC borrowed $571,838.48 from CoBank to pay expenses related to amounts recorded as revenue by Cobb Energy. In the Cobb EMC accounts payable records, this transaction was described as “BILLING & CALL CNTR SRVCS 3/07” and was recorded as an expense of $571,838.48. The expense appeared to be related to customer billing and support services. On the same day, Cobb Energy recorded an increase in cash in the amount of $571,838.48 and recorded revenue as “Fixed Infrastructure Cgh – NonJV” and “Revenue – Cust & Call Center Services.”

3. On August 29, 2008, Cobb EMC borrowed $956,329.89 from CoBank to make a payment to Cobb Energy related to labor charges and the adder fee. In the Cobb EMC accounts payable records, this disbursement was described as “PPE 8/24/08,” which appears to relate to payroll for the period ending August 24, 2008. On the same day, Cobb Energy recorded an entry for the same amount related to “Est Labor & Adder to CEMC.”

4. On December 5, 2008, Cobb EMC borrowed $13,970,294.96 from CoBank to pay the Cobb Energy Liquidating Trust, to buy stock in Cobb Energy, and to buyout Dwight Brown's Cobb Energy employment contract. In the Cobb EMC accounts payable records, these payments were described as “PAYMENT TO LIQUIDATING TRUST,” “CLASS A&B PREF & COMM STOCK,” and “EXECUTIVE CONTRACT BUYOUT.” On the same day, Cobb Energy recorded a cash receipt of $13,970,294.96 which were offset as follows: $600,000 to “AR-CE Liquidating Trust,” $12,004,622.59 to “Miscellaneous Paid-In
Capital,” which related to the stock purchase, and $1,365,672.37 to “Reorg Expense” which related to Brown’s employment contract buyout.

5. On December 22, 2008, Cobb EMC borrowed $1,735,952.12 from CoBank to make payments to Cobb Energy related to intercompany charges and the adder fee. In the Cobb EMC accounts payable records, these payments were described as “NOV 2008 INTERCOMPANY CHARGES” AND “PPE 12-21-08.” On the same date, Cobb Energy recorded cash receipts of $918,507.93 with a description of “RNA cash appld on 010609.” Cobb Energy also recorded cash receipts of $817,444.19, with a description of “Est Labor & Adder to CEMC.”

6. On December 31, 2008, Cobb EMC borrowed $703,194.15 from CoBank to make a payment to Cobb Energy related to labor charges and the adder fee. In the Cobb EMC accounts payable records, this payment was described as “PPE 12-28-08.” On the same day, Cobb Energy recorded cash receipts of $703,194.15 with a description of “Est Labor & Adder to CEMC.”

7. On February 9, 2009, Cobb EMC borrowed $962,918.95 from CoBank to make a payment to Cobb Energy related to the top hat program. In the Cobb EMC accounts payable records, this payment was described as “Top Hat Funding.” On the same day, Cobb Energy recorded cash receipts of $962,918.95 with a description of “ER Pension Contr - Top Hat Pension.”

8. On March 12, 2009, Cobb EMC borrowed $992,318.90 from CoBank to make a payment to Cobb Energy related to the adder fee. In the Cobb EMC accounts payable records, this payment was described as "PAY PERIOD ENDING 3/08/09." On the same day, Cobb Energy recorded a cash receipt entry for $992,318.90 related to “Est Labor & Adder to CEMC.”

9. On June 18, 2009, Cobb EMC borrowed $20,000,000 from CFC to make payments to Cobb Energy related to the meter transfer and the software joint venture. In the Cobb EMC accounts payable records, this payment was described as “METER TRANSFER & JOINT VENTURE” and “PAYROLL.” On June 24 and 25, 2009, Cobb EMC recorded cash disbursements of $984,499.56 and $18,279,885.61, for a total of $19,264,385.17. On June 25, 2009, Cobb Energy recorded cash receipts for the same amounts. Per Cobb Energy’s accounting records, the disbursement of $18,279,885.61 was used to reduce the “NCSC line of Credit - Current Yr” for $18,100,000 and “NCSC Interest Accrued STD” for $179,885.61. The $984,499.56 amount appears have been used for payroll expenses.
I. Whistle Blower Allegations around CEI and Energy Trading Issues

CliftonLarsonAllen LLP and Fellows LaBriola LLP were asked by the Cobb EMC Audit Committee ("audit committee") to look into whistleblower allegations about possible financial loss to Cobb EMC related to the buying, selling and trading of energy. Specifically, the whistleblower believed that deficiencies in Cobb EMC’s internal controls and management oversight resulted in Cobb EMC substantially overpaying for services rendered to Cobb EMC by Energy Consulting Group, LLC ("ECG"), Eagle Trading, EDF Trading North America, LLC ("EDF Trading"), and Cooperative Energy Incorporated ("CEI"). Additionally, the whistleblower believed that Cobb EMC and the other members of CEI might have been defrauded out of their fair shares of profits from energy trading.

CliftonLarsonAllen LLP and Fellows LaBriola LLP reviewed the following issues:

1. Was excess energy being bought to meet the peak needs of CEI, passing the costs of the over-purchase on to Cobb EMC and the other EMCS in CEI, and then selling the excess power for profit?

2. Was ECG overcharging Cobb EMC and/or the other members of CEI?

3. Was Cobb overcharging the other members of CEI when Cobb EMC performed the accounting for CEI for several years?

4. Were Cobb EMC and/or CEI making unjustified payments to related parties?

To review these potential issues, CliftonLarsonAllen LLP and Fellows LaBriola LLP requested backup documentation from CEI, ECG, and Cobb EMC related to energy trading (documentation showing the amounts paid for power, amounts ECG received for sale of excess power, amounts paid to ECG for their scheduling and power purchase services, amounts paid to Eagle Trading and EDF Trading, and mark to market reports). Additionally, CliftonLarsonAllen LLP and Fellows LaBriola LLP had several meetings and conference calls with Tim Jarrell and other Cobb EMC employees who had knowledge of Cobb EMC’s dealings with ECG and CEI.

Prior to this analysis, CliftonLarsonAllen LLP and Fellows LaBriola LLP had knowledge that Scott Turner performed the accounting for CEI from at least 2001 through 2011 as an employee of Cobb EMC. From 2008 through 2011, CEI was making power purchases for all the members of CEI and the CEI members were then billed their pro-rated portion of the total CEI power costs. During that time, notwithstanding repeated requests to upper management, Mr. Turner indicated that

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he did not have access to sufficient backup documentation to be able to set up official books and records for CEI. Instead, he was simply sent an invoice for the “cost of power” from ECG that encapsulated all costs. Turner then used that invoice to generate CEI invoices to the other CEI members for their prorated portions of the cost of power. Tim Jarrell, who is now the Vice President of Power Supply and Planning for Cobb EMC, indicated that such a practice would be “unacceptable” because without the backup information for the power purchases, it would be impossible to verify the invoice.

A senior manager at ECG raised issues related to energy purchasing by Cobb EMC and CEI. This individual challenged management on energy-trading issues and the management of ECG. Subsequently, the individual was terminated. The firing appears related to the individual’s complaints and indicates that there may have been a culture within ECG (and within Cobb EMC, which was made aware of his concerns) that criticism should not be voiced, and if it is, the individual will be punished by management. CliftonLarsonAllen LLP and Fellows LaBriola LLP subsequently met with the former senior manager to gain additional insight on the reconciliation of payments to CEI and to understand his/her concerns over energy trading.

The former manager presented CliftonLarsonAllen LLP and Fellows LaBriola LLP with a spreadsheet of data pulled from ECG’s operational and accounting data. He/she created the spreadsheet while was employed by ECG and discovered that the data appeared to show that a large amount of power was being “hubbed” out of Georgia and into Florida using Cobb EMC’s transmission capacity. The manager stated that when he brought this to the attention of management, he/she was told your concern is incorrect and not to investigate further. He/she also stated that individuals at Georgia Transmission Corporation (“GTC”) were instructed not to provide him/her with any additional operational data. Based on this spreadsheet and the data showing what appeared to be abuse of Cobb EMC’s Network Integration Transmission Service (“NITS”), CliftonLarsonAllen LLP and Fellows LaBriola LLP requested all operational data for Cobb EMC from Georgia Systems Operations Corporation (“GSOC”).

After receipt of the data from GTC, CliftonLarsonAllen LLP and Fellows LaBriola LLP continued working with the former manager and Mr. Jarrell to determine if hubbing occurred. Review of the data appeared to show that the load balanced and that the accounting data the former manager gathered while an employee of ECG was inaccurate because it showed the power flowing on the wrong NITS. This raised the question as to if the accounting information was incorrect and if there was an impact on the costs to Cobb EMC and the other CEI members.
Upon review of the agreements that Cobb EMC had with CEI, ECG, and EDF Trading, it was apparent that power transmitted on the GTC NITS cost Cobb EMC roughly an additional $2.00 per Mwh.\textsuperscript{12} Thus, if ECG was purchasing power transmitted on the Southern Company NITS but charging Cobb EMC and the other CEI members as if that power was flowing on the GTC NITS (as was shown from the internal ECG accounting data referenced above), then Cobb EMC and the other CEI members were being overcharged by a factor of about $2.00/Mwh. While this dollar amount seems small, the total power purchases of Cobb EMC and the other CEI members totaled over $1 billion between 2008 and 2011, making the potential loss quite large.

Beginning in 2008, CEI was handling power purchasing and scheduling for Cobb EMC, and the amounts paid to CEI for these services were significant. Cobb EMC made monthly payments to CEI totaling $238,195,462 in 2008 and $259,238,406 in 2009. Specifically, Cobb EMC paid CEI $16,514,501 in January 2009, $17,822,019 in February 2009, and $18,014,381 in March 2009. From 2000 through 2012 CEI was the single largest recipient of funds from Cobb EMC. Cobb EMC paid CEI over $210 million dollars per year from 2008 to 2012, for a total of $1.2 billion. The payments to CEI included energy purchases, consulting fees and expenses, and land purchases related to Power for Georgians ("P4G").

The table below summarizes the payments made to CEI from 1996 to 2012.

<table>
<thead>
<tr>
<th>Year</th>
<th>Cooperative Energy Inc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>$1,068,091</td>
</tr>
<tr>
<td>1997</td>
<td>1,208,089</td>
</tr>
<tr>
<td>1998</td>
<td>59,874</td>
</tr>
<tr>
<td>1999</td>
<td>26,281</td>
</tr>
<tr>
<td>2000</td>
<td>393,684</td>
</tr>
<tr>
<td>2001</td>
<td>7,469</td>
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<tr>
<td>2002</td>
<td>7,160</td>
</tr>
<tr>
<td>2003</td>
<td>3,977</td>
</tr>
</tbody>
</table>

\textsuperscript{12} Pursuant to the Amended and Restated Scheduling Agent Agreement between Cobb EMC, CEI, and EDF Trading North America, LLC ("the Agreement" (Exhibit No. 110)), EDF was supposed to schedule power on the Southern Company network at the “Southern Company Contract Price” unless the “GTC Contract Price” was lower. In the definitions section of the Agreement, the “GTC Contract Price” is defined to include a $2.00/Mwh “Matrix Price Adder” that the “Southern Company Contract Price” does not include. (Exhibits A and D to the Agreement).
<table>
<thead>
<tr>
<th>Year</th>
<th>Cooperative Energy Inc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>3,493</td>
</tr>
<tr>
<td>2005</td>
<td>5,488</td>
</tr>
<tr>
<td>2006</td>
<td>39,555</td>
</tr>
<tr>
<td>2007</td>
<td>5,292</td>
</tr>
<tr>
<td>2008</td>
<td>238,194,590</td>
</tr>
<tr>
<td>2009</td>
<td>259,238,407</td>
</tr>
<tr>
<td>2010</td>
<td>267,143,924</td>
</tr>
<tr>
<td>2011</td>
<td>263,666,984</td>
</tr>
<tr>
<td>2012</td>
<td>210,747,446</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$1,241,819,805</td>
</tr>
</tbody>
</table>

To investigate the whistleblower allegations that Cobb EMC and the other CEI members were being systematically overcharged for power, CliftonLarsonAllen LLP and Fellows LaBriola LLP needed both the operational data (previously received from GTC) and the hourly purchases and sales data. As discussed above, limited accounting data was provided to Cobb EMC despite the fact that a Cobb EMC employee was supposed to be performing the accounting for CEI. Therefore, if CliftonLarsonAllen LLP and Fellows LaBriola LLP were going to review the hourly transactions data, that information would have to be obtained from CEI, ECG, and EDF directly.

In December of 2013, in order to preserve Cobb EMC’s contractual rights to access the records of CEI, ECG, and EDF, Cobb EMC filed suit demanding the records. Counsel for CEI and ECG refused to provide the records, as did counsel for EDF Trading. While Cobb EMC has a right to the records, CliftonLarsonAllen LLP and Fellows LaBriola LLP recommended that the Cobb EMC Audit Committee approve a forensic audit of a selection of payments to CEI to determine if the payments were properly supported and outside the market cost of power before proceeding with litigation.

The reasoning for this approach was three-fold: (1) to limit the costs to Cobb EMC; (2) to ensure that if Cobb EMC did not pursue the records it would be able to support its invoicing of the other CEI members; and (3) to determine if it was likely to benefit Cobb EMC financially to pursue the records (if Cobb EMC was paying over the market cost of power that would be a strong indicator that the whistleblower allegations were correct and that Cobb EMC might recover for amounts it overpaid to CEI, ECG, and/or EDF).
1. Analysis and Testing

A total of 1,036 payments to CEI were extracted from the transaction data obtained from the Orcom and Lawson ERP systems. Once extracted, the payments were analyzed using a variety of queries to help identify and select payments for testing. The following are the types of analyses that were performed on the CEI payments:

- Numeric Stratification
- Benford's Law Analysis
- Duplicate Payment Analysis
- Summary of Payments by Description
- Payments by Expense Type
- Round Dollar Payment Analysis
- Trending of Payments by Year
- Top 20 Payments

CliftonLarsonAllen LLP and Fellows LaBriola LLP reviewed the results of the preceding queries and selected a sample of 42 payments for testing. These payments totaled $659,231,150 and represented approximately 53% of the dollar value of total payments to CEI. Once selected, all supporting documentation for each payment was downloaded from Cobb EMC's Filenet system. The Filenet system is an electronic repository of supporting documentation for disbursements made by Cobb EMC and related entities. Additional support for the payments associated with energy purchases was received from Mr. Jarrell, which included monthly "power packets." The "power packets" included various pieces of supporting documentation that was not found in the Filenet system. Much of this information had to be gathered from hard copies located in various locations at Cobb EMC, from the SharePoint system, Lotus Notes, Outlook, FileShare, the Cobb EMC Network, and electronic files located on hard drives of individual Cobb EMC employees. Each packet contained the monthly detail of certain aspects related to the invoices sent to Cobb EMC by CEI. The CEI invoices typically had line items for power purchases, capacity charges, transmission charges, control area charges, and natural gas hedging fees. However, none of the documents in the "power packets" contained sufficient information to allow CliftonLarsonAllen LLP and Fellows LaBriola LLP to perform the kind of reconciliation currently performed by Cobb EMC on each of its power supply invoices prior to payment. For example, there was no information on the hourly purchases and sales or on any volume discounts Cobb EMC would have received for buying a larger block of power. Additional supporting documentation for other types of payments, such as land purchases associated with P4G and consulting fees, was extracted from emails CliftonLarsonAllen previously acquired from Cobb EMC.

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For the payments associated with energy purchases, CliftonLarsonAllen LLP attempted to reconcile all line items listed on the CEI invoice. This included reconciliations of particular items to contracts, and the recalculation of purchases and sales of energy. Particular to the recalculation of energy purchases and sales, CliftonLarsonAllen LLP compared the average MWhs prices for both purchases and sales to monthly averages calculated from data obtained from Oglethorpe Power Corporation (“OPC”) and Southern Company (“SoCo”). This comparison was performed to help assess the reasonability of the monthly prices paid and sold by Cobb EMC. Additionally, the net amount of energy purchased was reconciled to supporting documentation to help assess the potential for excessive energy purchasing.

For the payments associated with land purchases, CliftonLarsonAllen LLP gathered all available supporting documentation for the payment, including emails, executed closing documents and contracts, and documents from the county tax assessor. Notably, final copies of the land purchase documents and other contracts were not located in the Filenet system, nor could they be located by the Cobb EMC accounting staff. CliftonLarsonAllen LLP reviewed the prices paid for the various parcels of land and compared those to the assessed land value per the historical records of the county tax assessor, as well as reconciled the sizes and locations of individual parcels to available supporting documentation.

For all other types of expenses selected for testing, CliftonLarsonAllen LLP attempted to reconcile the payments to all available supporting documentation from all potential sources.

2. Results

Overall, CliftonLarsonAllen LLP and Fellows LaBriola LLP were generally able to tie the payments Cobb EMC made to CEI to supporting documentation. However, the reconciliation process and the gathering of supporting documentation were extremely challenging. There was a lack of supporting documentation located on Cobb EMC’s Filenet system, and most of the gathered documents were harvested from emails that were previously obtained by CliftonLarsonAllen LLP and Fellows LaBriola LLP, and from meetings with Mr. Jarrell. Most supporting documentation from Cobb EMC was not readily available or couldn’t be located, and was only obtained via extensive searching. With regard to the payments associated with energy purchases, CliftonLarsonAllen LLP and Fellows LaBriola LLP were unable to obtain data that reflected the hourly energy prices paid by Cobb EMC. Additionally, data that reflected any volume pricing for purchases or sales was unavailable.
With regard to payments associated with energy purchases, CliftonLarsonAllen LLP was able to tie most of the invoice line item amounts to contracts and to the other gathered supporting documentation. The exception was Cobb EMC’s power cost data. CliftonLarsonAllen LLP and Fellows LaBriola LLP were not able to access the hourly pricing data for Cobb EMC. Therefore a comparison could not be performed of Cobb EMC’s hourly costs to the hourly prices paid by others in the OPC network. If CliftonLarsonAllen LLP and Fellows LaBriola LLP had this additional data they would have been able to better determine if Cobb EMC was overpaying for its power (because power costs can change dramatically on an hourly basis).

However, given the lack of available information, CliftonLarsonAllen LLP and Fellows LaBriola LLP determined that comparing the average monthly power cost paid by Cobb EMC to the historical monthly averages within the OPC and SoCo networks would provide a benchmark to determine if the power costs paid by Cobb EMC were significantly outside the normal range for a given month. When reconciling Cobb EMC’s monthly power costs to the OPC and SoCo average prices for power, the amounts sold and paid by Cobb EMC were typically lower than OPC and slightly higher than SoCo. As noted above, while this method is not the most accurate for determining if Cobb EMC was being overcharged for power, it was the most reliable method available since CliftonLarsonAllen LLP and Fellows LaBriola LLP could not obtain access to the hourly pricing data.

Overall, there were not significant variations when comparing the monthly power prices. When looking at the potential issue of excess energy purchases, CliftonLarsonAllen LLP selected 5 of the 42 CEI payment selections for additional review. Additional documentation was needed for this piece of the analysis and was provided by Mr. Jarrell. With the additional documentation, CliftonLarsonAllen LLP was able to generally reconcile the excess net energy (the power purchased or generated by Cobb EMC that was not used by Cobb EMC and either left on the system or sold to another party), however CliftonLarsonAllen LLP could not determine who the receiving party was when the excess was sold to a third party. Furthermore, it was learned during the testing process that excess energy was occasionally used to cover the “imbalance” for Cobb EMC as purchasing energy was cheaper to buy than to generate in these instances.

With regard to payments to CEI associated with land purchases for P4G, CliftonLarsonAllen LLP was able to gather and support all the aspects of the payments. There were instances where the amount paid for the land was higher than the appraised value of the land per the county tax assessor documents. CliftonLarsonAllen LLP was unable to obtain additional supporting documentation from Cobb EMC for these instances, however emails discussing the land and its
value were located. These emails discussed other factors for the land, such as its specific location and family heritage, which were factored into the offering price.

CliftonLarsonAllen LLP was able to assess these land purchases by P4G as assets on Cobb EMC’s balance sheet. Per discussions with Mr. Jarrell and others at Cobb EMC, the company still has a right to a percentage of these parcels (Cobb EMC’s share per its position in CEI), and will receive funds if the land is sold, or if timber is harvested.

The remaining payments were analyzed and reconciled to supporting documentation, except for two payments that were made from the older Orcom system. No supporting documents were located as these selections were for payments made in the year 2000.

3. Summary and Recommendation:

Due to the limited backup documentation available, CliftonLarsonAllen LLP and Fellows LaBriola LLP were not able to fully answer the questions they set out to resolve. However, the payment testing was able to establish that it is highly unlikely the other CEI members will be able to bring any claim against Cobb EMC for failing to identify excess charges for energy by ECG and/or EDF. The comparison of the average monthly power prices also showed that while Cobb EMC may have been overcharged for power, it was not overcharged to an extent that raised Cobb EMC’s cost of power above the monthly average for OPC members. Thus, it is unlikely to be financially beneficial for Cobb EMC to continue litigating against CEI, ECG, and EDF to obtain additional energy trading and power purchase documents. Further, while Cobb EMC and CEI’s backup documentation for the 42 selected payments was severely deficient, CliftonLarsonAllen LLP and Fellows LaBriola LLP were able to obtain sufficient documentation to establish that it is unlikely the payments were improper.

In light of the above results, CliftonLarsonAllen LLP and Fellows LaBriola LLP recommended that the Cobb EMC Audit Committee allow Fellows LaBriola LLP to file a dismissal of the lawsuit against CEI, ECG, and EDF without prejudice. The Audit Committee approved this recommendation and on August 20, 2014, Fellows LaBriola LLP filed a dismissal without prejudice disposing of the suit, while still allowing Cobb EMC six months to re-file in the event that it decides it does want to pursue additional documentation from CEI, ECG, and EDF.
VII. Corporate Governance

a. Overview of Corporate Governance

According to the non-authoritative (non-binding, not a professional standard) guidance issued by the American institute of Certified Public Accounts ("AICPA"), Association of Certified Fraud Examiners ("ACFE") and the Institute of Internal Auditors ("IIA") entitled Managing the Business Risk of Fraud, a Practical Guide, it states:

All organizations are subject to fraud risks. Large frauds have led to the downfall of entire organizations, massive investment losses, significant legal costs, incarceration of key individuals, and erosion of confidence in capital markets. Publicized fraudulent behavior by key executives has negatively impacted the reputations, brands, and images of many organizations around the globe.

Regulations such as the U.S. Foreign Corrupt Practices Act of 1977 (FCPA), the 1997 Organization for Economic Co-operation and Development Anti-Bribery Convention, the U.S. Sarbanes-Oxley Act of 2002, the U.S. Federal Sentencing Guidelines of 2005, and similar legislation throughout the world have increased management's responsibility for fraud risk management.

Corporate governance has been defined in many ways. Most of the organizations defining corporate governance focus on management and those responsible for oversight in meeting their fiduciary duties to stakeholders. The essence of corporate governance is designing programs and controls that demonstrate transparency in financial and business operations that protects and informs stakeholders.

CliftonLarsonAllen LLP’s discussion of corporate governance at Cobb EMC starts with the legal requirements as contained within the United States Sentencing Guidelines. However, there are also other corporate governance components that need attention. These enhancements to corporate governance include a proper tone-at-the-top, a Code of Conduct that is properly communicated to employees, a whistleblower hotline, management review, internal and external audits, and a truly independent, non-conflicted board of directors. Without specialized training and
affirmation (attesting to and signing off on the code of conduct, policies and procedures, etc.) corporate governance and the compliance and ethics program will be ineffective.

During the course of the forensic audit, CliftonLarsonAllen LLP examined Cobb EMC’s corporate governance program through interviews and reviewing documents that were on file at Cobb EMC. Additionally, CliftonLarsonAllen LLP reviewed the transcripts from the Fairness Hearing that took place on December 2, 2008.

During the Fairness Hearing, Steven E. Fox, an attorney with Rogers & Hardin who represented Cobb EMC, testified regarding Cobb EMC’s corporate governance program and its code of conduct. He stated: “...we also put in place a code of conduct of policies and procedures for related party transactions and then guidelines on significant corporate transactions and governance issues. It is, in my view, my opinion, state of the art. It is what you would find, for example, something like Coca-Cola Company or a Fortune 500 company.” (Exhibit No. 57 at 50:14-21, Fairness Hearing). He went on to note, “[Cobb EMC] has, I would submit, as good a corporate governance structure as there is”. (Id. at 50:25-51:1). He reasoned, “[m]ost private companies and which I’m aware don’t have anything resembling the kind of corporate governance that’s in place with respect [sic]the EMC now. In fact, I don’t think I’ve ever seen it. Now, this is an unusual private company”. (Id. at 58:25-59:4).

During CliftonLarsonAllen LLP and Fellows LaBriola LLP’s interviews of members of senior management, CliftonLarsonAllen LLP asked about Cobb EMC’s corporate governance program and their Code of Conduct. (Exhibit No. 111). CliftonLarsonAllen LLP also asked whether the statements above that were made by Mr. Fox were accurate. All of those interviewed were shown the current Cobb EMC’s corporate governance documents as well as those of the Coca-Cola Company, and they did not believe that Cobb EMC’s corporate governance program was comparable to Coca-Cola’s. (See Coca-Cola Company’s Code of Business Conduct, and Cobb EMC’s corporate governance documents for comparison). Based on our reviews of both programs, we observed that neither the former nor the current Cobb EMC corporate governance program resembles what you would find at a Fortune 500 company or at Coca-Cola Company.
b. **United States Sentencing Guidelines (USSG)**

Most organizations are not aware that they are required to have an effective compliance and ethics program in place to comply with the United States Sentencing Commission, Guidelines Manual (Nov. 2014) ("USSG"). The USSG states (emphasis added): "This chapter is designed so that the sanctions imposed upon organizations and their agents, taken together, will provide just punishment, adequate deterrence and incentives for organizations to maintain internal mechanisms for preventing, detecting, and reporting criminal conduct." (USSG, Ch. 8, Introduction Comment) The USSG further state, "This chapter applies to the sentencing of all organizations." USSG § 8A1.1.

The USSG also ascribes responsibility for the program: 
"[s]pecific individual(s) within high level personnel shall be assigned overall responsibility for the compliance and ethics program" USSG § 8B2.1(b)(2)(C). And sets out standards of conduct: "[t]he organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, to individuals referred to in subparagraph (B) by conducting effective training programs and otherwise disseminating information appropriate to such individuals' respective roles and responsibilities" USSG § 8B2.1(b)(4)(A).

Those in charge of the program are also required to evaluate the effectiveness of the program on a regular basis USSG § 8B2.1(b)(5)(A). The program must also allow for anonymous reporting ("[t]o have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization's employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation" USSG § 8B2.1(b)(5)(C).

According to the USSG 2014 Edition Section 8B2.1, "an organization shall (1) exercise due diligence to prevent and detect criminal conduct; and (2) otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law." An effective compliance and ethics program should be designed so that fraud, corruption and misconduct are detected in a timely manner. A corporate culture within the organization should be established to encourage ethical conduct on the part of all employees, including senior management and the board of directors.
As we demonstrate in the following paragraphs, not all CEOs operate with transparency or in the best interest of stakeholders. Most successful CEOs, whether coming from “for profit” or “not-for profit” businesses (or governmental entities), design a system of internal controls that prevent, deter, detect and respond to the risks of fraud and misconduct. Since some CEOs may unilaterally decide to broaden their authority to conduct business, there is a possibility that the CEO could override or ignore the existing internal controls.

**c. The Cobb EMC Whistleblower Hotline**

The ACFE has a relationship with EthicsLine, who provides hotline, case management and analytics. EthicsLine states "The fight against organizational fraud must be embraced and managed across all departments to effectively create an ethical culture to detect and deter fraud." (EthicsLine.com)

According to the ACFE's 2014 Report to the Nation, a whistleblower hotline is one of the most effective ways to detect fraud and misconduct. However, the Hotline will never be successful without mechanisms that allow for anonymity or confidentiality. If an employee is to feel comfortable using the hotline, they would have to know that their concerns are taken seriously and that there would be no retaliation against them for making the call.

A hotline needs to be properly designed, rolled out with adequate training and with an understanding that it is in fact anonymous. During the course of the investigation, CliftonLarsonAllen LLP and Fellows LaBriola LLP were told that within the past year Cobb EMC has instituted a new whistleblower hotline. That is a great first step in detecting fraud or misconduct within an organization. According to the ACFE’s 2014 Report to the Nation, and a number of other studies, tips are the most common detection method for fraud and misconduct. The following chart, per the ACFE 2014 Report to the Nation, shows that at 42%, tips (including hotlines) out-performed the next most frequent method, management review. Management review came in second in the study at 16%. Internal audit (14%) was determined to be the third most frequent mechanism to detect fraud and misconduct. The most shocking of the initial detection mechanisms is the external audit, which was tabulated at 3%.
Initial Detection of Occupational Frauds

When asked during one of CliftonLarsonAllen LLP's interviews how successful the hotline was, a member of senior management said he thought it was going well. He stated that they had received 3 calls since its inception. The calls, according to this witness, were not relevant to corporate governance. The witness explained that although the calls from the hotline were handled by a 3rd party provider, the provider sent these calls to members of the Board and to senior management.
For a hotline to be effective, the caller needs to know that the person receiving the call will take it seriously and that he/she will not retaliate against the caller. Here it appears that there are too many recipients of the hotline calls. If the caller had an issue with a member of the Board or senior management, he/she would be less likely to make the call if it involved one of the recipients of the call.

Normally hotlines are set up and monitored by an independent 3rd party who is not employed by or involved with the company they are working with. There should be an independent member of the Board who is responsible for triaging the calls (prioritizing them between personnel matters, urgent life threatening or safety issues and fraud and misconduct, etc.) and making sure that something is done to resolve the issue. Many of the same members of management from the 2008 (and prior) administration are still at Cobb EMC. If the employees or line managers want to report something that implicates current management, and those individuals are the ones receiving the calls, then the perception of an independent investigation of the issue would be hampered by this apparent conflict of interest.

d. **Tone-at-the-Top**

The Treadway Commission Report (Report of The National Commission on Fraudulent Financial Reporting, October 1987) defines the “tone at the top” as follows: “The tone set by top management that influences the corporate environment within which financial reporting occurs.”

To set the right tone, top management must identify and assess the factors that could lead to fraudulent financial reporting; all public companies should maintain internal controls that provide reasonable assurance that fraudulent financial reporting will be prevented or subject to early detection


The ACFE's 2014 Report to the Nations describes the top internal control weaknesses that lead to Occupational Fraud and Abuse. When examining how fraud is detected, the second most frequent way is through management review (see above chart). Looking at the below ACFE 2014 Report to the Nations chart, the second most frequent way fraud goes undetected is a lack of management review. However, the key to corporate governance is management setting the proper tone at the top. As you will see below, a poor tone at the top creates an environment where occupational frauds can occur.

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The Boards of both Cobb Energy and Cobb EMC were presented with information regarding the financial affairs of both entities. They saw the CEO of both creating an entity that he profited from. The CEO personally benefited and profited from:

a) A loan he and his wife received in the amount of a promissory note for $2 million dated October 1, 2005;

b) A loan he and his wife received in the amount of a promissory note for $1 million dated October 1, 2005;

c) The forgiveness of both loans, all interest forgiven, and no principal paid on either loan;

d) $5.6 million in disbursements to cover the tax liabilities associated with the loan forgiveness;

e) Using the proceeds from the $3 million loans to purchase preferred stock in Cobb Energy that only a few individuals (friends of the CEO) could purchase;

f) Dividends from the preferred stock ownership in Cobb Energy, totaling $851,146;

g) A payment of $746,653.78 for Cobb Energy’s executive contract payout in December 2008;

h) Significant increase in compensation (see e.g. payroll analysis section);

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i) Liquidation of the “Top Hat” program where Brown received approximately $2.9 million;

j) Payment as a “consultant” (after he was removed from his CEO positions)

The Board also witnessed, condoned and approved numerous business and financial transactions that did not benefit the members of Cobb EMC. Many of these financial transactions were financial disasters and should have been mitigated when they learned about them. For instances, the continuation of Cobb Energy operations despite growing insolvency problems, distributions of dividends for Cobb Energy preferred shareholders despite negative retained earnings, and Cobb EMC’s payment of SCANA contract termination fee while only Cobb Energy received benefits from the contract. However, the CEO (of both companies) was undeterred and continued doing what he wanted without any objection from the Board.

The Board also knew that there was no transparency to the decision making process that took place at the Board level. Despite this, the Board of Cobb EMC voted to move forward to create Cobb Energy. Further, the Cobb EMC Board voted in favor of the proposal to create Cobb Energy without a business plan or any projections supporting even minimal due diligence. In sum, there were numerous risk factors that should have been acted on by the Boards of both entities. (Exhibit No. 5 at 2-3, 7, Transcript of Telephone Conference dated May 23, 1997 discussing possible delay to formation of Cobb Energy).

Dwight Brown was a bully, not a leader, who made unilateral decisions in a dictatorial manner. Senior officers interviewed during the investigation disclosed that they were apprehensive about bringing him negative information for fear of being humiliated; and that he seldom if ever reconsidered a decision, even when significant new information on the subject was presented. The investigation revealed Brown intimidated Lee McKinstry, a Cobb Energy Board member, who told senior officers that he would never question or challenge Brown on a board issue ever again. Brown also subtly controlled the Cobb Energy and Cobb EMC boards by ensuring they were well compensated, and received extraordinary health insurance and retirement payouts when they retired from the board. Further, Brown was arrogant and disdained or refused to answer questions posed by members during several annual meetings and made numerous false or misleading statements in the meetings as well as in the members Annual Reports and Newsletters.

There were also no business plans or projections offered prior to Cobb Energy’s acquisition of affiliate businesses. As each subsidiary was added to Cobb Energy’s portfolio of related parties, no business plan was reviewed nor was any feasibility study presented. As realization of mounting losses occurred for Cobb Energy and its subsidiaries, there was no plan of attack to deal with them. The only

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way Cobb Energy and its subsidiaries continued operations was through funding from Cobb EMC. That funding occurred through the increase of the adder fee direct investments by Cobb EMC, and the float.

In spite of these clear risk factors presented to the Cobb EMC and Cobb Energy Boards, they never sent a strong message to senior management regarding a “proper tone at the top” and tolerated misconduct on the part of the CEO. Their message was mostly communicated in a silent, passive fashion or, alternatively, one based on the fear of retaliation for speaking up. These were observations made through interviews, a review of documents, emails and other sources. Because the risk of management override of internal controls is always present, proper oversight by the Board is essential. The Board should send a strong message to senior management, as well as the entire organization, that their “tone at the top” will not tolerate fraud or misconduct on the part of anyone in the organization. The tone should be reflected in clearly communicated policies and procedures. (See Management Override of Internal Controls: The Achilles Heel of Fraud Prevention).

The AICPA Discussion Paper on Management Override of Internal Controls: The Achilles Heel of Fraud Prevention (published in 2005) opened with this scenario:

The chair of the audit committee of ControlCo was stunned. Company counsel had just advised him that the prior year’s revenue and earnings may have been overstated. "But how could that happen? We have good internal controls and management and the auditors both signed off that they were effective!" he said. Ultimately, the chair learned of the "Achilles' heel" of any system of fraud prevention: Those who design and implement internal controls—management—can also override or bypass those controls. The chair began to wonder, what might we have done differently? How can an audit committee prevent management from overriding internal controls? A few weeks later, as the fraud became public, the chair felt even worse when reading the headline in the local newspaper: "Where Was the Audit Committee?"

Then, regulators and class action lawyers begin to ask:

- Was the audit committee sufficiently involved or were the members simply listeners?
- Did the audit committee’s actions demonstrate an appropriate level of skepticism?

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Did the individual members of the audit committee carefully read the quarterly financial statements? Did they understand the correct key performance indicators?

- Was the audit committee alert to financial statement fraud risk factors? Did the audit committee members focus on the potential for manipulation of financial statements?
- Were the entity’s code of conduct and whistleblowing processes really important to the entity or was it simply an effort to comply with regulatory requirements?
- Was the audit committee making best use of the entity’s internal auditors and independent auditors?

Although this scenario was directed at the audit committee of the fictitious entity, it does apply to boards of directors and those responsible for corporate governance.

As CliftonLarsonAllen LLP and Fellows LaBriola LLP learned from its interviews, and as more fully detailed in other parts of this report, the Cobb EMC CEO was able to override controls (where controls existed) and made business, accounting and financial decisions that benefitted him and his friends without much pushback. With no oversight mechanism in place by a truly independent Board, the CEO did as he pleased. As mentioned above, corporate governance starts with the “tone at the top.” Whether the Board initiates it or the CEO does, the CEO needs to make sure that a proper tone is established. The Board of directors is responsible for exercising proper oversight over the CEO and his/her compliance and ethics program, among other things.

Throughout the forensic audit we determined through interviews, a review of documents, emails and other sources, that Cobb’s (EMC and Energy) “compliance and ethics program” was not effective. Cobb’s (EMC and Energy) previous CEO clearly appeared to be uninterested in corporate governance or in establishing a corporate culture that encouraged ethical behavior. His “tone at the top” was one that discouraged open and honest communication. When certain board members, members of senior management, employees, members of Cobb EMC, and others tried to question the former CEO regarding financial transactions with Cobb Energy, financial performance issues, his compensation or stock ownership they were met with anger and hostility. If anyone spoke up or asked him questions Brown shouted them down, humiliated them or just ignored them. He also retaliated against a member of senior management—Frank Myers, by stripping Myers of his duties for reporting Cobb Energy’s negative cash flow.
After members joined together to file a derivative class action lawsuit in 2007 and after the December 2008 settlement, the Board, led by the former CEO filed a retaliatory SLAPP (Strategic Litigation Against Public Participation) lawsuit against the plaintiffs in 2009. It should be noted that the defendant’s legal fees were paid by Cobb EMC and its insurer. Brown’s legal fees are still being paid for by Cobb EMC and its insurance carrier to defend the criminal case against him. Clearly everyone at Cobb EMC, from the Boardroom to the loading dock, knew that they were better off keeping their mouths shut. For example, Glenn Brock was a board member who spoke up, was verbally reprimanded by Brown for challenging him and subsequently resigned; Frank Myers a member of Cobb EMC Senior Management spoke up about Cobb Energy’s failure to pay Cobb EMC in a timely manner, and was demoted by Brown; Tripper Sharp—now a director, spoke up at an annual meeting that occurred on the loading dock and was shouted down.

e. The Prior Boards were Conflicted and Non-Independent

Since Cobb EMC is a cooperative and was established as a membership organization, the CEO, Board of directors, the employees and others should be fiduciaries for the benefit of the members. When the former Cobb EMC and Cobb Energy CEO (one and the same) initiated and conducted business and accounting transactions, he was required to do so for the benefit of all the members of the cooperative. In exchange, the members of the cooperative entrusted their assets, money and property to the Cobb EMC CEO. With Board members, senior management and others being afraid to speak up or ask questions regarding their concerns over business and accounting transactions affecting Cobb EMC and its financial affairs, there was no effective compliance and ethics program at Cobb EMC.

In one of the clearest examples of a “non-independent” board, we reviewed a transcript of a telephone conversation between several of Cobb EMC’s attorneys that occurred prior to the formation of Cobb Energy. We learned that the former CEO consulted frequently with attorneys who were paid by Cobb EMC to provide legal and business advice on a variety of issues. In one conversation in 1997 prior to the formation of Cobb Energy several of the attorney consultants (Don Howell and Bonnie Wilson) had the following conversation on May 22, 1997:

That is to say, there’s not going to really be anything for the company to do I don’t think for quite a while that is going to require someone to be on the board that really you know has any significant function. And one of the things that for example you may want to do is that you may want to just create an entity that has board
members at least initially that don’t have any relationship to Cobb EMC. And that would mean maybe lawyers in your firm or Franklin Rogers or Dean Alford, or I mean what difference does it make if they have the appropriate motivation, they are going to do what they are told anyway. And there would be plenty of time for them to resign later on.

(Emphasis added). This clearly sent the message that the Board would do whatever they were told and they did. (Exhibit No. 4 at 1).

Later, after the formation of Cobb Energy, one of the Cobb EMC Board members, Glenn Brock, spoke up and voiced his concerns regarding the financial efficacy of Cobb Energy and its subsidiaries. He was treated with hostility by Brown, and shortly thereafter resigned from the Board. This information was obtained from interviews with certain employee(s). It should be noted that the former CEO was not an accountant, and there are reports that he either did not understand or ignored the financial impact of many of his decisions (i.e. the need to get funds from Cobb EMC to cover cash shortfalls at Cobb Energy and their subsidiaries, Cobb Energy’s insolvency, suspension of preferred stock dividend payments, etc.)

However, Brown well knew that he was profiting from Cobb Energy’s establishment. He knew that his compensation went from $391,000 in 2001 to $3.8 million in 2008. His total compensation for the period 2001 to 2011 was $14.7 million. He was paid $851,146 in preferred stock dividends. His wife was also paid $851,146 in preferred stock dividends. He received $2.9 million in a cash payout in 2009 for the Top Hat Program. Even after being forced to step down as CEO, he was still paid as a consultant. The payments to his consulting firm, DTB Consulting LLC, totaled $295,000 in 2011.

As discussed above, the former CEO had many friends and he did his best to take care of them. He did not allow a conflict of interest to stand in his way. Specifically, Brown offered his friends preferred stock ownership in Cobb Energy (with a hefty 8.85% yield per year); business relationships with Cobb Energy (in the form of subsidiaries or related parties); and business relationships with Cobb EMC (as vendors); as well as other financial benefits. Many of Brown’s friends profited from dividends on Cobb Energy preferred stock and as well as the financial relationships with Cobb Energy and Cobb EMC.
The following is a listing of the CEO's friends along with their business relationships with both Cobb Energy and Cobb EMC.

a) Anis Sherali: CEO of ECG, Preferred Shareholder in Cobb Energy, Real Estate Partner, vendor for P4G;
b) Dean Alford: Preferred shareholder in Cobb Energy, Real Estate Partner, vendor for P4G;
c) Bonnie Wilson: counsel for Cobb EMC, counsel for Cobb Energy, counsel for Brown personally, Real Estate Partner, Preferred Shareholder;
d) Glenn Brock: Board Member of Cobb EMC and partner at Brock Clay, the law firm used by Cobb EMC and then Cobb Energy;
e) Scott Gregory: a partner at Brock Clay, the law firm used by Cobb EMC and then Cobb Energy, and an investor in one of Dwight Brown's real estate ventures through H.S.G. Management Co.;
f) J.W. Rayder: a long time consultant for Cobb EMC and Cobb Energy, Trustee of the Liquidating Trust, and a Board Member of Gas South;
g) Don Howell: a partner at Vinson & Elkins and Andrews Kurth, two law firms used by Cobb EMC and later Cobb Energy;
h) Pat Winchester: an employee of CBIZ, Inc. that managed Cobb Energy’s Top Hat program, and also a co-owner of a condo with Dwight Brown;
i) Lee McKinstry: a friend of Dwight Brown that was allowed to purchase Class A preferred shares before they were offered to anyone else, owner of the White Circle property purchased by Cobb EMC, and a Board Member of Cobb Energy;

j) Lonnie Hale: a former Vice President at Cobb EMC, a preferred shareholder, and an investor in Dwight Brown’s real estate ventures;
k) Bob Elsberry: a former Vice President at Cobb EMC, a preferred shareholder, and an investor in Dwight Brown’s real estate ventures;
l) Buster Sylar: a friend of Dwight Brown's, a principal in Marable-Pirkle Services, and an investor in Dwight Brown's real estate ventures.

On August 26, 2008, Wayne Middlebrooks, a CPA hired to provide expert testimony on the operation and financial reporting aspects of EMCs signed an Affidavit under penalty of perjury and stated, in part, the following relevant opinions:

In my opinion, there is no question that the Officers and Directors of the EMC that are, or have been, financially involved with Cobb Energy would be in violation of both the letter and spirit of Cobb EMC's own by-laws, the NR-ECA guidelines, and the EMC's Policy Manual...

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In my opinion, Mr. Brown's service as President of both Cobb EMC and Cobb Energy and Chairman of the Board of Cobb Energy creates an irreconcilable conflict of interest as the goal of the two entities is in conflict. Under certain circumstances directors may serve on boards of the non-profit and affiliated for profit organization. However, in the event directors common to both boards receive financial benefit as a result of serving on the board of the affiliated for-profit entity, which benefit arises from economic transactions between the for-profit and not-for-profit, then in such event there would clearly be a conflict of interest....

In my 27 years of EMC audit work I have never seen a structure like this and I am unaware of any Board of an EMC ever approving these types of conflict of interest transactions. In my opinion this would constitute a lack of ethics and a departure from the letter and spirit of the entire EMC movement....

Virtually none of the required related party disclosures have been made in any meaningful way to the members of Cobb EMC. In my opinion the disclosure of related party transactions should conform to the requirements of FAS 57. Management should provide a complete Related Party Disclosure in a restated audit report for the period ending April 30, 2007, including full disclosure of:

- The relationship between the entities:
- The dollar amount of all transactions between the companies and affiliates
- Common executive control and ownership interest of management and directors
- Loans between entities
- Loans to members of management and directors
- Intercompany rent
- Intercompany guarantees
- Intercompany transfers of assets
I am asked to assume that each of the Directors has testified that they have no question or concern about conflicts-of-interest relating to any aspect of the CobbEMC/Cobb Energy contract and relationship, including Brown's service as CEO of both companies and Brown's stock ownership in Cobb Energy. In my opinion, this reflects an appalling failure of the Board to meet its obligations under the EMC policy Manual and the recommendations of the NRECA guidelines and the Bylaws.

(Exhibit No. 112, Middlebrooks Affidavit).

The above statements are indicative of the multiple problems present in the Cobb EMC/Cobb Energy structure and relationship. The stated purpose for the creation of Cobb Energy was to "... lower Cobb EMC's cost" (July 22, 1997 Board Minutes). However, the adder fees paid to Cobb Energy by Cobb EMC totaled $27,506,101 through December 31, 2007, and through April 2007 Cobb EMC recognized the sum of $166K of equity earnings of Cobb Energy. Accordingly, there were no cost savings and instead Cobb Energy constituted a large expense for Cobb EMC. Middlebrooks summarized, "A payout of approximately $27M versus a noncash return on investment of $166K does not appear to satisfy the original reason for the creation of Cobb Energy. It appears that Cobb EMC has been subsidizing Cobb Energy during Cobb Energy's existence. We can only assume that the shareholders of Cobb Energy have been the ultimate beneficiaries of this subsidy. It appears that the relationship between Cobb EMC and Cobb Energy has not lowered Cobb EMC's costs but has increased Cobb EMC's costs substantially. Those costs have reduced the member's patronage allocation."

f. Cobb Coalition

Although the Pounds derivative suit was settled at the December 2, 2008, Fairness Hearing, the elections for the Cobb EMC Board of Directors was a contentious issue that was bitterly litigated and survived for nearly three years. In an effort to cling to his leadership role at Cobb EMC, Dwight Brown was instrumental in the formation of Friends of Cobb EMC in March 2009. Robert Elsberry a retired Vice-President of Cobb EMC and a fellow investor in Brown's real estate venture in Tennessee, co-chaired the organization which issued a March 6, 2009, Press Release, (Exhibit No. 113), stating:
[Friends of Cobb EMC was formed] ... for the express purpose of undoing the damage caused by a small group of individuals. For 18 months, eight Cobb EMC members (out of 190,000) have attacked management and the board of directors with malicious allegations, charging them with mismanagement of the co-op and unjustified self-enrichment....

Friends of Cobb EMC firmly believes the management team and board of directors at Cobb EMC have done superlative work and always have the best interests of the members in mind with every action they take. As such, the organization is dedicating its efforts to supporting the individuals that have been subjected to an unjustified and unfortunate smear campaign.

Friends of Cobb EMC worked closely with Sam Kelly – Vice-President of Cobb EMC Public Relations and Cobb EMC’s public relations firm, Cookerly Public Relations, to tout the virtues of senior management, especially Dwight Brown and the existing board of directors, in an effort to build public support in advance of the anticipated elections. Tactics paid for by Cobb EMC included spinning facts in Talking Points for the board members making public appearances and having professionals ghost write supporting Letters to the Editor. The conduct of the first post-settlement round of elections would be conducted under a totally new concept in Cobb EMC’s history: democratic nominations of candidates. The directors in place prior to the November 2011 elections (“old board”) had a standing Nominating Committee which would re-nominate existing members or nominate replacements who would perpetuate the status quo.

In May 2009, Cobb EMC hired Tom Perdue, a seasoned professional political consultant, with the express goal to re-elect the old board. (Exhibit No. 114). Perdue built a grass roots program to recruit co-op members to vote for the old board. Perdue’s plan named the “Cobb EMC Coalition,” (Exhibit No. 115) and called for a Campaign Manager for each of the 10 board members. Additionally, the Coalition would have 25 Managers, each overseeing 10 Captains, who in turn would recruit 10 co-op Members to run the program:

[Campaign Managers] ... will help the board members increase their visibility among our membership and within the overall community be participating with the board member in Coalition events. The Campaign Managers will also have to work with the board
member to identify at least 50 Cobb EMC Members who
will commit to attend the initial meeting and vote with
us. [Perdue estimated a successful campaign would
identify “2,275 positive voters for us.”]

Other aspects [to] the campaign range from ramping up
our social media efforts to broadening our Friends of
Cobb EMC membership to making sure our Coalitions
touch everyone in our service area a few dozen times
over the next few months, to having an intense effort to
make sure Cobb EMC member employees who are also
Members actually vote to creating a plan to have our
Pataula members vote.

The January 12, 2010, Coalition plan required “volunteers” from Cobb EMC’s
work force who were asked to devote their time to the campaign – there was no
prohibition to working on company time; used Cobb EMC’s email system to
coordinate the plan; and, used the co-op’s membership data to create a list
identifying members who were “friends or foes” of the old board and Brown.

The Coalition plan involved visits by board members, Managers, Captains and
members of the team to: business customers, the Cobb EMC retiree group,
community festivals, local sporting events, schools, civic groups, neighborhood
organizations and others where they distributed “Did You Know” (“DYK”)
brochures, gave talks supported by DYK PowerPoint presentations, handed out
“goodie bags,” held “biscuit socials,” gave away gift cards as door prizes, and ran
other good will incentives. Other communication efforts included Customer
Appreciation Days at Cobb EMC’s HQ, direct mailings to members, and letter to all
charities that had received donations from Cobb EMC recently, asking those
organizations “. . . to make a brief comment [to their donors] about the support
given to [the charity] by Cobb EMC over the years. (Exhibit No. 116, May 13, 2010,
Master Coalition Document).

Cobb EMC paid Perdue’s firm and the Cookerly firm for this effort.
Interviews of senior Cobb EMC officials revealed that in the fall of 2011, as the date
for the first election approached (November 12, 2011), Perdue realized the efforts
to have the old board re-elected were futile and candidly told the board they were
going to be voted out of office.
g. **Cobb Energy Management Corporation's Supplemental Executive Retirement Plan**

If the compensation, dividends and forgiven loans were not enough, the former CEO received additional benefit from the Cobb Energy Management Corporation's Supplemental Executive Retirement Plan. This Plan was referred to as the "Top Hat" plan. The former CEO received a payment of $2,923,341.26 from the dissolution of the plan. The current CEO also benefitted from dissolving the plan. He was paid $1,006,431.68. Clarence D. Alford received $115,813 and Leila Lassiter received $161,055.87. According to the minutes, "CEO Brown reported plans were moving forward to dissolve the Top Hat Plan because of the merger and Cobb EMC Board's controlling interest."

h. **Fraud, Corruption and Misconduct**

Throughout the course of the investigation, CliftonLarsonAllen LLP and Fellows LaBriola LLP were told by Cobb EMC employees that they were not aware of any fraud going on at Cobb (EMC or Energy) during Dwight Brown's tenure. In spite of the Derivative Action, the execution of search warrants at Dwight Brown's and two directors' homes, and the indictment of Brown, where allegations of fraud and misconduct were laid out with some specificity, the interviewees could not or would not connect the dots. CliftonLarsonAllen LLP and Fellows LaBriola LLP believe part of the problem is a lack of understanding of fraud, corruption and misconduct. The ACFE defines the term "occupational fraud and abuse" as follows: "The use of one's occupation for personal enrichment through the deliberate misuse or misapplication of the employing organization's resources or assets." The conduct by senior management, managers and employees of an organization can and often do include asset misappropriation (the most common type of occupational fraud), corruption and fraudulent financial statements.
The following three charts from the ACFE 2014 Report to the Nation illustrate the various schemes related to the fraud categories of asset misappropriation, financial statement fraud, and corruption.

**Asset Misappropriation**

- **Cash**
  - Theft of Cash on Hand
  - Theft of Cash Receipts
  - Skimming
- **Non-Cash Assets**
  - Fraudulent Disbursements
  - Expense Reimbursement Schemes
  - Check Tampering
  - Misuse
  - Larceny
  - Cash Larceny
  - Payroll Schemes

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Financial Statement Fraud

As demonstrated by the above charts, the conduct by senior management, managers and employees of an organization can and often do include asset misappropriation (the most common type of occupational fraud), corruption (related party transactions) and financial statement fraud (improper disclosures).
According to the ACFE's guide, Managing the Business Risk of Fraud: A Practical Guide,13 “[f]raud is any intentional act or omission designed to deceive others, resulting in the victim suffering a loss and/or the perpetrator achieving a gain.”

Black's Law Dictionary defines fraud as “[a] knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. A misrepresentation made recklessly without belief in its truth to induce another person to act. A tort arising from a knowing misrepresentation made to induce another to act to his or her detriment.” (2004 8th Edition)

According to ACFE fraud is defined as, “The use of one's occupation for personal enrichment through the deliberate misuse or misapplication of the employing organization's resources or assets.”

Per AU-C 240, “Misstatements in the financial statements can arise from either fraud or error. The distinguishing factor between fraud and error is whether the underlying action that results in the misstatement of the financial statements is intentional or unintentional.”

Although there are numerous definitions of fraud, CliftonLarsonAllen LLP’s analysis will use one that has been used successfully in prior presentations and courtroom testimony: Fraud is an intentional misrepresentation of a material fact that is relied upon by someone to their detriment.

What appears to be missing from the witnesses' understanding of fraud are the business and accounting transactions and disclosures (or lack thereof) in Cobb EMC’s financial statements, annual reports, newsletters and other forms of communications such as annual meetings.

Through the interviews CliftonLarsonAllen LLP and Fellows LaBriola LLP conducted, it determined that the witnesses recognized that the various business and accounting transactions, including related party transactions, were not properly disclosed to the members. The Indictment of Dwight Brown focuses on the lack of disclosures and diversion of revenue (SCANA Contract, meter reading fees), and theft of funds (dividends, loans to Brown and his wife, among other things).

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13 This definition of fraud was developed uniquely for this guide, and the authors recognize that many other definitions of fraud exist, including those developed by the sponsoring organizations and endorsers of this guide.
In accordance with Count 1 of the Indictment Brown II, disclosures should have been made regarding the former CEO’s compensation by both Cobb Energy and Cobb EMC (Counts 30, 31). His and his wife’s preferred stock ownership in Cobb Energy (a related party) and the dividends they received on those preferred shares are material transactions that should have been disclosed in the financial statements (Count 30, 31). Additionally, the interest-free loans to the CEO and his wife and the forgiveness of those loans are significant issues that should have been disclosed to the members (Count 30, 31). The payout of the Supplemental Executive Retirement Plan, “Top Hat”, to the CEO of $2.9 million. The poor financial condition of Cobb Energy, and ultimately Cobb EMC, because of the undisclosed loans they made to Cobb Energy, should have been disclosed to the members prior to the “Fairness Hearing” (Count 1). Additionally, there were misleading account titles on the financial records relating to accounts payable by Cobb Energy to Cobb EMC. Per witnesses that were interviewed, the account names that were presented on financial statements to the board appeared to disguise these amounts as bank debt (to Wachovia) but in reality they were related party payables (the “float” from Cobb Energy to Cobb EMC).

There were other issues relating to the SCANA contract that should have been properly disclosed to the members. According to the counts 1, 4 to 11, and 26 of this Indictment, Cobb EMC was never a party to the SCANA contract yet the newsletters and the footnote disclosures led the reader to believe that Cobb EMC was a party to the contract. Even though Cobb EMC was not a party to the SCANA contract, Cobb EMC paid “Nonrecovered SCANA expenses” or “Tail Costs” to Cobb Energy. The stated reason was that for Cobb EMC to enter into the Gas South deal, it had to exit the SCANA contract; the fee was $3.4 million (Count 19). None of these expenses benefitted Cobb EMC, yet the members were led to believe that they did.

i. The Fairness Hearing

The plaintiffs and the attorneys representing them in the derivative action found themselves in an untenable situation. They were unpaid and were facing an adversary who was well funded and able to hire the best of the best to defend the individuals and Cobb Energy. A settlement was eventually reached and it came time for the settlement to be approved. As the case was a derivative action, the Georgia Code required that a “Fairness Hearing” occur prior to the settlement being approved by the Court. At the hearing on December 2, 2008, Judge Schuster, Cobb County Superior Court Judge, made the following statement:

THIS CASE HAS MOVED FORWARD AND THIS CASE HAS COME TO A CONCLUSION BECAUSE YOUR VOICE HAS BEEN HEARD THROUGHOUT THIS CASE. WHETHER

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IT'S YOUR ATTENDANCE AT A MEETING, A LETTER TO AN EDITOR OR AN APPEARANCE IN COURT, YOUR VOICE HAS BEEN VERY IMPORTANT TO ALL OF US. AS THE JUDGE AND AS BOTH SIDES TO THE CASE YOU WERE KIND OF THE SLUMBERING GIANT WHO WOKE UP AND LET US HEAR FROM YOU AND I WANT TO THANK YOU FOR DOING THAT

(Exhibit No. 57 at 2:1-13). Several witnesses testified during the hearing regarding various elements to the settlement. One of these witnesses, Judge Cauthorn, testified that the Special Litigation Committee ("SLC") saw no reason to pursue individual claims (litigation) against Dwight Brown or anyone else involved in the litigation. Judge Cauthorn also stated that there was no evidence of any wrongdoing on the part of anyone in the transaction creating Cobb Energy and the contract with Cobb Energy. In light of our internal investigation/forensic audit, these views appear to be uniformed and naïve.

The attorney for the derivative plaintiffs stated during the hearing that Cobb Energy was valued at approximately $112 million. This value was based on the termination of the 40-year management contract ($46 million), the value of the electric meters ($19 million), the value of the computer system ($20 million), the naming rights at the Cobb Center ($11 million), and ProCore Solutions ($15 million). He also stated that the net value received by Cobb EMC after deducting liabilities after the settlement was $65 million.

Judge Cauthorn testified at the Fairness Hearing in December 2008. In response to questions regarding the former CEO, Cauthorn responded as follows:

Q: Judge Cauthorn, did the Special Litigation Committee, while you were acting as counsel for the Special Litigation Committee, examine the allegations against the individual defendant, my client, Dwight Brown?

A: Yes

Q: Did the Special Litigation Committee find that it was in the company's best interests to pursue these allegations against Mr. Brown?

A: The Special Litigation Committee found it was not appropriate to pursue the individual claims against Mr. Brown and for that matter against the other individuals.
Q: Now, did the Special Litigation Committee under your supervision also find that there was no evidence of any wrongdoing by any individuals in this transaction, the creation of Cobb Energy and the contract with Cobb Energy?

A: Yes. It’s more complex than just yes. You know the devil is always in the details. But the facts of this case, as they were analyzed by the special litigation committee and as they are reflected in the minutes and in other places as well as in the press, was that there was a decision made after consulting with counsel. One of the hallmarks of corporate governance in Georgia is that a director may rely upon opinions and advice given by someone who is otherwise qualified to give the opinion or the advice. And one of the things that the statutory -

Q: And the reasons that you expressed, when you explained to Mr. Flint and to the people sitting here in the courtroom and to the members in the basis for your analysis of the liability of the directors, did you go through a similar analysis with respect to Mr. Brown?

A: Not only with respect to Mr. Brown but with respect to each of the other individual defendants and also with respect to each claim. I really, to the extent that I am permitted, I would like to incorporate by reference the findings of the SLC as well as the resolution of the SLC, because that speaks for the special litigation committee as to what its findings were and what its conclusions were as a group of three. So it’s more complicated than just saying yes or no. But yes, each specification was addressed. Each defendant was addressed separately. And the recommendation and conclusion of the special litigation committee was that individual liability did not exist.
VIII. Conclusions and Next Steps

Cobb EMC has seen what absolute power can do to an entity. The members unfortunately were not in a position to see what business and accounting transactions took place that benefitted a small number of people to their detriment. When corporate governance fails, individuals in senior management may choose to advance their own personal interests rather than those of the entity they manage. This is a breach of their fiduciary duties.

We recommend the Board carefully review our examination of McNair, McLemore and Middlebrooks & Co., LLP’s audit of Cobb EMC’s consolidated financial statements as discussed at 103, et. seq, above, and determine if your auditors should play a more active role monitoring the company’s internal controls.

We also suggest the Board require all Board members, senior-level management, and outside advisors, such as attorneys, accountants, and auditors, annually file confidential financial statements with the Board’s Related Party Subcommittee listing outside business interests and property holdings to avoid possible conflicts of interest in the future. For instance, see the Narratives concerning:

Payments to Preferred Shareholders (Id. at 6); Brown’s Employment Contract (Id. at 7); Payments to Anis Sherali (Id. at 9); Director McKinstry’s Sale of the White Circle Property (Id. at 10); the Tan and Cothran Severance Agreements and their purchase of businesses from the Cobb Energy Trust (Id. at 11); the Establishment of Cobb Energy (Id. at 32, et. seq); Cobb Energy’s Donation to Cobb Schools (Id. at 92); and Dwight Brown’s Personal Real Estate Transactions (Id. at 108, et. seq).

This report has clearly demonstrated how the former CEO made business and accounting decisions from which he and his friends profited. There was no effective compliance and ethics program and no oversight on the part of the Board of either entity, Cobb Energy or Cobb EMC to stop the activities perpetrated by the former CEO.
The current Cobb EMC Board and the audit committee should carefully consider what Cobb EMC’s compliance and ethics program looks like and whether it is effective. Many members of management who were at both Cobb EMC and Cobb Energy during the former CEOs regime are still employed at Cobb EMC and Cobb Energy. Although some of them may have tried to speak up, their voices were either not heard or they were retaliated against. The Board needs to have confidence in senior management and their integrity. This decision should be based on the historical look we have provided as well as their current management activities.

In today’s post Sarbanes-Oxley and Dodd-Frank legislation, whistleblowers need to know that they can speak up and say something if they see something wrong or inappropriate. In addition, the most effective hotlines are the ones that encompass vendors and customers. This is referred to as a 360-degree hotline program.

Hotline calls need to go to a neutral third party and not someone who might be the target of the call. Cobb EMC’s hotline will never be successful if the caller knows that the person who they are calling about will screen their call. We can provide more guidance in this area, as well as the compliance and ethics program, if you are interested.

As a starting point, we would like to recommend a confidential survey of the entire organization that will give us, and the Board, an idea as to whether current management has the integrity, management operating style, and the proper tone at the top to continue. The survey would be prepared by us, distributed by us and collected by us. We would also ask the Board to provide us with their thoughts through completing the survey as well. Again, these results would be strictly confidential and would be used as a feedback mechanism for the Board, and senior management.

The current Board of Directors has already made substantial progress in modifying Cobb EMC’s corporate practices and policies. In September 2013, the Tsinger Vance law firm re-wrote Cobb EMC’s By-Laws. Last year the Board and senior management worked to revise Cobb EMC’s corporate governance code and drafted a new mission statement and corporate view. In 2014, we learned that Frazier & Deeter was conducting a review of Cobb EMC’s power purchasing program and its methodology of accounting for and self-auditing power purchases. We were not privy to the work product of these other professionals and do not opine on their merits or sufficiencies. However, as noted frequently in this Report, self-dealing and conflicts of interest abounded during Brown’s tenure, and the Related Party Transactions Committee must be vigilant to such transgressions. The Board may also wish to implement a requirement that senior management officials
and Board members make an annual disclosure of outside businesses and investments, and certify they have read the Corporate Compliance Code and are conflict-free.

CliftonLarsonAllen LLP
March 27, 2015

Fellows LaBriola LLP
March 27, 2015