

attributable to recovered collateral and the surety bond settlement funds. He recalls that the bank, in preparation for our meeting, provided him detailed packets on every loan reflecting payments, collateral recovery and actual loss. He recalls our reviewing all of these materials in detail.

The meeting of September 1, 2006 concluded with Burns indicating that he was going to urge Ms. Hastings to withdraw plea negotiations and that the matter proceed to trial since he felt that Howard had caused a delay in executing the plea agreement. I assured Burns that such action was not necessary and the plea would go forward now that the issue of collateral offset was resolved.

HOWARD'S FEIGNED MEMORY LOSS

14. On September 5, 2006, I received a call from Roger Williams, an attorney in Nocona, Texas. Williams informed me that Howard had suffered an electrocution injury on a gas lease in Montague County and had been transferred to Parkland Hospital in Dallas in critical condition. I later learned Howard stayed at Parkland Hospital approximately a week and was admitted to a rehabilitation facility on September 12, 2006.

15. Beginning in early October of 2006, Ms. Hastings began to ask me for updates as to Howard's health and whether the plea agreement could go forward. I communicated with Karla Howard, Howard's wife, and began to receive medical updates which I furnished to Ms. Hastings in an effort to justify the delay. I also became aware that Burns was conducting an investigation in the Nocona area to determine if Howard was feigning memory loss and illness. Ms. Hastings related to me that their investigation was beginning to indicate that Howard was not suffering memory loss or mental deficiency and could go forward with the plea. I sent a number of medical narratives to Ms. Hastings and Howard executed a release so that Burns could confer with his medical providers. I met with Howard and his wife, Karla, on a Sunday, November 5, 2006 in my office at which time

Howard pretended to not know who I was or that he was previously a banker. He asked me, "Am I a banker now?" He pretended to have a vague recollection of Joe Bob Combs. He claimed no memory of Jack Ayres. He claimed not to remember some of his children. I reported this to Ms. Hastings and requested a delay in executing the plea documents. She indicated that the government's further investigation seemed to strongly indicate that Howard was faking memory loss in order to delay or avoid prosecution. She requested that I agree to have Howard submit to Federal Bureau of Investigation polygraph examination. I resisted this strongly and referred Howard over to the office of Rick Holden in Dallas, Texas to do a private polygraph test to determine whether Howard had any memory of the events related to this prosecution. I spoke with Bobby Parker (a licensed polygraph examiner in Holden's office). Parker told me that Howard gave a strong indication of deception on November 9, 2006 and was clearly faking memory loss. I advised Howard of this and that the plea documents should be signed. He said that he understood. On November 15, 2006, I received a letter from Ricky and Karla Howard that requested I forward my file to Ruben Gonzalez, Attorney at Law. I contacted Howard told him I would be happy to terminate my representation since I was then firmly convinced that he was faking memory loss and that he and his wife had used me as part of his pattern of deception and avoidance. He advised me that he realized that his memory loss ruse was over and that the plea had to go forward. The Plea Agreement document was signed by Howard on November 17, 2006. I have attached a copy of the executed Plea Agreement as Exhibit "D" where Howard agreed on page 3 to pay \$1,993,222.00 to Legend Bank and \$1,000,000.00 to St. Paul Insurance as restitution. Howard also certified on page 5 of the Plea Agreement that he had received a satisfactory explanation from me concerning every paragraph of the Plea Agreement. On January 3, 2007, Howard and I appeared before the United States District Court Magistrate and he entered a plea of guilty. Sentencing was set for April 13,