Presented to the Court by the foreman of the Grand Jury in open Court, in the presence of the Grand Jury and FILED in The U.S. DISTRICT COURT at Seattle, Washington.

MAY 3 2007

BRUCE RIFKIN, Clerk

By ______ Deputy

05-CR-00355-INDI

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,
v.
THOMAS TURNER,
Defendant.

NO. CR05-355C

SUPERSEDING INDICTMENT

THE GRAND JURY CHARGES THAT:

I.

GENERAL ALLEGATIONS

At all times material herein:

A. <u>THE CORPORATIONS</u>

1. Metropolitan Mortgage and Securities Company, Inc. (hereinafter "Met") was a corporation headquartered in Spokane, Washington engaged in the business of, among other things, commercial loans and real estate sales. Met was part of a group of affiliated, privately-held, jointly-run companies with a common majority owner. Those affiliated companies included Met subsidiaries Western United Holding Company and Western United Life Assurance Company (hereinafter "WULA"), an insurance company registered in the State of Washington, and Met sister company Summit Securities, Inc. (hereinafter "Summit"), and its subsidiary Old Standard Life Insurance Company (hereinafter "Old Standard"), an insurance company registered in the State of Idaho.

2. Met and its subsidiary Western United Holding Company each were issuers

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of a class of securities registered pursuant to Section 12 of the Securities and Exchange Act of 1934 and were required to file independently audited consolidated financial statements with the Securities and Exchange Commission (hereinafter "SEC"). Summit was also an issuer of a class of securities registered pursuant to Section 12 of the Securities and Exchange Act of 1934 and, along with its subsidiary Old Standard, was required to file an independently audited consolidated financial statement with the SEC.

B. THE DEFENDANT

3. Defendant **THOMAS TURNER** was president and a director of Summit and an employee and an executive officer of Met. His responsibilities included structuring investment and commercial loan transactions on behalf of Met and Summit and their subsidiaries.

C. THE TRANSACTION

4. Beginning in or about July 2002 and continuing through in or about September 2002, Met began negotiating a deal with one of its existing borrowers (hereinafter "T Corporation") to create a joint venture in which, generally, Met, Summit or one of their affiliated companies would loan money to T Corporation and both Met and T Corporation would contribute real property for the purpose of investment and property development. Defendant **TURNER** led the negotiations on behalf of Met.

5. Beginning in about August of 2002, defendant **TURNER** and another individual employed by Met telephoned Met's outside accountants at the accountants' offices in Seattle to ask for advice regarding accounting treatment for the proposed joint venture with T Corporation. Defendant **TURNER** and the other Met employee indicated that Met sought, through the proposed joint venture, to record an immediate gain, or profit, on the joint venture, as opposed to having to wait until future years to record a profit. Based on the proposed joint venture as represented by **TURNER** and the other Met employee, the accountants advised that Met would not be able to record an immediate profit because the proposed joint venture failed to satisfy certain accounting rules that governed the recording of an immediate profit on real estate transactions.

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6. Subsequently, **TURNER** and the other Met employee telephoned Met's outside accountants several times with modified versions of the originally proposed joint venture, each time seeking advice about Met's ability to record an immediate profit. Each time, Met's accountants advised that the modified joint venture proposals failed to satisfy the accounting rules for recording an immediate profit. Met's outside accountants informed **TURNER** and the other Met employee that a significant reason the proposals failed to meet the requirements of the applicable accounting rules was that the purchaser of Met's property was T Corporation, which, in the joint venture scenarios, was not acting as an independent third-party purchaser of the property Met was seeking to sell.

7. In approximately mid-September 2002, **TURNER** telephoned Met's outside accountants and informed them that Met had located an independent third-party purchaser for its property. **TURNER** represented certain facts to Met's outside accountants about the *bona fides* of the purported purchaser. Based upon **TURNER'S** representations as to the proposed transactions, Met's outside accountants preliminarily agreed that the deal may satisfy the requirements of the accounting rules for recording an immediate profit, subject to an audit of Met's fiscal year 2002 financial statements. Met's fiscal year ended September 30, 2002.

8. In the last week of September 2002, prior to the end of its fiscal year, Met closed two transactions, among others: (a) a loan of approximately $17.6 million from Summit subsidiary Old Standard to the T Corporation secured by T Corporation's timber property; and (b) the sale of two parcels of undeveloped real property owned by Met and it subsidiary WULA, one in Everett, Washington and the other near San Antonio, Texas, to a corporation newly formed by the purported independent third-party purchaser (hereinafter "JP") for a total of approximately $24 million. Met and WULA financed the sale of the properties and JP provided a 20% cash down payment on each parcel. An agent of JP (hereinafter "DS") contributed the cash down payment on behalf of JP. The source of JP's down payments was the Old Standard loan to the T Corporation.

9. Met recorded an immediate profit of approximately $10 million on the sale

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of the Everett and San Antonio properties to JP. Without this transaction, Met would have reported a net loss on its consolidated financial statements for the 2002 fiscal year.

D. <u>THE AUDIT</u>

10. Between approximately September and December of 2002, Met's outside accountants conducted an audit of Met's and Summit's 2002 fiscal year financial statements and specifically examined the sale of property to JP. Based on the representations of **TURNER** and others at Met, and various documents provided by Met, Met's outside accountants concurred with the recording of immediate profit on the sale of the Everett and San Antonio properties to JP.

11. On or about December 31, 2002 pursuant to the rules and regulations of the SEC, Met and Summit each submitted their audited consolidated financial statements to the SEC in a report known as a Form 10-K. Met's audited financial statement included the approximately $10 million in profit Met recorded from the sale of property to JP.

E. <u>THE SUBSEQUENT INVESTIGATION</u>

12. In approximately September of 2003, Met's outside accountants were conducting an audit of Met's 2003 financial statements when the accountants discovered Met internal documents that raised questions about the way in which the 2002 sale of property to JP had been recorded. Met internal auditors and Met's outside accountants each began investigations which included document review and interviews with **TURNER** and others. The investigations revealed, in summary, that JP was not truly an independent third-party purchaser of Met's property as **TURNER** had represented, and that **TURNER** was aware of this before the 2002 audit had been completed.

13. These investigations concluded in approximately January of 2004 and resulted in, among other things, Met deciding to reverse the $10 million profit it had recorded on its financial statements in 2002 from the sale of property to JP. Additionally, Met's outside accountants withdrew their audit opinion on the 2002 financial statements and resigned, based on, among other reasons, **TURNER's** misrepresentations and omissions about the sale of property to JP.

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II.

COUNT 1

(False and Misleading Statements to Accountants of a Securities Issuing Company)

14. Sections A through E of the General Allegations section of this Indictment are realleged here as though fully set forth herein.

15. In or about mid September 2002, the exact date being unknown to the Grand Jury, at Seattle, Washington, within the Western District of Washington, and elsewhere, the defendant, **THOMAS TURNER**, knowingly and willfully made, and caused to be made, materially false and misleading statements to Met's accountants in connection with the audit, review and examination of financial statements of Met and Summit, required by law to be made, and the preparation and filing of documents and reports, namely Met's and Summit's 2002 Form 10-K reports, required to be filed with the SEC pursuant to rules and regulations enacted by the SEC.

16. Specifically, **TURNER** made and caused to be made the following false and misleading statements in telephone conversations with Met's outside accountants who at the time were located in their offices in Seattle:

a. that JP and DS constituted an independent, third-party purchaser and that DS was interested in purchasing the properties, when, in truth and in fact, as **TURNER** then well knew, representatives of T Corporation were negotiating JP's purchase of the properties, and DS had expressed that he was participating in the transaction as a favor to the T Corporation, and did not want his cash down payment contribution at risk in the transaction;

b. that Old Standard's decision to loan $17.6 million to the T Corporation was independent of Met's sale of properties to JP, when, in truth and in fact, as **TURNER** then well knew, Old Standard's loan to the T Corporation was contingent, by oral agreement, on JP's purchase of the properties from Met.

All in violation of Title 15, United States Code, Section 78m(a), (b)(2), 78ff; Title 17, Code of Federal Regulations, Section 240.13b2-2; and Title 18, United States

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Code, Section 2.

COUNT 2

(Material Omissions to Accountants of a Securities Issuing Company)

17. Sections A through E of the General Allegations section of this Indictment are realleged here as though fully set forth herein.

18. On or about December 18, 2002, in Seattle, Washington, within the Western District of Washington, and elsewhere, the defendant, **THOMAS TURNER**, knowingly and willfully omitted to state material facts necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading, to Met's accountants in connection with the audit, review and examination of financial statements of Met and Summit, required by law to be made, and the preparation and filing of documents and reports, namely Met's and Summit's 2002 Form 10-K reports, required to be filed with the SEC pursuant to rules and regulations enacted by the SEC.

19. Specifically, **TURNER** knew, and omitted to state, the following material facts in a memorandum titled "Review of interest rate on sale to [JP]" which purported to justify the interest rate Met charged for the financing of the sale of properties to JP, sent from Met's offices in Spokane to the offices of Met's outside accountants in Seattle:

a. that representatives of T Corporation had negotiated JP's purchase of the properties;

b. that DS had expressed that he was participating in the transaction as a favor to the T Corporation, and did not want his cash down payment contribution at risk in the transaction;

c. that a representative of T Corporation had expressed that DS's down payment contribution would be secured, collateralized and otherwise protected;

d. that JP's purchase of properties from Met was contingent, by oral agreement, on Old Standard's $17.6 million loan to the T Corporation;

e. that a representative of T Corporation and **TURNER** had orally

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agreed that if JP transferred the properties to T Corporation, such a transfer would occur no earlier than the end of December 2002;

f. that a representative of T Corporation and **TURNER** had discussed T Corporation making JP's loan payments to Met.

All in violation of Title 15, United States Code, Section 78m(a), (b)(2), 78ff; Title 17, Code of Federal Regulations, Section 240.13b2-2; and Title 18, United States Code, Section 2.

<u>COUNT 3</u>

(False and Misleading Statements to Accountants of a Securities Issuing Company)

20. Sections A through E of the General Allegations section of this Indictment are realleged here as though fully set forth herein.

21. On or about December 27, 2002, in Seattle, Washington, within the Western District of Washington, and elsewhere, the defendant, **THOMAS TURNER**, knowingly and willfully made, and caused to be made, materially false and misleading statements to Met's accountants in connection with the audit, review and examination of financial statements of Met and Summit, required by law to be made, and the preparation and filing of documents and reports, namely Met's and Summit's 2002 Form 10-K reports, required to be filed with the SEC pursuant to rules and regulations enacted by the SEC.

22. Specifically, **TURNER** made and caused to be made the following false and misleading statements in a letter dated December 27, 2002 sent from Met's offices in Spokane to the offices of Met's outside accountants in Seattle:

a. that all significant agreements had been made available to Met's and Summit's outside accountants when, in truth and in fact, as **TURNER** then well knew, Old Standard's $17.6 million loan to the T Corporation was contingent, by oral agreement, on JP's purchase of properties from Met, and that oral agreement had not been made available to the outside accountants;

b. that there were no oral agreements that would have a material effect on any amounts reported in Summit's financial statements, when, in truth and in fact, as

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TURNER then well knew, Old Standard's $17.6 million loan to the T Corporation was contingent, by oral agreement, on JP's purchase of properties from Met;

c. that loans had been correctly described in the financial statements in all material respects, when, in truth and in fact, as **TURNER** then well knew, Old Standard's $17.6 million loan to the T Corporation was contingent, by oral agreement, on JP's purchase of properties from Met, and that oral agreement had not been described in the financial statements.

All in violation of Title 15, United States Code, Section 78m(a), (b)(2), 78ff; Title 17, Code of Federal Regulations, Section 240.13b2-2; and Title 18, United States Code, Section 2.

A TRUE BILL:

DATED:

[SIGNATURE REDACTED]
FOREPERSON

JEFFREY C. SULLIVAN
United States Attorney

WILLIAM H. STAPLETON, JR.
Assistant Chief, U.S. Department of Justice
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