

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO. 50 2009 CA 029903 XXXXMB

FD DESTINY, LLC, and
FD DESTINY MANAGEMENT, LLC,
and FREDERICK DELUCA,
Plaintiffs,

vs.

AVP DESTINY, LLC,
ANTHONY V. PUGLIESE, III,
ANTHONY V. PUGLIESE COMPANY,
INC., d/b/a THE PUGLIESE
COMPANY, and JOSEPH REAMER,

Defendants.

_____/

CASE NO. 50 2009 CA 0402955 XXXXAG
CONSOLIDATED FOR DISCOVERY ONLY

AVP DESTINY, LLC, ANTHONY V.
PUGLIESE, III, individually,
and LAND COMPANY OF OSCEOLA
COUNTY, LLC,
Plaintiffs,

vs.

FREDERICK A. DELUCA,
individually, FD DESTINY, LLC,
FD DESTINY CREDIT, LLC, and
DOCTOR'S ASSOCIATES, INC.,
Defendants.

_____/

VIDEOTAPE DEPOSITION OF FREDERICK A. DELUCA

Volume 2
Pages 99 through 236
Monday, August 27, 2012
10:21 a.m. to 5:03 p.m.
U.S. Legal Support, Inc.
444 West Railroad Avenue, Suite 300
West Palm Beach, Florida

U.S. LEGAL SUPPORT, INC. (561) 835-0220

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1 The videotape deposition taken before
2 Kimberley A. Ross, Florida Professional Reporter and
3 Notary Public in and for the State of Florida at
4 Large in the above cause. The videotape deposition
5 transcript continues from Volume 1.

6 *****

7 THEREUPON,

8 FREDERICK A. DELUCA,
9 having been previously duly sworn, was examined and
10 testified as follows:

11 DIRECT EXAMINATION (CONT.)

12 BY MS. HOFFLER:

13 **Q. Ready, Mr. DeLuca?**

14 A. Yes.

15 **Q. Okay.**

16 MS. HOFFLER: First of all, thank you all
17 for your patience. We didn't realize the pizza
18 was going to take that long. But having said
19 that, it was the most delicious pizza I've ever
20 eaten.

21 BY MS. HOFFLER:

22 **Q. Now, Mr. DeLuca, before our lunch break,**
23 **do you remember we were discussing the loan that you**
24 **made to LCOC; right?**

25 A. Yes.

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1 Q. Okay. And you do recall me asking if you
2 told Anthony Pugliese that you were going to make
3 roughly \$1.2 million upon closing on the loan that
4 you made to LCOC; right?

5 A. I don't think you asked me that question.

6 Q. Well, then I'm asking you right now.

7 Did you tell Anthony Pugliese before you
8 closed on the loan that you were going to make
9 roughly \$1.2 million upon closing on the loan that
10 you made to LCOC?

11 A. I told him that I would make a loan that
12 was slightly better than iStar was talking about.
13 That I would -- so that was what I told him in.

14 Q. Okay. But my question to you, sir, is not
15 whether the loan was going to be slightly better
16 than iStar, and we will come back to that, but
17 whether you told Anthony Pugliese that you were
18 going to make roughly \$1.2 million upon closing on
19 the loan that you made to LCOC. Did you tell him
20 that?

21 A. I told him that it would be slightly
22 better than iStar, and I think that it was. And
23 anything that was in the iStar program was very
24 similar to what we did eventually.

25 Q. Well, let me ask you this, if it was
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1 **slightly better. Were you going to make**
2 **\$1.2 million at closing on the iStar deal? Were you**
3 **personally, Fred DeLuca?**

4 A. No.

5 **Q. So did you tell Anthony Pugliese prior to**
6 **closing on the loan that you made to LCOC that you**
7 **were going to make \$1.2 million, yes or no, sir?**

8 A. I did not use the words \$1.2 million.

9 **Q. You did not. Now -- so you hid that from**
10 **him?**

11 A. No.

12 **Q. You just straight out hid that from him?**

13 MR. HUTCHISON: Objection to form.

14 THE WITNESS: No.

15 BY MS. HOFFLER:

16 **Q. You didn't hide it from him. Well, if you**
17 **didn't tell him about the \$1.2 million, you hid it**
18 **from him, sir.**

19 A. Well, I said I did not use the words
20 \$1.2 million. But all of the documentation was sent
21 to Mr. Pugliese and to his lawyers and everything
22 was laid out in black and white and negotiated from
23 there.

24 **Q. But you, Fred DeLuca, did not tell**
25 **Anthony Pugliese prior to closing that you,**
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1 **Fred DeLuca, were going to make one -- roughly**
2 **\$1.2 million on the loan that you were making to**
3 **LCOC, did you?**

4 MR. HUTCHISON: Objection, asked and
5 answered.

6 MR. GARY: He didn't answer it. He's been
7 evasive. Let him answer the question.

8 MR. HUTCHISON: Let him answer it again.
9 Go ahead.

10 MR. GARY: Answer it again. Did you do it
11 or not?

12 MR. HUTCHISON: One lawyer at a time,
13 Willie. One lawyer at a time. That's it.

14 THE WITNESS: I had documents sent to him
15 that told him everything, including all fees
16 and all interest rates in black and white.

17 BY MS. HOFFLER:

18 **Q. Did you happen to send to Anthony Pugliese**
19 **prior to the closing on the loan of LCOC your -- a**
20 **copy of your loan documents for the deal that you**
21 **struck with Wachovia? Did you show him that?**

22 A. No, I did not give him --

23 **Q. You did not.**

24 A. -- any of my personal documents.

25 **Q. You did not disclose to Anthony Pugliese**
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1 prior to the loan -- closing on the loan from LCOC,
2 you did not give him a copy or any information, in
3 fact, any information on the terms that you
4 negotiated with Wachovia, did you?

5 MR. HUTCHISON: Objection as to form.

6 THE WITNESS: He asked, and I told him
7 that I was not going to tell him any of my
8 personal financial information.

9 BY MS. HOFFLER:

10 **Q. Because you felt it was none of his**
11 **business; right?**

12 A. That wasn't any of his business.

13 **Q. And so that you made \$1.2 million upon**
14 **closing the loan for LCOC, you just felt, I don't**
15 **need to tell Anthony because it's none of his**
16 **business; right? That's what you thought?**

17 MR. HUTCHISON: Objection as to form.

18 THE WITNESS: No. In the loan documents
19 every penny was disclosed to Anthony Pugliese.
20 There was nothing omitted. It was negotiated.
21 His lawyers worked on it. He was told exactly
22 what the deal was. And he had a chance to
23 review the deal and decide whether or not it
24 was a good idea for him to go forward.

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1 BY MS. HOFFLER:

2 Q. Okay. But I just said that as a partner,
3 someone who you were doing business with, who at
4 that point you were already involved in a Green Sky
5 deal with him; right?

6 MR. HUTCHISON: Objection as to form.

7 THE WITNESS: I didn't understand the
8 question.

9 BY MS. HOFFLER:

10 Q. At the time when you closed on LCOC, you
11 were already doing business with Anthony Pugliese on
12 the Green Sky deal; right?

13 A. I had made an investment in the Green Sky
14 deal.

15 Q. You all were working together as business
16 associates, right, by the time you closed on the
17 LCOC deal; right?

18 A. I made an investment with him.

19 Q. That's not a business associate
20 investment?

21 A. It's an investment.

22 Q. So you were partners in that deal with
23 him. But you also -- basically, in the Green Sky
24 deal, and we are going to talk a little bit more
25 about that, you and Anthony were partners in that
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1 deal, weren't you?

2 MR. HUTCHISON: Objection to form and also
3 to the extent it calls for a legal conclusion.

4 BY MS. HOFFLER:

5 Q. Weren't you?

6 A. No, we were not partners.

7 Q. What were you? How would you describe it,
8 sir?

9 A. I had made an investment through a
10 corporation.

11 Q. You made an investment in
12 Anthony Pugliese?

13 A. No.

14 Q. So what, you just picked him up off the
15 street? I mean, you knew you had -- you were
16 introduced to Anthony Pugliese, sir; isn't that
17 right?

18 A. I was introduced to Anthony Pugliese.

19 Q. And you decided to go into business with
20 Anthony Pugliese; right? Whether it was through an
21 investment or not, you went into business with him;
22 isn't that right, sir? You did.

23 A. Well, I made an investment in a company.

24 Q. You didn't invest -- you did not go into
25 business with Anthony Pugliese? Is that your
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1 testimony in front of the jury under oath, that you
2 did not go into business with Anthony Pugliese in
3 connection with the Green Sky deal?

4 MR. HUTCHISON: Objection, form, asked
5 answered.

6 THE WITNESS: Anthony Pugliese made an
7 investment and I made an investment.

8 BY MS. HOFFLER:

9 **Q. Was it in the same business, sir?**

10 A. Yes.

11 **Q. So you went into business together?**

12 A. We both made an investment in the same
13 business.

14 **Q. In the same business. Just like you both
15 made an investment in the same business for LCOC;
16 right?**

17 A. We also made an investment in LCOC.

18 **Q. A second business that you all made an
19 vestment together; right? Right?**

20 A. The second -- it's the second one?

21 **Q. Yes.**

22 A. Yes.

23 **Q. So -- but you testified earlier that you
24 didn't make a single dime, I think you said, on the
25 loan that you made to LCOC. That's the transaction
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1 **you said you didn't make a single dime. Is that**
2 **still your testimony, sir, under oath today?**

3 A. Yeah, I don't know of being -- I don't
4 know of having received a single penny from LCOC in
5 relationship to that loan.

6 **Q. Now, I just want to make sure that we are**
7 **exceedingly clear for the jury's purposes because**
8 **this is an important case. You understand that**
9 **don't you, sir?**

10 MR. HUTCHISON: Objection.

11 BY MS. HOFFLER:

12 **Q. So in the interest of being exceedingly**
13 **clear, is it your testimony that you didn't make a**
14 **single dime, a single penny on the loan that you**
15 **gave, that you made, you, Fred DeLuca to LCOC, that**
16 **whole transaction, you made not one penny. Is that**
17 **your testimony?**

18 MR. HUTCHISON: Objection to form.

19 THE WITNESS: My testimony is that I lost
20 money on that loan.

21 BY MS. HOFFLER:

22 **Q. Okay. And just so the jury is clear, that**
23 **loan was not taken out in the name of**
24 **Doctor Associates, was it?**

25 A. Excuse me?
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1 Q. The loan that you made to LCOC was from
2 you, Fred DeLuca; is that right? It was a loan from
3 Fred DeLuca to LCOC; right?

4 A. That is correct.

5 Q. It was not a loan from Doctor Associates
6 to LCOC, was it?

7 A. It was a loan from Fred DeLuca to LCOC.

8 Q. And -- and you testified earlier that
9 certainly there was some expenses. Remember you
10 talked about some expenses --

11 A. Uh-huh.

12 Q. -- that were -- that you felt were paid at
13 closing. Do you remember you talked about that?

14 A. No. I said there was -- there were -- I
15 said -- well, I said we had expenses, but I don't
16 think I referred to anything to do with expenses at
17 closing.

18 Q. Oh, you had expenses in connection with
19 the loan?

20 A. Yes.

21 Q. And like what kind of expenses?

22 A. Okay. Well, I had to do an analysis of my
23 financial situation.

24 Q. So you had to do an analysis. So you
25 charged a fee for you doing an analysis of your
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1 **financial situation?**

2 A. Are you going to let me answer the
3 question?

4 **Q. Oh, I'm sorry. I didn't mean to interrupt**
5 **you, sir.**

6 A. Could we go back to the question so I
7 could remember it?

8 **Q. Did you -- my question was, what were the**
9 **expenses --**

10 A. I was going to answer that.

11 **Q. -- that were incurred --**

12 A. Yes.

13 **Q. -- in connection by you, in connection**
14 **with the LCOC loan that you made -- the loan that**
15 **you made to LCOC?**

16 A. Uh-huh.

17 **Q. What expenses?**

18 A. Okay. I had people size up whether or not
19 I should loan the money personally with my own cash
20 or if I should borrow money to make the loan. And
21 then there were lawyers hired to do the work.

22 **Q. And those lawyers got paid for the work**
23 **that they did; right?**

24 A. I think so.

25 **Q. Well, if they did, it would have been in**
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1 **the closing statement; right?**

2 A. Not necessarily. There could have been
3 other lawyers unrelated to -- there were other
4 lawyers unrelated to any lawyers that would have
5 appeared on the closing statement.

6 **Q. Did Anthony know about these lawyers? I**
7 **mean, these were lawyers that you hired in**
8 **connection with a deal that he was involved in. Did**
9 **Anthony know about those lawyers?**

10 A. Which deal are you talking about? The
11 loan or the purchase of the land?

12 **Q. I'm talking about the loan you,**
13 **Fred DeLuca, made to LCOC. You said there was some**
14 **lawyers. There were expenses incurred. And you**
15 **said one category was lawyers. Did Anthony know**
16 **about those lawyers?**

17 A. I don't think he knew about all the
18 lawyers.

19 **Q. Well, you said that you disclosed**
20 **everything in the paperwork to Anthony and he knew**
21 **everything. That's what you said; right? That's**
22 **your testimony?**

23 A. No.

24 MR. HUTCHISON: Objection, asked and
25 answered and misstates --
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1 BY MS. HOFFLER:

2 Q. It's not your testimony? So please
3 clarify for the jury.

4 A. I said that all the financial terms were
5 listed in the paperwork.

6 Q. And that would have been -- and part of
7 the financial terms would have been who the
8 professionals that were paid for helping you with
9 the loan; right?

10 A. Not necessarily.

11 Q. Now, the other thing, what other expenses
12 were incurred by you as the person who made the loan
13 to LCOC?

14 A. You want to know what type -- what types
15 of expenses were incurred?

16 Q. No, Mr. DeLuca. I want to know what the
17 expenses were. You testified that you incurred
18 expenses --

19 A. Yes.

20 Q. -- in connection with the loan that you
21 made to LCOC. I want to know what they were.

22 A. As I -- as I sit here today, I couldn't
23 tell you all of the expenses.

24 Q. But -- but none of the documents that you
25 sent Anthony Pugliese in connection with these loans
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1 and the terms reflected that you, Mr. DeLuca, were
2 making a profit off of the loan that you were making
3 to LCOC at the time that you were making the loan at
4 closing, none of those documents reflected that?

5 MR. HUTCHISON: Objection to form.

6 THE WITNESS: All of the documents
7 specified the fees, interest rates, expenses.
8 And so all of the fees were explained. And I
9 couldn't make a profit until I was paid and I
10 haven't been paid. So I have not made a
11 profit.

12 BY MS. HOFFLER:

13 Q. Well, did you -- did you -- were there
14 commitment fees that were paid for the loan? For
15 the loan that you made to LCOC, there were
16 commitment fees, weren't there?

17 A. I have to see the closing document.

18 Q. Okay. I'm going to give you the closing
19 document. But you don't have a recollection of the
20 commitment fees? Did you or do you have a
21 recollection of paying any commitment fees?

22 A. No.

23 Q. Now, so you have no recollection of
24 paying -- of charging any commitment fees for the
25 LCOC loan that you made?

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1 A. I do have a recollection that in the iStar
2 loan, there was a commitment fee and something
3 similar was supposed to be done.

4 **Q. Well, we are going to get to the iStar**
5 **deal in a second, but my question to you -- so what**
6 **you're saying is you do recall that there were**
7 **commitment fees that you charged for the LCOC loan?**

8 A. I don't know the actual terminology.

9 **Q. Term. Well, I'm going to --**

10 A. If you show me -- if you show it to me, I
11 think that would be helpful.

12 **Q. Definitely, and I'm going to show it to**
13 **you. But let me just ask you another question,**
14 **another question. You're a savvy business person.**
15 **Did you pay commitment fees on your loan from**
16 **Wachovia? Because you took out a loan from**
17 **Wachovia; right?**

18 A. I did.

19 **Q. In order to finance the deal for LCOC, for**
20 **the loan that you made LCOC, you didn't take it out**
21 **of your pocket, you took out a loan from Wachovia,**
22 **didn't you?**

23 MR. HUTCHISON: Objection to form.

24 THE WITNESS: I did.

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1 BY MS. HOFFLER:

2 Q. In fact, you took out two loans. You took
3 out one for 105 million; right?

4 A. I did.

5 Q. And you got .9% interest rate on that;
6 right?

7 A. I don't know.

8 Q. Well, I'm going to show you the documents.
9 But you took out a second one for 35 million; right?

10 A. I didn't borrow any additional money.

11 Q. You just borrowed the 105?

12 A. Yes.

13 Q. And the 35 million was just a line of
14 credit?

15 A. That's correct.

16 Q. Okay. And it just so happened that the
17 105 plus the 35 coincidentally totaled the
18 \$140 million which was the cost of the property.
19 That was a coincidence, no?

20 A. What was the cost of the property?

21 Q. About 140 million.

22 A. I don't remember that.

23 Q. You don't remember, but I'm going to give
24 you the documents and they probably will refresh
25 your recollection.

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1 A. Okay.

2 Q. So -- but for now, do you remember whether
3 you paid any commitment fees for the loan that you
4 took out from Wachovia?

5 A. I would have to see the documents, but I
6 presume I did.

7 Q. Okay. And I'm going to give you the
8 documents to refresh your recollection, but I just
9 wanted to see, you know, as a savvy business person,
10 if you remembered that particularly since you
11 prepared for this deposition; right?

12 MR. HUTCHISON: Objection to form.

13 BY MS. HOFFLER:

14 Q. Right?

15 A. I -- you said you asked me because I
16 prepared?

17 Q. Right. You prepared for this deposition,
18 and did you look at any of the loan documents and
19 the closing statements in connection with the LCOC
20 loan and the loans that you got from Wachovia, the
21 loan that you got from Wachovia?

22 MR. HUTCHISON: I'll object to the extent
23 it deals with any documents that I went over
24 with him.

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1 BY MS. HOFFLER:

2 Q. Did you? I just want to know.

3 MR. HUTCHISON: And it's work product.

4 MR. GARY: Hey, she didn't say what you
5 went over. Now, you've got to stop this. She
6 didn't say what you went over. She said the
7 documents that involved the deal. So you've
8 got to stop coaching. You've got to stop
9 coaching.

10 MR. HUTCHISON: Willie, quit using the
11 finger. All right?

12 MR. GARY: Well, you quit coaching.

13 MS. HOFFLER: Quit using your finger.

14 MR. HUTCHISON: It's not pointing at you,
15 C.K.

16 MR. GARY: Then stop coaching.

17 MR. HUTCHISON: First of all, to the
18 extent he reviewed documents with his lawyer
19 that I selected, they are work product and he
20 is not -- the witness is not to mention those
21 specific documents.

22 MS. HOFFLER: Well, we can certainly use a
23 refresher on Florida Rules of Civil Procedure.
24 Your witness certainly can answer whether he
25 reviewed certain documents. But what you
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1 advised him, all of that, the contents, no.
2 But I'm going to put it in front of him so we
3 can take out that issue.

4 MR. HUTCHISON: All right.

5 MS. HOFFLER: I'll put it in front of him.

6 BY MS. HOFFLER:

7 **Q. What I want to know based on your**
8 **recollection, sir, based on your recollection, your**
9 **recollection, do you remember paying any fees, yes**
10 **or no, any commitment fees on your loan to Wachovia?**

11 MR. HUTCHISON: Objection, asked and
12 answered.

13 THE WITNESS: I don't remember paying
14 commitment fees, but I'm confident there were
15 commitment fees.

16 BY MS. HOFFLER:

17 **Q. Okay. Very good. Well, I'm going to hand**
18 **you then, Mr. DeLuca, because you aren't**
19 **remembering -- you seem to have a problem**
20 **remembering the loan documents.**

21 MR. HUTCHISON: Objection, move to strike
22 counsel's comment.

23 MS. HOFFLER: I haven't finished my
24 comments. So wait until I finish, then you can
25 strike it if you feel appropriate.

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1 BY MS. HOFFLER:

2 Q. So since you have difficulty remembering,
3 I want to refresh your recollection.

4 A. That would be helpful.

5 Q. Okay. Very good.

6 MR. HUTCHISON: Same objection.

7 MS. HOFFLER: Now, your client feels it to
8 be helpful, but you're objecting.

9 BY MS. HOFFLER:

10 Q. Now, first thing I'm going to hand you --
11 and this we are going to mark as an exhibit.

12 (Discussion off the record.)

13 BY MS. HOFFLER:

14 Q. The first thing I'm going to hand you,
15 Mr. DeLuca, and I ask you to take a moment to look
16 at this. I'm going to hand you what we are marking
17 as DeLuca Exhibit 1. I'm going to hand that to your
18 counsel.

19 (Exhibit 1 marked for identification.)

20 BY MS. HOFFLER:

21 Q. I'm going to ask you just to take a look
22 at this. Thank you.

23 I like your humming, Mr. DeLuca. I was
24 just going to make a comment about it.

25 Let me know when you're finished, sir.
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1 A. Okay.

2 Q. Okay. Now, have you had your memory
3 sufficiently refreshed about the loan that -- that
4 Wachovia made to you in connection -- for
5 \$105 million in connection with the LCOC project?

6 MR. HUTCHISON: Objection to the form.

7 THE WITNESS: Yes, I had a chance to read
8 this.

9 BY MS. HOFFLER:

10 Q. Okay. And for the record, what I am going
11 to do, Mr. DeLuca, I'm going to identify what is in
12 Exhibit 1. Is that okay with you?

13 A. Sure.

14 Q. The first page is August 10, 2005, is a
15 letter signed by you to Ms. Olivier of Wachovia Bank
16 and it's "Re: \$105 million loan from Wachovia Bank,
17 National Association to Frederick A. DeLuca
18 ("Loan")." Do you see that?

19 A. I do.

20 Q. Have I identified the first page
21 correctly? And, basically, in that --

22 MR. GARY: Wait, wait. He didn't answer.

23 BY MS. HOFFLER:

24 Q. I thought you did. You have to say yes or
25 no.

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1 A. I thought I did.

2 MR. GARY: You have to speak up.

3 BY MS. HOFFLER:

4 Q. And so -- and, basically, in that letter,
5 it says, "This letter will authorize and direct
6 Wachovia Bank National Association to pay the
7 expenses shown in Exhibit A attached hereto and wire
8 the net proceeds of the above-referenced loan to
9 Hill, Ward & Henderson, P.A. in accordance with the
10 wire instructions attached hereto as Exhibit B. You
11 are authorized to accept and act upon a facsimile or
12 PDF version of this letter."

13 Have I read that correctly, Mr. DeLuca?

14 A. I wasn't following you.

15 Q. Would you like me to read it again so you
16 can follow me?

17 A. If you would like.

18 Q. Or would you like my half glasses if you
19 need them?

20 A. No, I can see. I just didn't realize you
21 were going to ask me if you read it correctly.

22 Q. Okay. I will read it again so the record
23 is very clear, Mr. DeLuca, because this is a letter
24 signed by you. "This letter will authorize and
25 direct Wachovia Bank, National Association to pay
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1 the expenses shown, Exhibit A attached hereto, and
2 wire the net proceeds of the above-referenced loan
3 to Hill Ward & Henderson, P.A. in accordance with
4 the wire instructions attached hereto as Exhibit B.
5 You are authorized to accept and act upon a
6 facsimile or PDF version of this letter. Very truly
7 yours, Frederick A. DeLuca."

8 Have I read this correctly, sir?

9 A. You did.

10 Q. And this is your signature, is it not?

11 A. That is my signature.

12 Q. Right.

13 Now, Exhibit A, which is the next page,
14 it -- this is the Exhibit A that's referenced in the
15 cover letter, is it not?

16 A. I think so.

17 Q. Okay. And this page has a few captions.
18 It says, Loan Proceeds, Expenses, Wachovia Bank,
19 N.A., Bingham McCutchen, LLP, Edgel C. Lester, and
20 total expenses, and Net Proceeds. Do you see that?

21 A. Yes.

22 Q. That's Exhibit A. And, basically, this
23 Exhibit A details the expenses associated with this
24 loan that you got from Wachovia Bank, does it not?

25 A. Not totally.

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1 Q. Well, this is what you disclosed to the
2 bank. I mean, this is a -- are you saying that
3 there are things that you did not -- that you hid
4 from the bank as well?

5 MR. HUTCHISON: Objection to form and
6 mischaracterizes testimony.

7 BY MS. HOFFLER:

8 Q. I mean, did you disclose to the bank? Did
9 you -- is there something that you didn't disclose
10 to the bank in terms of the closing expenses?
11 Answer the question, sir.

12 A. Well, this has balance of commitment fee.
13 So I had paid an amount prior which was not included
14 in this document.

15 Q. Right.

16 A. So you asked --

17 Q. But it includes in the --

18 A. You asked me if this includes everything
19 and I said no.

20 Q. Okay. So the only thing that it doesn't
21 include is that other part of the commitment fee
22 that's actually referenced in the document behind
23 it. We are going to go through that. But other
24 than that, this does include all the expenses
25 associated with this loan that Wachovia made to you
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1 **for \$105 million; right?**

2 A. No.

3 **Q. So are you saying that you failed to**
4 **disclose or hid from Wachovia expenses associated**
5 **with the loan that you were required to disclose?**

6 MR. HUTCHISON: Objection to form.

7 THE WITNESS: No, I didn't say that I hid
8 anything that I was required to disclose. I
9 said that -- you asked me if there were other
10 expenses and I said yes.

11 BY MS. HOFFLER:

12 **Q. But it's not on what you verified and sent**
13 **to Wachovia authorizing them to go ahead with the**
14 **loan. You didn't put this on these documents that**
15 **you sent to the bank, did you? Those other expenses**
16 **that you don't -- that you can't specify, they are**
17 **not on these documents that went to the bank though?**

18 MR. HUTCHISON: Objection to form.

19 THE WITNESS: You are correct that any
20 other expenses that I incurred personally were
21 not put on this document.

22 BY MS. HOFFLER:

23 **Q. Let's go to the third page, wiring**
24 **instructions to Bingham McCutchen, LLP. Was that**
25 **your law firm that helped you with this transaction?**
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1 A. I don't know who they are.

2 Q. So you sent a letter to Wachovia asking
3 them to go forward with the \$105 million loan and to
4 wire money to a law firm that you don't know
5 anything about? Is that what you're saying?

6 A. Yeah, I don't know who they are.

7 Q. It says wiring --

8 A. It might have been my lawyer or the bank's
9 lawyer. I just don't know.

10 Q. It says -- right. It says, Wire
11 Instructions, Bingham McCutchen, LLP, Bank of
12 America, and then there's some wiring instructions.
13 Do you see that?

14 A. I see that.

15 Q. The next page, wiring instructions to
16 Ed Lester. Do you know who Ed Lester was?

17 A. I don't know who Ed Lester is.

18 Q. Okay. Well, this -- the bank name was to
19 Wachovia, Tampa, Florida. There is an ABA routing
20 number, the account is a Carlton Fields trust
21 account. Did you use Carlton Fields' lawyers, do
22 you know, on this \$105 million deal?

23 A. I don't know who Carlton Fields is.

24 Q. Okay. Well, one thing you do know is that
25 the next document, which is a letter on -- dated
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1 July 19th, 2005, to you, Mr. Frederick A. DeLuca,
2 and it asked for your signature. And on the last
3 page, you did sign. That is your signature dated
4 July 27, 2005; right?

5 A. Yes.

6 Q. That is your signature. Okay. And so
7 this letter to you is -- it's entitled Loan
8 Commitment to Frederick A. DeLuca.

9 A. It is.

10 Q. And this letter, it says here, Wachovia
11 National Association (hereinafter "Wachovia" or
12 "Bank") is pleased to offer you a commitment to lend
13 \$140 million on the following terms and conditions;
14 right?

15 A. It says that.

16 Q. That's what it says. Now, this document,
17 just so the record is clear, this is not a document
18 that you sent to Anthony Pugliese; is that correct?
19 Prior to the closing of the LCOC loan.

20 A. This letter from the bank?

21 Q. Yes.

22 A. I don't think so.

23 Q. And you didn't -- you didn't talk to
24 Anthony Pugliese about any of the terms, according
25 to what you testified earlier, in this commitment
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1 **letter with Wachovia; right?**

2 MR. HUTCHISON: Objection as to form,
3 misstates his testimony.

4 THE WITNESS: No, I did not talk to him
5 about the details of this commitment letter.

6 BY MS. HOFFLER:

7 **Q. You didn't talk to him about the details**
8 **about the commitment letter. In fact, you didn't**
9 **talk to him or his attorneys about any of the terms**
10 **surrounding the loan that you took out that you used**
11 **to finance the loan that you gave to LCOC; right?**

12 A. In general I did.

13 **Q. In general you did? You told him how much**
14 **you were taking a loan for?**

15 A. I told him that I believed I would be able
16 to borrow money considerably less at very favorable
17 rates with the proper collateral. And that --
18 that's why I felt I would be able to make the loan.

19 **Q. Okay. Let me, let me -- let me just make**
20 **sure I'm very clear here. You said you called**
21 **Anthony Pugliese and told him you would be able to**
22 **take out a loan for less? When did you tell him**
23 **that, sir?**

24 A. After -- after Tom San Giacomo called me
25 and told me about the situation, shortly afterwards,
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1 I don't know if it was a week or a couple of weeks
2 or -- it may have been a couple of days,
3 Anthony Pugliese called me.

4 **Q. And you told him that you thought you**
5 **might be able to get a deal that was better than the**
6 **iStar deal?**

7 A. I told him that I thought that I could
8 loan money temporarily while he sought to get his
9 financing at -- and that I would charge slightly
10 less than the iStar deal that was not even offered
11 yet. They hadn't gone through with it. But there
12 were some terms that Tom San Giacomo told me about
13 that I thought that -- I actually wasn't pleased
14 with, but I told him I think we can do better than
15 that and I think you can do better than that, so --
16 so you should continue to try to borrow money from
17 other banks. In the meantime, I will see what I can
18 do.

19 But I didn't give him the specific terms
20 because I told him, look, if I use my own personal
21 money, I won't have any fees or expenses attached to
22 it. If I borrowed it from a bank, I will have some
23 costs which will be far less than this loan.

24 **Q. Now, and when Anthony through his**
25 **attorneys asked you -- through the attorneys asked**
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1 **you what the terms were, you told him it's none of**
2 **your business?**

3 A. The terms of what I was able to borrow --

4 **Q. To get from Wachovia.**

5 A. -- from others. I don't know what was
6 told to them.

7 **Q. Okay. But let's --**

8 A. But I wouldn't be surprised if people
9 declined to tell them the details.

10 **Q. Well, let's just be specific here. Who is**
11 **David Worroll?**

12 A. Worroll?

13 **Q. Worroll, yeah.**

14 A. David Worroll is the controller for
15 Subway.

16 **Q. For Subway. So that's Doctor &**
17 **Associates?**

18 A. Well, now he works for Franchise World
19 Headquarters.

20 **Q. I'm talking about in 2005. 2005, he**
21 **worked for Subway or Doctor & Associates, didn't he?**

22 A. That's correct.

23 **Q. Okay. So I'm going to hand you what we**
24 **are going to mark as Exhibit 3, and then we are**
25 **going to come back to this, just to refresh your**
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1 **recollection on what your people, David Worrell --**
2 **he basically worked for you; right?**

3 A. David Worrell?

4 **Q. Yeah, worked for you; right?**

5 A. Yes.

6 THE WITNESS: Can I take a minute and get
7 some more water?

8 MS. HOFFLER: Absolutely, we can get you
9 some water.

10 THE WITNESS: I'll just take a stretch.

11 (Whereupon, a recess was taken from
12 2:35 p.m. to 2:40 p.m.)

13 (Exhibit 3 marked for identification.)

14 BY MS. HOFFLER:

15 **Q. Mr. DeLuca, before our little break, I**
16 **handed you a document which is an email. And have**
17 **you taken a moment to look at that document?**

18 A. I haven't.

19 **Q. Okay. If you could take a moment to**
20 **please look over that document. It's a two-page**
21 **email. You've had a chance to read this email, sir?**

22 A. I did.

23 **Q. Okay. And I'm going to go through this**
24 **email with you and just read certain parts of it.**
25 **And I just want you to confirm whether I'm reading**
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1 it correctly and then I'll ask you some questions
2 about it. Is that okay?

3 All right. This -- you know, in emails
4 like this, you read from the back up. So correct me
5 if I am wrong, but there is an email that went from
6 Al Quentel on Friday, July 8th, 2005, at 12:02 p.m.
7 to davidworrell@subway.com.

8 Now, who was David Worrell again? What
9 was his title at Subway or Doctor & Associates at
10 the time, do you remember?

11 A. I'm not sure what his title was.

12 Q. Was he the controller?

13 A. I'm not sure.

14 Q. Did he handle personal deals for you?

15 A. Every now and then I would ask him to do a
16 favor for me and he would.

17 Q. Okay. But he was from Doctor &
18 Associates. It says right here in his own email to
19 Al Quentel saying David Worrell, Doctor's
20 Associates, Inc., 325 Bic Drive, Milford,
21 Connecticut 06460. So he wouldn't misrepresent that
22 he worked for, you know, Doctor's Associates unless
23 he did; right? He wouldn't misrepresent that, would
24 he?

25 A. All I can tell you is he worked for
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1 Doctor's Associates.

2 Q. Okay.

3 A. But I told you that before.

4 Q. Okay. I'm sorry. I must have
5 misunderstood.

6 Okay. So now David -- Al Quentel sent an
7 email to David that says, "Dear Dave, yesterday
8 evening Anthony Pugliese and Tom San Giacomo told me
9 that Wachovia would provide the financing for the
10 balance due the seller, 3 million for closing costs,
11 4 million for entitlements, and the interest carried
12 during the entitlement process. We are now just one
13 month away from closing, the seller is asking about
14 our financing, I have to get us ready to close, and
15 so far the only contact on behalf of Wachovia was
16 that an appraiser called Anthony. Will you please
17 send me an outline of the financing, or better yet a
18 term sheet, and information on what Wachovia will be
19 expecting. Also please send me your contact
20 information, since the only thing I have is your
21 email address. Best wishes. Sincerely, Al."

22 Now, this was Albert D. Quentel from
23 Greenberg Traurig; right?

24 A. I think so, yes.

25 Q. According to this email. Okay. And this
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1 is the Greenberg Traurig office in Miami, Florida;
2 correct?

3 A. That's what it says.

4 Q. And then David Worrell responds to
5 Al Quentel; right? And he responds about three days
6 later, July 11th, 2005, at 8:26 a.m. And he says,
7 "Al, we are still working with Wachovia to secure
8 the necessary financing. The final terms and
9 covenants of the financing arrangements have not
10 been officially finalized. We expect to get the
11 official offer (and commitment) this coming week.
12 So far, based on Mr. DeLuca's net worth and the
13 security he will be pledging, the bank has been
14 extremity positive thus far. At present time I do
15 not see any problems in finalizing the deal with the
16 bank this coming week. As a side note I have Bank
17 of America extremely interested in stepping in if
18 there is a problem with Wachovia."

19 Have I read that correctly?

20 A. You did.

21 Q. And then let's skip down to the last
22 paragraph. It says, "In terms of Fred DeLuca's
23 arrangement with Wachovia" -- oh, I'm sorry, let
24 me -- scratch that.

25 Let me read the last paragraph. "The
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1 terms of Fred DeLuca's arrangement with Wachovia are
2 between him and the bank. Fred is borrowing the
3 money personally and will be loaning the money to
4 the land acquisition company that he and Anthony own
5 to purchase the property. Fred is going to discuss
6 and work out the terms of the loan with Anthony with
7 the intent to make the terms better than what iStar
8 was offering. As I hear more from Wachovia, I will
9 keep you, Anthony and Tom updated."

10 Have I read that correctly?

11 A. You did.

12 Q. So -- but at no time did you tell
13 Anthony Pugliese that you, Fred DeLuca, you were
14 going to make roughly \$1.2 million off of this loan
15 to LCOC? At no time did you tell him that; right?

16 MR. HUTCHISON: Objection, asked and
17 answered and to form.

18 BY MS. HOFFLER:

19 Q. I just thought maybe this letter might
20 refresh your recollection that you didn't tell him.

21 A. No, I told him every term of the loan, the
22 interest rate and all the details that were provided
23 to Anthony and his lawyer well before the closing.
24 So all of the interest and expenses were disclosed.

25 Q. Okay. We must be clear here for the jury.
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1 **When you say you told him every term of the loan,**
2 **you mean every term of the loan for LCOC?**

3 A. The money that I was loaning to LCOC was
4 disclosed.

5 **Q. Right. Well, certainly because they**
6 **signed closing documents so they knew that; right?**
7 **I'm not asking that question. I'm asking, did you**
8 **disclose to him that you, that you -- and you**
9 **didn't. But I just want to confirm that even in**
10 **reading this, that you still -- that you still never**
11 **told him that you were going to make \$1.2 million**
12 **roughly off of the deal at closing.**

13 MR. HUTCHISON: Objection as to form,
14 asked and answered as well.

15 THE WITNESS: There's two points to the
16 answer. First of all, I never made any money
17 at closing or since then. But I did tell
18 Anthony directly that either I was going to
19 loan the money personally, in which case every
20 penny would be profit if I got paid, or I was
21 going to borrow money and I would be able to
22 borrow at very low interest rates and I would
23 make a profit on the loan. I did not tell him
24 the amount that I would be able to borrow at
25 because I frankly did not know what the terms
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1 from the bank would be.

2 BY MS. HOFFLER:

3 Q. Well, then why -- can you explain then,
4 why David Worrell would have said to
5 Anthony Pugliese's lawyer or the lawyer that was
6 working with Anthony and LCOC that the terms of
7 Fred DeLuca's arrangement with Wachovia are between
8 him and the bank? I mean, if you were going to tell
9 him everything, why would someone working for you at
10 Doctor's Associates say, look, it's none of your
11 business, and tell Anthony that, too?

12 A. Well, I think --

13 Q. Can you explain that?

14 A. You're confusing the two loans. Do you
15 want to know -- what do you want to know, whether or
16 not we told Anthony the terms of the loan to LCOC?

17 Q. No. As I said to you, I'm not confusing a
18 thing, firstly. But let me make it clear because
19 perhaps you're confused. I am very clear that
20 Anthony Pugliese knew from the closing documents or
21 had reason to know from the closing documents the
22 general terms of the loan between LCOC and you
23 because there were closing documents; right?

24 A. He knew the specific terms of the loan.

25 Q. He knew the -- he signed the closing
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1 documents as did you. So he knew. You knew. But
2 what he didn't know and what you hid from him was
3 that you, Mr. DeLuca, were making money unbeknownst
4 to him of about \$1.2 million. He didn't know that
5 and you didn't tell him that; right?

6 MR. HUTCHISON: Objection as to form,
7 asked and answered as well.

8 THE WITNESS: I've answered this already.
9 I told him I was going to make money on the
10 loan. Whether I made all the money or an
11 amount of money less what I had to pay the
12 bank, I told him I was going to make money on
13 the loan because I would be able to borrow, if
14 I did borrow, at a very low rate.

15 I did not know if I was going to loan the
16 money directly from cash assets or if I was
17 going to borrow money. I did not know what the
18 bank was going to charge if I borrowed. But I
19 did tell him that there would be money that I
20 would make if I got paid.

21 BY MS. HOFFLER:

22 Q. So what you told him is that the only way
23 you would make money on the loan is if you got paid
24 when?

25 A. Well, I think it's the same as in all
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1 loans. When you get paid and collect your money
2 back plus your interest --

3 **Q. Okay.**

4 A. -- you make money.

5 **Q. So what you told Anthony Pugliese was,**
6 **look, I'll make money on this once I get paid back**
7 **the money, the loan.**

8 A. Well, I --

9 **Q. Is that what you are saying?**

10 A. Not in those exact words, but I can tell
11 you what I said to him.

12 **Q. Right. But you --**

13 MR. HUTCHISON: Let him answer.

14 BY MS. HOFFLER:

15 **Q. I want to make sure -- I want to make sure**
16 **that I understand. But you did not tell, you hid**
17 **from him that having nothing to do with whether the**
18 **loan was repaid, that you were still going to make**
19 **money at the time of closing. You didn't tell him**
20 **that, did you?**

21 MR. HUTCHISON: Objection to form.

22 THE WITNESS: I didn't make -- first of
23 all --

24 MR. HUTCHISON: Let me.

25 Objection as to form and move to strike
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1 comment of counsel.

2 BY MS. HOFFLER:

3 **Q. You didn't tell him that, did you?**

4 THE WITNESS: I don't know what I am
5 supposed to do. I never heard the --

6 MR. HUTCHISON: You can answer the
7 question if you understand the question to
8 answer. I have to object for the record.

9 THE WITNESS: Okay. Can you read the
10 question again?

11 (Requested portion read by reporter.)

12 BY MS. HOFFLER:

13 **Q. You want me to rephrase it?**

14 A. There's a lot of parts to that. Yes,
15 please rephrase it.

16 **Q. Did you tell Anthony Pugliese that at the**
17 **time of closing you were going to make about**
18 **\$1.2 million, yes or no?**

19 A. No.

20 **Q. All right. Now, let's go through -- I**
21 **just want to confirm a couple of things here with**
22 **this email. So David Worrell, you don't remember**
23 **his title in 2005, but he worked for you at**
24 **Doctor's Associates, Inc. And, in fact, his email**
25 **address is d@subway.com. Is that -- do all of your**
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1 employees, do they have that sort of last part,
2 @subway.com?

3 A. No.

4 Q. No. Do some of them have
5 doctors&associates.com or something?

6 A. There are different companies and some
7 companies might have different email addresses.

8 Q. Well, what is your email address, sir?

9 A. Mine is Fred_DeLuca@subway.com.

10 Q. @subway.com. Okay. Of course, you own
11 half of Doctor & Associates.

12 Okay. Now let's go back to -- let's go
13 back to this August 10th, 2003 document, which is
14 Exhibit 1. So let's put aside this email. I'm
15 through with that.

16 Okay. So let's put aside this email and
17 we are going to go back to this Exhibit Number 1
18 that we went through, which is -- which contains
19 the -- you testified Exhibit A, which goes through
20 the expenses to the loan between you and Wachovia.

21 MR. HUTCHISON: This is August 10, 2005.

22 BY MS. HOFFLER:

23 Q. 2005. Did I say '10? I'm so sorry.
24 Strike that question. Let me make the record very
25 clear. I want to go back to the July 19, 2005
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1 correspondence between -- and letter of commitment,
2 loan commitment to you between you and Wachovia for
3 a moment.

4 Now, you mentioned that missing from this
5 list of expenses was the part of the commitment fee
6 that you had already paid. So you had paid -- am I
7 correct in saying you already paid 50% of the
8 commitment fee prior to the actual closing; is that
9 right?

10 A. I'm a little confused. Did you want to go
11 to the letter of July 19 --

12 Q. No, I'm going to the exhibits.

13 A. -- or are you going to --

14 Q. Yeah, the whole thing, the whole package.

15 A. Okay.

16 Q. Why don't you look at Exhibit A, which is
17 Exhibit A to the letter.

18 A. Okay.

19 Q. Okay. That's the second page. On
20 Exhibit A to the letter, I asked you about the
21 expenses. And I said, does it -- it has -- does it
22 have all the expenses? You said, well, no. The one
23 thing you said that was missing was you had already
24 paid part of the commitment fee beforehand and this
25 was the balance of the commitment fee to Wachovia;
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1 is that correct?

2 A. Did I say that? Yes.

3 Q. Don't ask me.

4 A. Did I say that, yes.

5 Q. You did say that?

6 A. I said that.

7 Q. Okay. And the amount that you paid
8 previously was \$78,750. You paid half of the
9 commitment fee previously; isn't that right?

10 A. I don't know.

11 Q. Well, then let's turn to Page 2 of the
12 actual loan commitment letter that you signed under
13 fees. Under fees, it says -- do you have that,
14 where it says commitment fees? Read with me. "By
15 acceptance of this commitment, borrower agrees to
16 pay the bank a commitment fee of 0.15% of the amount
17 of this commitment for the term loan, payable 50% at
18 the time of acceptance of this commitment and 50% at
19 the time of closing." All right?

20 A. That's what it says.

21 Q. So at the time of closing you paid 78,750.
22 That was 50%. So that means that you also paid,
23 according to this document that you signed,
24 previously \$78,750. Do you follow me?

25 A. If you say that's the math, I won't argue
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1 with that.

2 Q. Do you want a calculator? I don't want to
3 say what I say. I want you to testify, sir.

4 A. Well, if you're asking me if I know what
5 we paid, I don't know the answer to that.

6 Q. Well, do you know what this document reads
7 though?

8 A. Excuse me?

9 Q. You know what this document reads; right?

10 A. Yes.

11 Q. And you don't dispute this document, do
12 you, sir, that you signed?

13 A. No, I don't -- I don't dispute the words
14 in it.

15 Q. No.

16 A. I just don't know the math behind it.

17 Q. Okay. Well, basically, it was -- you paid
18 \$78,750 times two as a commitment fee. You would
19 agree with that just based on this document, just
20 based on that one paragraph?

21 A. If you tell me that's what I paid, I feel
22 comfortable with it. It doesn't sound unreasonable,
23 I just don't know the answer.

24 Q. Okay. Well, assume that I am right, based
25 on the document that you signed, because you've
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1 confirmed this is your signature. 78 -- does anyone
2 have a calculator here? \$78,750 times two, and I'm
3 just referring to the commitment fees, totals
4 157,500. Now, if you need a calculator, because I
5 want you to be able to say that that's what it
6 totals. 78,000 --

7 MR. BELAVAL: 157 even.

8 MS. HOFFLER: 157 even?

9 MR. BELAVAL: Seven eighty-five times two.

10 MS. HOFFLER: Seventy-eight seven-fifty
11 times two is?

12 MR. GOLDBERGER: One fifty-seven five.

13 MS. HOFFLER: One fifty-seven five. Does
14 anyone have a calculator so that Mr. DeLuca can
15 calculate that?

16 (Discussion off the record.)

17 BY MS. HOFFLER:

18 Q. 78,000. Here you go, Mr. DeLuca. Here's
19 a calculator. 78,000 according to Exhibit A. 78 --
20 do you want to type in \$78,750 times two, and that
21 equals 157,500; is that correct?

22 A. Correct.

23 Q. Okay. So according to these documents
24 that you signed -- okay. According to these
25 documents that you signed, you paid in commitment
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1 fees for this transaction, this loan that you
2 received from Wachovia, \$157,500. A hundred
3 fifty-seven five. Do you see where I'm saying,
4 based on the documents that you signed?

5 A. You can get there. I don't dispute it. I
6 think that sounds rational.

7 Q. Okay. All right.

8 Okay. Now, I'm going to now hand you,
9 Mr. DeLuca --

10 (Discussion off the record.)

11 MS. HOFFLER: I'll keep this here just in
12 case we need it.

13 BY MS. HOFFLER:

14 Q. Now, I'm going to now hand you what we are
15 marking as Exhibit 2, and I'm going to ask you to
16 take a look at this document.

17 MS. HOFFLER: And for the record,
18 Exhibit 2, the first page is entitled, "Land
19 Company of Osceola County loan."

20 (Exhibit 2 marked for identification.)

21 BY MS. HOFFLER:

22 Q. I'm going to hand this to you and if you
23 wouldn't mind taking a moment to look at this
24 document.

25 (Discussion off the record.)

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1 THE WITNESS: I'm ready.

2 BY MS. HOFFLER:

3 Q. Oh, you're ready? Okay. So, Mr. DeLuca,
4 you've had a chance to look over these documents,
5 that four-page document entitled, "Land Company of
6 Osceola County loan," right?

7 A. I looked at it. I don't know what it is,
8 but I looked at it.

9 Q. Well, essentially, you've never seen this
10 document before?

11 A. I've never seen it before.

12 Q. Okay. Well, let's just go through it. It
13 says, "Loan principal funding detail." Do you see
14 that?

15 A. I do see it. But what is this document?

16 Q. Well, this is a document that -- and I
17 will -- if you want the entire, all of the closing
18 documents for the loan that you made to LCOC, then
19 certainly we can do that.

20 A. Is this a closing document?

21 Q. This is part of the closing document, yes,
22 for the loan that you made, Mr. DeLuca, to LCOC
23 which details the commitment fee at closing that you
24 were paid. That also details the payment -- and I'm
25 going to ask you to look at Exhibit 2 and Exhibit 1
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1 **side-by-side so we can match up the two closing**
2 **documents from the two loans.**

3 MR. HUTCHISON: I'm going to move to
4 strike comment of counsel and with respect to
5 this exhibit, form, object to form and
6 foundation.

7 THE WITNESS: This has got a lot of dates
8 after the closing. I don't know what this is.

9 BY MS. HOFFLER:

10 **Q. Take a moment to look it over. We've got**
11 **five days together, so I'll give you the entire**
12 **document, but for purposes of my questioning now I'm**
13 **only interested --**

14 A. Wait. Did you say this was part of the
15 closing documents?

16 **Q. Right. It's part of the documents related**
17 **to the LCOC loan and the payments of the LCOC loan,**
18 **et cetera. So -- but the only part that I am -- I'm**
19 **going to refer to, but I will get all the closing**
20 **documents which will reflect this, because this is**
21 **something that was generated that you have in your**
22 **records as well, but let's just focus on the first**
23 **paragraph of this.**

24 **And no need in you looking at counsel.**

25 A. Well, I just asked him if he ever saw this
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1 before. I've never seen anything like this. But
2 anyway --

3 Q. Well --

4 MR. GARY: But it ain't for you to ask --

5 BY MS. HOFFLER:

6 Q. -- ask your counsel.

7 MR. GARY: -- to read this, so --

8 THE WITNESS: Oh, okay.

9 BY MS. HOFFLER:

10 Q. And, respectfully, your counsel was not
11 even your counsel at the time, so --

12 MR. GARY: You had other lawyers for that.

13 BY MS. HOFFLER:

14 Q. So let's just focus on -- I'm asking the
15 questions and so let's just focus on these questions
16 that I am going to ask about this.

17 A. Does it go line by line?

18 Q. Yes. And I'm only going to ask you
19 questions on the first either six or seven entries,
20 because I'm only really interested in the closing
21 and the costs that were incurred, or that you
22 charged LCOC in connection with the closing.

23 Okay. Do you see that first? First, let
24 me go through it. Now, the first entry is 7/5/05,
25 Wachovia Bank. There was an appraisal fee of
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1 **38,650. Do you see that?**

2 A. I see that.

3 **Q. And then 8/11/05 closing, Wachovia Bank**
4 **cash at closing, 104,864,870.10. Do you see that?**

5 A. I see that.

6 **Q. Okay. Then 8/11/05, adjustment for**
7 **additional capital contribution. And it says in**
8 **parens, \$2,809,037.54. Do you see that?**

9 A. I see that.

10 **Q. And then the next line says at 8/11/05,**
11 **closing commitment fee 1%. And that is**
12 **\$1.4 million. Do you see that?**

13 A. I see that.

14 **Q. So on 8/11/05 at closing, there was a**
15 **commitment fee for the loan that you made to LCOC**
16 **that you got for \$1.4 million. Do you see that?**

17 MR. HUTCHISON: Objection.

18 BY MS. HOFFLER:

19 **Q. According to this document.**

20 MR. HUTCHISON: Objection to form.

21 THE WITNESS: I never --

22 MR. HUTCHISON: And asked and answered.

23 THE WITNESS: It says that I got
24 \$1.4 million on here?

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1 BY MS. HOFFLER:

2 Q. Let me go further.

3 A. I just don't know what this is. And --

4 Q. Oh, I'm going to go through the whole --

5 A. You can ask me what it is, but I don't
6 know what it is.

7 Q. Okay. That's very interesting that you
8 don't know anything about the \$1.4 million that you
9 got at closing. So for sure you didn't -- you hid
10 it from Anthony Pugliese --

11 MR. HUTCHISON: Objection.

12 BY MS. HOFFLER:

13 Q. -- because you're claiming now that you
14 don't know about it.

15 MR. HUTCHISON: Objection, move to strike
16 comment of counsel. Objection to form.

17 MS. HOFFLER: What's the form?

18 MR. HUTCHISON: Objection because it was
19 asked and answered.

20 Go ahead.

21 THE WITNESS: Do I say something?

22 BY MS. HOFFLER:

23 Q. Go ahead and answer it.

24 A. Okay. All of the interest rates and fees
25 relating to this loan were disclosed to
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1 Anthony Pugliese. I just don't know what this piece
2 of paper is.

3 Q. Oh, and we are going to get to the
4 interest rates. We are going to get to the interest
5 rates. But for now, I'm just going to -- and we are
6 going to get further documentation on this
7 commitment fee. But right now, according to this
8 document, at 8/11/05 at closing, the commitment fee
9 of 1% was \$1.4 million in connection with the loan
10 that you made to LCOC. Let me go further. 8/11/05
11 at closing, payment to Carlton Fields, cash at
12 closing of \$5800. Do you see that?

13 A. I see that.

14 Q. Now, further, 8/11 at closing, payment to
15 Bingham McCutchen, cash at closing, 49,829.90. Do
16 you see that?

17 A. I see that.

18 Q. And then 8/11/05, closing, debit memo,
19 cash at closing, \$750.

20 A. I see that, too.

21 Q. Now, what I would like you to do is I
22 would like you to go back to the exhibit. It's
23 exhibit 1, which we -- and I want you to look at
24 Exhibit A. Exhibit 1 to your deposition, turn to
25 the second page, which is Exhibit A, which goes
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1 through the expenses, the loan proceeds and the
2 expenses. Okay? And what I would like you to do --

3 A. Which loan proceeds?

4 Q. This is in reference to your loan that you
5 got from Wachovia.

6 A. This is the loan that I got from Wachovia.

7 Q. From Wachovia. So what I want you do is,
8 I want you to have Exhibit 1 in front of you, turn
9 the page and go to Exhibit A of Exhibit 1, which is
10 the Exhibit A of the -- your loan from Wachovia.
11 And then I would like you to look side-by-side at
12 Exhibit 2. And we are only looking at the first few
13 lines. And I would like you to look at both of
14 these at the same time and I would like you to go
15 through it with me. And let's look at 8/11/05,
16 where it says closing payment to Carlton Fields.

17 A. 8/11/05. Okay.

18 Q. Do you see there was a closing payment to
19 Carlton Fields?

20 A. I see that.

21 Q. Okay. And that's in the amount of how
22 much?

23 A. On which? On this paper that you gave me?
24 On Exhibit 2, it says \$5,800.

25 Q. On Exhibit 2, which purportedly relates to
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1 the loan that you made to LCOC, it says \$5800.

2 Those are the payment costs to Carlton Fields.

3 Now, let's look at Exhibit A on your loan
4 from Wachovia. Now, on your loan from Wachovia,
5 correct me if I am wrong, there is a payment of
6 \$5800 that went to Edgel C. Lester. And we know
7 from the wire instructions that he was at
8 Carlton Fields. If you want, you can go two pages,
9 two or three pages later.

10 A. I could look at all this. I just don't
11 follow it very well.

12 Q. Then I'm going to work with you until you
13 can follow it, sir. It's very important.

14 A. So you just jumped over to the wire
15 instructions. So let's take a look.

16 Q. Well, because I want to make sure, you
17 said you didn't know who Edgel C. Lester was.

18 A. I don't know Edgel C. Lester.

19 Q. So go to --

20 A. And I don't know Carlton Fields.

21 Q. Okay. Well, let's go two pages behind
22 Exhibit A of your loan documents with Wachovia and
23 we see wire instructions to Ed Lester.

24 A. Uh-huh.

25 Q. Account, Carlton Fields. Do you see that?
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1 A. I see that.

2 Q. Okay. So in your loan documents for your
3 loan with Wachovia, there is a payment of \$5800 that
4 was made to Ed Lester. And then when you look at
5 the loan that you made to LCOC and, again, there is
6 a payment of \$5800.

7 So you passed through or you charged,
8 according to these documents, \$5800 to LCOC for
9 whatever, to Carlton Fields, which was paid in your
10 loan to Wachovia. You see it's the exact same
11 amount?

12 A. I see --

13 MR. HUTCHISON: Objection to form and move
14 to strike.

15 THE WITNESS: I see \$5800 on both
16 documents, but I still don't know what
17 Exhibit 2 is.

18 BY MS. HOFFLER:

19 Q. Well, we're going to -- we're going to
20 give you the complete part of Exhibit 2 so you have
21 everything.

22 A. But you're referencing this as something.
23 I don't know what it is.

24 Q. Well, it says Land Company of Osceola
25 County loan. Did anyone other than you give a loan
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1 to Land Company of Osceola loan that was in the
2 hundreds of millions -- hundreds of million dollars?
3 Was there anybody else that you know of?

4 A. Well, this could have come from Anthony's
5 records. I don't know what this is.

6 Q. Well, I'm going to give you the complete
7 set, but for purposes now --

8 A. Why don't you do that so I at least know.

9 Q. I don't have -- I don't have it right
10 here. But for purposes now, I'm asking you,
11 Mr. DeLuca, to assume that this is based on the loan
12 that you made to LCOC. And all I'm asking you is,
13 do you see \$5800 to Carlton Fields in your loan
14 documents and \$5800 to Carlton Fields in the loan
15 documents for the loan that you made to LCOC?

16 A. I see --

17 MR. HUTCHISON: Same objection as before
18 with respect to this exhibit and all questions
19 with respect to this exhibit, form and
20 foundation.

21 BY MS. HOFFLER:

22 Q. Do you see that?

23 A. I see \$5800 in each place.

24 Q. Okay. Now, let's go further. Let's go
25 further. There is a payment, attorneys' fees for
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1 Bingham McCutchen, LLP. And I'm referencing your
2 loan documents, the expenses detailed in your loan
3 documents for your loan with Wachovia, the loan that
4 they gave you. And paid to Bingham McCutchen was a
5 total of \$49,829.90. Do you see that?

6 A. I see that.

7 Q. Now, just as we did before -- wow. Just
8 as we did before --

9 (Discussion off the record.)

10 (Whereupon, a recess was taken from

11 3:13 p.m. to 3:32 p.m.)

12 BY MS. HOFFLER:

13 Q. So, Mr. DeLuca, when we -- when we left
14 off, I asked you to basically compare Exhibit 1 and
15 Exhibit 3. Do you recall? Do you recall? And I
16 think you have them in front of you?

17 MR. HUTCHISON: I think it was 1 and 2.

18 THE WITNESS: 1 and 2two.

19 BY MS. HOFFLER:

20 Q. It was 1 and 2? 1 and 2.

21 A. Yeah. We're looking at 1 --

22 Q. And then 2.

23 A. -- and 2.

24 Q. You're absolutely right. I apologize. I
25 stand corrected. And Exhibit 1 is again the --
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1 reflects the terms of closing costs, if you will, in
2 connection with the loan that you got from Wachovia.
3 And Exhibit 2 is basically a spreadsheet, and I'm
4 only focusing on the top part of the spreadsheet
5 that reflects closing costs associated with the LCOC
6 loan that you made to LCOC.

7 So in looking at those two documents, I
8 think I asked you to look at the payments.
9 Specifically, let's go to Exhibit 1. There was a
10 payment of \$49,364.90 to Bingham McCutchen, LLP.
11 And those were for attorneys' fees it says, on your
12 Exhibit A of your closing documents with Wachovia.
13 Do you see that, sir?

14 A. I see that.

15 Q. Now, if we go then to the LCOC document
16 and specifically reference where it addresses -- the
17 first seven lines, where it addresses closing costs.
18 It says on 8/11/05, closing payment to
19 Bingham McCutchen, cash at closing. And it says
20 \$49,829.90. That's the same amount; is that
21 correct?

22 A. I think you referenced the different
23 amount, but if you -- on A, if you take the two
24 numbers --

25 Q. I'm sorry. You're right.
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1 A. -- for the forty-nine --

2 Q. -- thousand. I'm sorry. You're right.
3 So let me just make sure the record is clear. I
4 apologize.

5 In Exhibit A, which is the term sheet for
6 the closing costs that were paid for your Wachovia
7 loan, the total amount paid to Bingham McCutchen,
8 LLP, was \$49,829.90; is that correct?

9 A. That's what it says.

10 Q. And if we go over to the document that
11 reflects the loan to LCOC that you made on 8/11/05,
12 it says closing payment to Bingham McCutchen, cash
13 at closing, it's \$49,829.90. So the same amount; is
14 that correct?

15 A. Yeah. I see the same amount. I just
16 don't know what this document Number 2 is.

17 Q. And I've asked you for purposes of these
18 questions just to assume that this is in connection
19 with LCOC, because tomorrow I'm going to present to
20 you all of the closing documents for -- that we have
21 for your loan and between you and Wachovia and the
22 loan between you and LCOC.

23 A. Okay.

24 Q. And then we can match it up. But I
25 just -- for purposes of my questioning now, I'm
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1 asking that when you look, you see that the same
2 payments to the lawyers, whether it's Edgel Lester
3 or Bingham McCutchen for services rendered in
4 connection with your closing on the loan to Wachovia
5 are reflected in this statement as relates to the
6 loan that you made to LCOC. Do you see that?

7 A. The same numbers are on both pages.

8 Q. And just for the record, your loan closed
9 on August 10th of 2005 or thereabouts; is that
10 right? Just according to this document.

11 A. Which loan is that?

12 Q. Your loan from Wachovia.

13 A. Closed on August 10th.

14 Q. August 10th. I mean, based on the
15 instructions that you gave to Wachovia Bank to
16 authorize the bank to pay certain expenses on or
17 about August 10th of 2005.

18 A. Well, yeah, certainly not after
19 August 10th and not much before it. I don't know
20 what they did. It closed.

21 Q. Okay. And you don't -- so the fact that
22 your letter says August 10th, 2005, you certainly
23 don't dispute if your letter says August 10th, 2005,
24 that it closed on or about August 10th of 2005, do
25 you?

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1 A. I think it's -- I don't think this really
2 references the closing of our loan. I think this
3 gives some instructions to Wachovia about wire
4 transfers.

5 Q. Well, so my question was, your loan closed
6 on or about August 10th of 2005. If on August 10th
7 of 2005 you're giving instruction to pay expenses of
8 closing, then you would agree with me, sir, that
9 your loan with Wachovia closed on or about
10 August 10th of 2005; right?

11 A. As I said before, on or before
12 August 10th, 2005.

13 Q. So now we are using the exact same
14 language. Now we are on the same page. So then --

15 MR. HUTCHISON: Objection, move to strike.
16 BY MS. HOFFLER:

17 Q. -- we look at LCOC. Let's look at
18 Exhibit 2. Exhibit 2 references the loan that you
19 made to LCOC in payments. And it says here,
20 according to this document, and we are going to go
21 through all the documents tomorrow, that there was a
22 commitment fee at closing of 8/11/05.

23 So according to this document, the loan
24 for LCOC that you made to LCOC closed on or about
25 August 11th of 2005.

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1 MR. HUTCHISON: Same objection, form,
2 foundation and move to strike comment by
3 counsel.

4 Answer.

5 BY MS. HOFFLER:

6 Q. Answer the question.

7 A. I don't know when the loan closed.

8 Q. You have no idea?

9 A. It closed in August.

10 Q. It closed in August. Do you know if your
11 loan -- God bless you.

12 Do you know if your loan closed before --
13 your loan from Wachovia closed before the loan that
14 you made to LCOC? Do you know?

15 A. I think it did.

16 Q. Now, let's talk about your loan, the loan
17 that you got from Wachovia. Did you pledge any
18 collateral for your loan that you got from Wachovia?

19 A. Yeah, I pledged a lot of collateral.

20 Q. And part of the collateral that you
21 pledged was the property that -- that was in
22 question, the LCOC property, the land; right?

23 A. I don't think I could pledge the property.
24 I might have pledged a loan that I made.

25 Q. Well, let's just be specific and let's
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1 look at the documents, because you don't -- you
2 don't dispute anything that's in the document that
3 you signed, do you?

4 A. Well, let me say this: I have to see what
5 you're referring to, to understand what it is and
6 then I would have to take a look at that.

7 **Q. My question is --**

8 A. But I could dispute something in the
9 document that I signed --

10 **Q. That you signed?**

11 A. -- if it's incorrect.

12 **Q. If it's incorrect. But you signed it.**
13 **Incorrect or not, you signed it. You verified that**
14 **was your signature; right?**

15 A. Yeah, I didn't say that I didn't sign
16 something. I'm saying -- you asked me if there is
17 something in the document that might be reviewed
18 later and I might think differently about that.

19 **Q. Okay. I wasn't --**

20 A. And sometimes that happens.

21 **Q. -- clear, sir, so let me just be**
22 **abundantly clear. If there is a document such as**
23 **this document, a loan commitment letter that you**
24 **signed with Wachovia, you don't dispute the accuracy**
25 **of the document, do you, now?**

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1 MR. HUTCHISON: Objection, calls for --
2 BY MS. HOFFLER:

3 Q. If you signed -- if you signed it, do you?

4 MR. HUTCHISON: Objection to form, it
5 calls for a hypothetical.

6 THE WITNESS: No, if I signed it, there
7 could be an error in it. If I signed it, it
8 could be an error in it. Just like sometimes
9 they have to amend a tax return. They give me
10 a tax return, I sign it. Sometimes I'm told
11 later that there has to be an amendment to it.

12 BY MS. HOFFLER:

13 Q. Did you amend this document that you
14 signed for a loan commitment letter to Wachovia, yes
15 or no?

16 A. I don't know.

17 Q. Do you think you did?

18 A. I wouldn't think so.

19 Q. Speaking of taxes, what were -- did you
20 factor in any tax implications when you made the
21 decision to get a loan from Wachovia, to use for the
22 loan that you made to LCOC versus just financing out
23 of your own pocket?

24 A. I don't think so.

25 Q. You don't think so. There were no
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1 **implications as all?**

2 A. I can't recall any.

3 **Q. Certainly you're concerned about taxes,**
4 **aren't you?**

5 MR. HUTCHISON: Objection as to form of
6 that question.

7 THE WITNESS: Yeah, I think, sure. But I
8 don't think any -- I don't think I thought
9 about taxes in relationship to this.

10 BY MS. HOFFLER:

11 **Q. So you didn't think about taxes in**
12 **relationship to the loan that you made to LCOC?**

13 MR. HUTCHISON: Objection to form.

14 THE WITNESS: I don't think I did.

15 BY MS. HOFFLER:

16 **Q. So you don't think that you thought about**
17 **any -- that there were any tax implications**
18 **associated with the loan that you made to LCOC**
19 **versus you financing the loan out-of-pocket?**

20 MR. HUTCHISON: Objection, asked and
21 answered.

22 THE WITNESS: That's a totally -- that's a
23 different question. But say it again, please,
24 so I could --

25 MS. HOFFLER: Would you read it back.
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1 You notice I'm not even paying attention
2 to you, counsel. But could you read it back.

3 (Requested portion read by reporter.)

4 THE WITNESS: It's a pretty complicated
5 question, because you asked it in several ways
6 there. I'm sure that there's tax implications
7 when you make a -- a business decision, but I
8 don't think I thought about tax implications.

9 BY MS. HOFFLER:

10 **Q. You didn't think about tax implications in**
11 **considering the loan to LCOC?**

12 A. I don't think I did.

13 **Q. I'm sorry?**

14 A. I don't think I did.

15 **Q. Okay. So on a \$140 million loan, you did**
16 **not consider the tax implications --**

17 MR. HUTCHISON: Objection.

18 BY MS. HOFFLER:

19 **Q. -- at the time that you were seeking the**
20 **loan from Wachovia?**

21 MR. HUTCHISON: Objection to form.

22 THE WITNESS: Not to my recollection.

23 BY MS. HOFFLER:

24 **Q. Okay. But, of course, you did consider**
25 **how you were going to make money on the loan. I**
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1 mean, that was a consideration first; right?

2 A. I think I considered the risks and the
3 potential rewards.

4 Q. Now -- so assuming that this document
5 relative to the loan that you made to LCOC is
6 accurate, meaning that there was a commitment fee
7 paid of \$1.4 million, assume that's accurate for
8 this loan. For purposes of my question, just assume
9 this is accurate. Okay?

10 And assume that -- and what we have gone
11 over is that the attorneys' fees that were charged
12 to you for your loan with Wachovia were also billed
13 to LCOC. So they are going to be a wash because
14 they are the exact same thing. But let's assume
15 that for purposes of my question. Then what you
16 paid out-of-pocket in connection with your
17 out-of-pocket cash in connection with your loan from
18 Wachovia was \$157,500, which was the -- which was
19 the commitment fee --

20 MR. HUTCHISON: Same objection.

21 BY MS. HOFFLER:

22 Q. -- right?

23 MR. HUTCHISON: Is there a question there?
24 Are you done with your question? If you are, I
25 object to the hypothetical as improper, the
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1 form of the question, and a motion to strike
2 the comment of counsel.

3 THE WITNESS: I wouldn't assume that this
4 is accurate to start with.

5 BY MS. HOFFLER:

6 Q. What are you referring to when you say
7 "this"?

8 A. Exhibit 2, because it -- like, for
9 instance, you were talking about a commitment fee of
10 1%, and it says \$1.4 million. The loan was
11 105 million, I believe. So the commitment -- 1% is
12 less than \$1.4 million, so there is some inaccuracy
13 on this document. I just don't know how it got
14 here.

15 Q. Well, then let me just commend you -- we
16 are going to go through the exact documents
17 tomorrow, but let me just commend the first
18 paragraph to your attention of the letter dated
19 July 19, 2005, to you from Wachovia that you signed
20 in Exhibit 1, where it says, "Wachovia Bank,
21 National Association hereafter -- (hereinafter
22 "Wachovia" or "Bank") is pleased to offer you a
23 commitment to loan a \$140 million on the following
24 terms and conditions."

25 Do you see that?

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1 A. I see that.

2 Q. So their commitment to you to lend was
3 \$140 million, was it not? Just answer my question.
4 That was their commitment to lend to you?

5 A. There were two loans that they offered
6 totaling \$140 million.

7 Q. And, sir, what is 1%? You need the
8 calculator here? What is 1% of 140 million? Maybe
9 just calculate right there.

10 A. Well, I don't think the 1% fee --

11 MR. GARY: Answer the question.

12 BY MS. HOFFLER:

13 Q. Just answer the question, sir.

14 MR. GARY: Hold it. Do what you were told
15 to do.

16 MR. HUTCHISON: He can answer the question
17 the way he thinks is appropriate.

18 MR. GARY: Just do what you were told to
19 do. Do it on the calculator.

20 BY MS. HOFFLER:

21 Q. I'm just asking what 1% is?

22 A. Well, sure. First of all, I don't
23 think these two --

24 MR. GARY: Yeah, but just do it on the
25 calculator.

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1 MR. HUTCHISON: Let him finish his answer.

2 THE WITNESS: I will do it. I will do it.
3 I will do it.

4 I don't think the 1.4 million -- I think
5 the 1.4 million here relates to the iStar loan,
6 not this loan. But the answer is \$1.4 million.

7 MR. GARY: Well, we are not interested in
8 what you think.

9 BY MS. HOFFLER:

10 Q. Okay. But --

11 MR. HUTCHISON: Wait, wait. One lawyer at
12 a time.

13 BY MS. HOFFLER:

14 Q. Okay. But let me -- so we have a clean
15 record, let me reask the question, Mr. DeLuca.

16 Sir, what is 1% of \$140 million?

17 A. \$1.4 million.

18 Q. Okay. Now, going back to your own
19 document that you signed and you authorized Wachovia
20 to pay pursuant to which Exhibit A, your commitment
21 fee, total commitment fee including what you had
22 paid prior to closing and what you paid at closing
23 would have been \$157,500. That's what we talked
24 about before.

25 So that -- and the commitment fee, you
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1 **agree that the commitment fee would be what you had**
2 **to pay out-of-pocket; right?**

3 MR. HUTCHISON: Move to strike comment of
4 counsel and objection to form.

5 BY MS. HOFFLER:

6 **Q. A commitment fee is what you pay**
7 **out-of-pocket; right?**

8 A. Well, you asked two different questions,
9 but I don't know that a commitment fee is what's
10 paid out-of-pocket.

11 **Q. Did you pay out of -- did you pay a**
12 **hundred and fifty-seven five for a commitment fee in**
13 **connection with the loan that Wachovia made to you**
14 **according to these documents that you signed?**

15 A. It's a different question. Did you say
16 did I pay it, or did I pay it out-of-pocket?

17 **Q. Did you just hear my question?**

18 MR. GARY: Man, just what was
19 the commitment --

20 BY MS. HOFFLER:

21 **Q. Wait, wait, wait.**

22 A. You said two different questions --

23 **Q. Okay. Okay. But --**

24 A. -- sequentially, and I just want to know
25 which one to answer.

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1 Q. Okay. Mr. DeLuca, I'm not trying to be
2 cute. I don't have to try to be cute. But my
3 second question to you was very clear. Did you pay
4 the commitment fee totaling \$157,500 for your loan
5 that you got from Wachovia, yes or no?

6 A. I believe that's accurate.

7 Q. So if we assume -- if we assume that the
8 commitment fee that you got paid as the person
9 financing the loan from LCOC was 1.4 million, if we
10 assume that and if we deduct what you came -- what
11 you paid for in terms of a commitment fee from your
12 Wachovia loan, then the net amount -- and you got a
13 calculator, because I want you to calculate the net
14 amount, would be roughly one point -- oh, I'm sorry.
15 1.242, 500. I want you to calculate it.
16 1.4 million -- maybe you can do it from here, but I
17 want you to calculate it. 1.4 million minus a
18 hundred fifty-seven five.

19 MR. HUTCHISON: Objection to form,
20 improper hypothetical and move to strike
21 comment of counsel.

22 BY MS. HOFFLER:

23 Q. Go ahead and please calculate a hundred --
24 1.4 million minus a hundred and fifty-seven five.

25 A. I've done it.
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1 **Q. And what's the total, sir?**

2 A. What is the difference?

3 **Q. What's the difference?**

4 A. Subtracting one number from the other,
5 it's one, two, four, two, five, zero, zero.

6 **Q. So that is 1,242,500; is that right? If**
7 **you subtract those numbers.**

8 A. I think that's correct.

9 **Q. Okay. Now, assuming that that was the**
10 **commitment fee that you got, assuming that was the**
11 **commitment fee you got, the 1.4 million, and you**
12 **deducted out what you paid on your loan to Wachovia.**
13 **And assuming that you netted 1.2425, did you ever**
14 **tell Anthony Pugliese that you were going to make**
15 **that amount of money at closing on the deal, the**
16 **money that you loaned to LCOC, ever?**

17 MR. HUTCHISON: Objection as to form,
18 improper hypothetical.

19 BY MS. HOFFLER:

20 **Q. Answer.**

21 A. On the assumptions, I never received
22 \$1.4 million.

23 **Q. So you didn't -- so that would be no, you**
24 **did not tell him?**

25 A. No, I never received \$1.4 million and I
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1 never made a profit on this. And I did tell him
2 that I was going to charge something and all of the
3 charges were specified in the closing documents
4 presented to his lawyer. Every last detail was told
5 to him. But I did not tell him my cost of money.

6 **Q. You didn't tell that to him?**

7 A. Because he asked what it would be and I
8 said, I don't know what it would be, but I'm not
9 going to tell you what it would be.

10 **Q. Right. Just like -- just like you didn't**
11 **tell him, did you, that the loan that you got from**
12 **Wachovia, because you got -- you said there were two**
13 **loans. That's what you said. One for 105 million**
14 **and then a line of credit for 35 million; right? Am**
15 **I correct, that's what you said?**

16 A. There was a loan for 105 million and a
17 line of credit for 35 million.

18 **Q. Yes. And you did not happen to tell**
19 **Anthony Pugliese that for the loan that you got for**
20 **105 million, that you got that at .9%, the interest**
21 **rate was .9%; right?**

22 A. No, I never told him what I paid for
23 money.

24 **Q. And you never told him that the line of**
25 **credit that you got, that was at .4%. You never**
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1 **told him that either?**

2 A. I never told him what I could ever borrow
3 money for.

4 **Q. But what you did tell him was that you**
5 **charged him and LCOC 4% for the loan that you made**
6 **to them; right?**

7 A. I told him --

8 **Q. Right.**

9 A. -- that I would charge him less than he
10 wanted to pay iStar.

11 **Q. But you never told him about that little**
12 **percentage point spread.**

13 A. Oh, I did. I told him.

14 **Q. Well, you didn't tell him the amount, sir.**
15 **You just said you didn't.**

16 MR. HUTCHISON: Let him finish his answer.

17 THE WITNESS: Listen. I told him that I
18 was either going to loan the money directly or
19 I was going to borrow money from a bank. And
20 that I would borrow the money at pretty good
21 rates so I would be able to offer him -- there
22 was two things he needed. But one thing was
23 offering him the opportunity to loan -- to
24 borrow from me at slightly less than the iStar
25 loan.

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1 BY MS. HOFFLER:

2 Q. But can I just -- can we just clarify for
3 the jury because this is just puzzling to me.

4 A. It's just what to you?

5 Q. It's just puzzling to me.

6 A. Puzzling.

7 Q. It wasn't just offering to
8 Anthony Pugliese, it was offering to you. You were
9 part of LCOC, weren't you?

10 MR. HUTCHISON: Move to strike comment of
11 counsel.

12 THE WITNESS: No.

13 BY MS. HOFFLER:

14 Q. Weren't you part of LCOC?

15 A. Well, I was an investor at LCOC.

16 Q. You were an investor in LCOC. So you're
17 ripping off yourself, too?

18 MR. HUTCHISON: Objection to form and
19 comment of counsel.

20 THE WITNESS: No. Anthony had a problem,
21 because he had put a deposit on the land, and
22 he told me that he was -- had a problem because
23 the closing was coming and he couldn't get the
24 loan. He told me that he had a potential
25 offer -- or Tom San Giacomo told me that he had
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1 a potential offer from iStar, but that it would
2 take a lengthy period of time to work through
3 the details of meeting the bank -- iStar's
4 requirement and they would never be able to
5 close on time.

6 BY MS. HOFFLER:

7 **Q. And you -- I'm sorry, I didn't mean to**
8 **interrupt you, sir.**

9 A. No.

10 **Q. Okay.**

11 A. And so I said that two things to Tom. One
12 is, I didn't think that the terms of the iStar loan
13 were that good. I thought they should be able to do
14 better. And I said that to help out with the
15 problem that you have, I would consider loaning the
16 money.

17 **Q. And you did help out in this way. IStar**
18 **was offering 4% above LIBOR. You offered 4% above**
19 **LIBOR; right?**

20 A. I don't know the details of both loans.

21 **Q. Oh, you don't know. Well, we will go over**
22 **the details.**

23 A. Good.

24 **Q. But -- so on that, you basically were**
25 **offering him in terms of percentage, the same. You**
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1 weren't giving him a gift there; right? If what you
2 offered at 4% was the same as what iStar offered,
3 that's not a better deal, is it?

4 A. He had a better deal than he got from
5 iStar.

6 **Q. But --**

7 A. And, also, I told him that I wanted them
8 to continue to try to better the loan because I did
9 not want to be a lender. I said either get a better
10 deal from iStar or borrow from someone else. And
11 that's something that was talked about right off the
12 bat.

13 **Q. Well, why wasn't it that we should try to**
14 **do that? I mean, you were an equal partner.**

15 A. No, I was not a partner. I was an
16 investor.

17 **Q. You --**

18 A. Anthony -- Anthony had represented to me
19 that he knew what he was doing. He had this
20 situation under control. He had done it dozens of
21 times in the past. And he was going to run the
22 project.

23 **Q. And, Mr. DeLuca, before we get to him**
24 **running the project, we are not even there yet right**
25 **now. We are pre-a-project existent. I'm talking --**
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1 what I am referring to now is everything that
2 transpired prior to, prior to, in fact, the
3 execution of an operating agreement. Before. And
4 what you did and what you didn't tell him. What you
5 did and what you hid. That's what I am talking
6 about.

7 So you told Anthony Pugliese that you
8 could get a deal that was better than iStar; right?
9 That's what you told him.

10 MR. HUTCHISON: Objection to form and move
11 to strike comment of counsel.

12 THE WITNESS: I told him --

13 MR. HUTCHISON: Go ahead.

14 THE WITNESS: I told him that I could
15 help, that I might be able to loan the money
16 out of cash or I might be able to borrow the
17 money. And that if I could borrow the money,
18 that I thought I would get a very good deal
19 because of the security I would be able to
20 offer the bank. And that I would allow -- I
21 would offer a loan slightly better than iStar,
22 because I didn't want to make it too much
23 better because I really wanted them to
24 refinance as soon as possible.

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1 BY MS. HOFFLER:

2 Q. And, Mr. DeLuca, there are so many points
3 in between a 4% loan and a .9% loan. That's not a
4 slightly better deal. That's a loan shark deal.

5 A. No. I said --

6 Q. That is not a slightly better deal,
7 Mr. DeLuca, and you know that. You're a business
8 person. When you offer a loan to someone at a
9 percentage rate of 4% and you get a loan for .9%,
10 that is the equivalent of a loan shark deal,
11 Mr. DeLuca. Be honest here. You're talking to a
12 jury under oath. That is not a slightly better
13 deal, sir.

14 MR. HUTCHISON: Objection to form and move
15 to strike comment of counsel.

16 THE WITNESS: Okay. Look, I'll tell you
17 and Mr. Pugliese sitting right there, this was
18 the best deal that he could find. He told me
19 that he had talked to between himself and Tom
20 San Giacomo, they had talked to more than a
21 dozen banks and none of them offered a deal as
22 good as that. That was the best deal available
23 on the market.

24 They could not find anything better than
25 that. The interest rate was good. It was a
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1 land deal, which is very risky. You can't find
2 financing for land deals at good -- or great
3 prices. But this was a very good price. They
4 could not do any better. It was the best deal
5 available on the market.

6 BY MS. HOFFLER:

7 **Q. But we are not comparing apples to apples,**
8 **Mr. DeLuca, are we? And let me explain what I mean**
9 **by that. You see iStar, Mr. DeLuca, would have just**
10 **been offering a loan to LCOC. Isn't that what it**
11 **would have been? It would have been a loan?**

12 MR. HUTCHISON: Objection to form, move to
13 strike comment of counsel.

14 BY MS. HOFFLER:

15 **Q. Right?**

16 A. I'm not sure what you're talking about.

17 **Q. Well, you talked to iStar, did you not?**

18 **You communicated with iStar?**

19 A. I never talked to them.

20 **Q. You never talked to iStar at all?**

21 A. Not once.

22 **Q. You never negotiated with them at all?**

23 A. Never spoke to them.

24 **Q. Did any of your --**

25 A. I don't know who they are, don't know
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1 where they are. I have no clue of anybody in iStar.

2 **Q. Then how -- how do you know, sir, that you**
3 **were offering a better deal than iStar if you didn't**
4 **even verify what their deal was?**

5 A. Tom San Giacomo called me and told me what
6 the deal was. And I said that I could do -- I would
7 do a bit better if I could. And I talked to Anthony
8 and told him the same thing, and we provided the
9 documents, the loan documents to them. And to my
10 understanding, they were better -- it was a better
11 deal than iStar.

12 **Q. Well, the biggest difference, do you agree**
13 **with me, is that iStar or even Wachovia, if Wachovia**
14 **had financed the deal, would not have taken 50% of**
15 **the business like you did -- let me finish.**
16 **Mr. DeLuca, when you provided financing to LCOC, you**
17 **didn't just provide financing, you took a piece of**
18 **the business; whereas, a lending institution such as**
19 **Wachovia or iStar did not -- would not have and did**
20 **not, deal on the table, require to take half of the**
21 **business; isn't that right?**

22 MR. HUTCHISON: Objection to form, move to
23 strike comment of counsel.

24 THE WITNESS: Well, first of all, it was a
25 separate transaction.

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1 BY MS. HOFFLER:

2 Q. Well, certainly, it was, but --

3 A. Can I answer the question, please?

4 Q. Absolutely, sir.

5 A. Thank you. It was a separate transaction.

6 Anthony came to me and asked me to invest in the
7 land company and we structured a business deal. His
8 job was to find the financing. We already had the
9 business deal. We would have had the business deal
10 whether Wachovia provided the financing or anybody
11 provided the financing. But later I made a separate
12 offer to help him out and to provide financing.

13 Even if we had gone with a different
14 lender, I would have still had my investment in the
15 land company, which turned out to be a very bad
16 investment.

17 Q. Well, let's talk about before you made
18 your investment, because what I am talking about
19 now, Mr. DeLuca, is everything that happened before
20 the operating agreement was executed. Okay? Can we
21 agree to that? I'm going to ask you some questions.

22 A. I can't agree to what you're going to ask
23 me. You can ask me.

24 Q. No, no, no. I'm going to -- I want you to
25 agree that when I am asking the following questions,
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1 I'm asking about them, before there was actually an
2 operating agreement that was signed; okay?

3 A. Okay. If you ask me the question, I will
4 see that it's before.

5 Q. Absolutely. Now, Anthony Pugliese was the
6 person who signed the contract for the purchase of
7 the land; right? That had nothing to do with you at
8 the time when he signed the contract; isn't that
9 right?

10 A. Um.

11 Q. In December of '04.

12 A. Yeah, I don't know who signed on Anthony's
13 behalf. I presume it was Anthony.

14 Q. But it wasn't you?

15 A. I knew nothing about the land.

16 Q. You knew nothing about it. You had no
17 role in the negotiations whatsoever; right?

18 A. Absolutely none.

19 Q. You did not -- you did not put up any
20 money, not a single penny?

21 A. That is correct.

22 Q. For -- to secure the contract for the
23 land; right?

24 A. That is correct.

25 Q. You didn't talk to the sellers at all;
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right?

A. Correct.

Q. You didn't go all the way by Yeehaw Junction and that whole area, you didn't survey or do anything at the time or before the contract for the purchase of that property took place; right?

A. Correct.

Q. You did not engage any experts to assist in evaluating the deal; right?

A. Correct.

Q. You didn't talk to any real estate agents to present a deal to you; right?

A. Correct.

Q. And you did not go through a competitive process to get that land; right?

A. I didn't understand. What?

Q. You didn't go through a competitive process to purchase the land. You didn't go through a competitive process; right?

A. I had -- I had absolutely nothing to do --

Q. Nothing to do.

A. -- with the land acquisition at all.

Q. Right.

A. I didn't even go -- I didn't even go to U.S. LEGAL SUPPORT, INC. (561) 835-0220

1 look at the land before the closing.

2 **Q. Right. That was all Anthony Pugliese?**

3 A. He represented to me that he did a lot of
4 work with experts that he hired --

5 **Q. Right.**

6 A. -- and that he did a very professional
7 job --

8 **Q. Right.**

9 A. -- typical of the professional job that he
10 has done many other times in the past.

11 **Q. And Anthony Pugliese --**

12 A. And he did it all.

13 **Q. Excuse me.**

14 A. Absolutely.

15 MR. HUTCHISON: Let him finish his answer.

16 BY MS. HOFFLER:

17 **Q. Right. But you had nothing -- but you**
18 **had -- all I want to establish is that you had**
19 **absolutely nothing to do with securing that contract**
20 **and at the time -- when the contract was signed, you**
21 **had no money invested in that deal; right?**

22 A. That is correct.

23 **Q. Okay. Now, you testified that you never**
24 **met iStar. You never talked to iStar. And is it**
25 **your testimony that none of your staff from**
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1 **Doctor's Associates or anybody working for you ever**
2 **talked to iStar as well?**

3 MR. HUTCHISON: Objection to form.

4 THE WITNESS: I have no knowledge of
5 anyone talking to iStar.

6 BY MS. HOFFLER:

7 **Q. Didn't iStar representatives travel to**
8 **Connecticut to review your finances?**

9 A. Not that I know of.

10 **Q. Wasn't iStar a contender for financing the**
11 **project once you got involved?**

12 A. I don't know of the timeline with iStar.

13 **Q. And, in fact, there were other banks.**
14 **Wachovia. With you involved, Wachovia would have**
15 **considered financing the project; right?**

16 A. I don't think so.

17 **Q. Well, did you ask them?**

18 A. No.

19 **Q. No, because you wanted to finance yourself**
20 **because you knew you could make a lot of money --**

21 A. No.

22 **Q. -- with this deal. And, in fact, within**
23 **one month, within one month, this deal closed in**
24 **August of 2005 and September of 2005 and it closed**
25 **for \$5,000 you paid an acre. And in September of**
 U.S. LEGAL SUPPORT, INC. (561) 835-0220

1 **2005, LCOC got an offer of more than twice the value**
2 **of the property; isn't that right?**

3 MR. HUTCHISON: Objection to form,
4 foundation.

5 THE WITNESS: And we're talking about
6 after?

7 BY MS. HOFFLER:

8 **Q. I'm talking about after. Isn't that**
9 **right?**

10 A. Well, I didn't see it personally. But
11 Anthony Pugliese did call me and tell me that he had
12 an offer for \$10,000 per acre. And I told him that
13 that's great. I think we should sell. And he said
14 he did not want to sell because that would not
15 change his life. He didn't want to make a profit of
16 \$50 million plus because he had other ideas. And,
17 yes, he got that offer. He told me about it. I
18 told him to sell. And he said no.

19 **Q. Now, I just want to make sure that we are**
20 **clear here. You provided the loan, right, to**
21 **finance LCOC? You provided the loan for the**
22 **purchase of the property; right?**

23 A. Yes.

24 **Q. You held the strings on the loan; right?**
25 **Right?**

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1 A. There were no strings.

2 **Q. Well, you have loan documents and terms**
3 **for the loan; right?**

4 A. There was a loan document.

5 **Q. Right. And you -- and you owned and**
6 **invested in LCOC. You certainly had a say in what**
7 **was going to happen, particularly as you financed**
8 **the purchase of the land; right?**

9 MR. HUTCHISON: Objection to form.

10 THE WITNESS: I don't -- I don't think.

11 BY MS. HOFFLER:

12 **Q. You didn't have a say?**

13 A. Well, hold on. Let me answer the
14 question.

15 **Q. Sure.**

16 A. You said particularly because I provided
17 financing. I don't think the financing gives
18 someone more or less of a say. The business
19 partners, the investors, we have two members.

20 **Q. You have business partners?**

21 A. No, we had two investors who both formed
22 companies with the lawyers. And as I understood it,
23 we had to agree before selling it. I could not
24 order Anthony to sell it. I thought he had -- if
25 this was true, that someone would pay \$10,000 an
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1 acre, it was one of the best things that we could
2 have done. It made lots of sense. It would have
3 given us a great return on the investment.

4 I told him that we should close -- we
5 should try to make the deal if we can. And he just
6 said, no, I don't want to sell. I'm not going to
7 pursue this. This kind of profit won't change my
8 life.

9 **Q. And let me just ask you this, sir: Did**
10 **you send him an email in writing about that? You**
11 **liked to send emails. Did you happen to send**
12 **Mr. DeLuca (sic) an email saying, look, Mr. DeLuca**
13 **or Anthony, I think that you should -- I think we**
14 **should accept, I think we should accept this offer**
15 **and I think we should sell. Did you put that in**
16 **writing, sir?**

17 MR. HUTCHISON: Objection to form, move to
18 strike comment of counsel.

19 THE WITNESS: Yeah. Well --

20 BY MS. HOFFLER:

21 **Q. Yes or no, did you or not?**

22 A. Well, you said I like to write emails, and
23 I don't particularly care to write emails.

24 **Q. But you write a lot of them. Did you or**
25 **did you not put in writing --**

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1 A. Well, you asked me a multi-part question.

2 Q. Okay. Then I'm going to simplify it. Let
3 me ask you this: Did you or did you not put in
4 writing to Anthony Pugliese that you felt that you
5 should accept the deal to -- and sell the property
6 for twice the value?

7 A. I told -- I just told it to him. I didn't
8 write it, I don't think.

9 Q. You didn't put it in writing?

10 A. No.

11 Q. And even though you said with a lot of
12 passion that you felt that he should do this, the
13 best investment since the beginning of mankind, you
14 didn't --

15 A. I didn't -- I didn't say that.

16 Q. Well, you thought it was the best
17 investment at that time; right?

18 A. I thought -- I thought that it would
19 provide a great return on investment and it made
20 sense to make the sale.

21 Q. Right. And given with all your lawyers
22 and knowing the risk that you felt you had with the
23 loan on, as you said, development property which you
24 said was so difficult to secure at that time from
25 any bank, you didn't put in writing that you felt
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1 **that you all should accept that offer to sell the**
2 **land?**

3 MR. HUTCHISON: Objection, asked and
4 answered and move to strike comment of counsel.

5 BY MS. HOFFLER:

6 **Q. Did you or did you not?**

7 A. No, I told him that I was in favor of
8 selling and he told me he was not.

9 **Q. And who else did you tell? Did you tell**
10 **anyone else that you had been told that you had**
11 **received an offer for the purchase of the land that**
12 **doubled what you paid for it three weeks previously**
13 **and that Anthony did not want to sell? Did you**
14 **share that information with anyone else?**

15 A. Well, first of all, I didn't receive the
16 offer.

17 **Q. Did you ask to see the offer because it**
18 **was in writing? Did you ask to see it?**

19 A. I did not ask to see it.

20 **Q. Okay. Did you --**

21 A. But -- but I talked to Anthony about it.
22 I talked to Fred Florio about it and Tom San Giacomo
23 about it.

24 **Q. Now, for the record, who is Fred Florio at**
25 **the time?**

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1 A. Fred Florio worked for me.

2 MR. HUTCHISON: C.K., sometime in the next
3 five or ten minutes, whenever you get a good
4 spot, let's take a break.

5 BY MS. HOFFLER:

6 Q. So Fred Florio worked for you?

7 A. Uh-huh.

8 Q. Does he still work for you?

9 A. He does not.

10 Q. Did you fire him?

11 A. I did not.

12 Q. How long did Fred Florio work for you?

13 A. I think over 15 years.

14 Q. Over 15 years. And Fred Florio, and
15 correct me if I am wrong, but Fred Florio was the
16 person from your operation, I guess
17 Doctor's Associates --

18 A. No.

19 Q. -- that you -- well, correct -- let me
20 finish. Fred Florio from your operation, Doctor &
21 Associates, was detailed to work with LCOC and
22 actually had an office in the LCOC office; isn't
23 that right?

24 MR. HUTCHISON: Objection to form.

25 THE WITNESS: Well, there is a lot of
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1 parts, again, but most of it is wrong.

2 BY MS. HOFFLER:

3 Q. Let me break it down so you can say what
4 is right and what is wrong.

5 A. Okay.

6 Q. Fred Florio worked for you; right?

7 A. Yes.

8 Q. He was paid by Doctor & Associates;
9 correct?

10 A. I don't think so.

11 Q. Who was he paid by if it wasn't Doctor &
12 Associates?

13 A. I think he worked for Prestige Business
14 Consultants.

15 Q. But who was he paid by, sir?

16 A. Prestige Business Consultants.

17 Q. So it's your testimony that he received a
18 check from Prestige Business Consultants?

19 A. Well, let me say --

20 MR. HUTCHISON: Objection, asked and
21 answered.

22 THE WITNESS: I don't -- I don't know for
23 sure. I think he worked for Prestige Business
24 Consultants and received a check from them, but
25 I don't know that.

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1 BY MS. HOFFLER:

2 Q. And what is Prestige Business
3 Associates (sic)?

4 A. It's a small company here in Florida.

5 Q. Do you own that company?

6 A. I think I -- I'm not sure of the ownership
7 structure of that company. I think I have
8 50% owner.

9 Q. And who has the other 50%?

10 A. I think that Peter Buck has the other 50%.

11 Q. You think that Peter Buck has the other
12 50%, is that what you said?

13 A. I think he does.

14 Q. And what is the relationship between
15 Prestige and Doctor's Associates, sir?

16 A. Excuse me?

17 Q. What is the relationship between Prestige
18 and Doctor Associates?

19 A. They are separate companies.

20 Q. They are separate companies. So there's
21 no relationship between the two?

22 A. Except for I know that I have an ownership
23 interest in both.

24 Q. And didn't Fred Florio have a Doctor
25 Associates' company car, sir?

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1 A. He had a company car. It might have been
2 owned by Doctor's Associates.

3 **Q. And didn't Fred Florio have a 401(k) from**
4 **Doctor Associates, sir?**

5 A. I'm not sure.

6 **Q. What do you need to refresh your**
7 **recollection?**

8 A. What do I need?

9 **Q. Uh-huh. Do you need anything to refresh**
10 **your recollection as to whether Fred Florio had a**
11 **401(k) from Doctor Associates?**

12 A. I -- I could call and ask that.

13 **Q. Well, we have got five days. So I'm**
14 **certain that you can find that out, if you would,**
15 **during the five days that we are going to spend**
16 **together in this deposition.**

17 A. Okay.

18 MR. HUTCHISON: Through the normal
19 channels of discovery, you can find that out if
20 we haven't already provided it.

21 BY MS. HOFFLER:

22 **Q. We'll come back to that because we are**
23 **going to come back to a discussion about**
24 **Fred Florio. And during the entire time that**
25 **Fred Florio was detailed to work with LCOC, he had**
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1 **the same car; right?**

2 A. He wasn't detailed to work with LCOC.

3 **Q. Well, how did -- how did he end up working**
4 **with LCOC?**

5 A. Okay. He did -- well, he was present
6 when -- it was a long question. Short question.

7 **Q. It was a short question.**

8 A. Yeah, short question. But in the
9 beginning, he just wanted to help out with the
10 project and would stop by --

11 **Q. Bless you.**

12 A. -- stop by from time to time, and I was
13 fine with that.

14 **Q. So your employees just routinely when they**
15 **want to help out with any project, they just stop by**
16 **and insert themselves in the project? Is that how**
17 **it works at your company?**

18 A. Is it --

19 **Q. This is a \$140 million investment. I'm**
20 **just trying to figure out what the process is for**
21 **you, Mr. DeLuca, when you just let your employees**
22 **decide, you know, if they want to work on this, they**
23 **work on that. How did he get to work with LCOC?**

24 MR. HUTCHISON: Objection to form, move to
25 strike comment by counsel.

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1 THE WITNESS: Okay. Fred Florio did some
2 work with several investments that I had. Some
3 of them were Subway related investments, some
4 were other investments, some were other
5 franchise companies. And so he generally
6 worked on a variety of different things without
7 a lot of specific direction from me.

8 BY MS. HOFFLER:

9 Q. So you didn't direct him to work with
10 LCOC. He just decided he felt like doing it and he
11 was going to do it. You did not direct him to work
12 there.

13 A. Not as --

14 MR. HUTCHISON: Objection to form, asked
15 and answered.

16 THE WITNESS: No, not as a specific
17 direction, like go there today and do this,
18 that and the other thing. But in terms of
19 generally doing work in his capacity, he
20 touched on a number of things, including LCOC.

21 BY MS. HOFFLER:

22 Q. But it wasn't just that he went
23 occasionally to work at LCOC. He was there almost
24 every day, wasn't he?

25 A. Say that again.
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1 **Q. It wasn't just that Fred Florio was at**
2 **LCOC occasionally. He was there almost every day,**
3 **wasn't he?**

4 A. Well, what I -- what I know is that in the
5 beginning, he went there only occasionally to visit
6 with Mr. Pugliese. And then what I know is that he
7 developed more of an interest in the project and
8 said that he wanted to go there more. And I said it
9 was fine.

10 **Q. So you -- and at all times when he was at**
11 **LCOC, he was your representative, wasn't he?**

12 A. He was my employee that worked for
13 Prestige Business Consultants.

14 **Q. So he was your employee at all times when**
15 **he was at LCOC; right?**

16 A. Yeah, I -- I don't believe he received any
17 money from LCOC.

18 **Q. No, you paid him. That's my point. You**
19 **paid him, Mr. DeLuca, but yet you allowed him to go**
20 **to LCOC every day. But you paid him or**
21 **Doctor's Associates paid him?**

22 A. I don't think he went to LCOC every day.

23 **Q. Well, let's just say in the beginning, he**
24 **went from time to time. But at some point it -- as**
25 **you said, it increased, that he was spending a lot**
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1 of time there and he took more of an interest in the
2 project. And you said that was okay. But during
3 that whole time, you -- and we are going to find out
4 if it's through Doctor & Associates, and I believe
5 it is. You paid Fred Florio through whatever
6 corporate entity the entire time that he worked at
7 LCOC; right?

8 A. Well, he didn't work at LCOC.

9 Q. In the entire time he interfaced with LCOC
10 and was involved with the project.

11 A. Yes.

12 Q. And he was there as your representative
13 since he was your employee; isn't that right, sir?

14 MR. HUTCHISON: Objection to form.

15 THE WITNESS: He was my employee.

16 BY MS. HOFFLER:

17 Q. Yes. And let's just talk about Prestige.
18 What does Prestige do? What does that company do?

19 MR. HUTCHISON: C.K., time is up. I need
20 a break here in a minute. So we've been going
21 an hour.

22 MS. HOFFLER: Let me finish this line of
23 questioning.

24 MR. HUTCHISON: As long as it's not more
25 than a few minutes.

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1 MR. GARY: Give us two.

2 THE WITNESS: Just to get a clear -- what
3 time is it now because I know we are going to
4 break at 5:00?

5 MR. HUTCHISON: It's 4:15.

6 MR. GARY: You have an hour.

7 MS. HOFFLER: Yeah, 45 minutes.

8 BY MS. HOFFLER:

9 Q. What does Prestige do, Mr. DeLuca?

10 A. I think I already answered that question
11 for you.

12 Q. I'm sorry, I didn't understand. What does
13 it do?

14 A. Yeah, it was pretty early when you asked
15 about it.

16 Q. What does it do?

17 A. It works on a variety of projects, mostly
18 the idea was to work with franchising.

19 Q. Okay. So mostly to work with franchising.
20 Okay. And does it have any income? Is there an
21 income stream from Prestige?

22 A. It has income.

23 Q. It has income. Was there income in --
24 during the period of let's just say 2005 to 2010,
25 was there any income from Prestige?

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1 A. This is one of those things that I will
2 have to get information for you because I don't
3 really have the details.

4 **Q. That's fine. And what was Fred Florio's**
5 **title at Prestige, do you know?**

6 A. I'm not sure.

7 **Q. Was he the treasurer?**

8 A. I'm not positive.

9 **Q. And -- and what -- did Fred Florio have a**
10 **title at Doctor Associates?**

11 A. I don't think so.

12 **Q. Did he ever work for Doctor Associates?**

13 A. I think he did work for
14 Doctor's Associates at one time. I don't know of
15 the title that he had.

16 **Q. And when he worked for Doctor Associates,**
17 **he was paid by Doctor Associates; right?**

18 A. Well, if he worked -- I think he worked
19 for Doctor's Associates at one time and he would
20 have been paid by Doctor's Associates.

21 **Q. And during the time that this Destiny deal**
22 **was evolving and this LCOC deal was evolving, did**
23 **Fred Florio get paid by Doctor Associates?**

24 A. I think he got paid by Prestige, but I
25 could find that out.

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1 **Q. Okay. And what -- do you know**
2 **Fred Florio's email address, sir?**

3 A. Not offhand.

4 **Q. Is it like a Subway email address, too?**

5 A. He might have had one.

6 **Q. I mean, there is no Prestige email**
7 **address; right?**

8 A. I don't know. I will find that out, too.

9 **Q. Okay. That would be great. And --**

10 A. But, excuse me, just one thing. There's a
11 lot of things to find out here.

12 MR. HUTCHISON: You're not going to find
13 out anything. It will be done through the
14 normal course of discovery.

15 THE WITNESS: Okay.

16 MR. GARY: And we'll write out -- you can
17 find out whether or not he was paid by Doctor &
18 Associates; right? You can find that out?

19 MR. HUTCHISON: Through the normal course
20 of discovery.

21 MR. GARY: During the course that you were
22 in business with Anthony, can you find out
23 whether or not he was on Doctor & Associates'
24 payroll?

25 MR. HUTCHISON: Through the normal course
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1 of discovery, we will get that done.

2 MR. GARY: Listen, I'm just asking the
3 question.

4 MR. HUTCHISON: And I'm telling you the
5 answer.

6 MR. GARY: Okay. Don't get -- okay.

7 MS. HOFFLER: His answer is no. His
8 answer is no.

9 MR. GARY: But I didn't ask -- I didn't
10 ask you, and you can do it during the normal
11 course. I'm saying can you find out, sir,
12 whether or not during the time that you and
13 Anthony Pugliese were working together as
14 partners and Fred Florio was there --

15 MS. HOFFLER: Florio.

16 MR. GARY: Florio was there, was he paid
17 with a check by Doctor & Associates, or do you
18 know?

19 THE WITNESS: I don't know the answer.

20 BY MS. HOFFLER:

21 **Q. And so he --**

22 MR. GARY: He could have been; right?

23 MR. HUTCHISON: Wait, wait. We are not
24 doing two lawyers. This is a good place for a
25 break, you guys. I asked for a break 15
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1 minutes ago and I'm taking one now.

2 (Whereupon, a recess was taken from
3 4:22 p.m. to 4:39 p.m.)

4 BY MS. HOFFLER:

5 Q. Mr. DeLuca, when we -- before we took our
6 last break, we were talking about Prestige.
7 Prestige, I guess that's the company that you said
8 Mr. Florio worked for; right?

9 A. I believe he worked for Prestige.

10 Q. Okay. Is it that you're not sure if he
11 worked for Prestige? Is that what you're saying?

12 A. I'm not positive.

13 Q. You're not positive. And I just want to
14 make sure we are clear. I'm talking about during
15 the time -- I'm interested in knowing who
16 Fred Florio worked for during the time that he was
17 working with the LCOC project in particular.

18 A. He was working for me personally.

19 Q. He was working for you personally?

20 A. Yes.

21 Q. Okay. And you were paying him personally?

22 A. No.

23 Q. Who was paying him?

24 A. I think he was paid by Prestige.

25 Q. Prestige.
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1 A. But he did this for me as a favor.

2 Q. So he did it for you as a favor. And you
3 had one of your companies to pay him for the work he
4 was doing for you as a favor; is that right?

5 A. Yes.

6 Q. And -- okay. Did the company write off --
7 how did that work in terms of taxes now? You --
8 you -- is it you only own part of Prestige, and
9 Mr. Buck didn't ask him to do the work. So did
10 you -- how did you write that off of your taxes?
11 Did the company write it off or did you? I mean,
12 how did that work, sir?

13 A. I don't know.

14 Q. You're sure you disclosed it though? Was
15 it disclosed appropriately?

16 A. It would be intercompany --

17 MR. HUTCHISON: Objection to the form.

18 THE WITNESS: You mean with intercompany
19 transfers and billings?

20 BY MS. HOFFLER:

21 Q. Yeah.

22 A. I don't know.

23 Q. I mean, do you know on the tax returns,
24 the corporate tax returns, how Fred Florio was
25 listed? Like was he an employee of, do you know
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1 that?

2 A. I don't.

3 Q. Okay. Is it common practice for you to
4 have people who work for you to do favors for you
5 and you just have one of your corporate entities pay
6 them? Is that how you operate?

7 A. Oftentimes when there's business related
8 things, yes.

9 Q. And one of those companies could be Doctor
10 & Associates -- Doctor's Associates, too?

11 A. Yes, people from Doctor's Associates have
12 done work for me personally.

13 Q. They do favors for you? You used the term
14 "favors," so --

15 A. They've done work for me.

16 Q. And they do favors for you, too; right?

17 A. They do favors for me.

18 Q. And for the favors, you compensate them?

19 A. You mean me per -- I don't understand the
20 question.

21 Q. Well, for the favors that these -- that
22 your employees do for you, you compensate them, do
23 you not, for the favors that they do for you?

24 A. I don't compensate them separately.

25 Q. Oh, I see. So you pay them a salary and
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1 **then they do whatever you want them to do?**

2 MR. HUTCHISON: Objection to form.

3 THE WITNESS: I think generally that's the
4 case.

5 BY MS. HOFFLER:

6 **Q. Okay. Now, if Fred Florio were making**
7 **over, say, a hundred thousand dollars a year, who**
8 **would have written that check? Would it have been**
9 **Doctor Associates or Prestige?**

10 MR. HUTCHISON: Objection, asked and
11 answered.

12 THE WITNESS: I don't know.

13 BY MS. HOFFLER:

14 **Q. You don't know. My question is: Did**
15 **Prestige -- how old a company was Prestige? How old**
16 **a company is Prestige?**

17 A. I don't recall.

18 **Q. Was it created after the LCOC project?**

19 A. I don't think so.

20 **Q. Do you know how much before the LCOC**
21 **project it was created?**

22 A. No.

23 **Q. It's not an old company, though? It's not**
24 **older than ten years; right?**

25 A. I don't know.

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1 Q. You've no idea?

2 A. I don't.

3 Q. It's a Florida-based company, is it not?

4 A. I think it is.

5 Q. Okay. Now, I just want to make sure,
6 Mr. DeLuca, that the record is clear on this. Is it
7 your testimony that you never saw the offer from the
8 Florida Family Development group to purchase the
9 LCOC property for over twice the amount that you all
10 paid for it?

11 A. At the time when the offer was made, I
12 don't have any recollection of seeing the document.
13 But I do recall talking to Anthony Pugliese about
14 it.

15 Q. And you said Fred Florio was aware that
16 you spoke to Anthony Pugliese about that, too;
17 right?

18 A. Yes.

19 Q. And Fred Florio was aware of what you
20 claim Anthony Pugliese told you about that; right?

21 MR. HUTCHISON: Objection.

22 THE WITNESS: Well, I didn't understand
23 the question.

24 BY MS. HOFFLER:

25 Q. Is it your testimony that Fred Florio was
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1 **aware that you wanted to sell the property and make**
2 **that profit, but Anthony did not? Is it your**
3 **testimony that Fred Florio was aware of that?**

4 A. Yes. And Fred Florio thought it was a
5 good idea to sell the property, too. And he told
6 Anthony that, also.

7 **Q. Were you there when he told Anthony that?**

8 A. Yes.

9 **Q. And so it's your testimony that you all**
10 **were in a meeting. Where did that meeting take**
11 **place?**

12 A. I didn't say we were all in a meeting.

13 **Q. Well, you said that he was -- you were**
14 **there and he was there and he told Anthony that and**
15 **you were there.**

16 A. It's time sequence. I know that he told
17 Anthony that at some point, because he told me he
18 told Anthony that. And then later I know that he
19 told Anthony that, because Anthony was there and we
20 reiterated the discussion. But it wasn't a meeting
21 that we had when it first came in.

22 **Q. Let me break this down. First of all, you**
23 **have no firsthand knowledge about any conversation**
24 **between Fred Florio and Anthony Pugliese about that**
25 **because you were not on the call or not there in**
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1 **person when they met about it, were you?**

2 A. I have firsthand knowledge about
3 conversations that Anthony, myself and Fred had
4 subsequently.

5 **Q. Right. That was not my question,**
6 **Mr. DeLuca. My question was: You, sir, have no**
7 **firsthand knowledge of Anthony Pugliese's**
8 **conversation with Fred Florio relative to the sale**
9 **of the property to this group that made the offer**
10 **because you were not there when they allegedly**
11 **talked about it, were you?**

12 MR. HUTCHISON: Objection to form.

13 THE WITNESS: It was a long question. Did
14 you say -- did you say that I did not --

15 BY MS. HOFFLER:

16 **Q. Let me break it down. See, I don't want**
17 **you to guess.**

18 A. Well, I don't --

19 **Q. Let me make it clear.**

20 A. -- understand. Your questions are a
21 little compound.

22 **Q. Well, that's all you have to say.**

23 **That's --**

24 A. Okay.

25 **Q. -- one of the rules of depositions. I**
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1 didn't think I had to review is. If at any time my
2 question is not clear, you simply ask for me to
3 clarify it and I certainly will. So that's what I
4 am going to do.

5 You testified that Fred Florio and
6 Anthony Pugliese, just the two of them, had a
7 discussion about this offer, and that Fred Florio
8 told Anthony Pugliese it's a good idea, we need to
9 sell. Is that your testimony?

10 A. That's what Fred told me, but I was not
11 there to hear their discussion at the time that it
12 happened.

13 Q. Right. So you personally, Mr. DeLuca,
14 have no firsthand knowledge of that conversation
15 because you were not there; isn't that right?

16 A. Well, I think I do have firsthand
17 knowledge because Anthony told me and confirmed that
18 conversation. So I would classify that as
19 firsthand.

20 Q. You were not there. That's secondhand
21 knowledge. You were not there. That's hearsay.
22 You were not there. My question to you, Mr. DeLuca,
23 you were not physically present and, therefore,
24 cannot say I heard Anthony --

25 A. Oh, I agree --
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1 **Q. Excuse me. Excuse me, let me get the**
2 **question out.**

3 **Mr. DeLuca, you were not there and thus**
4 **have no firsthand knowledge of the conversation**
5 **between Anthony Pugliese and Fred Florio relative to**
6 **the offer to buy the LCOC land for an amount that**
7 **was over twice the amount that it was paid for. You**
8 **were not there; is that right?**

9 MR. HUTCHISON: Objection to form and to
10 move to strike comment of counsel.

11 THE WITNESS: You asked me if I had
12 firsthand knowledge. And the way I understand
13 firsthand knowledge, I did because they both
14 told me about their discussion. But I was not
15 there when they had their discussion.

16 BY MS. HOFFLER:

17 **Q. Okay. Well, let me define what I mean by**
18 **firsthand knowledge. Firsthand knowledge to me is**
19 **were you physically present and did you hear it. So**
20 **the question is --**

21 A. Oh, the answer to the question --

22 **Q. Were you physically present? Did you hear**
23 **the conversation between Fred Florio and**
24 **Anthony Pugliese relative to the offer made to**
25 **purchase the property?**

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1 A. The first conversation they had?

2 Q. Yes.

3 A. I was not there during the first
4 conversation that they had.

5 Q. So you can't say for a fact what did or
6 didn't happen because you did not hear that
7 conversation; isn't that right?

8 A. No, I could say for a fact what happened
9 because they both told me --

10 Q. Well, you were told --

11 MR. HUTCHISON: Let him finish his answer.

12 THE WITNESS: By both of them, by both of
13 them. They both told me. To me, that's
14 firsthand knowledge. When two people tell me
15 what they did and talked about or they said it
16 in front of me, I construe that as firsthand
17 knowledge.

18 BY MS. HOFFLER:

19 Q. Well, you're sitting here telling under
20 oath a whole lot of information that maybe somebody
21 would not construe as accurate. So, I mean -- but
22 my question to you is: You didn't hear it with your
23 own ears, did you?

24 MR. HUTCHISON: Objection, move to strike
25 comment of counsel and objection to form.
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1 THE WITNESS: I already answered that.

2 BY MS. HOFFLER:

3 **Q. Did you hear?**

4 A. I said I was not there when they had their
5 first conversation about that.

6 **Q. Okay. Let's just dissect that. So let's**
7 **take this in baby steps.**

8 MR. HUTCHISON: Did you finish your
9 answer, Mr. DeLuca?

10 THE WITNESS: Yeah, I would like to finish
11 my answer.

12 BY MS. HOFFLER:

13 **Q. Okay. Well, let's take this in baby**
14 **steps.**

15 MR. HUTCHISON: Let him finish his answer.

16 BY MS. HOFFLER:

17 **Q. The first thing is, were you there for the**
18 **conversation that Anthony Pugliese and Fred Florio**
19 **supposedly had relative to this offer?**

20 MR. HUTCHISON: You can finish your answer
21 from the previous question, too, if you would
22 like to, Mr. DeLuca.

23 THE WITNESS: Okay. The -- well, the
24 first -- I know that when they had their first
25 conversation about this letter, I was not there
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1 to hear it.

2 BY MS. HOFFLER:

3 Q. Okay. Now, were you at a meeting at any
4 time with Anthony Pugliese and Fred Florio where you
5 said to them, I think we should accept the offer to
6 sell LCOC, this was within three weeks of the
7 purchase of the property, and Anthony said no?

8 A. I spoke to Fred individually, Anthony
9 individually soon after this offer came and told
10 him -- told them both that I thought we should sell.
11 Anthony said to me he didn't want to. And then we
12 subsequently discussed it with just rehashing the
13 past. Well, we talked about it.

14 Q. Did you -- I know you spoke to -- you're
15 saying now that you spoke to Anthony individually
16 and you spoke to Fred Florio individually. My
17 question, sir, is: Did you have a conversation with
18 the two of them wherein, as you claim, you told
19 Anthony we should sell the property, Fred Florio
20 said, yes, we should sell the property, and Anthony
21 said, no?

22 A. We had a meeting --

23 Q. Who is "we," sir?

24 A. -- after the fact.

25 Q. Who is "we"?

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1 A. Anthony, Fred Florio and myself.

2 **Q. And what is after the fact, after what**
3 **fact?**

4 A. After he had said, no, he's not going to
5 sell the property.

6 **Q. Now, at that point -- who is "he's not**
7 **going to sell the property"? Is it your testimony**
8 **that you did not have a say-so on what happened to**
9 **that property? As someone who provided the loan in**
10 **your individual capacity for the property, as**
11 **someone who owned as an investor half of the**
12 **company, it's your testimony that you did not have a**
13 **say-so in that decision?**

14 MR. HUTCHISON: Objection to form and
15 asked and answered.

16 THE WITNESS: Well, there's a couple of
17 parts. In terms of the loan, I didn't have a
18 say-so. But in terms of being an investor, in
19 terms of owning a member -- membership in the
20 corporation, in the company, my understanding
21 was that if we agreed, that's FD Destiny, and
22 Anthony agreed through AVP Destiny, then we
23 could take action. So if we agreed, we could
24 take action.

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1 BY MS. HOFFLER:

2 Q. Well, what if you disagreed?

3 A. Then we could not take action.

4 Q. So your understanding -- are you referring
5 to the operating agreement?

6 A. No, I'm just referring to what I
7 understand to be the way our arrangement was.

8 Q. Which you understand -- you mean your
9 personal arrangements between you and Anthony?

10 A. No. The arrangement -- the operating
11 agreement is separate from the companies. There's
12 LCOC.

13 Q. Yes.

14 A. There's two companies that are members.

15 Q. Yes.

16 A. So what I understand is that if the two
17 companies that are members agreed on something, they
18 could do it. But if they didn't agree on something,
19 then they couldn't do it.

20 Q. And what do you base that understanding
21 on, sir?

22 A. Just -- well, you know, I don't know what
23 I base it on. It just seems like that is correct.
24 I believe that's what it is. I don't believe I
25 could have sold, unilaterally sold the project. And
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1 I don't think Anthony could have unilaterally sold
2 the project. But if we agreed, we could have sold
3 the project property.

4 **Q. And you were aware, were you not, that**
5 **there was another offer that came in that was for**
6 **potentially much more than what was offered**
7 **initially by the Florida Family Development**
8 **Corporation? Were you aware of that?**

9 A. I don't think that was -- I don't know
10 that either of them were what I would classify as an
11 actual offer, whereby if you had accepted it, you
12 would have a deal. But I think both of them were
13 certainly expressions of interest. I heard that one
14 was for about twice what we paid and the other one
15 was even more than that.

16 **Q. And, again, you took -- what position did**
17 **you take in terms of the second offer?**

18 A. Great.

19 MR. HUTCHISON: Objection to form.

20 THE WITNESS: Great, I'm very happy to
21 sell it.

22 BY MS. HOFFLER:

23 **Q. And who did you communicate great, you're**
24 **very happy to sell it to?**

25 A. I told that to Anthony Pugliese and I also
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1 told that to Fred Florio.

2 Q. And did you request a meeting with either
3 one of these parties that had expressed an interest
4 in purchasing the property that you were financing
5 and that you had an investment in? Did you at any
6 point request a meeting with them since you were so
7 interested since you thought you should sell it?

8 A. No, I didn't request a meeting with either
9 party.

10 Q. Now, for this loan, this \$150 million loan
11 that you took out for Wachovia, that's Exhibit 1.
12 Let's go back to Exhibit 1, \$150 million loan that
13 you took out.

14 A. Do you have the number right?

15 Q. I'm not. 150. \$105 million. I
16 apologize. You have Exhibit 1 in front of you?

17 A. Okay.

18 Q. Can you go to the -- now, for that loan
19 that you took out, I asked you if -- I asked you if
20 it was true that you had pledged as collateral the
21 land, the LCOC land; right?

22 A. I think you did ask me that.

23 Q. Yes. And you said no. But you want to
24 refresh your recollection by reading this document
25 again?

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1 A. Sure. Which?

2 Q. Maybe you can read Page 3, where it says,
3 "The borrower shall grant Wachovia security interest
4 in the following collateral and provide any
5 documents required for perfection of the security
6 interest."

7 A. Which part of Page 3?

8 Q. Under -- under -- it says "Collateral".
9 And then it says --

10 A. Facility Number 1?

11 Q. Yes. "Facility Number 1." It says, "A
12 first priority security interest in: (a) all loan
13 documents evidencing the \$105 million loan made by
14 the Borrower to the Company (including, without
15 limitation, the mortgage granted by the Company in
16 favor of the Borrower on the Florida Real Estate
17 securing a principal amount of \$70 million."

18 Okay. Now, the Florida Real Estate, we
19 have got to look and see what the Florida Real
20 Estate means, because that's a term in there that is
21 not defined right there. Do you see where it says
22 the Florida Real Estate?

23 A. Should I look under definitions?

24 Q. Well, no. Do you see the term "Florida
25 Real Estate" from what I just read?

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1 A. Oh, yes, I see Florida Real Estate.

2 Q. So the Florida Real Estate was pledged as
3 collateral. Now, let's go to Page 1 of that
4 document, which is the first page, July 19, 2005,
5 and let's look under "Terms," under -- I'm sorry,
6 not terms, under "Purpose" which says, "This
7 facility shall be used by the Borrower solely to
8 make a loan in the original principal amount of
9 \$105 million to Land Company of Osceola County, LLC,
10 a Florida limited liability company," and it says
11 paren, the company, "to allow the company to buy
12 27,410 acres of raw land in Osceola County,
13 Florida," and then it says in parentheses, "(the
14 "Florida real estate")."

15 A. I apologize. What page were you on?

16 Q. Okay. Let me go through it again. We're
17 on the first page --

18 A. First page.

19 Q. -- in this letter, which was the loan
20 commitment to you from Wachovia dated July 19th,
21 2005, which is roughly a month before the closing
22 which was, you know --

23 A. What section? What section shall I read?

24 Q. The section that says under "Purpose," it
25 defines what the Florida Real Estate means. And the
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1 Florida Real Estate is the 27,410 acres of raw land
2 at Osceola County, Florida. That's what the Florida
3 Real Estate is; right?

4 A. I'm just trying to get the -- under
5 "Purpose"?

6 Q. Take your time. Take your time.

7 A. Yes.

8 Q. Okay. So now let's go back to
9 "Collateral" and Page 3 under "Facility Number 1."
10 It says, "A first priority security interest in: all
11 loan documents evidencing the \$105 million loan made
12 by the Borrower to the Company, (including, without
13 limitation, the mortgage granted by the Company in
14 favor of the Borrower on the Florida Real Estate
15 securing a principal amount of \$70 million."

16 Okay. So you did, in fact, pledge as
17 collateral the Florida Real Estate which was the
18 land for LCOC; right?

19 A. No, I pledged the mortgage.

20 Q. Okay. So you pledged the mortgage. And
21 was the land -- and the mortgage on what?

22 A. The mortgage was on the land.

23 Q. Okay. The mortgage on the land. So that
24 was tied up in this loan. The mortgage on the land
25 was tied up in this loan; right?

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1 A. What do you mean "tied up"?

2 Q. Well, if you defaulted on this loan to --
3 that Wachovia gave you; right? If you defaulted for
4 any reason, any number of reasons, if you defaulted
5 for any reason on this loan, then the land and the
6 mortgage would have been in jeopardy; isn't that
7 right, sir?

8 A. No.

9 Q. Well, it would have gone to Wachovia. You
10 pledged the mortgage. It would have gone to
11 Wachovia. They would have owned it.

12 A. Well, the -- well, it's possible that
13 Wachovia could have owned the mortgage.

14 Q. Right. Did you consult -- no, strike
15 that.

16 You did not consult with the person who
17 signed the contract to get that land and who was on
18 the hook in part for that property, for that
19 mortgage, Anthony Pugliese, prior to making this
20 commitment to pledge the mortgage, as you put it,
21 for your loan to Wachovia. You did not consult with
22 him on that, did you?

23 MR. HUTCHISON: Objection to form.

24 THE WITNESS: Yeah. So the question is
25 did I consult with him about the collateral?
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1 BY MS. HOFFLER:

2 Q. The question is: You did not consult
3 about the collateral, because you said in -- through
4 your Mr. Worroll, you said, well, that's none of
5 your business, buddy, and don't ask me again.
6 That's basically what you said in your email that I
7 went through, Exhibit Number 3. In Exhibit
8 Number 3, you -- your representative Dave Worroll
9 said the terms of Fred DeLuca's arrangement with
10 Wachovia are between him and the bank.

11 So you did not in making this
12 arrangement -- and, in fact, this was July 19, 2005,
13 a month before the closing, you did not pick up the
14 phone, you did not send an email. In fact, you
15 refused to provide information to Anthony Pugliese
16 about the fact that you had pledged the mortgage for
17 that land as collateral for this loan that you took
18 out from Wachovia --

19 MR. HUTCHISON: Objection to form.

20 BY MS. HOFFLER:

21 Q. -- did you?

22 MR. HUTCHISON: Objection to form and move
23 to strike comment of counsel.

24 THE WITNESS: That was a long question,
25 but the answer --
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1 BY MS. HOFFLER:

2 Q. You got the essence of it.

3 A. The essence of what?

4 Q. You got the essence of my question. You
5 didn't tell him. You hid that from him.

6 MR. HUTCHISON: Objection to form.

7 THE WITNESS: I told him that I was going
8 to have to put collateral, sizable amounts of
9 collateral, but I didn't tell him what the
10 collateral would be.

11 BY MS. HOFFLER:

12 Q. Absolutely. And when his lawyer asked,
13 you said, go fly a kite, not your business. That's
14 what your representative told Anthony Pugliese when
15 he wanted to find out what exactly were those terms.

16 Now, let me --

17 MR. HUTCHISON: Objection to form.

18 THE WITNESS: That's not correct.

19 BY MS. HOFFLER:

20 Q. That's not correct? This isn't go fly a
21 kite: The terms of Fred DeLuca's arrangements with
22 Wachovia are between him and the bank. When I say
23 go fly a kite, that means it's not your business, or
24 is there a different way of interpreting that? Did
25 you mean, oh, it could be your business but it's not
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1 **your business? What did you mean by that?**

2 **I mean, you yourself said you had no**
3 **intentions of telling him because you didn't think**
4 **he deserved to know. You didn't think he needed to**
5 **know.**

6 A. Listen, don't put words in my mouth.

7 MR. HUTCHISON: Objection to form.

8 BY MS. HOFFLER:

9 **Q. Well, did you tell him what he needed to**
10 **know?**

11 A. Now, look --

12 MR. HUTCHISON: Objection to form.

13 Objection to form. Finish your answer and it's
14 5 o'clock and then we can finish up. So finish
15 your answer to the question.

16 BY MS. HOFFLER:

17 **Q. Oh, we need break now. All right. We**
18 **need a break, I see.**

19 A. What this means simply is that the terms
20 of Fred DeLuca's arrangement with Wachovia are
21 between him and the bank.

22 **Q. All right. And --**

23 MR. HUTCHISON: You guys can pick up here
24 tomorrow morning.

25 MS. HOFFLER: Okay.
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(The videotape deposition was adjourned at
5:03 p.m.)

(Reading and signing of the videotape
deposition was not waived by the witness and
all parties.)

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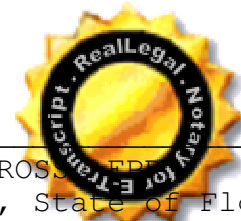
CERTIFICATE OF OATH

STATE OF FLORIDA
COUNTY OF PALM BEACH

I, Kimberley A. Ross, Florida Professional Reporter, Notary Public, State of Florida, certify that FREDERICK A. DELUCA personally appeared before me on the 27th day of August, 2012, and was duly sworn.

Signed this 5th day of September, 2012.

Kimberley A. Ross



KIMBERLEY A. ROSS, Notary Public, State of Florida
Commission No. EE 155026
Commission Expires: January 27, 2016

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA

3 COUNTY OF PALM BEACH
4

5 I, KIMBERLEY A. ROSS, Florida Professional
6 Reporter, certify that I was authorized to and did
7 stenographically report the videotape deposition of
8 FREDERICK A. DELUCA, pages 99 through 232; that a
9 review of the transcript was requested; and that the
10 transcript is a true record of my stenographic notes.

11 I further certify that I am not a relative,
12 employee, attorney, or counsel of any of the parties,
13 nor am I a relative or employee of any of the parties'
14 attorneys or counsel connected with the action, nor am
15 I financially interested in the action.

16 Dated this 5th day of September, 2012.
17

18 
19

20 _____
21 KIMBERLEY A. ROSS, FPR
22 Florida Professional Reporter
23
24
25

U.S. LEGAL SUPPORT, INC. (561) 835-0220

1 TO: FREDERICK A. DELUCA
2 c/o RICHARD C. HUTCHISON, ESQ.
3 HOLLAND & KNIGHT, LLP
4 222 Lakeview, Suite 1000
West Palm Beach, Florida 33401

5 IN RE: FD DESTINY, LLC, ET AL. vs.
6 AVP DESTINY, LLC, ET AL.

7 Please take notice that on the 27th day of August,
8 2012, you gave your videotape deposition in the above
9 cause. At that time you did not waive signature. The
10 transcript is now available at our office for your
11 review.

12 Please call (561) 835-0220 to schedule an appointment
13 between the hours of 9:00 a.m. and 4:00 p.m., Monday
14 through Friday, at a U.S. Legal Support office located
15 nearest you.

16 If you are a party in this action and your attorney
17 has ordered a copy of this transcript, you may wish to
18 read his copy of the transcript. In that event,
19 please execute the Errata Sheet, which can be found at
20 the back of the transcript, and return it to us for
21 distribution to all parties. We have enclosed a
22 self-addressed envelope for your convenience.

23 If you do not read and sign the videotape deposition
24 within a reasonable amount of time or 30 days, the
25 original, which has already been forwarded to the
ordering attorney, may be filed with the Clerk of the
Court.

If you wish to waive your signature now, please sign
your name in the blank at the bottom of this letter
and return it to us.

Very truly yours,

Kimberley A. Ross, FPR
U.S. LEGAL SUPPORT, INC.
444 Railroad Avenue, Suite 300
West Palm Beach, Florida 33401
(561) 835-0220

FREDERICK A. DELUCA
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ERRATA SHEET

DO NOT WRITE ON THE TRANSCRIPT
ENTER CHANGES ON THIS PAGE

IN RE: FD DESTINY, LLC, ET AL. vs.
AVP DESTINY, LLC, ET AL.

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Under penalties of perjury, I declare that I have read the foregoing document and that the facts in it are true.

DATE

FREDERICK A. DELUCA

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