

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 3

Pages 237 through 353

Tuesday, August 28, 2012

10:21 a.m. to 1:45 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 Deposition taken before Kimberley A. Ross,
2 Florida Professional Reporter and Notary Public in
3 and for the State of Florida at Large in the above
4 cause.

5 *****

6 THEREUPON,

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

10 MS. HOFFLER: C.K. Hoffler on behalf of
11 Anthony Pugliese.

12 MR. GARY: Willie Gary on behalf of
13 Anthony Pugliese.

14 MR. BELAVAL: Edgar Belaval on behalf of
15 AVP Destiny.

16 MR PORTER: Marwan Porter on behalf of
17 Anthony Pugliese.

18 MR. MAREK: Doug Marek on behalf of The
19 Pugliese Company.

20 MR. KRISCHER: Barry Krischer on behalf of
21 Pugliese.

22 MR. FRONSTIN: Guy Fronstin on behalf of
23 Joseph Reamer.

24 MR. BUTTERWORTH: Bob Butterworth on
25 behalf of Mr. Pugliese.

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1 MR. GARY: And just for the record, I'm
2 here on behalf of everybody on this side of the
3 table and up to Bob. Just kidding.

4 MR. HUTCHISON: Rick Hutchison,
5 John Pfannenbecker, John Chapman, and
6 Robert Ray, same appearances as yesterday on
7 this side of the table.

8 MS. HOFFLER: I just want to make sure
9 that it's very clear that we are still not
10 waiving any of our rights as it relates to
11 Mr. Ray. And we are likely going to keep this
12 deposition open until we -- until such time as
13 we have a chance to address it with the Court.
14 Since the courthouse is closed again today, we
15 have no choice but to continue in the interest
16 of getting this deposition going again.

17 Additionally, we will keep this deposition
18 open because there were some privileges that
19 are asserted by counsel for the defendant that
20 we believe were simply nonsensical and
21 erroneous, not privileges that are recognized
22 under Florida law or any Florida Constitution.
23 So we are going to simply raise this issue with
24 the Court, but because the Court is not open
25 today, we can't do that. But subject to
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1 those --

2 MR. HUTCHISON: I have a question, C.K.
3 Did you say that other lawyers are going to
4 question Mr. DeLuca during the course of this
5 deposition?

6 MS. HOFFLER: Absolutely.

7 MR. HUTCHISON: And have they made notices
8 of appearances in this case?

9 MS. HOFFLER: Of course they have.

10 MR. HUTCHISON: Everyone --

11 MS. HOFFLER: We follow the rules, so yes.

12 MR. HUTCHISON: So everyone --

13 MS. HOFFLER: The answer is yes.

14 MR. HUTCHISON: -- who is going to
15 question filed a notice of appearance?

16 MS. HOFFLER: Mr. DeLuca.

17 MR. HUTCHISON: Is that -- I just want
18 to -- because if not --

19 MS. HOFFLER: I answered your question.

20 MR. HUTCHISON: Okay. Because, if not,
21 then --

22 MS. HOFFLER: There is not an if not. I
23 answered your question. I don't need to repeat
24 it again and that's it. So let me start my
25 deposition.

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1 MR. HUTCHISON: Okay. With regard to the
2 privilege issues, I'm available to go to court
3 tomorrow morning on motion calendar. So we can
4 go tomorrow.

5 MR. GARY: You said on what, the privilege
6 issues?

7 MS. HOFFLER: On the privilege.

8 MR. HUTCHISON: On the issues that C.K.
9 raised.

10 MR. GARY: Yeah, but if the lawyers are
11 making appearances on behalf of certain
12 parties.

13 MS. HOFFLER: No, he's not even linking
14 them.

15 MR. GARY: Oh, you're not talking --

16 MR. HUTCHISON: Well, we can go on that
17 issue, too, if that needs to be addressed.

18 MR. GARY: No, we don't need to address
19 that. It is what it is.

20 MR. HUTCHISON: If they filed notices of
21 appearances, I have no problem if they --

22 MR. GARY: If not, they will go on the
23 record and do it.

24 MR. HUTCHISON: I mean in the lawsuit.

25 MR. GARY: They don't have to say you have
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1 to do it in the lawsuit.

2 (Discussion off the record.)

3 MS. HOFFLER: No, I'll just remind him
4 he's still under oath. Okay. Thank you.

5 DIRECT EXAMINATION (CONT.)

6 BY MS. HOFFLER:

7 Q. And, Mr. DeLuca, of course, I'm reminding
8 you that you're still under oath. And as you answer
9 these questions, please be mindful that your answers
10 are given under oath. You understand that, don't
11 you?

12 A. I understand what you said.

13 Q. Okay. Do I need to go over any of the
14 rules of deposition for you or are you good?

15 A. If you feel like you should, perhaps you
16 should.

17 Q. Okay. If ever there is a question that I
18 pose that you feel is unclear or that requires any
19 type of clarification in any way, shape or form, let
20 me know and I'm happy to clarify the question. I
21 don't want you to guess at all. And I'm asking you
22 questions based on information that you know, and
23 I'm asking that you simply just answer the questions
24 truthfully.

25 I have already had a discussion on the
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1 record with counsel about what I believe is
2 obstructionist behavior. And if for any reason you
3 feel that a question is convoluted, I'm very happy
4 as you know from yesterday to break it down so that
5 we have a clean record. This is a very important
6 case and it's very important for both sides, for
7 both you and for Mr. Pugliese and all of the parties
8 involved to have a clean record, as undoubtedly we
9 are going to go to trial in this case. So do you
10 have any questions about that?

11 A. I -- I think I understand. I just hope
12 that you are able to ask questions that are less
13 compound because, oftentimes, there were very
14 compound questions with miscellaneous items thrown
15 in. So if you could do that, that will be helpful.

16 Q. Well, this is the thing: Unless your
17 counsel objects and unless you say, I need you to
18 clarify, then the question stands and you have to
19 answer it.

20 A. I understand.

21 Q. So --

22 A. But it would be easier so I wouldn't have
23 to --

24 Q. Right. But I'm not here to make life easy
25 for you. I'm sure you understand that. I'm here to
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1 ask my questions and to make my record. So if --
2 again, if you have some confusion about a question,
3 I will be more than happy to clarify.

4 A. Okay. Good.

5 Q. Okay? All right. Now, yesterday, and I'm
6 going to hand you what we are going to label as
7 DeLuca Exhibit 4. And this is what you reviewed
8 yesterday, but I'm going to mark it as an exhibit
9 now to this deposition.

10 A. Thank you.

11 (Exhibit 4 marked for identification.)

12 MS. HOFFLER: And this just for the
13 record, Exhibit 4 is the case Nicholas C.
14 Jannotta, individually, and as executor of the
15 Estate of Victoria A. Jannotta and Carmein D.
16 Blasucci, as executor of the Estate of Victoria
17 A. Jannotta, and against Subway Sandwich Shops,
18 Inc., Frederick A. DeLuca, Peter H. Buck and
19 Doctor's Associates, Inc.

20 BY MS. HOFFLER:

21 Q. Do you see that? That's a document that
22 you reviewed on the record yesterday.

23 A. Yeah, I read part of it.

24 Q. You read part of it. Well, you had the
25 opportunity yesterday certainly to read the entire
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1 document. I gave you ample time; right?

2 A. No, there wasn't enough time.

3 Q. Okay. Well, you need to review it because
4 I'm going to -- I'm just going to ask you a couple
5 questions about it.

6 A. Okay.

7 Q. Why don't I ask you questions and then if
8 you feel you need to review it, then we can take it
9 further. How about that?

10 A. Okay.

11 Q. Now, yesterday, we talked about the fact
12 that there was a verdict in this case of
13 compensatory damages and punitive damages of
14 \$10 million assessed against you and some of the
15 other defendants on the trial court level; right?
16 We talked about that.

17 MR. HUTCHISON: Objection to form.

18 THE WITNESS: On the first case, we talked
19 that \$10 million was improperly awarded as
20 punitive damages and it was reversed.

21 BY MS. HOFFLER:

22 Q. Well, we talked about the fact that a
23 jury, a jury found that you were liable for punitive
24 damages, all the defendants for \$10 million, and you
25 particularly for \$3 million. I just want you to
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1 **confirm whether we talked about that. Otherwise, I**
2 **will go all through it again like we did yesterday.**

3 MR. HUTCHISON: Objection.

4 BY MS. HOFFLER:

5 **Q. Did we talk about that?**

6 MR. HUTCHISON: Objection to the form and
7 move to strike comment of counsel.

8 BY MS. HOFFLER:

9 **Q. Did we talk about that, sir?**

10 A. As we talked about yesterday --

11 **Q. And let me just ask you this: Do you**
12 **deny that a jury --**

13 MR. HUTCHISON: Let him finish his answer.

14 Did you finish your answer?

15 BY MS. HOFFLER:

16 **Q. Do you deny that a -- you don't deny, do**
17 **you, that a jury awarded \$3 million to the**
18 **plaintiffs against you, individually? You don't**
19 **deny that that happened?**

20 MR. HUTCHISON: Did you finish your
21 answer?

22 THE WITNESS: Am I supposed to answer the
23 first question or am I supposed to answer the
24 second question?

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1 BY MS. HOFFLER:

2 Q. You can answer both.

3 A. Okay. I don't remember both of them. So
4 why don't you read --

5 Q. Well, then let me read --

6 A. Why don't you read me the first one.

7 Q. No, no, no, it's my deposition. What will
8 happen is I will ask it again.

9 A. Okay.

10 Q. My deposition, remember that.

11 You don't deny, Mr. DeLuca, that a jury, a
12 jury awarded damages, punitive damages in the amount
13 of \$3 million in federal court against you
14 personally?

15 A. As we discussed yesterday, the jury
16 improperly awarded punitive damages and they were
17 reversed.

18 Q. I'm moving to strike because you simply
19 are not asking -- answering my question. The way it
20 works, and I guess I've got to go over this rule in
21 deposition because I thought you knew, you've been
22 deposed a lot, you've been sued a lot. So let me go
23 over this rule.

24 You can say yes or no and then explain.

25 And, see, then that way we don't have to go through
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1 five minutes; right? If you feel you need to
2 explain. But as long as you don't answer my
3 question, you know me by now, I'm going to pose it
4 until you do.

5 A. Okay.

6 Q. So let's make this -- excuse me. So let's
7 make this easy on you and on me. And so let me pose
8 the question again and maybe I can get an answer.
9 And then if you want to explain, you feel you can
10 explain, you can do that. So let me pose it again.

11 A. No. No, hold on. Hold on.

12 Q. No. There's no --

13 A. You're giving me legal instruction. I
14 have a lawyer here. I'd like to take a five-minute
15 break to talk to him --

16 Q. Okay. Go ahead.

17 A. -- to understand.

18 Q. Go take a break. I don't know why you
19 need a five-minute break --

20 A. Well, because --

21 Q. -- to find out if you want to answer a
22 question.

23 A. No, I'm fine with answering it. But
24 you're telling me I should do things a certain way.

25 Q. Well, then go ahead. Go ahead. Go ahead
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1 **right there and ask him.**

2 A. I will take it outside.

3 MR. HUTCHISON: I'm going to take it out.
4 You guys can all stay there. We will take two
5 minutes. And I do have an objection for the
6 record about comment of counsel, and move to
7 strike it.

8 MS. HOFFLER: And I move to strike your
9 objection for the record. Okay. Go on with
10 your client. Thank you.

11 (Whereupon, a recess was taken from
12 10:30 a.m. to 10:34 a.m.)

13 BY MS. HOFFLER:

14 **Q. Mr. DeLuca, did a jury in Illinois award**
15 **punitive damages in the amount of \$3 million against**
16 **you individually, yes or no?**

17 A. As we discussed yesterday, a jury --

18 MR. GARY: Objection. Why don't you -- we
19 can get through this if you just answer yes, if
20 it calls for a yes or no answer. Your lawyer
21 can come back later and revisit that. But,
22 now, if you are going to sit up here all day
23 and give rebuttal and not -- this is
24 cross-examination. We have a right to do that.

25 So if it calls for a yes or no answer, if
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1 you say you can't answer the question, then
2 that's okay. But if you can answer it, why
3 don't you do it so we can move along and we
4 won't have a fight with this.

5 MR. HUTCHISON: One lawyer at a time.
6 Miss Hoffler is asking the questions. So let
7 her go.

8 MS. HOFFLER: I think Mr. Gary --

9 MR. GARY: But I'm representing
10 a different --

11 MS. HOFFLER: In a much nicer way than I
12 would.

13 MR. GARY: I'm representing a different --
14 a different --

15 MR. HUTCHISON: And I appreciate --

16 MR. GARY: -- plaintiff in the case, so --

17 MR. HUTCHISON: And I appreciate your tone
18 and -- as Miss Hoffler pointed out. But I will
19 also say this: He has the right to answer as
20 he thinks is the appropriate answer. It may
21 call for a yes or no, it may call for an
22 explanation, he may not know. Just let him
23 answer the questions and you guys can follow
24 up with the questions you need.

25 MR. GARY: If he doesn't know, he needs to
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1 say he can't answer the question. If he -- if
2 he knows, he can answer yes or no, and then we
3 can fuss about whether he's entitled to sit up
4 there and run off for ten minutes.

5 MR. HUTCHISON: He will answer as -- what
6 his answer.

7 MR. GARY: If you can answer yes or no,
8 just do it. If you can't answer yes or no,
9 tell us, I can't answer that.

10 MR. HUTCHISON: He's not -- there's no
11 obligation for him to just answer yes or no as
12 we all know.

13 MR. GARY: If it's a yes or no question.

14 MR. HUTCHISON: Well, he's entitled to an
15 explanation.

16 MR. GARY: He's not entitled to --

17 MR. HUTCHISON: He's entitled to an
18 explanation.

19 MR. GARY: How are we going to do
20 discovery and know what he knows or what he
21 doesn't know if he can't -- if he doesn't have
22 to use a yes or no question (sic), or he has to
23 tell us he can't answer it.

24 MR. HUTCHISON: Well, we disagree, Willie.
25 If we need to go to the judge on that, I'm
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1 available tomorrow morning at 9:30.

2 MS. HOFFLER: And you know what? We're
3 definitely going to go to the judge on that
4 because I would love to go before Judge Crow
5 and say, Judge Crow, I asked the witness a
6 question, you were at trial, did a jury award a
7 \$3 million punitive damages verdict against you
8 individually, and he couldn't say yes or no.
9 Oh, I want to go to Judge Crow on that.

10 MR. HUTCHISON: Okay. Well, then let's
11 go.

12 MS. HOFFLER: So if that's -- if that's
13 how we are going to play this, let's play it --

14 MR. GARY: Let's work through this.

15 MS. HOFFLER: -- because I'll go every
16 day. I've got four days with you. If that's
17 how you want to do it, then that's how we'll do
18 it.

19 My suggestion is to you, is that you
20 answer. Your counsel knows what the rules are.
21 You answer yes or no and then take it from
22 there.

23 MR. GARY: And if you can't answer it yes
24 or no, just tell us and we'll move on.

25 MR. HUTCHISON: And if you need an
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1 explanation --

2 MS. HOFFLER: And then if you don't
3 remember, you don't remember, but say yes or
4 no. So let's start again and then explain.

5 THE WITNESS: I guess you-guys are going
6 to the judge tomorrow to talk about --

7 MS. HOFFLER: No, no. Mr. DeLuca.

8 MR. GARY: You answer the question now.

9 MS. HOFFLER: Mr. DeLuca, I'm going to
10 pose the question again. It is not for you to
11 tell us or to assume what we are or aren't
12 going to do with the judge. Not your role, not
13 your place. So let me ask the question again
14 and I am going to ask you to answer the
15 question.

16 BY MS. HOFFLER:

17 **Q. My question to you, sir, is: Did a jury**
18 **in Illinois award a punitive damages verdict against**
19 **you individually in the amount of \$3 million, sir,**
20 **yes or no?**

21 MR. HUTCHISON: Objection, asked and
22 answered and I'll move to strike comment of
23 counsel.

24 THE WITNESS: As we discussed yesterday, a
25 jury in Illinois improperly awarded a punitive
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1 damage verdict and that was overturned.

2 BY MS. HOFFLER:

3 Q. Of -- my question, sir -- again, you know,
4 we are going to be here all morning on this one
5 question.

6 A. Okay.

7 Q. My question to you, sir, is this. And I'm
8 going to break this down into baby steps because I
9 think that's what it's going to require to get an
10 answer from you.

11 Did a jury in Illinois in the Jannotta
12 versus Subway Sandwiches and Fred A. DeLuca, Peter
13 Buck and Doctor & Associates, did that jury in
14 federal court in Illinois award a \$3 million
15 punitive damages verdict against you individually,
16 yes or no?

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

19 MS. HOFFLER: I understand that --

20 MR. HUTCHISON: And move to strike comment
21 of counsel.

22 BY MS. HOFFLER:

23 Q. Yes or no, did they?

24 A. As we discussed yesterday and today, a
25 jury in Illinois improperly awarded a verdict that
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1 was overturned.

2 Q. How much was the verdict that was
3 overturned, Mr. DeLuca, against you? That punitive
4 damages verdict, how much was it?

5 A. The total verdict was \$10 million, of
6 which \$3 million was against me, I believe. And it
7 was overturned.

8 Q. And let's talk about why it was
9 overturned, shall we? I would like you to take
10 Exhibit Number 4 in front of you, which you've read.
11 And I believe you testified yesterday that the trial
12 was a couple of days. Is that what you --

13 A. I don't have a good recollection of this.
14 I think it was two days.

15 Q. Two days. Well, I don't know, according
16 to a federal -- the United States Court of Appeals
17 in Seventh Circuit, the first paragraph of this
18 opinion says, "After a lengthy trial in this
19 diversity case." Would you disagree with a federal
20 court that says it was a lengthy trial? You
21 wouldn't disagree, would you?

22 MR. HUTCHISON: Objection as to form of
23 the question, comment of counsel. Move to
24 strike.

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1 BY MS. HOFFLER:

2 Q. Would you disagree with a federal Court of
3 Appeals' opinion that your trial was a lengthy
4 trial, sir?

5 A. If they think two days is a lengthy trial,
6 then I wouldn't disagree with them.

7 Q. And what I would like to do is I would
8 like to -- if you hand me your exhibit, sir, I'm
9 going to highlight what I'd like you to read into
10 the record in this case.

11 And for the record, Mr. DeLuca, is going
12 to read into the record what the United States Court
13 of Appeals, Seventh Circuit, found in his case where
14 he was awarded punitive damages and \$3 million
15 against him.

16 And so if you can start reading,
17 Mr. DeLuca, from "having."

18 MR. HUTCHISON: I'm going to object to
19 form and the document, obviously, speaks for
20 itself. And, also, the fact that he's only
21 reading part of the document as opposed to the
22 entire document in its context.

23 BY MS. HOFFLER:

24 Q. If you want to question your witness
25 after, just question your witness after.
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1 MR. GARY: Just let him do it and just
2 move on. You're on the record.

3 BY MS. HOFFLER:

4 Q. So, Mr. DeLuca...

5 MS. HOFFLER: You're on the record, make
6 your objection. In Florida, we don't do
7 speaking objections, I think you know that.

8 BY MS. HOFFLER:

9 Q. So, Mr. DeLuca, start reading from
10 "having" to the end of the paragraph, sir.

11 A. I'd like to --

12 MR. HUTCHISON: Same objections.

13 THE WITNESS: Yeah, I'd like to take a
14 moment to review the context of the paragraph
15 you want me to read.

16 BY MS. HOFFLER:

17 Q. Well, I'm asking you to -- I'm not asking
18 you to -- I'm not asking you questions. I'm asking
19 you to read into the record a paragraph.

20 A. I know, but I would like some time to --

21 Q. Whatever -- excuse me. Excuse me, sir.
22 Whatever context you believe is there is not going
23 to impact the words on this page. All I'm asking
24 you to do, sir, is to read the words on this page
25 into the record. That's it.

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1 I'm not going to ask you -- when I ask you
2 questions on it, then I want you to take the time to
3 look at the context. But for right now, sir, all I
4 want you to do is read into the record those lines,
5 please.

6 MR. HUTCHISON: Take your time.

7 THE WITNESS: I have to ask my lawyer a
8 question now.

9 MR. GARY: You don't get to do that during
10 deposition.

11 THE WITNESS: Because I believe that I am
12 allowed to read something to get an
13 understanding of what I'm reading. So I
14 don't --

15 MS. HOFFLER: What kind of --

16 MR. GARY: We don't need for you to get an
17 understanding.

18 BY MS. HOFFLER:

19 **Q. What kind of situation? What**
20 **understanding?**

21 MR. GARY: We don't need for you to get an
22 understanding.

23 BY MS. HOFFLER:

24 **Q. I want you to read into the record. What**
25 **understanding do you need to read the words on a**
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1 **page? I'm curious about that.**

2 A. You don't have to yell at me, badger with
3 me, argue with me, be disrespectful.

4 **Q. And you don't have to be condescending,**
5 **Mr. DeLuca. And you don't have to be disrespectful.**

6 MR. HUTCHISON: If you need a second to
7 look at it, and then you can read what she
8 needs you to read.

9 MS. HOFFLER: And don't point your finger
10 at me. If you're going to -- don't do this
11 (indicating) at me.

12 MR. HUTCHISON: Fred, Fred. Mr. DeLuca,
13 stop.

14 THE WITNESS: If you would stop that,
15 also.

16 MS. HOFFLER: And you need to stop. Just
17 stop.

18 MR. GARY: Let me just say one thing. I
19 don't know what your strategy is, but we are
20 going to get five days of deposition out of
21 you. Now, if we have to haul you back in here
22 next week or the week after, that's up to you.

23 MR. HUTCHISON: Fred. Fred.

24 MR. GARY: But you can stall all you want
25 to with all these long, lengthy, uncalled for
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1 answers, because you're not going to cheat us
2 out of our five days. And so, you know, if we
3 have to come back, we're going to -- and I know
4 you don't want to do that. So we need to move
5 this along.

6 BY MS. HOFFLER:

7 **Q. So, Mr. DeLuca, I ask you again, please**
8 **read the last part of the paragraph beginning with**
9 **"having" into the record.**

10 A. "Having carefully reviewed the evidence
11 before the jury, we must reject the defendants'
12 contention that it does not support an award of
13 punitive damages. Unfortunately for plaintiffs,
14 however, we agree that the instructions provided to
15 the jury on the punitive damages questions were not
16 in accord with Illinois law. And because that
17 instructional error cannot be deemed harmless on
18 this record, we must vacate the punitive damages
19 judgment and remand for a new trial on that issue."

20 **Q. Thank you, Mr. DeLuca.**

21 **We haven't finished with that document. I**
22 **would like you to go to Paragraph 30. I'm going to**
23 **highlight just to make it easier for you,**
24 **Mr. DeLuca.**

25 **I would like you to read into the record,**
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1 **Paragraph 30. The first full sentence, Mr. DeLuca,**
2 **beginning with "finally."**

3 A. "Finally, in addition to the evidence
4 suggesting that Subway had no intention of paying
5 the rent and keeping the property in good repair,
6 plaintiffs also presented evidence from which a
7 reasonable jury could have found that Subway had no
8 intention of honoring the restricted trade area in
9 the Jannotta lease."

10 **Q. Thank you, sir.**

11 **Now we're going to turn to Paragraph 31 of**
12 **this opinion as well.**

13 **(Discussion off the record at 10:46 a.m.**
14 **to 10:45 a.m.)**

15 THE WITNESS: Do you want me to read it?

16 BY MS. HOFFLER:

17 **Q. Yes. If you could also read from**
18 **Paragraph 31 beginning with "given."**

19 A. "Given this overwhelming evidence, a
20 reasonable jury could easily have found that the
21 defendants wantonly and designedly made a series of
22 utterly false representations in order to induce
23 Victoria Jannotta to execute the instant lease."

24 **Q. Then the last sentence of that**
25 **Paragraph 31 that begins with "we therefore," could**
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1 **you read that into the record, Mr. DeLuca, please.**

2 A. "We therefore have no doubt that the
3 far-reaching fraud proven in this case could be
4 found to satisfy the stringent punitive damage
5 standard employed in the State of Illinois."

6 **Q. And then the next sentence.**

7 MR. GARY: Can you speak up?

8 Can you hear back there?

9 THE VIDEOGRAPHER: I can hear.

10 MR. GARY: Yeah, can you raise your voice
11 just a little bit because I'm having
12 difficulties hearing.

13 THE WITNESS: "As a result, the district
14 court did not err in determining to submit the
15 issue to the jury."

16 BY MS. HOFFLER:

17 **Q. And then the next part that I have**
18 **highlighted for you, sir, could you please read into**
19 **the record.**

20 MR. HUTCHISON: Same objections as before.
21 Go ahead.

22 THE WITNESS: "Defendants insist, however,
23 that even if gross fraud -- gross fraud were
24 shown below, they cannot be subjected to
25 punitive damages for that fraud because it was
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1 neither authorized nor ratified by any officer
2 or director of the corporate defendants or by
3 either of the individual defendants themselves.
4 In Illinois, punitive damages cannot be
5 assessed against a corporation for the acts of
6 its agents or employees under a theory of
7 respondeat superior. It must be shown, rather,
8 that the responsibility employee was acting in
9 a managerial capacity or that his acts were
10 authorized or ratified by the corporation."

11 BY MS. HOFFLER:

12 **Q. And from Paragraphs 33, could you read**
13 **into the record what the U.S -- U.S. State -- United**
14 **States Court of Appeals for the Seventh Circuit**
15 **said.**

16 A. Which part?

17 MR. HUTCHISON: Same objection.

18 BY MS. HOFFLER:

19 **Q. Pardon me?**

20 A. Which part of 33?

21 **Q. From that I've highlighted.**

22 A. That you've highlighted?

23 **Q. Yes, sir.**

24 A. "To the extent defendants' argument is
25 addressed to the sufficiency of plaintiffs' proof of
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1 corporate complicity, it is completely without
2 merit. As we explained above, plaintiffs' fraud
3 theory was premised not only on fraudulent
4 misrepresentations made to Jannotta by McSwiggan in
5 the field, but also on misrepresentations and
6 material omissions made to Jannotta over the
7 telephone by Kaligian from DAI's home office in
8 Connecticut."

9 MR. GARY: You're going to have to speak
10 up.

11 Counsel, how do we deal with this? I'm
12 not badgering, but --

13 MR. HUTCHISON: He can speak as loud as he
14 can speak, Willie. I mean, I can't change his
15 volume of his voice.

16 MR. BELAVAL: No, you can't hear anything.

17 MR. GARY: You can't hear him, I mean.

18 MR. HUTCHISON: Well, the table is 50 feet
19 long and there's 12 people here.

20 MR. GARY: Well, that's why he has to
21 speak up.

22 MR. HUTCHISON: Well, but he speaks --

23 MR. GARY: Do we want to stop and get a
24 microphone? We can do that, because we are
25 going to have five days of depo.

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1 MR. HUTCHISON: Okay.

2 MR. GARY: And we can do it and be done or
3 we are going to be here, plain and simple.

4 MS. HOFFLER: Well, you know, and a minute
5 ago when --

6 MR. GARY: But I'm not going to sit here
7 struggling to hear him.

8 MS. HOFFLER: A minute ago, when the
9 defendant Mr. DeLuca was yelling at me, he had
10 no problem speaking up. So I suggest that he
11 speak a little louder so that everybody can
12 hear what he's reading.

13 MR. GARY: Yeah. And then --

14 MR. HUTCHISON: I don't think he was
15 yelling at you. I think he was trying to get
16 his voice as loud as yours.

17 MR. GARY: I think he has a low voice. I
18 got no problem with that. But, you know,
19 that's not helping the situation.

20 MR. HUTCHISON: He will do his best.

21 Fred, just do your best to get it up.

22 MR. GARY: If not, we are going to have to
23 stop and get a --

24 MS. HOFFLER: Microphone.

25 MR. GARY: -- system for him because --
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1 THE WITNESS: I'll try to speak a little
2 loud, but maybe you should get a microphone
3 also because the table is pretty long. I don't
4 know if those guys can hear most of this stuff.

5 MR. GARY: There's nobody on that end can
6 hear you and we're struggling. And I am
7 sitting next to you and I'm struggling.

8 THE WITNESS: Do you have an objection if
9 they get a microphone?

10 MR. HUTCHISON: No, if they can get one.

11 MR. GARY: Well, I'm just saying if, you
12 know --

13 MR. BELAVAL: I will go to Radio Shack and
14 find one.

15 MR. GARY: If we have to stop the depo to
16 do that, you're just buying into your time, not
17 ours.

18 MR. HUTCHISON: No, we can get it at
19 lunch. I'm okay with that.

20 BY MS. HOFFLER:

21 **Q. Okay. So let's continue reading as loud**
22 **as you can, the next portion that I have highlighted**
23 **for you to read from Paragraph 33.**

24 A. I lost track. Thirty-three?

25 **Q. Okay. Then let's read "to the extent,"**
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1 **the part that starts "to the extent."**

2 A. Yes. "To the extent defendants' argument
3 is addressed to the sufficiency of plaintiffs' proof
4 of corporate complicity, it is completely without
5 merit. As we explained above, plaintiffs' fraud
6 theory was premised not only on fraudulent
7 misrepresentations made to Jannotta by McSwiggan in
8 the field, but also on misrepresentations and
9 material omissions made to Jannotta over the
10 telephone by Kaligian from DAI's home office in
11 Connecticut."

12 **Q. And then at the bottom of the page,**
13 **Paragraph 33, where it begins "Plaintiffs' proof."**
14 **I've highlighted that for you as well.**

15 A. "Plaintiffs' proof of corporate complicity
16 went further even than that, however. A reasonable
17 jury could also have found that DAI, DeLuca, and
18 Buck had a policy of using shell leasing companies
19 like SSS to incur rental obligations to landlords
20 without ever intending that the leasing company
21 would satisfy its obligations under the lease."

22 MS. HOFFLER: Did you all hear that at the
23 back? Okay. Then I -- let me --

24 MR. HUTCHISON: All he's doing is reading.

25 MS. HOFFLER: Okay. But let me --
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1 MR. GARY: They can read along with him.

2 MS. HOFFLER: Okay. Let me do this.

3 MR. GARY: No, no, no.

4 MS. HOFFLER: Let me do this. Let me read
5 that last part to make sure everything hears
6 this. "Plaintiffs' proof of corporate
7 complicity went further even than that,
8 however. A reasonable jury also could have
9 found that DAI, DeLuca, and Buck had a policy
10 of using shell leasing companies like SSS to
11 incur rental obligations to landlords without
12 ever intending that the leasing company would
13 satisfy its obligations under the lease."

14 BY MS. HOFFLER:

15 Q. Okay. Mr. DeLuca, let's turn the page
16 here. And I'm going to read the next sentence just
17 to make sure everyone can hear, and then I'll ask
18 you to read the last sentence, which hopefully you
19 can read louder.

20 "The same jury also could have found that
21 those defendants agreed to a restricted trade area
22 in the Jannotta lease without any intention that it
23 would be honored. In either circumstance, it could
24 not be said that a superior officer of the
25 corporation had failed to authorize or to ratify the
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1 misconduct occasioning the punitive damage award."
2 And that's from Paragraph 34.

3 Now, Mr. DeLuca, I'm going to ask that you
4 read finally Paragraph 35, the one sentence there,
5 from this opinion from the Seventh Circuit,
6 U.S. District Court of Appeals.

7 A. Number 35?

8 Q. Yes.

9 A. "For these reasons, we necessarily must
10 reject the cramped reading of the record that leads
11 defendants to suggest that corporate complicity is
12 absent as a matter of law."

13 Q. Thank you very much, sir. You can put
14 that exhibit down for now.

15 Now, Mr. DeLuca, yesterday we talked for
16 quite some period of time about the commitment
17 letter for the loan that you had and the promissory
18 note for the loan that you got from Wachovia, the
19 \$105 million loan from Wachovia that you used to
20 finance, if you will, the LCOC land acquisition
21 deal; right? Do you recall that discussion?

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

24 THE WITNESS: I didn't understand the
25 question actually.

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1 BY MS. HOFFLER:

2 Q. Okay. Well, let me --

3 A. It was two parts.

4 Q. Then let me -- let me rephrase it. I'm
5 sorry if it was -- if it was compound.

6 Yesterday we had a discussion about your
7 Wachovia loan; right?

8 A. The loan that I took from Wachovia, yes.

9 Q. Well, there was only one Wachovia loan
10 that we discussed yesterday; right? We discussed
11 the Wachovia line of credit, but we only discussed
12 one Wachovia loan yesterday; isn't that right?

13 A. I think that's correct.

14 Q. And that Wachovia loan was for
15 \$105 million and that was the loan that you took out
16 and that you subsequently used to finance the LCOC
17 land acquisition deal; right?

18 A. Again, it's compound, but you're saying I
19 did take the loan out and I did also loan
20 105 million to LCOC.

21 (Exhibit 5 marked for identification.)

22 BY MS. HOFFLER:

23 Q. And what I am going to hand you now is
24 what we have marked as DeLuca Exhibit 5. And if you
25 would like to take just a moment to review this
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1 **document, Mr. DeLuca.**

2 MR. HUTCHISON: I'm just going to object
3 to the cover page of the document.

4 MS. HOFFLER: Right. And if you want, if
5 you would like, we can during a break, I will
6 take off the cover page.

7 BY MS. HOFFLER:

8 **Q. But if you could look at the other page.**

9 MR. HUTCHISON: Yeah, do that at the
10 break, please.

11 MS. HOFFLER: Yeah, we will do that at a
12 break so as not to take up time right now.

13 BY MS. HOFFLER:

14 **Q. First of all, Mr. DeLuca, let's look at**
15 **the last page of the document.**

16 A. I haven't had a chance to review it yet.

17 **Q. I would like you to look at the last page**
18 **of the document, sir.**

19 A. Oh, I thought you said I should review it.

20 **Q. Right. But I'd like you to look at the --**
21 **before we -- I'm not going to ask you any**
22 **substantive question. I just want you to look at**
23 **the last page of the document.**

24 **Now, is that your signature?**

25 A. That looks like my signature.
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1 **Q. And that was dated on August 8th of 2005;**
2 **is that correct?**

3 A. It looks like it was dated August 8th,
4 2005.

5 **Q. Well, the signature is notarized; is that**
6 **right?**

7 A. It says that.

8 **Q. Okay. Now, if you want to take a moment**
9 **to look at the document, if you need to refresh your**
10 **recollection. You may not need to, because that is**
11 **a promissory note that you signed.**

12 MR. HUTCHISON: C.K., I don't see this
13 note marked as confidential, this Exhibit 5. I
14 would request it be marked confidential under
15 the confidentiality order and that you redact
16 any personal identification, Social Security
17 number, taxpayer ID number, anything like that
18 from the original exhibit.

19 MS. HOFFLER: What I will agree to do is
20 to do what's in conformity with our
21 confidentiality order before it's submitted in
22 final version.

23 MR. HUTCHISON: That's all I'm asking,
24 comply with the confidentiality order. Thank
25 you.

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1 BY MS. HOFFLER:

2 Q. Okay. Mr. DeLuca, this is the promissory
3 note, correct me if I am wrong, that you signed in
4 relation to the \$105 million loan that you got from
5 Wachovia; is that right?

6 A. I think that's correct.

7 Q. And the use of the proceeds, the use of
8 this loan was strictly for the acquisition of the
9 land in connection with the Destiny project; right?

10 A. Yeah, that was my intention.

11 Q. Well, that's what you signed. That's what
12 you signed with the bank. That that's -- that was
13 the only way that these proceeds would be used;
14 isn't that right?

15 A. Did I say something different? That was
16 my intention.

17 Q. I'm not asking about your intention. I'm
18 saying, could these proceeds have been used for
19 anything other than the acquisition of the land in
20 the Destiny project?

21 A. I don't know that answer.

22 Q. Well, okay, let's go to "Use of Proceeds,"
23 Page 1. And it says, and read with me, "Borrower
24 shall use the proceeds of the loan(s) evidenced by
25 this Note for the commercial purposes of Borrower,
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1 as follows: To make a loan in the original
2 principal amount of \$111 million," and in
3 parentheses, "(the "Land Loan") to Land Company of
4 Osceola County, LLC, a Florida limited liability
5 company," and then it says, ("LLOC"), and LM Land
6 Company, LLC, a Florida limited liability company,"
7 in parentheses, ("LMLC", and together with LLOC,
8 collectively, the "Companies")."

9 Now, there is no doubt in your mind, sir,
10 that the only reason and the only way that you could
11 have used this loan would be to acquire the property
12 associated with the Destiny project; right?

13 A. No.

14 Q. You believe that you could have used this
15 \$111 million for any purposes that you chose?

16 A. No, the intent of the loan was to use the
17 proceeds in this way, but I don't know that we
18 couldn't have done it -- done something else.

19 Q. Did you use it for that?

20 A. I think we did.

21 Q. Now, let's go to Page 2. Page 2, under
22 "Repayment Terms." Now, just so the record is
23 clear, you did not give a copy of this promissory
24 note to Anthony DeLuca (sic), did you?

25 MR. GARY: Anthony Pugliese.
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1 BY MS. HOFFLER:

2 Q. I'm sorry. Anthony Pugliese. Forgive me.
3 Let's strike that. Let me start again because
4 that's just so horrific. Let me start again.

5 Mr. DeLuca, you did not give a copy of
6 this promissory note to Anthony Pugliese at any time
7 before, before the closing on the land deal, did
8 you?

9 A. I don't believe so.

10 Q. And you did not discuss the terms of this
11 promissory note with Anthony Pugliese at any time
12 prior to the closing on the land deal, did you?

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

15 THE WITNESS: In general terms I did, but
16 in specific terms I didn't.

17 BY MS. HOFFLER:

18 Q. And it's fair to say what you mean by
19 "specific terms," like, for example, you didn't tell
20 him that I pledged as collateral the mortgage for
21 purposes of -- of getting this loan. You didn't
22 tell him that, we discussed that yesterday; right?

23 A. No, I think that was told to --

24 Q. To whom?

25 A. -- to Anthony and his lawyer.
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1 **Q. Well, did you tell him that in writing,**
2 **sir, or did you just --**

3 A. In writing? I seem to recall something
4 about that. I would have to refresh my memory on
5 that.

6 **Q. Okay. Then so it's your testimony here**
7 **today that you believe you told Anthony Pugliese and**
8 **his lawyer that you would have to collateralize the**
9 **mortgage, the mortgage on the land in order to get**
10 **this loan?**

11 A. I told Anthony that I would have to give
12 substantial collateral. I don't know if I -- I
13 didn't know what would be required, but I might have
14 to collateralize it using the loan -- using the
15 mortgage.

16 **Q. But you also didn't tell**
17 **Anthony Pugliese -- and did you personally tell him**
18 **or did you just have someone tell him, someone who**
19 **you thought?**

20 A. No. When he called me to ask me to help
21 him out, I told him that I might be able to provide
22 assistance. He asked me -- he said he was in
23 trouble and he even asked me to provide him an
24 advance. And I think I provided something like a
25 \$4 million advance early in June because he needed
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1 to straighten things out with the deal he had made.
2 And I -- we talked about the different situations,
3 and one of the things we talked about was the
4 possibility of me being the lender.

5 Q. Uh-huh. And yet -- and certainly I
6 understand that. But at the time, obviously, in
7 June, you had no idea, you had no idea how you would
8 have to collateralize this loan?

9 A. Yeah, but I knew what the possibilities
10 were and those possibilities were all discussed.

11 Q. And you did not tell Anthony Pugliese in
12 any way, shape or form, Anthony, I'm going to need
13 to collateralize the land that, by the way, you're
14 guaranteeing. You didn't tell him that?

15 MR. HUTCHISON: Objection to form.

16 THE WITNESS: No, I told him that that
17 might be a possibility.

18 BY MS. HOFFLER:

19 Q. And you never went back to him and said,
20 hey, Anthony, I got to do it. You never went back
21 and told him that?

22 A. I don't think you're correct on that.

23 Q. Well, what -- and, okay, then tell me
24 specifically what you told him then. And just so
25 that I am clear with my question, I'd like to know
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1 **specifically when and where you told**
2 **Anthony Pugliese that you had to use the land for**
3 **the Destiny deal as collateral for your loan that**
4 **you got with Wachovia.**

5 A. I'm trying to remember exactly where that
6 was.

7 **Q. And also remember exactly who was there.**
8 **That would be interesting as well.**

9 MR. HUTCHISON: Objections to form, strike
10 counsel's comments.

11 THE WITNESS: You know, right this -- I
12 will refresh my memory on -- come back to this.
13 I'm pretty positive that this was discussed
14 again. And I will be happy to answer it. I
15 just can't recall this right now as I sit here.

16 BY MS. HOFFLER:

17 **Q. We've got five days.**

18 A. Thank you.

19 **Q. I definitely will come back. But the**
20 **other thing you did not discuss with Anthony, is you**
21 **didn't discuss with him the repayment terms.**

22 A. The repayment terms that I would have --

23 **Q. Yes.**

24 A. -- with my own bank?

25 **Q. Yeah, with your own bank in connection**
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1 **with this loan.**

2 MR. HUTCHISON: Objection as to form.

3 THE WITNESS: I -- when I talked to him
4 directly about it, it was before that loan. I
5 don't think I would have known the repayment
6 terms.

7 BY MS. HOFFLER:

8 **Q. And you never did discuss the repayment**
9 **terms with him, did you?**

10 MR. HUTCHISON: Objection as to form.

11 THE WITNESS: I -- I don't recall talking
12 to him about the repayment terms.

13 BY MS. HOFFLER:

14 **Q. Right, because in your email -- in the**
15 **email from your employee Mr. Worroll, that we went**
16 **over, this is Exhibit 3.**

17 MS. HOFFLER: Do you have the exhibits
18 from yesterday?

19 MR. HUTCHISON: They are right here.

20 BY MS. HOFFLER:

21 **Q. I would just like you to -- sir, let's**
22 **look at Exhibit 3. In this email dated July 11th,**
23 **your employee at Doctor's Associates made it very**
24 **clear to Anthony Pugliese's lawyer that the terms of**
25 **Fred DeLuca's arrangement with Wachovia are between**
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1 him and the bank. So right there, as we discussed
2 yesterday, there was a shutdown of any information
3 related to the terms of your loan with Wachovia.

4 A. No.

5 Q. Do you remember that?

6 A. No.

7 Q. Well, then tell me exactly when you told
8 anyone from Anthony Pugliese's office the terms of
9 your loan with Wachovia. You didn't?

10 A. Well, these are different questions. You
11 said it was a shutdown of information. There was no
12 shutdown of information.

13 Q. No, no, sir.

14 A. Anthony was free to --

15 MR. HUTCHISON: Let him answer the
16 question.

17 THE WITNESS: Anthony was free to contact
18 me and ask me questions, and I did answer
19 questions, but I did not provide him with the
20 details of the loans, all the details. He got
21 some of the details.

22 BY MS. HOFFLER:

23 Q. And what -- what's some of the details did
24 he get, sir?

25 A. He got the details. I told him already
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1 way in advance, that I believe that I could borrow
2 the money at a very low rate and that I could help
3 him with his problem. I could help him by giving
4 him an advance so he would not lose the money that
5 he had put down.

6 I thought I could arrange to loan money to
7 the land company at a --

8 **Q. Mr. DeLuca, you need to answer my**
9 **question.**

10 A. I am.

11 **Q. What did you tell him specifically about**
12 **the terms of your loan?**

13 MR. HUTCHISON: Let him finish his answer.

14 BY MS. HOFFLER:

15 **Q. What did you tell him?**

16 MR. HUTCHISON: Finish your answer.

17 BY MS. HOFFLER:

18 **Q. I don't want to know generally in life**
19 **what you told him. What did you tell him about the**
20 **specifics of this loan that you had with Wachovia?**

21 MR. HUTCHISON: Finish your answer.

22 THE WITNESS: I told him that I was going
23 to be able -- I believed I was going to be able
24 to borrow the money at a lower rate and better
25 terms.

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1 BY MS. HOFFLER:

2 Q. But you did not tell him about the
3 repayment terms ever.

4 MR. HUTCHISON: Objection as to form.

5 THE WITNESS: I don't recall telling him
6 about the repayment terms.

7 BY MS. HOFFLER:

8 Q. Right. And so let's look at -- let's like
9 at -- I'd like to turn to Page 2 under the
10 "Repayment terms." Can you look at that?

11 Now, under those "Repayment terms," let's
12 read -- just follow with me on the second sentence.
13 It says, "In any event, all principal and accrued
14 interest shall be due and payable on August 1st,
15 2008," that's the Maturity Date; "provided, that so
16 as long as no Default exists on Maturity Date, the
17 Maturity Date shall be automatically, without any
18 action by either Borrower or Bank, extended until
19 August 1, 2009, and so long as no Default exists on
20 August 1, 2009, the Maturity Date shall be
21 automatically, without any action by either Borrower
22 or the Bank, extended until August 1, 2010."

23 Do you see that?

24 A. I have to read it, because you started it
25 in the middle and I just want to read it. And I
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1 lost track, but --

2 Q. Well, okay, let me read it in its
3 entirety. I missed one sentence.

4 "The Note shall be due and payable in
5 consecutive monthly payments of accrued interest
6 only, commencing on September 1, 2005, and
7 continuing on the same day of each month thereafter
8 until fully paid."

9 Do you see that?

10 A. I do.

11 Q. Now, as it relates -- as it relates to --
12 to this particular paragraph, which you've already
13 second established you didn't discuss with
14 Anthony Pugliese, there are no -- there are no
15 penalties or anything paid for an extension on the
16 loan; right? Like if there was a -- if there was a
17 need to extend the loan, it was automatically done
18 after the maturity date, right, and there were no
19 penalties?

20 A. According to that first sentence that you
21 read?

22 Q. In according to the whole paragraph, sir.

23 A. Oh, let me read the paragraph. That's
24 what I said. I hadn't tracked with you when you
25 read it. But if you give me a minute, I will --

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1 **Q. Okay. Take your time to read it.**

2 **(Discussion off the record.)**

3 THE WITNESS: Your question was?

4 BY MS. HOFFLER:

5 **Q. Okay. My question is: There were no fees**
6 **charged to you if there was an extension on -- from**
7 **the maturity date; right? There was just the**
8 **automatic extension, two automatic extensions**
9 **without any fees charged to you?**

10 MR. HUTCHISON: Objection, the document
11 speaks for itself.

12 Go ahead and answer if you can.

13 THE WITNESS: Yeah, I think -- I think
14 this -- no, I think this says basically this is
15 a five-year loan, and at the end of three years
16 it has to be paid if there is a default. But
17 if there no default, it will continue for year
18 four and year five.

19 BY MS. HOFFLER:

20 **Q. And if there is that extension for year**
21 **four and year five, you don't -- they don't charge**
22 **you any fees; right?**

23 A. I don't know. I don't think so, but I
24 don't know.

25 **Q. Well, it says -- it would say here if they**
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1 **did under Repayment Terms. And according to this**
2 **document that you signed, Mr. DeLuca, they do not**
3 **charge you any fees if there's an extension beyond**
4 **the maturity date; right?**

5 A. Well, look, this is one paragraph in a
6 ten-page document. I don't know what the other
7 things say, but I don't think there were any fees
8 related to that particular paragraph, but I don't
9 know because I haven't read the document.

10 **Q. Well, I gave you the opportunity to read**
11 **the document, but let's -- but let's --**

12 A. Do you want me to read? I will read the
13 document.

14 **Q. Well, the only thing I'm asking you about**
15 **is the repayment terms. So I need you to answer,**
16 **sir. In this -- this paragraph regarding repayment**
17 **terms, is there any penalty or fee charged to you if**
18 **the loan isn't paid by the maturity date?**

19 MR. HUTCHISON: Objection.

20 THE WITNESS: In that paragraph?

21 BY MS. HOFFLER:

22 **Q. Yes.**

23 A. I don't see --

24 MR. HUTCHISON: Move to strike comment of
25 counsel, and asked and answered.

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Go ahead.

THE WITNESS: Yeah. In that paragraph, I don't see any fee.

BY MS. HOFFLER:

Q. Okay. Now, what I'm going to do is I'm going to give you, Mr. DeLuca, what we are going to mark as Exhibit 6, which is the promissory note between you and LCOC, and you know the other parties.

(Exhibit 6 marked for identification.)

BY MS. HOFFLER:

Q. And I'm going to ask that you take a moment to look at this. And then we are going to look at these side -- just to give you a heads up, we're going to look this document side-by-side with your Wachovia loan document.

MR. HUTCHISON: Note my objection to Exhibit Number 6. Again, the cover page, you will need --

MS. HOFFLER: We'll take the cover page off.

MR. HUTCHISON: Thank you.

MR. GARY: And the same with 6, just that it be handled under the confidentiality order just like deposition Exhibit 5.

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1 C.K., you'll do that?

2 MS. HOFFLER: Yes, we'll comply with
3 whatever we have to comply with.

4 MR. HUTCHISON: Thank you.

5 BY MS. HOFFLER:

6 Q. And just for the record, Mr. DeLuca, while
7 you're reviewing the document, I'd like you to
8 confirm that this is the promissory note for the
9 loan between you, Fred DeLuca, and LLM (sic) Land
10 Company.

11 A. I don't know if it is.

12 Q. You don't know if it is?

13 A. I don't.

14 Q. You never -- you don't -- have you ever
15 seen the promissory note between you and LCOC or LLM
16 Land Company?

17 A. I think I saw it once.

18 Q. Well, let's assume for purposes of the
19 questions that this is, in fact, the promissory note
20 that was executed. And if you look at the last
21 page, you'll see it was executed by Anthony Pugliese
22 on behalf of Land Company of Osceola County, LLC,
23 and Anthony Pugliese as manager of Land Company of
24 Osceola County, LCC.

25 A. The third page from the back?
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1 Q. Yes. So let's assume for purposes of our
2 questioning that this is, in fact, the promissory
3 note as stated between you, Mr. DeLuca, and the
4 parties indicated involving the Destiny land deal.

5 A. Okay.

6 Q. Okay? And, in fact, this is -- this is a
7 document, and I'd like you to turn to Page 3 if you
8 could. There is a paragraph that says "Repayment
9 terms." Do you see that?

10 A. I see that paragraph.

11 Q. And I would like you to take a moment to
12 just look at this section entitled, "Repayment
13 Terms," and just read it if you would --

14 A. Sure.

15 Q. -- to yourself.

16 A. (Witness complies.)

17 Q. Have you had a chance to read that
18 paragraph, sir?

19 A. Should I read the one that says "repayment
20 upon conveyance" also --

21 Q. No.

22 A. -- or just "repayment terms"?

23 Q. Repayment terms. I was very clear in
24 which paragraph I wanted you to read, sir. So the
25 repayment -- your counsel can come back and ask you
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1 any question he wants. But for purposes of my
2 examination, please read and tell me when you are
3 finished reading the repayment terms.

4 A. I read the repayment terms.

5 Q. All right. And, again, look at your -- on
6 your Wachovia loan, have it side-by-side so we
7 can -- we can go back and forth between your
8 repayment terms clause in your loan with Wachovia
9 and then the loan that you extended to LCOC; okay?
10 So I want you to look at those two paragraphs
11 side-by-side.

12 Now, in yours, Wachovia -- God bless you.
13 Wachovia does not charge you a fee if the loan is
14 extended beyond the maturity date. We established
15 that earlier; right? There is no fee according to
16 this paragraph; right?

17 A. Correct.

18 Q. But now let's look at the repayment terms
19 which is what you charged to LCOC, Anthony Pugliese
20 and other parties, if there is an extension.

21 Now, just as with your repayment term
22 clause, and they said the loan commences on
23 September 1 of 2005, so that's the same. And then
24 it says -- and then we talk about the maturity date
25 is August 1, 2008, in your loan, and similarly in
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1 the loan that's made to -- that you make to LCOC,
2 the maturity date is the same.

3 And it says here -- but the difference is
4 that in both, you've got that there cannot be a
5 default in order for this provision to kick in. But
6 in yours to LCOC, you charge LCOC for an extension,
7 an amount equal to 1% of the then principal balance.

8 And it says here, "Shall be extended to
9 and become a part of the principal for the fourth
10 loan year."

11 So you charge a fee in your loan to LCOC;
12 whereas, Wachovia -- and these loans are tied.

13 A. They're not tied.

14 Q. Whereas, Wachovia does not charge a fee to
15 you for an extension on your loan beyond the
16 maturity date.

17 A. Is there a question?

18 Q. Now, did you see -- do you see that, sir?

19 A. Is there a question?

20 Q. You didn't understand, do you see that,
21 sir?

22 A. Well, you made a long statement.

23 Q. Did you understand, do you see that, sir?

24 A. That's the question?

25 Q. Yes.

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1 A. Do I see the two paragraphs? I see the
2 two paragraphs and I know there are differences in
3 the two paragraphs.

4 **Q. And one of the differences is that you**
5 **charged LCOC a fee for the first year of extension**
6 **beyond the loan of -- and I'm reading from the sixth**
7 **line down, "An amount equal to one-quarter percent**
8 **of the then-principal balance which shall be added**
9 **and become a part of the principal for the fourth**
10 **loan year."**

11 You charge a fee to LCOC; whereas, for the
12 same year, if there's an extension for the same
13 year, the same date, Wachovia does not charge you a
14 single penny for an extension. Do you see that
15 difference, sir?

16 A. Oh, there's -- on that paragraph, there's
17 definitely a difference --

18 **Q. Do you say that difference?**

19 A. I have to finish my answer. In that
20 paragraph, there's definitely --

21 **Q. Well, okay, we can go back again. Do you**
22 **see that difference? And then you can talk about**
23 **other differences. Do you see that difference, sir?**

24 A. As I read these two paragraphs, I see that
25 there is a difference, just as there are differences
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1 throughout the loan document.

2 **Q. And one of those --**

3 A. There are many, many differences
4 throughout.

5 **Q. Yes, absolutely, there are many, many**
6 **differences. That's exactly my point.**

7 A. Right. And this was a --

8 **Q. And one of the -- excuse me.**

9 A. -- much better deal than he could have
10 gotten from iStar or anywhere else. There were
11 differences, definitely. This was the best deal
12 available.

13 **Q. And I move to strike as nonresponsive.**
14 **There were differences --**

15 A. Definitely.

16 **Q. -- and one of those differences,**
17 **Mr. DeLuca, that you did not disclose to**
18 **Anthony Pugliese at any time was that you were**
19 **charging a fee for an extension beyond the maturity**
20 **date on the loan that you made to him and to LCOC;**
21 **whereas, you were not charged a fee by Wachovia for**
22 **the same thing. I mean, that's one thing that you**
23 **just did not mention and you hid from**
24 **Anthony Pugliese.**

25 MR. HUTCHISON: Objection as to form,
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1 strike comment of counsel.

2 THE WITNESS: I didn't hide anything from
3 Anthony Pugliese.

4 BY MS. HOFFLER:

5 Q. Well, you certainly didn't tell him, look,
6 Mr. Pugliese, another way that I am going to make
7 money off you and LCOC with this deal is I'm going
8 to charge you for any extension beyond the maturity
9 date of the loan, even though I'm not being charged
10 by Wachovia for the same thing. You didn't tell him
11 that, did you?

12 A. I didn't hide anything from
13 Anthony Pugliese. I told him --

14 Q. You did not tell him that, did you, sir?

15 MR. HUTCHISON: Answer the question.

16 BY MS. HOFFLER:

17 Q. Answer the question.

18 A. I did not tell him the differences. I did
19 not tell him how I was going to structure this.

20 Q. Right. And, additionally, you also didn't
21 tell them that, oh, for the second year of
22 extension, just as with your -- in your Wachovia
23 loan, automatically, the second year it would
24 automatically extend, we talked about that, and you
25 were not being charged a fee by Wachovia, for the
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1 second year, and read along with me Mr. DeLuca,
2 "that the maturity date shall be automatically
3 without any action" --

4 MR. HUTCHISON: Where are you reading
5 from?

6 MS. HOFFLER: I'm reading from the LCOC
7 loan document, promissory note.

8 THE WITNESS: Which line and section?

9 BY MS. HOFFLER:

10 Q. Okay. Under "Repayment Terms." I'm only
11 referring to repayment terms. Two, three, four,
12 five, six, seven, eight -- the eighth line, seventh
13 and eighth line.

14 Now, let me go into one. It says here,
15 "And so as long as no Default exists on August 1,
16 2009, the Maturity Date shall automatically, without
17 any action by the Borrower or Lender, extended until
18 August 1 of 2010; and an amount equal to 1% of the
19 then principal balance shall be added to and become
20 a part of the principal for the fifth loan year."

21 Do you see that?

22 A. I do.

23 Q. So if there is an extension to the fifth
24 loan year, you are getting paid an additional 1%
25 that will then be added to the principal for the
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1 loan that you make to LCOC, right, according to this
2 document?

3 A. Yes, there is 1% that will be added to the
4 principal.

5 Q. Where there is no 1% at all or anything
6 charged to you by Wachovia for the same time period
7 if there is an extension, just based on your
8 promissory note that you signed; isn't that right,
9 sir?

10 A. That is correct.

11 Q. And you didn't tell Anthony anything about
12 that, that there was a difference between what you
13 were charged, which was nothing for an extension,
14 and what he and LCOC were being charged. You did
15 not tell him about that difference, did you, as
16 relates to these two loans?

17 A. No, I -- the --

18 Q. Yes or no, sir.

19 A. The details of the loan were negotiated
20 between the lawyers.

21 MR. GARY: Sir, why don't you answer yes
22 or no and then explain.

23 BY MS. HOFFLER:

24 Q. Just answer yes or no.

25 MR. GARY: We are going to be here --
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1 you're going to be here next week --

2 THE WITNESS: Well, I -- well, look --

3 MR. GARY: -- and I know you don't want to
4 do that.

5 THE WITNESS: This was already answered.
6 I said to you that I did not --

7 MR. GARY: I don't know what you said. We
8 want you just to answer.

9 THE WITNESS: I said --

10 MR. HUTCHISON: Let him finish the
11 question and answer.

12 BY MS. HOFFLER:

13 **Q. Okay. Let me repose the question.**

14 MR. HUTCHISON: No, let me -- let me just
15 finish what I --

16 MR. GARY: Rephrase the question. Let him
17 rephrase the question.

18 THE WITNESS: I just want to clarify --

19 MR. GARY: No, no, no.

20 THE WITNESS: Am I allowed to answer a
21 question?

22 MR. HUTCHISON: Of course you are.

23 MR. GARY: Let them rephrase the question.

24 THE WITNESS: What am I supposed to do --

25

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1 BY MS. HOFFLER:

2 Q. I withdraw the question and I'm going to
3 ask it again because all this back and forth, I want
4 a clean record, sir.

5 A. Uh-huh.

6 Q. You did not, sir, tell Mr. Pugliese that
7 you were making additional money and charging him
8 and LCOC additional fees for the extensions on the
9 loan that you, sir, were not being charged in
10 connection with your loan to Wachovia, did you?

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

13 THE WITNESS: As I said earlier --

14 BY MS. HOFFLER:

15 Q. Yes or no and then --

16 A. As I said earlier, I told Anthony certain
17 parts of the loan, but I did not provide him with my
18 loan document.

19 Q. Okay. I move to strike as nonresponsive.

20 Hear me and hear me clearly. Did you tell
21 Anthony Pugliese that you were going to make money
22 if the loan was extended one year beyond the
23 maturity date and two years beyond the maturity
24 date, yes or no?

25 A. I did not tell Anthony Pugliese the
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1 details of the loan. I did not tell him all of the
2 details of the loan that we had with Wachovia.

3 Q. All right. And so -- which included
4 telling him that you were not being charged for an
5 extension on the loan by Wachovia; right?

6 A. I did not have the negotiation -- I didn't
7 go through the negotiations when these documents
8 were put together. So Anthony and I were not
9 discussing it. It was being discussed between the
10 lawyers.

11 Q. And you at no time even after the
12 execution of the operating agreement said, hey,
13 Anthony, let me just tell you, if there's an
14 extension of this loan beyond the maturity date that
15 I got with Wachovia, I get nothing, but if there's
16 an extension -- I'm not charged anything by
17 Wachovia, but if there's an extension on -- of the
18 loan that I have made to you, I do make money off of
19 it. You didn't tell him that, did you, sir?

20 A. No, I don't think I did because I didn't
21 know the details of the documents.

22 Q. Now, sir, now I'm going to ask you -- I'm
23 going to ask you some questions, sir, and pick up
24 from -- on discussions that we had yesterday
25 regarding Fred Florio. Now, you --

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1 THE WITNESS: Let me just take a break now
2 and I'll be right back.

3 MS. HOFFLER: What are we breaking for?

4 THE WITNESS: Restroom break.

5 MS. HOFFLER: Restroom break. Okay.
6 That's fine.

7 (Whereupon, a recess was taken from
8 11:30 a.m. to 11:39 a.m.)

9 BY MS. HOFFLER:

10 Q. Mr. DeLuca, when we last broke, I was
11 telling you that I was going to start asking you
12 some questions as it relates to Mr. Florio. I was
13 going pick up from where I left off yesterday. And
14 remember yesterday, you testified that Mr. Florio
15 was actually -- you said an employee of Prestige; is
16 that correct?

17 A. I believe that he is an employee of
18 Prestige.

19 Q. And back in the period of 2005, say
20 through 2011, was he an employee of Prestige?

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

23 THE WITNESS: I believe so.

24 BY MS. HOFFLER:

25 Q. Now, even though he had a 401(k) from
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1 **Subway, he was an employee of Prestige?**

2 A. I don't know about the 401(k)s.

3 **Q. And even though he had a car from**
4 **Doctor Associates, he was an employee you're saying**
5 **of Prestige?**

6 A. I don't know who the car was registered
7 to.

8 **Q. And even though his car insurance was**
9 **taken out by Subway, you're saying he was an**
10 **employee of Prestige?**

11 A. Well, I said to you, I thought he was an
12 employee of Prestige. I'm not even certain what
13 company he was employed by.

14 **Q. And how long has he -- how long was he**
15 **working for you? 15 years?**

16 A. I think 15 years, maybe 20 even.

17 **Q. And even though his life insurance policy**
18 **was taken out by Subway or Doctor & Associates,**
19 **you're saying he was an employee of Prestige; is**
20 **that correct?**

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

23 THE WITNESS: I don't know anything about
24 life insurance policies.

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1 BY MS. HOFFLER:

2 Q. Well, let's say even though his dental
3 insurance policy was taken out by Doctor Associates
4 or Subway, you're still saying he was an employee of
5 Prestige?

6 MR. HUTCHISON: It's been asked and
7 answered.

8 BY MS. HOFFLER:

9 Q. Well, did you answer a question about the
10 dental insurance?

11 A. Well, I said that I thought he was an
12 employee of Prestige.

13 Q. Uh-huh.

14 A. I don't know when Prestige was formed. I
15 don't know about what he got from where, you know.

16 Q. Well, let me go further. You do know his
17 email address is a Subway email address like yours?

18 A. It is.

19 Q. Yeah. Even though he worked for Prestige,
20 even though you don't know when it was formed or
21 anything?

22 A. No, but lots of people have Subway email
23 addresses that are not employees.

24 Q. That's precisely my point, sir. And even
25 though he received bonuses from Subway like a Subway
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1 **employee, you're saying that he still worked for**
2 **Prestige maybe?**

3 A. I don't know.

4 MR. HUTCHISON: Objection and move to
5 strike comment of counsel.

6 You can answer.

7 THE WITNESS: I don't know the details of
8 his bonuses.

9 BY MS. HOFFLER:

10 **Q. Who approved his bonuses?**

11 A. I don't have any recollection of his
12 bonuses.

13 **Q. Who approved his bonuses, sir? I just**
14 **asked who approved them.**

15 A. I don't even have a recollection of
16 bonuses, let alone who approved them.

17 **Q. Okay. If he got a bonus from Subway or**
18 **Doctor & Associates, who would have approved them?**

19 MR. HUTCHISON: Objection, calls for
20 speculation.

21 THE WITNESS: I don't know.

22 BY MS. HOFFLER:

23 **Q. You don't know. Now --**

24 A. I don't think -- listen, let's be more
25 clear on this. It's not an approval process with
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1 bonuses. When we have bonuses, our bonus program,
2 it's often done by formula, and then at the end of
3 the year the accountants pay them out. But -- and
4 so when you say who approved them, there is not an
5 actual approval process.

6 **Q. And that's the process for Doctor &**
7 **Associates' employees?**

8 A. I don't know -- you're referring to when
9 we have bonuses at Doctor's Associates?

10 **Q. I just said bonus for Fred Florio. And so**
11 **you talked about a process. And so I'm just**
12 **clarifying, that process, Mr. DeLuca, is the process**
13 **for bonuses for Doctor & Associates' employees;**
14 **right?**

15 A. No, it crosses over many companies.

16 **Q. Okay. So is it your testimony that for**
17 **Prestige, the bonus process is the same?**

18 A. I don't know the details of it.

19 **Q. Don't know the details. But when you just**
20 **gave a statement about the process for giving**
21 **bonuses, you were referring to Doctor & Associates'**
22 **employees, weren't you?**

23 A. No, I was referring to a process that
24 crosses over several companies.

25 **Q. But you can't say whether it crosses over**
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1 **to Prestige, can you?**

2 A. I can't say. I don't know the details of
3 this.

4 **Q. And does Peter Buck know the details of**
5 **that?**

6 A. I'm sure he doesn't.

7 **Q. Does Peter Buck know that -- that**
8 **Fred Florio was a treasurer of LCOC? Was he aware**
9 **of that?**

10 A. I don't think he knows anything -- I don't
11 think he even knows about LCOC. I don't think he
12 has one idea about LCOC or Anthony Pugliese.

13 **Q. He knows he's getting sued. I mean,**
14 **it's -- you know, Doctor & Associates, that's his**
15 **company, too; right? He own 50% of it, doesn't he?**

16 A. Yes. I would doubt that he knows one bit
17 about this.

18 **Q. Uh-huh. You've never had a discussion**
19 **with him about it?**

20 A. I never have.

21 **Q. Now, if you don't know who Fred Florio**
22 **worked for, who would know?**

23 A. I think --

24 **Q. Other than Fred Florio, of course.**

25 A. I think that probably I'd go to
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1 Dave Worroll and ask him.

2 Q. So Dave Worroll -- and what was
3 Dave Worroll's title at Doctor & Associates?

4 A. In what time frame are you referring to?

5 Q. Let's just say I'm looking at the time
6 frame 2005 to 2011.

7 A. Yeah, I think now his title would be
8 controller, I think.

9 Q. Controller. And how long --

10 A. And --

11 Q. I'm sorry, sir.

12 A. I don't know if -- I don't know how long
13 that title, he's had that title.

14 Q. Now, the HR Department for Doctor &
15 Associates, they're responsible for Prestige, aren't
16 they? Prestige, dealing with Prestige employees?

17 A. I -- I think the answer is probably yes.
18 I'm not sure. I just don't know.

19 Q. The answer is probably what?

20 A. It's probably yes. I just don't know.

21 Q. All right. Now, Mr. DeLuca, I'm going to
22 touch on something that you and I discussed
23 yesterday, and I want to go over something with you
24 related to criminal tax liability issues that you
25 may have. And I want to be fair to you and I want
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1 to give you the opportunity to consult in advance
2 with your criminal defense lawyer, unless you want
3 to waive that right or unless you want to invoke
4 your Fifth Amendment privileges. You certainly have
5 the right to do that.

6 If you invoke that privilege, of course,
7 we certainly understand our responsibilities and we
8 won't ask you any questions related to such criminal
9 tax liability. But I want to now give you the
10 opportunity, Mr. DeLuca, to consult if you feel it's
11 necessary with your criminal defense lawyer prior to
12 you answering any questions, because that really is
13 what I am required to do given that there is a
14 criminal tax liability issue -- there could be a
15 criminal tax liability issue associated with the
16 answers that you might give. So do you want to take
17 a moment and call your criminal defense lawyer?

18 A. Why don't you do this. Why don't you give
19 me list of the questions and I'll read them. I
20 don't think there is any need to call anyone, but I
21 don't know what the questions are. So until you
22 tell me, I can't tell you about this.

23 Q. I'm not going to give you a list of the
24 questions. But if you want to just do it on a
25 question-by-question basis, we can certainly do
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1 that. But I'm putting you on notice right now that
2 there might be criminal tax liability exposure for
3 you, and I want to give you the opportunity now, as
4 a professional, in the context of this deposition,
5 to consult with your counsel beforehand if you want
6 to.

7 A. Well, look, I can't imagine a situation
8 where there would be criminal tax liability. But if
9 you give me a list of the questions, we will be able
10 to review them and decide if there's even something
11 for us to be thinking about.

12 Q. Okay. Well, I'm not going to give you a
13 list of the questions. I'm just going to go through
14 the questions now. But I want to --

15 A. Well, I would say this. I don't think I
16 should even go down this pathway, because you're
17 telling me that some bad thing might happen that I
18 have no any idea what you're talking about. And
19 you've got a whole big, long list of questions, and
20 I just don't know where you're going with this.

21 Q. I'm telling you where I'm going with it.

22 A. Okay.

23 Q. And so why don't --

24 A. Well, let me --

25 Q. Do you want to take a break and talk to
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1 **your counsel? And we will certainly allow you to do**
2 **that.**

3 THE WITNESS: Do we need a break to talk
4 about this?

5 MR. HUTCHISON: I haven't heard a question
6 yet.

7 MR. GARY: Or call your criminal lawyer.

8 THE WITNESS: Should we let her ask
9 questions?

10 BY MS. HOFFLER:

11 **Q. But if you want to have a criminal defense**
12 **lawyer present, then you can. Because, again, this**
13 **is a deposition --**

14 A. No, this is the most -- this is the most
15 ridiculous thing. I can't imagine a criminal tax
16 situation.

17 MR. HUTCHISON: Ask the question.

18 THE WITNESS: Ask the questions. Let's
19 see where it goes.

20 BY MS. HOFFLER:

21 **Q. Okay. That's what I suggested in the**
22 **beginning. But I want to give you --**

23 A. Well, go ahead.

24 **Q. -- the opportunity. Sir, I would like to**
25 **give you the opportunity if you feel it appropriate**
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1 because we have time. And I just think, you know,
2 when it involves criminal liability potentially,
3 certainly I don't want to have a witness not have
4 the benefit of his criminal defense counsel. And I
5 know you have criminal defense counsel.

6 MR. HUTCHISON: Okay. Enough commentary
7 and dissertation. He's got the warning.

8 MS. HOFFLER: You don't tell me enough
9 commentary or dissertation.

10 MR. HUTCHISON: Well, I'm going to --

11 MS. HOFFLER: You can't tell me enough.

12 MR. HUTCHISON: You're lecturing him.
13 You're trying to intimidate him. You're
14 harassing him.

15 MS. HOFFLER: You cannot --

16 MR. BELAVAL: Please don't raise your
17 voice.

18 MR. HUTCHISON: I'm not raising my voice.
19 You just yelled.

20 MR. BELAVAL: Because I'm trying to match
21 you.

22 MR. HUTCHISON: You just yelled. No,
23 there's nobody raising their voice. Edgar.
24 Edgar, calm down.

25 MR. GARY: Please, please, please.
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1 MR. BELAVAL: Don't do it again. I'm
2 giving you a warning.

3 MR. GARY: Please, please.

4 MR. HUTCHISON: The recording is on my
5 microphone right here.

6 MR. BELAVAL: I'll grab the microphone.
7 Don't do it again.

8 MR. HUTCHISON: Well, you need to calm
9 down, Mr. Belaval.

10 MS. HOFFLER: Well, you know --

11 MR. HUTCHISON: You can ask the question,
12 Miss Hoffler, and he'll answer it or he won't.

13 THE WITNESS: I would like to take a
14 break.

15 MS. HOFFLER: Okay. Go ahead and take a
16 break. That's what I suggested.

17 MR. GARY: He might want to call his --

18 MS. HOFFLER: He needs to call his
19 criminal attorney. That's what I told him.

20 (Whereupon, a recess was taken from
21 11:48 a.m. to 12:00 p.m.)

22 BY MS. HOFFLER:

23 **Q. Mr. DeLuca, prior to our recent break, I**
24 **indicated to you that I'm going to go into a line of**
25 **questioning and, basically, the answers to those**
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1 questions may elicit incriminating information. And
2 so I gave you the opportunity to consult with your
3 counsel and any criminal defense counsel that you
4 may have, to be fair, and given the issues at play
5 hear, so that you would have an opportunity to
6 consult with your attorney to make a determination
7 as to whether you want to waive the right to have
8 any criminal defense counsel here, or whether you
9 feel like you should invoked your Fifth Amendment
10 privileges.

11 And, again, if you do choose to invoke the
12 privilege, we understand our responsibility and we
13 won't ask any additional questions related to such
14 potential criminal liability. Okay? I just wanted
15 to make sure that we are clear.

16 A. Yeah, I don't have a criminal defense
17 counsel, but I did speak to my lawyer here.

18 Q. And you're satisfied so I can proceed with
19 the questions?

20 A. You may proceed.

21 Q. Now, Mr. DeLuca, we talked about
22 Fred Florio, and we talked about the fact that
23 Fred Florio, you testified that you believed he
24 worked for Prestige; right?

25 A. I believe he works for Prestige.
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1 **Q. But Fred Florio was receiving benefits**
2 **from Doctor & Associates; right?**

3 A. I don't know.

4 **Q. Well, let's assume his 401(k) was from**
5 **Subway, Doctor's Associates.**

6 A. I just don't know the details.

7 **Q. But if his 401(k), his car, his car**
8 **insurance, his life insurance, his dental insurance**
9 **and the like, bonuses were from Doctor's Associates**
10 **or Subway, then he's working for one company and**
11 **being paid by another company; right?**

12 MR. HUTCHISON: Objection, calls for
13 speculation and form.

14 THE WITNESS: Yeah, I just don't know the
15 details.

16 BY MS. HOFFLER:

17 **Q. You don't know the details of a 15-year**
18 **employee that's worked for you?**

19 A. Correct.

20 **Q. And you do know the details, sir, however,**
21 **of the favors that you testified about yesterday**
22 **that he did by going over and working on the LCOC**
23 **project; right?**

24 A. Yeah, I know that he worked on the LCOC
25 project.

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1 **Q. And he worked, you said it was a favor to**
2 **you, and he continued though to get paid by**
3 **Doctor's Associates or Subway.**

4 A. Yes. Well, whatever -- whatever he was
5 paid, by whether it's Prestige or Doctors', he was
6 paid on a regular basis.

7 **Q. He was paid on a regular basis. And he**
8 **was paid on a regular basis for -- and you said he**
9 **handled personal matters for you, you know, as a**
10 **favor to you.**

11 A. Well, I wouldn't put it -- he worked for
12 me. This was no favor. He worked for me and he did
13 a variety of things for me, some of them were
14 personal in nature.

15 **Q. Right. And yesterday you classified them**
16 **as favors.**

17 **So now let's talk about how for tax**
18 **purposes, sir, how you classified Mr. Florio. How**
19 **did you classify Mr. Florio?**

20 MR. HUTCHISON: Move to strike comment of
21 counsel, objection as to form.

22 THE WITNESS: I don't know.

23 BY MS. HOFFLER:

24 **Q. You don't know how he was classified for**
25 **tax purposes?**

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1 MR. HUTCHISON: Objection to form, asked
2 and answered.

3 BY MS. HOFFLER:

4 Q. Yes or no, do you know?

5 A. What was the question?

6 Q. How was he classified for tax purposes?

7 MR. HUTCHISON: Asked and answered,
8 objection as to form.

9 THE WITNESS: Yeah, as I said earlier, I
10 don't know.

11 BY MS. HOFFLER:

12 Q. And who would know? You don't know who
13 would know?

14 A. Well, I'm just thinking over here
15 because -- I actually don't know because there's a
16 tax department that we have, there's a controller.
17 I have separate counsel that handles my taxes. So I
18 don't know who would know that.

19 Q. And who in the tax department would be in
20 the best position to know in your operation?

21 A. I don't know.

22 Q. You don't know who in your tax department
23 could answer a question about the tax treatment of
24 one of your employees?

25 MR. HUTCHISON: Asked and answered.
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1 THE WITNESS: I don't know.

2 BY MS. HOFFLER:

3 Q. You don't. Who would know? Who would
4 know about who in the tax department would have that
5 information?

6 A. I think Dave Worroll might know that.

7 Q. Dave Worroll. And did you pay
8 Social Security benefits for Fred Florio for this
9 work that he did on your personal matters? Did you
10 pay Social Security benefits through Doctor &
11 Associates, even though it wasn't Doctor &
12 Associates work technically?

13 A. Yeah, I don't know how things were paid.

14 Q. Well, let me ask you this: Did you pay
15 his retirement --

16 MR. HUTCHISON: Asked and answered --

17 BY MS. HOFFLER:

18 Q. -- for Doctor's Associates, through
19 Doctor's Associates even though he was doing work
20 for you elsewhere?

21 A. I'm not sure about what a retirement is,
22 but I think -- I think that any payments he received
23 would have been either from Doctor's Associates or
24 Prestige or one of the related companies.

25 Q. And Prestige is -- what is the
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1 **relationship between Prestige and**
2 **Doctor's Associates?**

3 A. They are separate companies that have -- I
4 believe there is common ownership.

5 **Q. Are they affiliated companies?**

6 MR. HUTCHISON: Objection as to form --

7 THE WITNESS: Well, I don't know.

8 MR. HUTCHISON: -- to the extent it calls
9 for a legal conclusion.

10 THE WITNESS: Yeah, I'm not exactly sure
11 what you mean by affiliated.

12 BY MS. HOFFLER:

13 **Q. Well, Prestige -- what is the source of**
14 **Prestige's income?**

15 A. I'm actually not sure.

16 **Q. So you created a company that you own, but**
17 **you don't know the source of its income?**

18 A. I'm not sure.

19 **Q. How many other such companies did you**
20 **create that you own, but whose source of income you**
21 **don't know? How many others?**

22 A. I don't know.

23 **Q. It could be a lot; right?**

24 MR. HUTCHISON: Objection as to form.

25 THE WITNESS: I don't know the answer.
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1 BY MS. HOFFLER:

2 Q. Because these are like shell companies,
3 aren't they? I mean, these are shell companies that
4 you created?

5 MR. HUTCHISON: Objection as to form to
6 the extent it calls for a legal conclusion.

7 THE WITNESS: Not that I know of.

8 BY MS. HOFFLER:

9 Q. By you don't even know if these companies
10 have income; right? You can't say whether Prestige
11 has income or not, can you, as you sit here today?

12 A. Look, I don't know the details of the
13 company.

14 Q. Do you know if Doctor's Associates has
15 income, Mr. DeLuca?

16 A. I know about that company.

17 Q. Yeah. But so this company that you say
18 you believe that Fred Florio works for, you don't
19 know if there's any income derived from it?

20 A. I just don't know the details of it.

21 Q. And is there a checkbook? Does Prestige
22 have any checkbooks or any checks written out of
23 Prestige?

24 A. I don't know.

25 Q. And for people who you claim are employed
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1 **by Prestige, are there Social Security benefits that**
2 **are paid to those people for work that they do for**
3 **Prestige?**

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

6 THE WITNESS: I just don't know anything
7 about the details of this.

8 BY MS. HOFFLER:

9 **Q. And for those people that you claim like**
10 **Fred Florio that work for Prestige, are there any --**
11 **are there any retirement benefits that are paid to**
12 **them?**

13 MR. HUTCHISON: Objection, asked and
14 answered.

15 THE WITNESS: I don't know about
16 retirement benefits.

17 BY MS. HOFFLER:

18 **Q. And Fred Florio was not an independent**
19 **contractor, was he?**

20 A. For the purpose of working for me, he was
21 an employee.

22 **Q. He was an employee of what?**

23 A. I think he was an employee of Prestige.

24 **Q. Okay. But you don't know if he was an**
25 **employee of something -- of some other entity that**
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1 **may or may not have income. You don't know that.**

2 A. I -- I think he was an employee of
3 Prestige. I don't know.

4 **Q. Okay. Now, is there any income -- was**
5 **there ever any income for FD Destiny, the company**
6 **FD Destiny?**

7 A. I don't know.

8 **Q. What about any income for FD Destiny**
9 **Management?**

10 A. I don't know.

11 **Q. Was there ever any income for FD Destiny**
12 **Credit?**

13 A. I don't know.

14 **Q. And were there ever any bank accounts**
15 **established for either FD Destiny, FD Destiny**
16 **Credit, FD Destiny Management?**

17 A. I don't know.

18 **Q. Were there ever any employees of**
19 **FD Destiny, FD Destiny Management and FD Destiny**
20 **Credit?**

21 A. I don't know the details of that.

22 **Q. And did you ever file any tax returns,**
23 **Mr. DeLuca, for FD Destiny, FD Destiny Management or**
24 **FD Destiny Credit?**

25 A. I don't know.
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1 **Q. Who would know? Would it be David Worroll**
2 **again?**

3 A. No, I don't think so. On which question?

4 **Q. Who would know --**

5 A. All those questions in general?

6 **Q. -- if there were any taxes filed on any of**
7 **the employees that may have existed for FD Destiny,**
8 **FD Destiny Management, or FD Destiny Credit? Who**
9 **would know, sir, since you said you don't know?**

10 A. Yeah, I think David Friedman might know.

11 **Q. David Friedman. And who is**
12 **David Friedman?**

13 A. David Friedman works in my family office.

14 **Q. What is your family office? Which family**
15 **office is that?**

16 A. It's called Rockridge.

17 **Q. Does Rockridge have any -- is there any**
18 **income at Rockridge that comes into**
19 **Rockridge Capital?**

20 MR. HUTCHISON: C.K., I'm going to give
21 you a few more minutes on this, but we are
22 getting so far afield here.

23 MS. HOFFLER: Answer the whole --

24 MR. HUTCHISON: Well, I'm going to tell
25 him to stop answering.

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1 MS. HOFFLER: And we'll go to the judge,
2 not a problem.

3 MR. HUTCHISON: Okay. We're ready.

4 BY MS. HOFFLER:

5 Q. Is there any -- are there -- is there
6 any -- is there any income that comes into
7 Rockridge Capital that you said David Friedman works
8 for?

9 A. I don't know. I don't know the details of
10 how it works.

11 Q. Are there any taxes paid related to any
12 employees of Rockridge Capital?

13 A. I don't know how it works.

14 Q. Were there any taxes paid for any
15 employees that were working for Rockridge Capital,
16 but the taxes were being paid through Doctor &
17 Associates?

18 MR. HUTCHISON: Objection, asked and
19 answered.

20 THE WITNESS: I don't know.

21 BY MS. HOFFLER:

22 Q. So for when your employees of any of these
23 companies, even the ones that you don't know about,
24 when those employees handle personal matters for
25 you, do you get a tax benefit from them through your
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1 **Doctor & Associates company or do you get a tax**
2 **benefit for them for the work they do through**
3 **another company?**

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

6 THE WITNESS: Well, look, I don't know
7 about tax benefit. I get a benefit -- anybody
8 that does anything for me, I get a benefit.

9 BY MS. HOFFLER:

10 **Q. I'm asking about a tax benefit, sir.**

11 A. I don't know the -- what that means.

12 **Q. Well --**

13 MR. HUTCHISON: All right.

14 BY MS. HOFFLER:

15 **Q. You don't know what that means?**

16 A. I don't.

17 **Q. Let me just ask you this: Do you pay**
18 **taxes, you personally, Mr. DeLuca?**

19 MR. HUTCHISON: Okay. He's not going to
20 answer any more questions about his taxes.
21 He's done.

22 MS. HOFFLER: I didn't ask about
23 whether --

24 MR. HUTCHISON: Mr. DeLuca, I'm
25 instructing you --
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1 MS. HOFFLER: I didn't ask about
2 whether --

3 MR. HUTCHISON: -- not to answer any more
4 questions --

5 MS. HOFFLER: I didn't ask about the
6 amount of taxes.

7 MR. HUTCHISON: About the taxes.

8 MS. HOFFLER: They were -- I just -- what
9 I am going to do --

10 MR. HUTCHISON: You're so far afield now.

11 BY MS. HOFFLER:

12 **Q. What I'm going to do is, I'm going to ask**
13 **you these questions. And then you need to say for**
14 **the record, I am not --**

15 MR. GARY: May lead to discoverable
16 information.

17 MS. HOFFLER: Well, let me make the
18 record.

19 BY MS. HOFFLER:

20 **Q. I'm going to ask you questions and you**
21 **need to say for the record, I am not going to answer**
22 **this question based on instruction of my counsel, or**
23 **you can plead the Fifth. All right? So I'm going**
24 **to ask you a series of questions, and you can take**
25 **position if your counsel is going to do that.**

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1 A. No, I thought you said you were going to
2 go to the judge tomorrow. So why don't you just do
3 that.

4 **Q. Mr. DeLuca --**

5 A. And the judge will tell you what you can
6 do.

7 **Q. -- answer my questions, because I'm making**
8 **my record. And trust me, trust me, we are going to**
9 **the judge, but I need to have my record. I need to**
10 **have my record. So let me make my record.**

11 **Mr. DeLuca, for -- do you personally pay**
12 **income taxes?**

13 MR. HUTCHISON: Move to strike comment of
14 counsel.

15 Mr. DeLuca, do not answer these questions
16 about taxes upon advice from me.

17 BY MS. HOFFLER:

18 **Q. All right. Say upon advice of counsel,**
19 **I'm not answering that question. Go ahead.**

20 A. No, you heard what he said. I'm not going
21 to say what you tell me to say.

22 **Q. Okay. Well, then answer the question.**

23 MR. HUTCHISON: He's not answering the
24 question.

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1 BY MS. HOFFLER:

2 Q. Are you going to follow your counsel's
3 advice?

4 MR. HUTCHISON: Yes.

5 THE WITNESS: Yes, of course I'm going to
6 follow my counsel's advice.

7 BY MS. HOFFLER:

8 Q. That's all you need to say.

9 Now, does Doctor Associates pay taxes on
10 employees?

11 MR. HUTCHISON: We're getting too far
12 afield. Don't answer these questions. It's
13 all for harassment purposes. Just don't answer
14 the questions about taxes.

15 BY MS. HOFFLER:

16 Q. Are you going the follow the advice of
17 your counsel?

18 A. Yes.

19 Q. Now, does Prestige -- we talked about
20 Prestige, a company that you own, and that you say
21 you believe Fred Florio works for. Does Prestige
22 pay taxes on employees that work for it?

23 MR. HUTCHISON: I believe this was asked
24 and answered, but at this point he's not
25 answering any more questions on taxes.
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1 BY MS. HOFFLER:

2 Q. Are you going to follow the advice of your
3 counsel?

4 A. Yes.

5 Q. And you're not going to answer that
6 question?

7 A. I'm going to follow the advice of my
8 counsel.

9 Q. Are you going to plead the Fifth on that?

10 A. No.

11 Q. You're just not going to answer the
12 question?

13 MR. HUTCHISON: Correct.

14 THE WITNESS: I'm going to follow the
15 advice of my counsel.

16 BY MS. HOFFLER:

17 Q. Does Rockridge Capital have employees?

18 A. I believe it does.

19 Q. And is -- and you talk about that being a
20 home business or a family business. Is that
21 operated out of your home, Rockridge Capital?

22 A. No.

23 Q. Where is it operated out of?

24 MR. HUTCHISON: Objection, asked and
25 answered.

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1 THE WITNESS: It's in Connecticut.

2 BY MS. HOFFLER:

3 Q. And how many employees does
4 Rockridge Capital have, sir?

5 A. I'm not sure. I think perhaps three.

6 Q. And who are the three employees that
7 Rockridge Capital has?

8 A. I believe David Friedman is one. I think
9 Robert Ray is the second.

10 Q. That would be Robert Ray who is on the
11 phone?

12 A. Who is on the phone. And the name of the
13 third escapes me right now.

14 Q. And is there anybody else on the phone
15 other than Robert Ray right now?

16 A. I have no idea who is on the phone.

17 MS. HOFFLER: Mr. Ray, is there anybody
18 else on the phone with you?

19 MR. RAY: No, I'm by myself in my office,
20 locked door.

21 MS. HOFFLER: Okay. You're on the phone
22 with your office, I know, but is there anybody
23 there with you, sir?

24 MR. HUTCHISON: He answered your question.

25 MS. HOFFLER: We can't hear you.
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1 THE WITNESS: So --

2 MR. RAY: There is nobody else in my
3 office but myself.

4 MS. HOFFLER: Okay.

5 MR. RAY: There is nobody else on the
6 phone but me.

7 MS. HOFFLER: All right. Thank you.

8 BY MS. HOFFLER:

9 Q. So for Rockridge Capital, do those three
10 employees, David Friedman, Robert Ray, and the third
11 person whose name escapes you right now are -- do
12 you pay taxes through Rockridge Capital for their
13 services or do you pay taxes through another one of
14 your corporate entities on those three individuals?

15 MR. HUTCHISON: Mr. DeLuca is not
16 answering that question upon advice from me.

17 BY MS. HOFFLER:

18 Q. Are you pleading the Fifth on that,
19 Mr. DeLuca?

20 A. No.

21 MR. HUTCHISON: No, he's not pleading the
22 Fifth. He's not answering these questions
23 because they are all dealt for harassment and
24 they're irrelevant.

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1 BY MS. HOFFLER:

2 Q. Are you --

3 MR. HUTCHISON: And I'm telling him not to
4 answer them.

5 BY MS. HOFFLER:

6 Q. You are going to follow your counsel's
7 advice?

8 A. Yes.

9 Q. Now, you do realize that David Friedman is
10 somebody who was intricately involved and is
11 intricately involved in the day-to-day-operations of
12 the Destiny project; right?

13 MR. HUTCHISON: Object to form.

14 THE WITNESS: Not at all.

15 BY MS. HOFFLER:

16 Q. Is it your testimony that David Friedman
17 had no involvement in the Destiny project?

18 A. He had tangential involvement in the
19 Destiny project.

20 Q. And what tangential involvement did he
21 have?

22 A. He tried to get information from Anthony's
23 books and records about the finances and Anthony
24 wouldn't give it to him.

25 Q. And that's what you understand? You
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1 haven't seen any emails to that effect or anything,
2 have you?

3 A. That's what I understand.

4 Q. Okay. Now, and what about Bobby Ray?
5 He's on the phone right now. Was he very involved
6 in the -- or intricately involved in the operations
7 of Destiny?

8 MR. HUTCHISON: Objection as to form.

9 THE WITNESS: No, not in the operations,
10 but he too asked for financial information from
11 Anthony. So I would not call it intricately
12 involved, just tangentially involved.

13 BY MS. HOFFLER:

14 Q. So Rockridge Capital was created after the
15 Destiny project was in force; right?

16 MR. HUTCHISON: Objection to form.

17 THE WITNESS: I think it was.

18 BY MS. HOFFLER:

19 Q. And you don't know whether Social Security
20 benefits are paid for David Friedman or Robert Ray
21 through Rockridge Capital or through Doctor &
22 Associates, do you?

23 MR. HUTCHISON: Same objection.

24 THE WITNESS: Yeah, I'm not sure how it
25 all works.

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1 BY MS. HOFFLER:

2 Q. And who would know that, sir?

3 A. I think David Friedman might know how that
4 works.

5 Q. Now, who is responsible, sir, for
6 assembling the information for Doctor Associates --
7 Doctor's Associates for purposes of payment of taxes
8 of the employees, on the employees? Who is
9 responsible for that? Would it be Dave Worroll?

10 A. I don't know.

11 MR. HUTCHISON: Can you read back that
12 question.

13 MS. HOFFLER: No, I'll repeat the
14 question.

15 BY MS. HOFFLER:

16 Q. Who, Mr. DeLuca, would be responsible for
17 assembling information on employees of Doctor &
18 Associates for purposes of paying taxes?

19 MR. HUTCHISON: He's not going to answer
20 any more questions about taxes of the company.

21 BY MS. HOFFLER:

22 Q. Are you following the advice of your
23 counsel?

24 A. Yes.

25 Q. Are you pleading the Fifth?
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1 MR. HUTCHISON: No, he's not pleading the
2 Fifth. The questions are designed --

3 MS. HOFFLER: I said --

4 MR. HUTCHISON: -- for harassment and
5 intimidation and Mr. DeLuca is not going to
6 answer them without a court order.

7 MS. HOFFLER: What are yelling you for?

8 MR. HUTCHISON: Because you won't let me
9 talk. You keep cutting me off.

10 MS. HOFFLER: Then give me -- I mean --

11 MR. HUTCHISON: We were going to take a
12 lunch break at 12 o'clock. What happened?

13 MS. HOFFLER: Well, let me see. Let's
14 just put on the record what happened at
15 12 o'clock. You all broke at 12:10 to have
16 your notorious little caucus session. You had
17 your notorious little caucus session, came back
18 after 12:00, and then we started questioning.
19 So what happened? You all made the
20 determination you needed to take a break.

21 MR. HUTCHISON: At 12:30, we're taking a
22 lunch.

23 MS. HOFFLER: I not concerned about it.
24 We will take a break when we take a break.

25 MR. HUTCHISON: Well, I'm going at 12:30.
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1 BY MS. HOFFLER:

2 Q. Now, Mr. DeLuca, are you going to -- are
3 you going to follow your counsel's advice and not
4 answer any questions as relates to the taxes paid on
5 employees of Doctor & Associates, even those that
6 were involved in the Destiny project, yes or no?

7 MR. HUTCHISON: Well, I'll clarify for the
8 record, he had testified regarding those ones
9 involved in the Destiny project --

10 MS. HOFFLER: I'm not interested in you
11 clarifying for the record.

12 MR. HUTCHISON: -- and he didn't know.
13 With regard to the other ones --

14 MS. HOFFLER: Speaking objections in
15 Florida.

16 MR. HUTCHISON: He's not answering --

17 MS. HOFFLER: No. You answer --

18 MR. HUTCHISON: -- those questions. He's
19 already --

20 MS. HOFFLER: Mr. -- then don't answer the
21 questions. But I'm moving to strike your
22 speaking objection which is clearly
23 impermissible.

24 BY MS. HOFFLER:

25 Q. Now, Mr. DeLuca, answer the question. Are
U.S. LEGAL SUPPORT, INC. (561) 835-0220

1 you going to follow your counsel's advice and not
2 answer any questions about the taxes paid on
3 employees of Doctor & Associates that were involved
4 in the Destiny project, yes or no?

5 MR. HUTCHISON: Other than the answer --

6 THE WITNESS: I don't -- well, first of
7 all -- go ahead.

8 MR. HUTCHISON: Other than his answer --

9 MS. HOFFLER: Make an objection and say
10 I'm objecting.

11 MR. HUTCHISON: He is not talking ---

12 MS. HOFFLER: The way we do in Florida --

13 MR. HUTCHISON: He is not talking about
14 his taxes --

15 MS. HOFFLER: -- is I object for the
16 record.

17 MR. HUTCHISON: -- of Doctors &
18 Associates.

19 MS. HOFFLER: And we don't make speaking
20 objections.

21 MR. HUTCHISON: So, Mr. DeLuca, please do
22 not answer any questions about those taxes.

23 BY MS. HOFFLER:

24 **Q. Okay. Go ahead. Are you going to answer**
25 **the question, sir, or are you not going to answer**
 U.S. LEGAL SUPPORT, INC. (561) 835-0220

1 **the question or are you going to plead the Fifth,**
2 **which one?**

3 A. Well, I'm not going to plead the Fifth.
4 If you ask me a question, then we'll decide this
5 question by question.

6 **Q. I already asked you a question. I asked**
7 **you --**

8 A. I don't remember the question.

9 **Q. I asked you, sir, who -- or do you know**
10 **anything about the tax treatment of employees of**
11 **Doctor & Associates that were involved in the**
12 **Destiny project?**

13 MR. HUTCHISON: Objection, asked and
14 answered.

15 BY MS. HOFFLER:

16 **Q. How were they treated for tax purposes?**

17 A. Yeah, I don't know.

18 **Q. And who would know that?**

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

21 THE WITNESS: I'm not sure.

22 BY MS. HOFFLER:

23 **Q. You're not sure?**

24 A. Uh-huh.

25 **Q. Okay. So how was it asked and answered if**
 U.S. LEGAL SUPPORT, INC. (561) 835-0220

1 **he's not sure. You're not sure --**

2 MR. HUTCHISON: Because that was the
3 previous answer.

4 BY MS. HOFFLER:

5 **Q. You're not sure who from your company,**
6 **Doctor Associates, that you've been half owner of**
7 **since 1967, you're not sure who would be responsible**
8 **for knowing about taxes for employees, sir?**

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

11 BY MS. HOFFLER:

12 **Q. Is that your testimony?**

13 A. Yeah, that's what I said.

14 **Q. Would Dave Worroll know? He's your**
15 **controller.**

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

18 THE WITNESS: He might know.

19 BY MS. HOFFLER:

20 **Q. Now, Tom Hislop sued you. You recall**
21 **that; right?**

22 A. Tom Hislop.

23 **Q. Right. He sued you. He's your former**
24 **controller; right?**

25 A. He was.

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1 Q. And he sued you for breach of contract and
2 some other claims; right?

3 A. I don't remember the details.

4 Q. Do you remember if you won or lost in that
5 case?

6 A. I actually don't remember the details of
7 it.

8 Q. You don't remember if you paid him money?
9 He was controller. You don't remember if you paid
10 him?

11 A. I actually don't remember.

12 Q. Were you involved in that? Did you make
13 an appearance in that case?

14 A. I know I was sued. I just don't know the
15 details.

16 Q. Now, you were sued in your individual
17 capacity; right?

18 A. I don't recall.

19 Q. Well, I'm going to -- you know, when we
20 take your break, I'm going to -- we're going to
21 focus on that litigation. And -- but I just want to
22 know this, sir: Did you testify in that case?

23 A. I don't recall.

24 Q. How long ago were you sued, do you
25 remember that?

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1 A. It feels like somewhere between five and
2 eight years ago.

3 **Q. Have -- was he the first controller that**
4 **you had to sue -- that sued you?**

5 A. I don't think any controller has ever sued
6 us. He was an ex-employee that sued us.

7 **Q. Okay. Well, he was your controller and he**
8 **sued you. So when you say you don't think --**

9 A. Well, listen, I remember that there was a
10 dispute. I don't remember the details.

11 **Q. Okay. But just so that we are clear, you**
12 **don't remember whether any other controller sued you**
13 **other than him.**

14 A. Well, I don't --

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

17 THE WITNESS: Not -- to my knowledge, no
18 other have -- no other controllers have sued
19 me.

20 BY MS. HOFFLER:

21 **Q. And how long did he work for you?**

22 A. Tom Hislop?

23 **Q. Uh-huh.**

24 A. I think somewhere between -- I'd say
25 somewhere between 12 and 18 years, something in that
U.S. LEGAL SUPPORT, INC. (561) 835-0220

1 range.

2 **Q. And -- okay. So an employee of yours --**
3 **now, controller is an important position in a**
4 **company, isn't it?**

5 MR. HUTCHISON: Objection as to form.

6 THE WITNESS: Yeah, I'd say Tom had an
7 important position.

8 BY MS. HOFFLER:

9 **Q. Right. Because he's the one who is**
10 **responsible in part for the financial aspects of the**
11 **company; right?**

12 A. I think that's generally what controllers
13 do.

14 **Q. And you would work very closely with your**
15 **controller of Doctor & Associates, don't you?**

16 A. I don't know what the definition of
17 "closely" is.

18 **Q. Well, you certainly confer with him on a**
19 **regular basis, don't you?**

20 MR. HUTCHISON: Objection as to form.

21 THE WITNESS: Yeah, I'd say I talk to -- I
22 talk to the key employees on a regular basis,
23 and I'd say Tom was a key employee.

24 BY MS. HOFFLER:

25 **Q. Right. And he was a part of senior**
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1 **management; right?**

2 A. I would say that's correct.

3 **Q. Right. Because the controller at your**
4 **company, Doctor Associates, the controller is part**
5 **of senior management; right?**

6 A. Not necessarily.

7 **Q. I'm asking -- not -- I'm asking is that**
8 **the case at your company, Doctor Associates?**

9 A. Well, is it the case now? Is it --

10 **Q. Was it the case back then?**

11 A. Look, Tom was part of senior management.
12 David Worroll is part of senior management.

13 **Q. And so Tom who worked for you for 12 to**
14 **18 years, and who sued you, you're testifying that**
15 **you just don't know why he sued you?**

16 A. I don't remember it.

17 **Q. It just wasn't that important to you?**

18 MR. HUTCHISON: Objection as to form and
19 argumentative.

20 THE WITNESS: No, I think it's more that I
21 have a thousand employees and 37,000 stores and
22 I have a lot of things to work on. I just
23 don't remember that.

24 BY MS. HOFFLER:

25 **Q. Now, you have been found to have lied**
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1 under oath, sir, and intentionally misrepresented in
2 litigation in the past; isn't that correct?

3 MR. HUTCHISON: Objection to form.

4 THE WITNESS: I don't recall that.

5 BY MS. HOFFLER:

6 Q. Well, let me just refresh your
7 recollection. Do you remember the NASD dispute, a
8 lawsuit that you filed?

9 A. I need more detail on that. I don't
10 understand the initials.

11 Q. You don't understand what NA -- okay.
12 That's fine. We will go through it.

13 You don't remember lawsuits that you
14 filed? Not the ones that you're being sued in, but
15 the ones that you filed.

16 A. What was the question?

17 Q. You don't remember -- you don't remember
18 filing a NASD arbitration claim?

19 A. A security claim?

20 Q. Uh-huh.

21 A. I believe that one was filed.

22 Q. Right. And you were alleging -- this was
23 in 2007; right? And you were alleging that UBS, is
24 that Union Bank Swiss? Is that UBS?

25 A. I don't know what you UBS stands for.
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1 Q. Well, you were alleging, is it not, sir,
2 that UBS cost you \$192 million in damages for
3 improperly investing funds in tech stocks before the
4 2001 market crash; right?

5 A. There was -- it was some kind of claim
6 like that.

7 Q. Right. And that was a claim that you
8 filed; right?

9 A. I believe so.

10 Q. And -- and in that case, you lost
11 actually; right?

12 A. That's correct.

13 Q. And -- and the -- and it was found that
14 you were -- you, Mr. DeLuca, were a well-versed
15 investor and had directed the investments; right?
16 That's what the tribunal found.

17 A. I don't know what the tribunal found.

18 Q. Well, they also found, Mr. DeLuca, that
19 you, quote, lied under oath, changed your story and
20 intentionally, fraudulently misrepresented
21 information to the arbitration board. You don't
22 remember that? That was just 2007.

23 A. Now, if you showed me it, it would refresh
24 my memory.

25 Q. My question to you, sir: Do you remember
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1 that an arbitration board found that you lied under
2 oath, changed your story, and intentionally,
3 fraudulently misrepresented information to the
4 arbitration board?

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

7 THE WITNESS: I don't remember that.

8 BY MS. HOFFLER:

9 Q. You don't remember. Well, if that is what
10 an arbitration board found, you wouldn't dispute
11 their findings, would you?

12 MR. HUTCHISON: Objection as to form.

13 THE WITNESS: Well, I might. I might.

14 BY MS. HOFFLER:

15 Q. So is it your testimony here under oath
16 that you did not lie under oath, you did not change
17 your story under oath, you did not intentionally,
18 fraudulently misrepresent information to the
19 arbitration board? Is that your testimony under
20 oath here today?

21 MR. HUTCHISON: Objection as to form.

22 BY MS. HOFFLER:

23 Q. In connection with --

24 MR. HUTCHISON: And asked and answered.

25 MS. HOFFLER: Excuse me. Now I have to
 U.S. LEGAL SUPPORT, INC. (561) 835-0220

1 ask it over again. I mean, I know you're
2 anxious. You should be. But let me ask the
3 question over again so we have a clean record.

4 BY MS. HOFFLER:

5 Q. Mr. DeLuca. Hold on a second.

6 And you were sued as well, Mr. DeLuca, for
7 violation of the Connecticut Unfair Trade Practices
8 Act, right, in 2005?

9 A. I don't recall that.

10 Q. You don't recall that. You don't
11 recall -- do you recall being sued over the
12 advertising for Subway stores by some of your
13 franchisees?

14 A. I recall there was a case.

15 Q. You recall there was a case?

16 A. I don't recall the details right now, but
17 I recall there was a case.

18 Q. You recall there was a case. And that was
19 like a class action; right? A class of your
20 franchisees sued you?

21 A. I don't think so.

22 Q. You don't think it was multiple
23 franchisees that sued you?

24 A. Class action? I don't think so.

25 Q. Well, let me restate that. Do you recall
U.S. LEGAL SUPPORT, INC. (561) 835-0220

1 **that multiple, hundreds of your franchisees sued you**
2 **concerning advertising for Subway stores?**

3 A. Well, I don't recall that hundreds did. I
4 recall that there was a suit.

5 MR. HUTCHISON: A good place to stop.

6 It's 12:30.

7 MS. HOFFLER: Okay.

8 MR. HUTCHISON: Let's have lunch.

9 (Whereupon, a luncheon recess was taken
10 from 12:30 a.m. to 1:45 p.m. The videotape
11 deposition transcript continues in Volume 4.)

12 (Reading and signing of the videotape
13 deposition was not waived by the witness and
14 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 28th day of August, 2012, and was duly sworn.

Signed this 6th 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 237 through 354; 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 6th 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 28th day of August, 2012,
8 you gave your videotape deposition in the above cause. At
9 that time you did not waive signature. The transcript is
10 now available at our office for your review.

11 Please call (561) 835-0220 to schedule an appointment
12 between the hours of 9:00 a.m. and 4:00 p.m., Monday
13 through Friday, at a U.S. Legal Support office located
14 nearest you.

15 If you are a party in this action and your attorney has
16 ordered a copy of this transcript, you may wish to read
17 his copy of the transcript. In that event, please execute
18 the Errata Sheet, which can be found at the back of the
19 transcript, and return it to us for distribution to all
20 parties. We have enclosed a self-addressed envelope for
21 your convenience.

22 If you do not read and sign the videotape deposition
23 within a reasonable amount of time or 30 days, the
24 original, which has already been forwarded to the ordering
25 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,

26 Kimberley A. Ross, FPR
27 U.S. LEGAL SUPPORT, INC.
28 444 Railroad Avenue, Suite 300
29 West Palm Beach, Florida 33401
30 (561) 835-0220

31 _____
32 FREDERICK A. DELUCA

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

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