

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 4

Pages 354 through 450

Tuesday, August 28, 2012

1:45 p.m. to 4:10 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 (The videotape deposition transcript
7 continues from Volume 3.)

8 THEREUPON,

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

12 DIRECT EXAMINATION (CONT.)

13 BY MS. HOFFLER:

14 **Q. Now, Mr. DeLuca, when we finished -- well,**
15 **before our last break, I was chatting with you about**
16 **other litigation that you have been involved in,**
17 **specifically other litigation where you've been sued**
18 **in. Do you remember that?**

19 A. Yes.

20 **Q. And we talked about Thomas Hislop. And**
21 **Thomas Hislop, Thomas Hislop you testified was -- or**
22 **had been an employee of yours for you said roughly**
23 **between 12 and 18 years, and he had served as your**
24 **controller; right?**

25 A. Yes.

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1 Q. And you don't remember why he sued you?

2 A. In general I do.

3 Q. Why did he sue you?

4 A. I think it had to do with a bonus payment.

5 Q. A bonus payment. He was alleging that you
6 owed him money; right?

7 A. Yes.

8 Q. Did you pay him the money?

9 A. I think that was resolved.

10 Q. Did you pay him the money?

11 A. I don't recall how it was resolved.

12 Q. And he sued you in 2004; right?

13 A. I don't know.

14 Q. You don't remember. Is it that you don't
15 remember?

16 A. I don't remember.

17 Q. Okay. Now, Mr. DeLuca, do you have the
18 exhibits in front of you?

19 MR. HUTCHISON: Yes.

20 BY MS. HOFFLER:

21 Q. And I'm going to ask you specifically to
22 turn to Exhibit Number 5, which is the promissory
23 note between you and Wachovia for \$105 million.
24 Could you turn to that, please.

25 And while you're looking for that, were
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1 you ever sanctioned by a federal agency in any way?

2 A. I don't know.

3 Q. And so I just want to make sure that we
4 are very clear here. You're saying you don't know
5 whether you have ever been sanctioned by a federal
6 agency of the U.S. government?

7 A. Yeah, as I sit here, I don't recall that.

8 Q. Do you recall if Subway,
9 Doctor's Associates or any of your companies that
10 you owned, whether entirely or in part, have ever
11 been sanctioned by a federal agency?

12 A. I don't recall that.

13 Q. Have you ever paid damages for forming
14 shell companies?

15 MR. HUTCHISON: Objection as to form and
16 to the extent it calls for a legal conclusion.

17 THE WITNESS: I don't know what you're
18 talking about.

19 BY MS. HOFFLER:

20 Q. You don't know what a shell company is?

21 A. Listen, I don't know anything about this.
22 A shell company, I have an idea what that is.

23 Q. Okay. What is your idea, sir?

24 A. A shell company is one that is formed and
25 doesn't conduct any business. I really don't know
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1 the details of it.

2 **Q. Okay. Have you ever formed a company that**
3 **doesn't conduct any business?**

4 A. Well, I think in this case, we formed --
5 both FD Destiny and AVP Destiny were formed and they
6 were investors. So they didn't really conduct any
7 business.

8 **Q. Well, they conducted business as**
9 **investors?**

10 A. No, I wouldn't say that.

11 **Q. Well, have you ever -- other than the**
12 **FD Destiny -- and my question was whether you,**
13 **Mr. DeLuca, have ever formed a shell company that**
14 **was not conducting business. What is your answer?**
15 **Not what anyone else in the world did, but have you**
16 **ever formed such a company?**

17 MR. HUTCHISON: Objection as to form and
18 to the extent it calls for a legal conclusion.

19 THE WITNESS: Yeah, I --

20 BY MS. HOFFLER:

21 **Q. Based on your definition of a shell**
22 **company, have you ever formed a shell company?**

23 A. Well, I don't know the answer to that. I
24 know that some companies get formed and are never
25 used. So that would be a company that doesn't
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1 conduct business.

2 **Q. Okay. When you say some companies get**
3 **formed that are never used, are these companies that**
4 **you formed that were never used specifically?**

5 A. Me personally? No, I think -- I -- well,
6 I think that these would be companies that -- well,
7 I don't actually know the answer to this. But if
8 there -- I think that it would be related to
9 Doctor's Associates, but I don't know.

10 **Q. Okay. Did you ever pay fines to a federal**
11 **agency of the U.S. government due to having shell**
12 **companies created for a business transaction?**

13 A. I don't recall anything like that.

14 **Q. Let's look at Exhibit Number 5. You've**
15 **had a chance to review that. I asked you a few**
16 **questions previously about that.**

17 A. Let me just take a look at it again.

18 **Q. Okay. Sure.**

19 A. Okay.

20 **Q. And just for the record, this is a copy of**
21 **a document that you signed, is that correct,**
22 **Mr. DeLuca, on August 8th of 2005?**

23 A. I believe so.

24 **Q. Okay. And this -- this document, this**
25 **promissory note is based on a loan that you took out**
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1 in your individual capacity; is that correct? Do
2 you want to look at Page 1?

3 A. This is the note between myself and
4 Wachovia?

5 Q. Right.

6 A. Yes.

7 Q. Was Doctor & Associates involved at all
8 with this loan?

9 A. No.

10 Q. Was Doctor Associates, did they have --
11 did Doctor & Associates -- Doctor Associates have
12 any obligations under the terms of this loan?

13 A. Not that I know of.

14 Q. Okay. And we already discussed based on
15 the use of proceeds, and that's on the first page,
16 that this loan -- or this promissory note was to
17 make a loan in the original principal amount of
18 111 million to Land Company of Osceola County;
19 right?

20 A. It says in the use of proceeds that that's
21 what was contemplated.

22 Q. Yes. And I would like to turn to the
23 "Default" provision, which is on Page 3 if you
24 would. If you could take a moment to read over the
25 "Default" provision, please.

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1 A. It's long, it's complicated, but I read
2 it.

3 **Q. Okay. It's long and complicated, but you**
4 **read it. And, certainly, you're accustomed to**
5 **reading banking documents, aren't you, Mr. DeLuca?**

6 MR. HUTCHISON: Objection as to form.

7 THE WITNESS: No.

8 BY MS. HOFFLER:

9 **Q. You're not?**

10 A. No.

11 **Q. You usually sign banking documents without**
12 **reading them?**

13 A. I don't read banking documents.

14 **Q. Well, you have people that read them for**
15 **you and then brief you?**

16 A. I don't even know if they read them.

17 **Q. So you just sign banking documents**
18 **typically?**

19 A. Well, most typically, people bring me
20 something to sign and they say that I should sign it
21 and I sign it.

22 **Q. So in this instance, you did read the**
23 **"Default" provision and you noticed in the default**
24 **provision that there is, in fact, a reference to**
25 **Doctor Associates, Inc.; right? Actually, more than**
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1 one reference on Page 4 at the top of the page.

2 A. There is reference to Doctor's Associates,
3 Inc.

4 Q. Yes. And there is more than one reference
5 to Doctor Associates, Inc., right, in that
6 paragraph?

7 A. I don't see more than one, but maybe there
8 is.

9 Q. Okay. Well, let me go through this more
10 specifically. Under the "Default" provision, there
11 is a subparagraph that says "Cross Default"; am I
12 correct? On Page 3, it says "Cross default".

13 You may want to look at that. And you may
14 want to stay at --

15 A. Yes.

16 Q. -- that page and follow with me.

17 Under "Cross Default" it says, and I
18 quote, "At Bank's option, any default in payment or
19 performance of any obligation under any other loans,
20 contracts or agreements, the aggregate principal
21 amount of which in each case is in excess of a
22 1,000,000, Of borrower, Doctor's Associates, Inc.
23 ("DAI"), The Franchise Development Team, Inc.
24 ("FDTI"), FD Destiny, LLC, ("FD Destiny') or any
25 affiliate of either DAI, FDTI or FD Destiny, any
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1 default in payment of any principal of any
2 obligation of either Company to the Borrower, or any
3 default in performance under the Promissory Note in
4 the original principal amount of \$111,000,000 from
5 the Companies to the Borrower dated August 9th,
6 2005," and in quotes it says, (the "Land Promissory
7 Note") or the Mortgage, Assignment of Rents,
8 Security Agreement and Fixture Filing from LMLC to
9 the Borrower beyond any applicable grace period."
10 And then it has a parenthesis, ("affiliate" shall
11 have the meaning as defined under 11 U.S.C.
12 Section 101, as in effect from time to time, except
13 for -- except that the term "Borrower" shall be
14 substituted for the term "Debtor" therein)."

15 Do you see that?

16 A. I saw that.

17 Q. And so that section, that "Cross Default"
18 section implicates, does it not, Doctor &
19 Associates, FDTI which you own, FD Destiny which you
20 own, or any affiliate of either Doctor Associates,
21 FDTI or FD Destiny? I mean, those companies are
22 specifically mentioned and implicated in the "Cross
23 Default" provision of this loan, aren't they?

24 MR. HUTCHISON: Objection as to form.

25 THE WITNESS: They are mentioned. They
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1 are not implicated.

2 BY MS. HOFFLER:

3 **Q. Well, what would you call it, sir?**

4 A. Mentioned.

5 **Q. So it's your position that they are just**
6 **mentioned and there is no meaning to them being**
7 **mentioned in the "Cross Default" provision?**

8 A. No, they are mentioned and it explains it.

9 **Q. And what does it explain, sir, based on**
10 **your understanding?**

11 A. I actually don't understand all the
12 details, but I think it basically says that -- well,
13 actually, I would hesitate to say what it says
14 because it's very complicated.

15 **Q. What's your understanding?**

16 A. What's my understanding? I'll try it
17 again.

18 **Q. Well, sir, you signed the promissory note;**
19 **right?**

20 A. I did.

21 **Q. And you are 50% owner of**
22 **Doctor Associates; right?**

23 A. I am.

24 **Q. And you were 50% owner of Doctor**
25 **Associates when this was signed in 2005; right?**
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A. I was.

Q. And you were owner of FDTI, right, at the time?

A. Partial owner, yes.

Q. And you were partial owner or complete owner of FD Destiny at the time; right?

A. I'm not sure when FD Destiny was formed. So I don't know at the time.

Q. Okay. Now let me just -- FD Destiny was formed based on the Destiny project; right?

A. Yes, but I don't know when it was formed.

Q. Okay. So suffice it to say, that FD Destiny was not created before you met Anthony Pugliese; right?

A. Yes.

Q. You agree with me on that; right?

A. Yes.

Q. All right. And you met Anthony Pugliese in what, 2004, end of 2004?

A. No. I think it was in 2005.

Q. In 2005. So if FD Destiny wasn't created before you met Anthony Pugliese, and this agreement was signed in 2005, it's pretty fair to say that FD Destiny was created in 2005, no?

A. Well, that's a different question. You
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1 were asking before or after. I don't know when
2 FD Destiny was formed in relationship to this
3 document.

4 **Q. You met Anthony Pugliese in 2005; right?**

5 A. I did.

6 **Q. You signed this document in 2005; right?**

7 A. I did.

8 **Q. So common sense would tell you that**
9 **FD Destiny was created in 2005.**

10 MR. HUTCHISON: Objection as to form and
11 asked and answered.

12 THE WITNESS: Common sense wouldn't tell
13 me that, but I think that FD Destiny was formed
14 in 2005.

15 BY MS. HOFFLER:

16 **Q. So what is your understanding in the**
17 **"Cross Default" provision of the document, a**
18 **promissory note that you signed, of the implications**
19 **on FD Destiny, FD Destiny -- FD Destiny, FD Destiny**
20 **Development Team, Inc., Doctor & Associates as**
21 **relates to this loan?**

22 A. What's my understanding as the
23 implications --

24 **Q. Yes.**

25 A. -- relating to them? None. There's no
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1 implications to them.

2 **Q. There's no -- so if you default on this**
3 **loan, no implication to Doctor Associates?**

4 A. No. There's implications to me, but not
5 to Doctor's Associates.

6 **Q. So then why would Doctor Associates be**
7 **even mentioned in this loan document?**

8 A. I don't know.

9 **Q. Well, you certainly didn't tell them,**
10 **don't mention Doctor Associates in this loan**
11 **document, did you?**

12 A. I didn't read it.

13 **Q. Well, you know, you're a seasoned business**
14 **person; right? You've been in business since 1965;**
15 **right?**

16 MR. HUTCHISON: Objection as to form.

17 THE WITNESS: I have been.

18 BY MS. HOFFLER:

19 **Q. You have been in business since 1965?**

20 A. I have been.

21 **Q. You run a billion-dollar company; right?**

22 A. I do.

23 **Q. You had able lawyers work with you on this**
24 **promissory note, did you not?**

25 A. I don't know who worked on that promissory
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1 note.

2 Q. Well, you've been sued enough to know that
3 saying, I didn't know if I read the document, is not
4 going to get you off the hook. You know that, don't
5 you?

6 MR. HUTCHISON: Objection as to form, move
7 to strike comment of counsel, and
8 argumentative.

9 BY MS. HOFFLER:

10 Q. You do know that, don't you?

11 MR. HUTCHISON: Same objection.

12 THE WITNESS: I don't know anything that
13 you say is correct, but I do know that I signed
14 the document.

15 BY MS. HOFFLER:

16 Q. Okay. When you sign something, the
17 presumption is that you agree with the contents of
18 it; right?

19 A. No. It means that I have a contract with
20 Wachovia Bank that I have made with them and I have
21 to live up to it.

22 Q. Absolutely. And if in that contract there
23 are provisions involving Doctor Associates and other
24 companies that you own, they, too -- you have to on
25 behalf of those companies, you also have to live up
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1 to the obligations that those companies have; right?

2 A. No, not at all.

3 MR. HUTCHISON: Objection to the form and
4 to the extension it calls --

5 THE WITNESS: Because --

6 MR. HUTCHISON: -- for a legal conclusion.

7 Let me finish my objection.

8 BY MS. HOFFLER:

9 Q. Not at all? Okay. Well, let's just read
10 further in this document. Let's go down two
11 paragraphs. "Annual Financial Statements," do you
12 see that?

13 A. Yes.

14 Q. Specifically, and read along with me since
15 you feel that Doctor Associates has -- is not
16 implicated in this agreement, let's read it.

17 It says, "Borrower shall deliver to Bank
18 annually, within sixteen months of the previous
19 statement date on file with Bank, Borrower's
20 personal financial statement. Said financial
21 statement shall disclose all of Borrower's assets,
22 liabilities, net worth, income and contingency
23 liabilities, all in reasonable detail and acceptable
24 to the Bank and submitted on a form to be provided
25 by Bank or on such other form acceptable to Bank,
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1 signed by Borrower and certified by Borrower to the
2 Bank to be true, correct and complete."

3 You with me so far, Mr. DeLuca?

4 A. I read that, yes.

5 Q. "Borrower shall also deliver to Bank,
6 within 90 days after the close of each fiscal year,
7 audited financial statements reflecting the
8 operations during such fiscal year of DAI,
9 including, without limitation, a balance sheet,
10 profit and loss statement and statement of cash
11 flows, with supporting schedules." Do you see that?

12 A. I see that.

13 Q. Now, DAI is Doctor Associates; right?

14 A. I believe that's what that means, yes.

15 Q. Well, let's look at -- I mean, you know
16 what the name of your company is, but let's look on
17 the top of that page where this agreement
18 specifically defines what DAI is. Look at the
19 second line. It says Doctor's Associates, Inc., and
20 in parenthesis, it says DAI.

21 A. It does.

22 Q. So under the terms of this agreement, DAI
23 and you as a part owner of DAI must provide annual
24 financial statements of DAI; right?

25 A. Wrong. I must provide them.
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1 Q. Well, you, but DAI -- what happens if you
2 don't provide them?

3 A. I could be declared in default.

4 Q. And that is an obligation as the owner of
5 DAI because what they're interested in, in this
6 transaction, is how DAI is doing. I mean,
7 otherwise, why would they put in DAI even in this
8 loan agreement?

9 MR. HUTCHISON: Objection as to form,
10 calls for a legal conclusion.

11 BY MS. HOFFLER:

12 Q. Right? Now, let's go a little bit further
13 under "Tax Returns." Let's turn to Page 5, "Tax
14 Returns."

15 Now, is DAI an S corporation, do you know?

16 A. I think it is.

17 Q. All right. "Tax Returns. Borrower shall
18 deliver to Bank, within 30 days of filing, complete
19 copies of federal tax returns, as applicable,
20 together with all schedules thereto, including,
21 without limitation, K-1 statements for the Borrower,
22 the Companies," and the companies previously have
23 been defined to include, you know, DAI. But let's
24 go further.

25 A. I'm not sure -- I'm not sure that's the
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1 definition of company, is it?

2 Q. Okay. We'll go back and look at the
3 definition of companies.

4 A. Where is that located?

5 Q. Well, let me finish the paragraph and then
6 we will go back to the definition of companies.

7 A. Okay.

8 Q. Okay? So let me start again. "Borrower
9 shall deliver to the Bank, within 30 days of filing,
10 complete copies of federal tax returns, as
11 applicable, together with all schedules thereto,
12 including, without limitation, K-1 statements for
13 the Borrower, the Companies and FDTI and for all
14 other partnerships and subchapter S corporations,
15 each of which shall be signed and certified by
16 Borrower to be true and complete copies of such
17 returns."

18 Do you see that?

19 A. Well, you misread it a little bit but it's
20 generally correct.

21 Q. It's generally correct. Well, one thing
22 that is clear, it does say that you have to provide
23 the tax returns for all S corporations, and you
24 testified that you believe that Doctor Associates is
25 an S corporation; right?

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1 A. Let me just read what it says. But I
2 think the answer is I did have obligations to
3 provide data to the bank. They were my obligations,
4 not the obligations of the various companies
5 mentioned.

6 **Q. And that's based on you said that you**
7 **didn't even read the document before you signed it?**

8 A. No, I'm reading it based upon what it
9 says.

10 **Q. You didn't even read the document before**
11 **you signed it so you really don't know.**

12 A. No, I'm reading it right now, and it says
13 borrower shall deliver. I'm the borrower. I'm the
14 person who is supposed to deliver.

15 **Q. And they're interested and they're**
16 **implicating in this agreement your companies.**

17 A. Not implicating. They're not implicating
18 anybody. All they are doing is saying that I have a
19 requirement to provide certain information.

20 **Q. Well, you would be in default if you**
21 **didn't provide information related to Doctor**
22 **Associates, the Franchise Development Team, Inc.,**
23 **FD Destiny, LCC, or any affiliate of either Doctor &**
24 **Associates, FDTI or FD Destiny. And that's what it**
25 **says. And -- and --**

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1 A. It doesn't actually say that.

2 Q. And it says --

3 A. It says at the bank's option, I could be
4 in default.

5 Q. Well, and it says further, and it says
6 further, it talks about a security agreement and
7 fixture filing for LMLC. What is LMLC?

8 A. Where is that?

9 Q. On page -- at the top of Page 4.

10 A. Top of Page 4.

11 Q. It says LMLC. I'll help you out here. On
12 Page 1, LMLC is defined as LM Land Company, LLC, a
13 Florida limited liability company. Do you see that
14 under "Use of Proceeds"?

15 A. It says --

16 Q. I'm asking what the definition of LMLC.

17 A. Okay. LMLC is Land -- LM Land Company.

18 Q. There we go. And that's the land company
19 that -- that -- is that the -- what is LMLC? What
20 is LM Land Company?

21 A. I think LM Land Company owns the land.

22 Q. Now, let's go down to on Page 5, "Change
23 of Control." "Change of Control," read with me,
24 "Borrower shall not make or suffer a change of
25 ownership that effectively changes control of any of
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1 DAI," that's Doctor Associates, "FDTI," that's
2 Fred DeLuca or F -- that's Fred DeLuca, I guess --
3 I'm sorry, the Franchise Development Team, Inc.,
4 "FD Destiny, or either Company, or changes the
5 organizational structure of either of the foregoing
6 entities."

7 Now, that right there basically says there
8 cannot be a change of ownership of any of those
9 companies and, if so, there would be a breach of
10 this agreement. And that's what it says; right?

11 A. I don't know if it says it would be a
12 breach of the agreement, but it says that there --
13 shall not make a change of control of those
14 companies.

15 Q. Right. So -- so, again,
16 Doctor's Associates is listed. And at the time of
17 the execution of this agreement, it's saying that
18 there cannot be a change of control not only of
19 Doctor Associates, but of some of the other
20 companies that you own; right? FDTI, FD Destiny.

21 A. Yeah, it says that there shouldn't be a
22 change in control in those three companies.

23 Q. Uh-huh. And just as with any term of an
24 agreement, if there is a change in control, then you
25 would be in breach, just like with any of the other
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1 **terms?**

2 MR. HUTCHISON: Objection, asked and
3 answered.

4 THE WITNESS: Not necessarily.

5 BY MS. HOFFLER:

6 **Q. Well, if you didn't provide financial**
7 **statements, you said you would be in breach; right?**

8 **So --**

9 A. No, I didn't say that.

10 **Q. Oh, you did. When I asked about the**
11 **financial statements that had to be provided for**
12 **DAI, you said, well, if I didn't provide them, I**
13 **would be in breach.**

14 A. No, I didn't say that. I said that it was
15 a requirement of me to do certain things under the
16 loan, and that if I didn't do certain things the
17 bank had the option to say that I was in breach, but
18 I don't know which things that are breachable. But
19 it wasn't an automatic as far as I understood it.

20 **Q. Hmm. Let's look at the next -- let's look**
21 **at the next paragraph under "Single Purpose Entity".**

22 **And by the way, none of these terms did**
23 **you share with Anthony Pugliese; right? You didn't**
24 **share the terms about tax returns or the fact that**
25 **you had to provide annual financial statements for**
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1 **Doctor Associates. You didn't share that with**
2 **Anthony Pugliese, did you?**

3 A. On the terms of my loan with --

4 **Q. Yes.**

5 A. -- Wachovia, I did not give
6 Anthony Wachovia (sic) the terms of this agreement.

7 **Q. Okay. And let's look at "Single Purpose**
8 **Entity." It says, "Borrower shall at all times**
9 **cause LLOC, LMLC and FD Destiny (a) to not own any**
10 **assets other than the 27,410 acres of land in**
11 **Osceola County and Indian River County, Florida.**

12 MR. HUTCHISON: I'm sorry. Where are you
13 reading?

14 MS. HOFFLER: Page 5, the bottom of the
15 page under "Single Purpose Entity."

16 BY MS. HOFFLER:

17 **Q. "And such incidental personal property as**
18 **may be necessary for the operation thereof."**

19 **Do you see that?**

20 A. Uh-huh.

21 **Q. Would you like me read it again, sir?**

22 A. No, I'm going to read it.

23 **Q. Okay.**

24 A. I read it.

25 **Q. Now, that first two lines says, "Borrower**
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1 shall at all times cause LLOC," and for the record,
2 LLOC is defined on the first page as Land Company of
3 Osceola County, LLC.

4 Now, LLOC, that's a company that
5 Anthony Pugliese and his company had an interest in;
6 right?

7 A. LLOC?

8 Q. Yes.

9 A. I'm not sure what that company is.

10 Q. You don't know what Land Company of
11 Osceola County is?

12 A. Not LL -- I think it's normally referred
13 to as LCOC.

14 Q. Well, this says LLOC. Let's go a step
15 further. You've already established that LMLC is
16 Land -- is LM Land, Company, LLC, right, that owns
17 the land? You said that earlier.

18 A. LM Land Company owns the land.

19 Q. Right. And Anthony Pugliese had an
20 interest in that land, right, and his company?

21 A. No. That land was the interest -- well,
22 not at the time of this document. But the
23 contemplation was that LCOC was supposed to buy the
24 land.

25 Q. And say LCOC was supposed to buy the land.
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1 **At the time of the execution of this document, which**
2 **is before closing on the loan; right?**

3 A. Uh-huh.

4 **Q. The person that was on the hook for that**
5 **land in Osceola County and that signed the contract**
6 **for the purchase of that land was Anthony Pugliese;**
7 **right?**

8 MR. HUTCHISON: Objection.

9 BY MS. HOFFLER:

10 **Q. We talked about that yesterday.**

11 MR. HUTCHISON: Objection as to form.

12 BY MS. HOFFLER:

13 **Q. I mean, he's the one -- he's the one that**
14 **put the contract on that land; right?**

15 A. He made the -- well, I don't know. Him or
16 a related company or --

17 **Q. Him or a related company, a company**
18 **controlled by him put the contract. He and/or that**
19 **company put the contract on that land; right?**

20 A. That's correct.

21 **Q. So he was on the hook for it; right?**

22 A. No, I don't know what that means.

23 **Q. You don't know what "on the hook for"**
24 **means?**

25 A. Well, he wasn't on the hook for the land,
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1 like he had to buy it. He had a deposit down.

2 Q. Right. So he could have been -- so he had
3 an investment in that property because he had put a
4 contract on it, and he had put some of his own money
5 down; isn't that right?

6 A. That's what he told me.

7 Q. Right. And you certainly wouldn't be --
8 you didn't see? You're going into business with
9 him, you didn't see any of the documents related to
10 the land?

11 A. I did not.

12 Q. So -- but, well, certainly you wouldn't
13 have signed a promissory note to purchase land, a
14 promissory note for \$111 million if there had not
15 been a sales contract that was valid, would you
16 have?

17 A. Are you referring to this note from --

18 Q. Would you have signed -- would you have
19 taken out a \$111 million loan, Mr. DeLuca, for the
20 purchase of a property if there were not a valid
21 sales contract on it?

22 A. This loan from Wachovia --

23 Q. Yes or no, would you have taken out --

24 A. I'm explaining it.

25 Q. Okay. But let's say yes or no first.
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1 A. No.

2 Q. Would you -- no?

3 A. No, that's not my answer. The point is,
4 this -- this loan was not -- this was a loan that I
5 borrowed money for. This wasn't for the purchase of
6 the property.

7 Q. Excuse me.

8 A. The loan that I -- this loan was not --

9 Q. The loan -- it says "Use of Proceeds".
10 The borrower shall use. It didn't say could, would,
11 would of, should of, could of. It says, the
12 "Borrower shall use the proceeds of the loan," on
13 Page 1, "evidenced by this Note for the commercial
14 purposes of the buyer (sic) as follows: To make a
15 loan in the original principal amount of
16 \$111,000,000." And it says, "(the "Land Loan") to
17 Land Company of Osceola County, LLC, a Florida
18 limited liability company ("LLOC"), and LM Land
19 Company, LLC, a Florida limited liability company,
20 and in parens, ("LMLC", and together with LLOC,
21 collectively the "Companies").

22 So this loan, the proceeds of this loan,
23 according to the promissory note that you signed,
24 says that you, the borrower, shall use the proceeds
25 for the purchase of that land.

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1 MR. HUTCHISON: Objection. Misstates.

2 THE WITNESS: It does not say that. You
3 read it. You read it --

4 BY MS. HOFFLER:

5 Q. And --

6 A. -- and it clearly doesn't say that.

7 Q. And -- and you, Mr. DeLuca, would not have
8 taken out a promissory note for \$111 million tied to
9 the purchase of land in Osceola County without
10 knowing that there was a valid contract for that
11 purchase, would you have?

12 A. You're incorrect on many counts.

13 Q. You would have?

14 A. Look, this --

15 Q. Well, that certainly doesn't make good
16 business sense, Mr. DeLuca.

17 A. This was not -- look --

18 Q. Mr. DeLuca.

19 A. Let me explain my answer.

20 Q. Well, let me ask the question to you.

21 A. No, I'm still explaining the answer from
22 before.

23 Q. Well, let me -- let me clarify, because --

24

25 A. You've asked the question. I'm trying to
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1 answer it. So if you'll please let me finish.

2 **Q. Well, let me strike that question and ask**
3 **you a different one.**

4 MR. HUTCHISON: He's answering it.

5 THE WITNESS: I'm in the middle of
6 answering it.

7 BY MS. HOFFLER:

8 **Q. You're not in the middle of it.**

9 A. Yes, I am.

10 **Q. You're fighting with me.**

11 MR. HUTCHISON: No, he's not fighting with
12 you.

13 THE WITNESS: All I'm saying to you --

14 MS. HOFFLER: Who asked you? I mean, you
15 can make an objection for the record. You
16 don't interrupt your client.

17 MR. HUTCHISON: My objection is don't you
18 interrupt my client and let him finish his
19 answer.

20 MS. HOFFLER: Just make an objection for
21 the record. That's what we do in Florida. I
22 mean, how long have you practiced in Florida?
23 You make an objection for the record, you don't
24 have speaking objections, and then he answers.

25

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1 BY MS. HOFFLER:

2 Q. Let me ask this question.

3 MR. HUTCHISON: Well, finish your answer
4 if you'd like.

5 BY MS. HOFFLER:

6 Q. Mr. DeLuca.

7 A. I'm going finish the last question.

8 Q. That's fine. But would you as a business
9 person --

10 A. All right. Let me -- if that's fine, let
11 me finish the last --

12 Q. Would you as a business person, I want to
13 make sure we're clear on the question. Would you,
14 Mr. DeLuca, as a business person enter into a
15 contract for a loan for a \$111 million for the
16 purchase of land without knowing and without
17 satisfying yourself that it was based on a
18 legitimate purchase contract?

19 MR. HUTCHISON: Go ahead and answer the
20 question that you want to answer, Mr. DeLuca.

21 THE WITNESS: I didn't understand the
22 question. It was compound. So if you could
23 say it again.

24 BY MS. HOFFLER:

25 Q. I'm going to break it down for you.
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1 **Anthony DeLuca put a contract on --**

2 MR. HUTCHISON: Anthony Pugliese.

3 BY MS. HOFFLER:

4 **Q. I'm sorry. Anthony Pugliese -- let me**
5 **strike that and start from the beginning.**

6 **Anthony Pugliese put a contract for the**
7 **purchase of land in Osceola County; right? And that**
8 **was prior to meeting you.**

9 A. That's what I understand.

10 **Q. Right. And you believed, Mr. DeLuca, that**
11 **it was a valuable -- that there was some value to**
12 **that contract; right?**

13 A. No.

14 **Q. You felt there was no value to that**
15 **contract?**

16 A. To the contract itself, no.

17 **Q. Then if you felt there was no value to**
18 **that contract, then why in the world, Mr. DeLuca,**
19 **would you have entered into a promissory note with**
20 **Wachovia Bank for \$111 million for the purchase of**
21 **that land if you didn't think that the contract, the**
22 **purchase agreement that he had was valuable?**

23 A. Well, first of all, I didn't borrow money
24 from Wachovia to purchase the land. I borrowed
25 money from Wachovia to make a loan. Secondly, I
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1 didn't believe the contract on its face was
2 valuable, because on its face it was just a contract
3 to buy land. And I made an investment based upon
4 Anthony Pugliese telling me what he was going to do
5 with the land and how he was going to bring his
6 expertise to bear to get entitlements, just like he
7 had done many times previously. And he went through
8 the numbers of how he would be able to make a profit
9 using his skill and expertise.

10 So it had nothing to do with the land
11 itself. The purchase -- a contract to purchase land
12 has no value, but his representations of what he was
13 going to do were -- and also --

14 **Q. That's what it was based on?**

15 A. And also -- and, also, the fact that he
16 told me that the downside risk was extremely low
17 because the state wanted -- the federal government
18 wanted to purchase that land. They had an offer in
19 for a price very near the price that he was going to
20 pay. So that's -- that's why we talked about going
21 into business.

22 **Q. Okay. And under "Single Purpose Entity"**
23 **it says that the "Borrower shall at all times cause**
24 **LLOC, LMLC and FD Destiny --**

25 A. Put me in the right place in the document.
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1 Q. Page 5, the last thing, the last paragraph
2 I read. It says "Single Purpose Entity". This says
3 that you shall at all times cause LLOC, LMLC and
4 FD Destiny to not own any assets other than the
5 27,410 acres of land in Osceola County and Indian
6 River County. Do you see that?

7 A. I see that.

8 Q. Yes. And so in this loan, one of the
9 conditions to this loan that you got was that these
10 companies that owned the property or that were
11 involved in some capacity with this deal could not
12 own any other assets other than the 27,000 acres;
13 right?

14 A. It doesn't say that.

15 Q. Well, what does it say?

16 A. It says that I -- it says, Borrower,
17 that's me, shall at all times cause those companies
18 to not own. So if I had -- if I had control, I had
19 to do certain things.

20 Q. Well, it doesn't say if borrower has
21 control he could do certain things. It says, quote,
22 "borrower shall", not may, not could, if he has
23 control have, whatever. It says, "Borrower shall at
24 all times cause LLOC, LMCL and FD Destiny (a) to not
25 own assets other than the 27,400 (sic) acres of land
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1 in Osceola County and Indian River County."

2 Now, if you had a question with that, did
3 you ask any -- did you ask the bank about that
4 provision?

5 A. I didn't have a question about it.

6 Q. You didn't have a question about it.

7 Now, when LCO -- LLOC and LMLC, when
8 they -- when there was another, the Rodey property
9 was acquired. You're familiar with the fact that
10 there was another tract of land that was required --
11 acquired subsequent to you taking out this
12 promissory note.

13 A. That's not correct.

14 Q. It wasn't acquired?

15 A. The Rodey property was never acquired.

16 Q. It was you had rights to the Rodey
17 property.

18 A. No, I wouldn't say we had rights either.

19 Q. Okay. How would you describe the Rodey
20 property, if you know?

21 A. Anthony told me that --

22 Q. And, I'm sorry, this is just based on what
23 Anthony told you. Did you not look at any
24 documents?

25 A. I didn't look at any documents.
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1 Q. Okay. Tell me your understanding, sir.

2 A. Anthony told me that he wanted to get an
3 option on the Rodey property.

4 Q. Did he get an option on the Rodey
5 property?

6 A. I think he did.

7 Q. And so that became an asset. The Rodey
8 property, that option became an asset of LLOC or
9 LMLC, didn't it?

10 A. No.

11 Q. And -- well, you never looked at any
12 documents so how do you know whether it did or
13 didn't?

14 A. It wasn't an asset.

15 Q. And how do you know if you didn't look at
16 any documents?

17 A. An asset is normally something of value.
18 That was more of a liability.

19 Q. So it's your testimony here that that
20 additional property that you took was not an asset?

21 A. Correct.

22 Q. So it didn't enhance the value of the
23 project? Is that your testimony?

24 A. Not in and of itself.

25 Q. That you had additional land that could --
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1 that would enable you to have twice as much perhaps,
2 residential development, commercial development,
3 that didn't enhance the value of that deal?

4 A. No. It was a liability. It was not an
5 asset.

6 Q. So acquisition of property now you're
7 saying, or an option on property is a liability.
8 That's your testimony?

9 A. In that particular case --

10 Q. And I guess --

11 A. -- it was a liability.

12 Q. Then I guess the acquisition of the
13 27,000 acres was also a liability from just with
14 using your analysis.

15 MR. HUTCHISON: Objection as to form.

16 THE WITNESS: Look, I was referring to the
17 option on the Rodey property. I said that that
18 was a liability. I wasn't referring to every
19 land purchase made by everybody in every
20 situation.

21 BY MS. HOFFLER:

22 Q. And in either -- in any event, you never
23 once told Anthony Pugliese that under this -- this
24 promissory note that you had engaged in with
25 Wachovia, that you -- that LLOC, LMLC and FD Destiny
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1 could not own assets other than the 27 -- 27,410
2 acres of land in Osceola County. You never shared
3 that with Anthony Pugliese.

4 A. It doesn't say that.

5 Q. You didn't share anything in this
6 provision with Anthony Pugliese.

7 A. Look, it doesn't say what you said it said
8 to start with.

9 Q. Did you share any part of this provision
10 with Anthony Pugliese?

11 A. No, I did not.

12 Q. Just like you didn't share -- let's go
13 further with this provision, where it says in this
14 provision on the next page, when it says what you
15 have to do. And under (g) and (h), it says, "To
16 maintain adequate capital for the normal obligations
17 reasonably foreseeable in businesses of their sizes
18 and character and in light of their contemplated
19 business creations (sic), and to not co-mingle their
20 funds and other assets with those of any affiliate
21 of any other person." You didn't share that, that
22 clause with Anthony Pugliese either; right?

23 A. Let me just read this because it is
24 disengaged from the other part.

25 Q. Well, let me just ask you: Did you share
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1 anything -- did you share this term, or was this
2 another term that you didn't share with
3 Anthony Pugliese?

4 A. No, as I told you before, yesterday twice,
5 three times today, I did not share the details of my
6 loan with Wachovia.

7 Q. Okay. Then --

8 MR. HUTCHISON: Let him finish.

9 BY MS. HOFFLER:

10 Q. That's all I'm asking. Now, let's go to
11 the "Environmental Conditions of Florida Real Estate
12 and indemnity."

13 A. I didn't finish my answer.

14 Q. No, all I wanted to know is if you
15 shared it.

16 A. No, I need to explain the answer.

17 Q. But you did share -- no, I don't need --

18 A. Well --

19 Q. I just want a yes or no.

20 MR. HUTCHISON: You can finish your
21 answer.

22 BY MS. HOFFLER:

23 Q. No. When Mr. Hutchison is coming back and
24 questions you, you can do all you want.

25 MR. HUTCHISON: Finish your answer.
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1 THE WITNESS: No. I --

2 BY MS. HOFFLER:

3 Q. Yes or no.

4 MR. HUTCHISON: Yes, he can.

5 BY MS. HOFFLER:

6 Q. No. Yes or no. If I want you --

7 A. I don't want you guys to argue about this.
8 I'm going to stop because I don't want to be
9 interrupted in the middle of a question.

10 I better put this on.

11 I'll be happy to answer questions, but you
12 cannot --

13 Q. Then you need to -- then talk to your
14 counsel. He's interrupting you left, right and
15 center. So tell your counsel, Mr. Counsel, I don't
16 want you to interrupt me in the middle of my
17 sentence. I mean, if you don't want to be
18 interrupted, then tell your counsel.

19 MR. HUTCHISON: Did you finish your last
20 answer?

21 THE WITNESS: Can we stop now and confer?

22 I did not -- no, I did not finish.

23 BY MS. HOFFLER:

24 Q. He wants to stop and confer. So finish
25 your answer --

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1 MR. HUTCHISON: Finish your answer and
2 then we'll stop and confer.

3 BY MS. HOFFLER:

4 Q. Stop and confer. Finish your answer.

5 A. I will be happy to finish.

6 Q. Stop and confer.

7 A. Could you read for me --

8 Q. Stop and confer.

9 A. -- the question and answer that I gave?

10 Q. As far as I'm concerned, you've already
11 answered the question. Go ahead and stop and
12 confer.

13 MR. HUTCHISON: No, read the question
14 back.

15 MS. HOFFLER: Is this a break or is this
16 another time to lead your witness or whatever
17 you're trying to do?

18 MR. HUTCHISON: He's trying to finish his
19 answer.

20 Would you please read him the question and
21 answer back.

22 MS. HOFFLER: He's already finished his
23 answer.

24 THE WITNESS: No, I told you I didn't
25 finish my answer.

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1 BY MS. HOFFLER:

2 Q. The question was a yes or no. Did you go
3 through this term with Anthony Pugliese? You said,
4 no.

5 Done. That's the answer.

6 MR. HUTCHISON: That's not what he said.

7 BY MS. HOFFLER:

8 Q. If your -- if you want -- if your counsel
9 wants to go through with you and go through every
10 term, he can do that. He'll have an opportunity to
11 go through and ask you questions. And that's what
12 he'll do, because --

13 MR. GARY: He doesn't even know what the
14 question was.

15 THE WITNESS: Look, I'm not a lawyer, but
16 I realize you can't --

17 BY MS. HOFFLER:

18 Q. You're not a lawyer.

19 A. -- interrupt --

20 Q. I know you're not a lawyer.

21 A. You're doing it again. I can't even get a
22 sentence --

23 Q. Why are you pointing at me, Mr. DeLuca?

24 A. Because you are interrupting --

25 Q. No, it's not because of anything.

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1 A. -- continuously.

2 **Q. You are not to point at me.**

3 A. You are mean and rude, and it's a shame.

4 **Q. And you are mean and rude, and it's a**
5 **shame, too.**

6 A. Why don't you let me -- why don't you let
7 me finish an answer? It's very simple. I was in
8 the middle of answering a question. You went on to
9 something else, and I said I wasn't finished. If
10 you will just let me finish it, we will --

11 **Q. Let me move on here.**

12 MR. GARY: Finish --

13 MS. HOFFLER: Wait a minute. Wait a
14 minute. Before you finish, let me respond.

15 BY MS. HOFFLER:

16 **Q. You are a very rude, very rude,**
17 **condescending person.**

18 MR. HUTCHISON: All right. If we are
19 going to call each other names, it's a good
20 point for a break.

21 MS. HOFFLER: No, no, no. You can be in
22 here or not.

23 BY MS. HOFFLER:

24 **Q. So the next time you call somebody rude --**

25 MR. HUTCHISON: We're off the record right
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now.

BY MS. HOFFLER:

Q. Why don't you look at yourself in the mirror, Mr. DeLuca.

MR. HUTCHISON: Okay. Stop.

MS. HOFFLER: Now we can take a break.

MR. HUTCHISON: We're not going to play that game.

MS. HOFFLER: It's not a game. And take your rude counsel with you.

THE VIDEOGRAPHER: Going off the video record at 2:30 p.m.

MR. GARY: You're not quitting, are you?

MR. HUTCHISON: I'm taking a break.

MR. GARY: Oh, okay.

MS. HOFFLER: Okay, because you have to be here for three more days.

(Whereupon, a recess was taken from 2:30 p.m. to 2:42 p.m.)

BY MS. HOFFLER:

Q. On Page 5, Mr. DeLuca, of the promissory note that you signed with Wachovia, it talks about change of control and how borrower shall not make or suffer a change of ownership that effectively changes control of any -- of DAI, FDTI, FD Destiny U.S. LEGAL SUPPORT, INC. (561) 835-0220

1 **or any company or changes in the organizational**
2 **structure of any of the foregoing entities. Do you**
3 **see that?**

4 A. I see that.

5 **Q. When there was a --**

6 MR. GARY: Excuse me one second. Your guy
7 is not recording this, is he?

8 MS. HOFFLER: No, it would be illegal.

9 MR. HUTCHISON: It's being recorded right
10 here.

11 MR. GARY: No, I'm just saying, but he's
12 not recording it now.

13 MR. HUTCHISON: He doesn't have to. It's
14 being recorded right here.

15 MR. GARY: That ain't what I asked. I
16 just wanted to know if he was. But if he's
17 not, fine, go ahead.

18 MS. HOFFLER: Okay.

19 BY MS. HOFFLER:

20 **Q. During the period that this promissory**
21 **note was in effect, were there any changes of**
22 **control of Doctor & Associates, FDTI, FD Destiny,**
23 **Mr. DeLuca?**

24 A. Not that I know of.

25 **Q. Well, you didn't report any, did you, to**
 U.S. LEGAL SUPPORT, INC. (561) 835-0220

1 the bank?

2 A. I don't know of any.

3 Q. Now, under -- under -- on Page 6, there is
4 a clause entitled, "Environmental Condition of
5 Florida Real Estate and Indemnities." Do you see
6 that? And read with me.

7 It says, "Borrower warrants and represents
8 to Bank, except as reported by Borrower to the Bank
9 in writing prior to the date hereof, that (1) the
10 Florida Real Estate, LLOC, LMLC, and other (sic)
11 occupants of the Florida Real Estate, are in
12 compliance with and shall continue to be in material
13 compliance with all applicable federal, state and
14 local laws and regulations intended to protect the
15 environment and public health and safety of the same
16 as the same may be amended from time to time."

17 What did you undertake -- what efforts did
18 you undertake to ensure that the land and LLOC, LMLC
19 was in compliance with these environmental
20 regulations?

21 A. Me personally?

22 Q. Yes, sir, you personally.

23 A. I didn't do anything personally.

24 Q. Well, did you direct anyone to ensure
25 compliance?

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1 A. I did not.

2 Q. All right. Let's go to the "Miscellaneous
3 Provisions" on Page 7 of your promissory note with
4 Wachovia. Under "Miscellaneous Provisions," do you
5 see that?

6 A. I see it.

7 Q. Under "Compliance with Laws," it's about
8 midway through the paragraph. It's in bold print,
9 "Compliance with Laws," which is a sub --
10 subcaption, I guess.

11 And read with me. It says, Borrower
12 represents that Borrower, any loan document to which
13 it is a party -- I'm sorry. Let me read that again.

14 "Borrower represents that Borrower, any
15 subsidiary of Borrower, DAI, FDTI, any affiliate of
16 DAI or FDTI and the Companies are in compliance in
17 all respects with all federal, state and local laws,
18 rules and regulations applicable to its properties,
19 operations, business, and finances, including,
20 without limitation, any federal or state laws
21 relating to liquor or narcotics and/or any
22 commercial crimes."

23 Now, what efforts did you undertake to
24 make sure that DAI, FDTI and any affiliate and any
25 of the Companies were compliance with those state,
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1 **federal and local rules and regulations?**

2 A. Well, as with the rest of this document,
3 the lawyers were responsible to make sure that
4 things were taken care of.

5 **Q. Did you direct the lawyers to make sure**
6 **that things were taken care of?**

7 A. No, I didn't even know what was in the
8 document.

9 **Q. And you signed a document without knowing**
10 **what was in the document.**

11 **And again here, Doctor Associates is**
12 **certainly implicated and mentioned in the**
13 **miscellaneous provisions of this document; right?**

14 MR. HUTCHISON: Objection to form to the
15 extent it calls for a legal conclusion and
16 asked and answered.

17 THE WITNESS: Yeah, they are not
18 implicated. It is mentioned though.

19 BY MS. HOFFLER:

20 **Q. Well, people are -- entities are mentioned**
21 **in this document for a reason; right?**

22 A. I presume that they are.

23 **Q. But you never undertook any efforts to**
24 **find out why Doctor Associates was mentioned in**
25 **these -- in this document. I pointed out no less**
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1 **than seven different places where Doctor Associates**
2 **is mentioned. You never undertook any efforts to**
3 **strike them from this document, did you?**

4 A. I didn't read the document and I don't
5 think the lawyers thought there was any reason to
6 make any changes to the document.

7 **Q. My question to you, sir, is: Did you**
8 **personally undertake any efforts to strike Doctor**
9 **Associates from this document?**

10 A. No.

11 **Q. Okay. Now, let's look at -- Mr. DeLuca,**
12 **I'm going to hand you what we are going to mark as**
13 **Exhibit 7. We are going to skip Exhibit 6 for now.**
14 **And what I am going to hand you is a promissory note**
15 **for \$35 million. It's Exhibit 7.**

16 **(Exhibit 7 marked for identification.)**

17 MS. HOFFLER: This is a promissory note.
18 And the first page, Mr. Hutchison, we will
19 redact.

20 MR. HUTCHISON: Thank you. And then the
21 rest of it, just make sure it complies with the
22 confidentiality order in this case, please.

23 MS. HOFFLER: Where applicable.

24 MR. HUTCHISON: I'm sorry?

25 MS. HOFFLER: Yes.

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1 MR. HUTCHISON: I'm sorry, C.K., what did
2 you say?

3 MS. HOFFLER: I said where applicable.

4 MR. HUTCHISON: Yes. Thank you.

5 BY MS. HOFFLER:

6 Q. Can you take a moment to review this
7 document, or have you done it already?

8 A. I have it.

9 Q. And for the record, this is a promissory
10 note dated August 10th, 2005, for \$35 million, a
11 promissory note between Frederick A. DeLuca and
12 Wachovia Bank, National Association.

13 Mr. DeLuca, while you're looking at that,
14 would you just confirm for the record that on the
15 last page of that document, that you signed this
16 promissory note, it appears on August 8th of 2005,
17 and that your signature is notarized.

18 A. That looks like my signature.

19 Q. Was your signature notarized?

20 A. And there is a notary below it. I've
21 scanned through it.

22 Q. Okay. Now, Mr. DeLuca, this promissory
23 note, the date of it is August 10, 2005, which is
24 the same date as the previous Exhibit 5, I believe.
25 Yes, which was the promissory note for the
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1 **\$105 million that you executed; right? Do you see**
2 **that?**

3 A. I think they were both August 8th.

4 Q. Well, they were both signed by you on
5 **August 8th, but at the top of both their pages it**
6 **says August 10th. Why don't you take a look.**
7 **Exhibit 5 and Exhibit 7. If you look at the top of**
8 **both of those pages it says August 10th; right?**

9 A. Yes. The page says -- the first page says
10 October 10th.

11 Q. No, it says August 10th.

12 A. I'm sorry. You're correct. The first
13 page says August 10th, 2005, and the signature page
14 says August 8th, 2005.

15 Q. Okay. Now, in terms of this document,
16 **this was a promissory note that you executed for a**
17 **line of credit for \$35 million. And this is**
18 **basically a personal line of credit; right?**

19 A. I think that's correct.

20 Q. I mean, this was -- this was -- this
21 **\$35 million line of credit was for your personal**
22 **use; right?**

23 A. I actually don't know what it was for.

24 Q. Well, let's look at the section called
25 **"Use of Proceeds." And read with me. It says,**
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1 **"Borrower shall use the proceeds of the loan,**
2 **loan(s) evidenced by this Note for personal use."**

3 **Do you see that?**

4 A. Correct.

5 **Q. So this loan was for your personal use,**
6 **right, according to the document that you signed?**

7 A. According to the -- personal in terms of
8 whatever I had to do with it, not personal in terms
9 of living expenses or anything like that.

10 **Q. Well, it was not a business line of**
11 **credit, was it?**

12 A. Oh, it was for whatever I decided to do
13 with it.

14 **Q. But it was a personal -- it was a personal**
15 **line of credit; right?**

16 A. They loaned it to me personally so that I
17 could use it at my discretion for anything I wished
18 with relatively few exceptions.

19 **Q. Well, let's talk about one of the major**
20 **exceptions, and let's go further. It says,**
21 **"Borrower shall use the proceeds of the loan,**
22 **loan(s) evidenced by this Note for personal use;**
23 **provided that no portion of any Advance shall be**
24 **used in connection with the loan the Borrower is**
25 **making to Land Company of Osceola County, LCC, a**
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1 Florida limited liability company ("LLOC"), and LM
2 Land Company, LLC, a Florida limited liability
3 company ("LMLC", and together with LLOC,
4 collectively, the Companies"), or (y) for the
5 purpose of purchasing or carrying any "margin stock"
6 or "margin security" as such terms are used in
7 Regulations U and X of the Board of Governors of the
8 Federal Reserve System, 12 C.F.R., Parts 221 and
9 224."

10 Have I read it correctly?

11 A. I think generally correctly.

12 Q. And so one of the exceptions to this
13 personal use is that you couldn't use any portion of
14 this line of credit for any parts of the LLOC
15 project; right?

16 A. No, that's not correct.

17 Q. Do you think that you could use this line
18 of credit for anything in connection with LCOC or
19 LLOC or LMLC?

20 A. The only prohibition was in connection
21 with the loan the borrower is making.

22 Q. Did you use these funds,
23 Mr. Pugliese (sic), or the proceeds for this line of
24 credit in connection with the loan that you were
25 making to LLOC or LMLC?

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1 A. I never actually borrowed any of this
2 money and I didn't use the funds for anything
3 because I never took it.

4 **Q. So you're saying that your signature on**
5 **this promissory note meant nothing because you never**
6 **used the line of credit?**

7 A. No, it meant that I signed the note, but I
8 never took any loans under this line of credit.

9 **Q. Did you ever use the line of credit, sir?**

10 A. Not to my knowledge.

11 **Q. Right. Now, the thing is, Mr. --**
12 **Mr. DeLuca, did -- for purposes of this line of**
13 **credit was there any involvement or any mention in**
14 **this line of credit of Doctor Associates, was there**
15 **any encumbrance that this line of credit entailed?**

16 A. I don't know if it mentioned
17 Doctor's Associates in the line of credit.

18 **Q. Are you familiar with whether there are**
19 **any conditions precedent to the -- to you receiving**
20 **this line of credit?**

21 A. I'm not familiar -- I'm not specifically
22 familiar with the term exactly, the conditions that
23 had to be taking place first.

24 **Q. Is this another document that you signed**
25 **and didn't read?**

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1 A. I didn't read that document.

2 Q. All right. Let's go through the document
3 that you didn't read though.

4 All righty. Because you signed it, and so
5 you're bound by what you signed; right?

6 A. Yes, if I had borrowed money, I'm bound by
7 what I signed.

8 Q. Right. So let's look under the "Default
9 Provision" on Page 3, Mr. DeLuca. The middle of the
10 paragraph, "Cross Default. At Bank's option, any
11 default in payment or performance of any obligation
12 by Borrower under any loans, contracts, or
13 agreements, the aggregate principal amount in which
14 each case is in excess of \$1,000,000 of Borrower,
15 Doctor's Associates, Inc.," that's DAI, "The
16 Franchise Development Team, Inc., ("FDTI"),
17 FD Destiny, LLC, ("FD Destiny") or any affiliate of
18 either DAI, FDTI or FD Destiny, any default in
19 payment of any principal of any obligation of either
20 Company to the Borrower or any default in
21 performance under the Promissory Note in the
22 original principal amount of \$111,000,000 from the
23 Companies to the Borrower dated August 9th, 2005,"
24 in quote, "(the "Land Promissory Note") or the
25 Mortgage, Assignment of Rents, Security Agreement
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1 and Fixture Filing from LMLC to the Borrower beyond
2 any applicable grace period ("affiliate" shall have
3 the meaning as defined in 11 U.S.C. Section 101, as
4 in effect from time to time, except from the term --
5 except that the term "Borrower" shall be substituted
6 for the term "Debtor" therein)."

7 Did you see that?

8 A. I didn't track with you. Where did you
9 start? Let me read it now.

10 Q. Under "Cross Default." Do you want me to
11 read it again?

12 A. Let me just find out where it is. I
13 didn't see it here.

14 Q. I said in the middle of the paragraph
15 under "Default" there is caption that says "Cross
16 Default" in bold print.

17 A. Okay. I see it now.

18 Q. Okay. Why don't you read it.

19 A. Okay. I read it.

20 Q. Now, Mr. DeLuca, again, in this paragraph
21 "Cross Default" it references at the bank's option
22 what can happen when there are any default in
23 payment or performance of any obligation by
24 borrower. That would be you. And it specifically
25 also references Doctor & Associates, Franchise
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1 Development Team, Inc., that's FDTI, FD Destiny.
2 And these are all companies that you own either
3 entirely or in part. And it also references, does
4 it not, the \$111 million loan that you borrowed on
5 August 9th, 2005, as the land promissory note. Have
6 I read that correctly?

7 A. No.

8 Q. Okay. Well, it doesn't reference those
9 entities?

10 A. It has reference to certain entities, but
11 you mentioned me borrowing \$111 million. And I
12 didn't borrow \$111 million.

13 Q. I'm just reading from this document. Does
14 it or does it not, Mr. DeLuca?

15 A. You're asking me if you read it right. We
16 will break it down.

17 Q. Right. Right. Listen to my question --

18 A. Sure.

19 Q. -- Mr. DeLuca. My question is: Does this
20 provision, the "Cross Default" provision, reference
21 not just you in the context of default, but Doctor &
22 Associates, the Franchise Development Team, Inc.,
23 FD Destiny, LCC, or any affiliate of either Doctor
24 Associates, FDTI or FD Destiny. Does it or does it
25 not, sir?

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1 A. It mentions them.

2 Q. Yes, it referenced them.

3 Does it or does it not, Mr. DeLuca, also
4 reference the note in the original principal amount
5 of \$111 million from the performance under the
6 promissory note in the original principal of
7 \$111 million from the companies to the borrower to
8 you dated August 9th of 2005?

9 A. It mentions that.

10 Q. So that note is mentioned in the "Cross
11 Default" provision of this promissory note of yours
12 for a line of credit for \$35 million; right?

13 A. It is mentioned.

14 Q. Yes. And, again, since you never read
15 this document, you didn't mention to
16 Anthony Pugliese, did you, that the loan that you
17 were making to Land Company -- to the company LCOC
18 or one of the other entities for the purchase of the
19 land, the Destiny land, we will call it the Destiny
20 land in question, you didn't mention that it was
21 specifically referenced in your line of credit that
22 you secured on August 10th from Wachovia? You
23 didn't mention that --

24 MR. HUTCHISON: Objection to form.

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1 BY MS. HOFFLER:

2 Q. -- to Anthony Pugliese.

3 MR. HUTCHISON: Form.

4 THE WITNESS: Yeah, I didn't mention to
5 Anthony Pugliese what was in the personal loan
6 document. And I don't think it affects
7 Anthony Pugliese at all.

8 BY MS. HOFFLER:

9 Q. Well, you didn't mention -- let's be
10 clear. You did not mention to Anthony Pugliese that
11 you took -- that you, first of all, got a
12 \$35 million line of credit that was executed the
13 same day as the promissory note that you executed
14 for the loan that you made to the land company for
15 purchasing the land. You didn't mention that to
16 Anthony Pugliese; right?

17 A. I don't recall mentioning that.

18 Q. And let's just read a little further,
19 Mr. DeLuca. Again, "Annual Financial Statements" on
20 Page 4, references in the middle of the paragraph
21 that "Borrower shall deliver to Bank, within 90 days
22 after the close of each fiscal year audited
23 financial statements reflecting the operations
24 during such fiscal year of DAI, including, without
25 limitation, a balance sheet, profit and loss

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1 **statement and statement of cash, flows with**
2 **supporting schedules.**

3 A. Where did you start from on that?

4 Q. In the middle of the paragraph, one, two,
5 **three, four, five, six, seven. Line 7.**

6 A. Okay.

7 Q. At the end of line -- at the beginning of
8 **Line 6, it says, "Borrower shall also deliver to the**
9 **Bank."**

10 A. Okay.

11 Q. And so DAI is referenced again, that you
12 **have to provide annual financial statements in**
13 **connection with this line of credit; right?**

14 A. It's mentioned that I have to provide --
15 let me read it and then I'll tell you what it says.

16 MR. GARY: Can you speak up, please. Are
17 you able to speak up?

18 MR. HUTCHISON: Sure. Speak up,
19 Mr. DeLuca.

20 THE WITNESS: Yes. It says that I have to
21 deliver financial statements of DAI to the
22 bank.

23 BY MS. HOFFLER:

24 Q. Uh-huh. And then under "Tax Returns" it
25 **says, "Borrower shall deliver to Bank, within 30**
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1 days of filing," that's on the same page, "complete
2 copies of federal tax returns, as applicable,
3 together with all schedules thereto, including,
4 without limitation, K-1 statements for the Borrower,
5 the Companies and FDTI and for all partnerships and
6 subchapter S corporations, each of which shall be
7 signed and certified by Borrower to be true and
8 complete copies of such returns."

9 Now, did you comply with that section?

10 A. Gees, I doubt that any of these were
11 followed through with because we never borrowed the
12 money.

13 Q. Well, this is a line of credit. So it's
14 your testimony that you never used the line of
15 credit?

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

18 THE WITNESS: Yeah. Yeah, to my
19 knowledge, I didn't use the line of credit.

20 BY MS. HOFFLER:

21 Q. Right. But you got the line of credit
22 because you signed the promissory note. You just
23 didn't use it; right?

24 A. I think that -- I think that's correct.

25 Q. Do you still have this line of credit?
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A. I --

Q. Don't know?

A. -- wouldn't know.

Q. All right. Let's go to Page 5. You didn't execute a document closing out the line of credit, did you?

A. I don't know one way or the other.

Q. Uh-huh. All right. Let's talk about "Change of Control" on Page 5. "Borrower shall not make or suffer a change of ownership" --

A. Let me -- can I -- let me get to it.

Q. Okay. "Change of control." Do you see it?

A. I see it.

Q. It says, "Borrower shall not make or suffer a change of ownership that effectively changes control of any of DAI, FDTI, or the Company, or changes the organizational structure of any of the foregoing entities."

Do you see that?

A. I see that.

Q. Did you in connection with this line of credit, whether you used it or not, notify Wachovia of any changes that may have occurred of organizational structure for DAI, FDTI, or what they U.S. LEGAL SUPPORT, INC. (561) 835-0220

1 **define as "the Company"?**

2 A. I'm not sure what "the Company" is. So if
3 we can just reference that.

4 Q. Yes. Let's look at the definition of "the
5 Company," which would be -- let me see if there is a
6 definition. Well, it defines "the Companies" on the
7 first page.

8 But even if we don't consider what the
9 company is, it does say DAI; right? It does talk
10 about any change of control related to DAI, FDTI;
11 right?

12 A. Correct.

13 Q. And did you notify Wachovia of any changes
14 to DAI or FDTI in the organizational structure since
15 the time that you secured this line of credit?

16 A. I doubt it, because I don't think there
17 were any changes.

18 Q. Well, let me just say, when you and your
19 controller were fighting in litigation and you got a
20 new controller, wasn't that a change of the
21 organizational structure?

22 A. No.

23 Q. So when you change -- in your
24 interpretation of changes to the organizational
25 structure, that doesn't include to you a change in
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1 **senior management?**

2 A. An employee, no.

3 **Q. Even if it's senior management?**

4 Well, aren't you technically an employee
5 of Doctor Associates? You're an owner, but you're
6 also an employee, aren't you?

7 A. I think I'm an employee of
8 Doctor's Associates, but I'm not even sure.

9 **Q. But let's assume you are an employee of**
10 **Doctor Associates. If there were a change, like if**
11 **you stepped down as a senior manager of Doctor**
12 **Associates, that would be a change of control**
13 **because you're -- you're a senior executive; right?**

14 MR. HUTCHISON: Objection to the extent it
15 calls for a legal conclusion on that term, and
16 asked and answered.

17 BY MS. HOFFLER:

18 **Q. Right?**

19 A. No.

20 **Q. Okay. So it's your testimony, then, under**
21 **this promissory note, if you stepped down as --**
22 **as -- in your capacity as a senior executive for**
23 **Doctor & Associates, you would not have had or would**
24 **not have a duty to notify Wachovia in connection**
25 **with this promissory note?**

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1 MR. HUTCHISON: Objection to the extent it
2 calls for a legal conclusion.

3 THE WITNESS: Yeah, I don't think so.

4 BY MS. HOFFLER:

5 Q. Uh-huh. All right. Let's look at
6 "Conditions Precedent" or Conditions Precedent.
7 However you want to pronounce it.

8 On Page 5, "The obligation of the Bank to
9 make the loan evidenced by this Note shall be
10 subject to the satisfaction of the Bank with all of
11 the proceedings in connection with the transactions
12 contemplated hereby, including, without limitation,
13 all the conditions precedent to the Bank making that
14 certain \$105,000,000 loan to the Borrower."

15 Do you see that?

16 A. I see that.

17 Q. So what does that mean to you, Mr. DeLuca?

18 A. That the bank would not be obligated to
19 make this loan to me if they were dissatisfied with
20 something.

21 Q. Well, not just something. Not just
22 something. It's in connection with -- in connection
23 with the loan that they were making to you for
24 \$105 million; right?

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

2 BY MS. HOFFLER:

3 **Q. Right?**

4 A. No, this is a broad statement. It says,
5 "with all proceedings in connection with the
6 transactions contemplated hereby, including, without
7 limitations (sic), all of the conditions precedent
8 to the bank making that certain \$105,000,000 loan to
9 the borrower."

10 **Q. And just so the record is clear, that**
11 **\$105 million loan to the borrower, that was the**
12 **money that you borrowed from Wachovia that you**
13 **subsequently -- that you used and subsequently**
14 **loaned for the purchase of the property; right?**

15 A. That \$105 million it refers to, I think
16 certainly refers to the other promissory loan to me
17 for the \$105 million.

18 **Q. So basically you secured a line of credit**
19 **for \$35 million; right? You didn't let**
20 **Anthony Pugliese know about this line of credit for**
21 **\$35 million, because you didn't think it was his**
22 **business. Isn't that fair?**

23 A. Oh, my God, this is not his business at
24 all.

25 **Q. Okay. And so even though this loan that**
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1 you say was not his business at all, to quote you,
2 for \$35 million was secured, and as a condition
3 precedent to getting it there were certain
4 conditions that had to be satisfied for the loan
5 that was ultimately made to entities that he was
6 engaged in, you just felt there was no need to
7 inform him of it?

8 A. No. It has nothing -- it didn't mention
9 Anthony Pugliese or those entities at all.

10 Q. Okay. Well, what do you mean it didn't
11 mention those entities?

12 A. It says they had to be satisfied with the
13 loan that they were making to me, the borrower.

14 Q. Well, it does say, Mr. DeLuca, does it
15 not, it does mention LCOC, it does mention the
16 property, it does reference the loan for the land in
17 this line of credit. We just went through it. It
18 does mention the loans for the line credit in this
19 document.

20 MR. HUTCHISON: Objection to form.

21 THE WITNESS: Yeah. There were --
22 throughout the document, there are various
23 companies mentioned. But in the condition
24 precedent here, it's the bank, if they were
25 dissatisfied with the loan that they made to
 U.S. LEGAL SUPPORT, INC. (561) 835-0220

1 me, then they could deny me this line of
2 credit.

3 BY MS. HOFFLER:

4 Q. That they made to you. And it's that
5 loan -- and let's go right back so we can match
6 apples to apples. And that was Exhibit Number 5.
7 That loan, and there is that promissory note,
8 Exhibit Number 5 for \$105 million, where it says,
9 "Use of proceeds" for that loan that's referenced as
10 a condition precedent, Borrower shall use the
11 proceeds of the loan evidenced by this Note for the
12 commercial purposes of Borrower as follows: To make
13 a loan in the original principal amount of
14 \$111,000,000, (the "Land Loan") the Land Company of
15 Osceola County, LLC, a Florida limited liability
16 company, and LM Land Company, LLC, a Florida limited
17 liability company.

18 So this line of credit that you got on the
19 same day that you got for your own personal use, you
20 basically got based on the equity and the sweat that
21 Anthony Pugliese had in that land that you
22 subsequently loaned money to acquire.

23 MR. HUTCHISON: Objection as to form.

24 THE WITNESS: No, not at all.

25

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1 BY MS. HOFFLER:

2 Q. And, in fact, not only was that the case,
3 but this is just -- in addition to the \$1.2 million
4 that we discussed yesterday in commitment fees that
5 you pocketed, you were able to get a \$35 million
6 loan on the back of the LCOC deal the exact same day
7 that you closed the promissory note on the LCOC
8 money.

9 MR. HUTCHISON: Objection to form,
10 misstates the testimony.

11 THE WITNESS: I never pocketed anything,
12 never got paid anything by Anthony Pugliese.
13 And any loan that I was able to get was not at
14 all on the value of the land. It was based
15 upon other things.

16 BY MS. HOFFLER:

17 Q. It was not at all based upon the value of
18 the land? Is that your testimony under oath,
19 Mr. DeLuca?

20 A. Absolutely.

21 Q. That the loan that you got for
22 \$105 million was not at all based on the value of
23 the land? Is that your testimony?

24 A. Well, we were first talking about the --

25 Q. Oh, no, no, no.

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1 A. -- \$35 million loan.

2 Q. No, no, no. But I --

3 MR. HUTCHISON: Let him finish his answer.

4 BY MS. HOFFLER:

5 Q. I switched. I want to make sure we're
6 clear.

7 A. We'll get both of them. On the
8 \$35 million loan, that had nothing to do with the
9 land at all. And on the \$105 million loan that I
10 took, I qualified for that mostly with collateral
11 that I provided, and that's the situation.

12 Q. And part of the collateral, Mr. DeLuca,
13 which we went over yesterday that you provided, was
14 that land, the mortgage on that land.

15 A. Not the land, but the mortgage that I
16 would receive would be part of the collateral. So
17 there was no equity there.

18 Q. You qualified for it based on the mortgage
19 on that land.

20 MR. HUTCHISON: Objection as to form.

21 THE WITNESS: I didn't hear you.

22 BY MS. HOFFLER:

23 Q. Now, you just testified something --

24 THE REPORTER: I didn't hear the answer.

25 THE WITNESS: I said, I didn't hear her.
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1 BY MS. HOFFLER:

2 Q. And you just said something that was very
3 interesting. You said that you didn't pocket a
4 penny from this deal. Is that what you said?

5 A. Well, to my knowledge, I wasn't paid
6 anything.

7 Q. To your knowledge.

8 A. To my knowledge.

9 Q. You just don't follow your money, so you
10 don't know if you made money or don't make -- you
11 didn't make money, is that it?

12 A. Not to my knowledge, I wasn't paid on any
13 of this.

14 Q. Well, let me hand to you, Mr. DeLuca, I
15 want you to look at it really carefully, what we are
16 going to mark as DeLuca 8. And I want you to follow
17 with me really closely.

18 MR. HUTCHISON: Do you have a copy for me?

19 MS. HOFFLER: Oh, I'm sorry. Absolutely,
20 Counsel. You definitely want to see this.

21 MR. HUTCHISON: Thank you.

22 (Exhibit 8 marked for identification.)

23 BY MS. HOFFLER:

24 Q. Exhibit 8. Now, Exhibit 8 reflects,
25 Mr. DeLuca, emails between David Worroll, who was
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1 your controller, you testified. And, in fact, in
2 the email, it says David Worroll, controller, Doctor
3 Associates, Inc. Do you see that, the last page?

4 MR. HUTCHISON: The last page of the
5 exhibit?

6 BY MS. HOFFLER:

7 Q. The last page of the exhibit it says,
8 "Thanks, David Worroll, controller,
9 Doctor's Associates."

10 A. I see that.

11 Q. Okay. So David Worroll at the time -- and
12 this string of emails were in 2006. He was your
13 controller at the time, was he not, at
14 Doctor's Associates?

15 A. I think that would be a reasonable
16 statement.

17 Q. Well, not just a reasonable statement,
18 it's an accurate statement, because that's how he
19 was representing himself to the world. And
20 certainly you wouldn't let somebody make
21 representations that he was a controller if he
22 wasn't; right?

23 A. I think that's a reasonable statement,
24 that he was the controller.

25 Q. All right. So David, David Worroll sends
 U.S. LEGAL SUPPORT, INC. (561) 835-0220

1 an email to -- to Tom San Giacomo on September 13th,
2 2006. Do you see that initially?

3 A. I see that.

4 Q. It says, Tom. And then -- and then if you
5 go -- and we are reading from the back up. And I
6 will bring to your attention on September 29th,
7 2000 -- I'm sorry, September 19th, 2006,
8 David Worroll sends an email to Tom San Giacomo.

9 And Tom San Giacomo was involved in LCOC
10 business; isn't that right?

11 A. Yes.

12 Q. And the subject is re LCOCL tax returns.
13 Do you see that?

14 A. I see that.

15 Q. And it reads as follows: "Tom, not sure
16 when you're (sic) back in the office but we need
17 immediate to expedite the LCOCL returns so I can get
18 Fred's returns wrapped up and ready for his
19 signature. In order to meet the October 15th
20 deadline in filing his returns, we'll need this
21 wrapped up and I'll need the LCOCL K-1 by the end of
22 this month at the latest. The items that you need
23 and I need to agree on is the cost to be included in
24 the loan," in parenthesis, "(the closing costs),
25 and the capital contributions that was required by
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1 Fred - anything in excess will be part of the loan
2 and any shortage would be a reduction of the loan.

3 Here's a summary of what I have that will
4 need to be confirmed by you in order to wrap up the
5 tax returns for LCOC.

6 Fred has made the following
7 contributions."

8 Do you see that?

9 And then it says on 06/6/05 W/T,
10 4,237,836.

11 And it goes through a total of LCOCL
12 equity investment of 26,690,962.46; right? That's
13 the total on the first page.

14 Then it says, Adjustment at loan
15 closing - see below, 2,809,037.64.

16 And then it says, Fred's equity
17 contribution to LCOCL is 29,500,000.

18 Do you see that, Mr. DeLuca?

19 A. I'm tracking with you.

20 Q. Yeah. And Fred refers to you, Fred
21 DeLuca; right?

22 A. I believe that's who he's referring to.

23 Q. Well, is there any other Fred DeLuca
24 that -- that made the loan? Any other Fred that
25 made the loan?

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1 A. No, I believe that this -- he's referring
2 to me.

3 Q. Okay. And it says, "The RPAC funding
4 amount of \$2,000,000 I got off the K-1 that Joe
5 supplied me. It shows 20,000 in capital stock and
6 1.980,000 in shareholder loan."

7 Do you see that?

8 A. I see that.

9 Q. Now let's go to the second page. And,
10 again, this is from your controller, David Worroll,
11 in 2006, September 2006, after the closing.

12 Okay. And now, Mr. DeLuca, what I am
13 going to ask you to do, I'm going to ask you --
14 yesterday you said, well, I don't know what this --
15 I gave you a document, I think it was Exhibit 2.

16 So let's go back to -- let's take
17 Exhibit 2 out again, Mr. DeLuca. Let's take out
18 Exhibit 2. And yesterday when I went through with
19 you Exhibit 2, which was entitled, "Land Company of
20 Osceola County loan," you seemed to have some
21 confusion. You said you didn't know what that --
22 where that document came from and you couldn't
23 verify whether it was accurate or wasn't accurate
24 and, you had some confusion, and you were adamant
25 about the fact that you had not received a single
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1 penny in a commitment fee. That's what you said;
2 right?

3 A. I wasn't paid the money. It was rolled
4 into the loan.

5 Q. Oh, now you say it was rolled into the
6 loan. But yesterday you said you received nothing,
7 there were no charges. But -- so are you changing
8 your testimony?

9 A. No. I said yesterday that I was not paid
10 cash.

11 Q. Okay. You lost your microphone. And
12 this, of course, we need on.

13 A. I'm sorry.

14 Q. Okay.

15 A. Yeah, I said yesterday I wasn't paid any
16 cash.

17 Q. Okay. So now your testimony is that you
18 weren't paid cash. Well, let's see what your
19 controller says.

20 "The following costs are included in the
21 loan from Fred to LCOCL. 7/5/05 Appraisal Fee paid
22 to Wachovia." And that's in the amount of 38,650.

23 Now, let's look at Exhibit 2. So let's
24 just compare Exhibit 2 that you looked at yesterday
25 and you claimed to have no understanding of.

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1 You see the first line of Exhibit 2? It
2 says, 7/5/05 Wachovia Bank Appraisal Fee, \$38,650.

3 Do you see that?

4 A. I see that.

5 Q. And it is exactly the same amount that is
6 in that Exhibit 2 that I reviewed with you
7 yesterday; right?

8 A. Okay.

9 Q. And so you don't have any reason to
10 dispute or disagree with David Worroll, who is your
11 controller, if he's sending this information out?

12 A. I haven't reviewed this email yet. Do you
13 want to give me a minute to review this?

14 Q. Oh, yes. Oh, yes, take your time.
15 Absolutely.

16 A. I read it.

17 Q. Follow with me, Mr. DeLuca.

18 Your controller writes, puts in an email
19 on September 19th, 2006, at 4:08 p.m. to Tom
20 San Giacomo, who is involved in the Destiny project,
21 and he says, "The following costs are included in
22 the loan from Fred to LCOCL."

23 And at first we discussed on 7/5/05, the
24 appraisal fee paid to Wachovia. And that's in the
25 amount of \$38,650, which is the exact amount at the
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1 top of the page of Exhibit 2, which is appraisal fee
2 to Wachovia, 38,650. Do you follow me thus far?

3 A. I do.

4 Q. Do you agree with that, that they are both
5 the exact same amount and they're for the exact same
6 thing, right, on exact same date?

7 A. They appear to be the same.

8 Q. Yes. Okay. The next entry, 8/11/05
9 Wachovia Loan proceeds.

10 And on the Exhibit 2, it says it's
11 104,468,870.10.

12 MR. HUTCHISON: 864.

13 BY MS. HOFFLER:

14 Q. I'm sorry. Let me do that again.
15 104,864,870.10. Do you see that?

16 A. I do.

17 Q. And it's to -- it's Wachovia Bank. And
18 then if you look at the email that your controller
19 sent to Tom San Giacomo, it is for 8/11/05 Wachovia
20 Loan proceeds for 104,864,870.10. Do you see that?

21 A. I see that.

22 Q. So those are the exact same figures, are
23 they not?

24 A. The two numbers are the same.

25 Q. The two numbers are the same and they are
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1 **both from money from Wachovia Bank; right?**

2 A. They are described differently, but they
3 both reference Wachovia Bank.

4 **Q. Right. One is Wachovia Loan proceeds.**
5 **The other one says Wachovia Bank. Your -- your**
6 **controller says they are Wachovia Loan proceeds.**
7 **Okay.**

8 **Now, let's go to the third entry.**
9 **8/11/05, it says Closing Costs - filing fee, \$5,800.**
10 **That is from your controller, David Worroll. Do you**
11 **see that?**

12 A. I see that.

13 **Q. And you see if you go on 8/11/05, a few**
14 **entries down on the Exhibit 2 document, it says,**
15 **Closing, Payment to Carlton Fields cash at closing,**
16 **\$5,800.**

17 A. I see that.

18 **Q. Okay. Then let's go further in the email**
19 **from your controller under 8/11/05 Legal fees. Do**
20 **you see that?**

21 A. I do.

22 **Q. And in Legal fees, he's got \$49,829.90.**
23 **Have I read that correctly?**

24 A. You did.

25 **Q. And then if we go back to Exhibit 2 that I**
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1 went over with you yesterday, the -- in the first
2 paragraph, the second line from the bottom, it says
3 8/11. That's the same date, is it not?

4 A. I see 8/11.

5 Q. Yes. Closing, Payment to
6 Bingham McCutchen cash at closing. And the amount
7 is \$49,829.90. Do you say that?

8 A. I see that.

9 Q. So that is the exact same amount as was
10 detailed in Exhibit 2 that I went over with you
11 yesterday. Do you see that?

12 A. I see that.

13 Q. On the exact same day the exact amount was
14 paid, according to your controller, David Worroll.
15 So let's continue now.

16 A. Hold on. Hold on. According to -- this
17 is what he put in the email seeking confirmation
18 from Tom San Giacomo. He's saying he has some
19 information and he was seeking confirmation.

20 Q. But this information is coming from
21 Doctor Associates, from your controller; isn't that
22 right?

23 A. Are you --

24 Q. Yes or no, is it coming from
25 Doctor Associates' controller?

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1 A. I'm just confused. Are you referring to
2 Exhibit 8?

3 **Q. All this information -- all this**
4 **information for David Worroll is coming from your**
5 **controller.**

6 A. Your --

7 **Q. He sent this email and put this**
8 **information in it; right?**

9 A. You're referencing Exhibit 8?

10 **Q. Exhibit 8.**

11 A. Okay. Well, I've never seen this email.
12 I presume it's from David Worroll.

13 **Q. Okay. So let's continue, Mr. DeLuca.**
14 **Now, then we have 8/11/05. It says, Closing -**
15 **filing fee. This is according to what your**
16 **controller put in an email. 8/11/05 Closing Fees -**
17 **filing fee, \$750.**

18 Do you see that?

19 A. I see that.

20 **Q. Okay. And then 8/11, the last entry in**
21 **the first paragraph of Exhibit 2, 8/11/05, it says,**
22 **Closing, Debit Memo, Cash at closing, \$750.**

23 So it's the exact same amount and on the
24 exact same date. So just the amount and the date
25 are the same on both entries.

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1 Do you see that?

2 A. I see that.

3 Q. Nonetheless, your controller puts in an
4 email, Closing Fees - filing fee, \$750.

5 Now, let's go further. 8/23/05, it says,
6 Loan registration fee - Florida, \$2,450.

7 Do you see that?

8 A. I see that.

9 Q. And now if you go down in Exhibit 2, go in
10 the second paragraph, the second entry, 8/23, exact
11 same day, it says, Wachovia Bank, Florida Taxes Due
12 on loan, \$2,450.

13 Do you see that?

14 A. I see that.

15 Q. And so, again, you've got the exact same
16 amount reflected in Exhibit 2 as is reflected in
17 David Worroll, your controller's email to Tom San
18 Giacomo. Do you see that?

19 The exact same amount on the exact same
20 day. Do you see that, sir?

21 A. I see it.

22 Q. All right. Now, let's go further.
23 9/16/05, this is from the email from your
24 controller, David Worroll, Closing cost - Legal
25 fees, \$55,000.

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1 Do you see that entry?

2 A. I see that.

3 Q. And if you go and look on Exhibit 2, the
4 third entry in the second paragraph, it says,
5 9/16/05. That would be the same date, would it not,
6 sir?

7 A. I'm looking.

8 Q. Is it the same date?

9 A. It is.

10 Q. Okay. And it says, Closing cost - Legal
11 fees. That's what David Worroll, your controller,
12 says. And he's got \$55,000.

13 And in this entry on Exhibit 2 it says,
14 Levy & Droney, and it says, \$55,000, does it not?

15 A. It does.

16 Q. All right. Now, then we have got here,
17 Adjustment per above for adj equity share.

18 Do you see that?

19 A. I see that.

20 Q. And in -- David Worroll, your controller,
21 he says that amount is 2,809,037.54; is that
22 correct?

23 A. It's a negative figure.

24 Q. Okay. I'm sorry. Negative figure.

25 A. Yes.

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1 Q. It's in brackets. I apologize. It's in
2 brackets.

3 So in brackets, the negative figure is
4 2,809,037.54; is that correct?

5 A. That's what it says.

6 Q. And then we look at Exhibit 2, entry
7 Number 3 on 8/11, it says, Adjustment for additional
8 Capital Contribution. And we have the exact same
9 negative figure of \$2,809,037.54, don't we?

10 A. Yes.

11 Q. Okay. Now, let's go down and then there
12 is an initial loan balance that is calculated by
13 David Worroll of 102,208,312.46.

14 Do you see that?

15 A. I do see it.

16 Q. Okay. Now, let's go to the second one,
17 the second part of this email. He has 1% commitment
18 fee, \$1.4 million. Do you see that?

19 A. I see that.

20 Q. And this is under the caption, "Following
21 costs are included in the loan from Fred to LCOCL."

22 Now, that's from your controller. And
23 then if we look here in Exhibit 2. What I went over
24 with you yesterday, when I was talking about the
25 commitment fee, it says 8/11, Closing Commitment Fee
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1 1%, 1.4 million.

2 Do you see that, sir?

3 A. I see that.

4 Q. And you see where David Worroll, your
5 controller, calls it a 1% Commitment Fee, and the
6 number that he has is 1.4 million.

7 And in Exhibit 2, it says commitment fee,
8 1%, 1.4 million.

9 So those are the exact same numbers;
10 right?

11 A. Yes.

12 Q. And the exact same percentage of
13 commitment fee; right?

14 A. The words are the same.

15 Q. The words are the same.

16 And from your controller's lips to this
17 paper, he says, "The following costs are included in
18 the loan from Fred to LCOCL."

19 Have I read that correctly, sir? Have I
20 read this correctly?

21 A. Can you repeat the question. There were
22 two parts there.

23 Q. And from his lips to the email -- strike
24 that. Let me just be clear.

25 And Mr. -- your controller put in the
 U.S. LEGAL SUPPORT, INC. (561) 835-0220

1 email under "The following costs are included in the
2 loan from Fred to LCOCL" 1% commitment fee of
3 \$1.4 million." Isn't that what's in that?

4 A. That's part of the email.

5 Q. Yes. Okay. Now, you can put this down,
6 Mr. DeLuca. Now --

7 MR. HUTCHISON: We need to take a break in
8 about five minutes, C.K., so why don't we get
9 to a good stopping point.

10 MS. HOFFLER: Okay. But that would not be
11 now.

12 MR. GARY: What do you need the break for?

13 MR. HUTCHISON: Uh?

14 MR. GARY: What do you need the break for?

15 BY MS. HOFFLER:

16 Q. Now, Mr. DeLuca --

17 MR. GARY: What do you need a break for?

18 MR. HUTCHISON: Because I just got a
19 message for Mr. DeLuca that his mother is very
20 seriously ill and in grave condition in a
21 hospice.

22 MR. GARY: Why don't you break now.

23 MR. HUTCHISON: Well, I was going to let
24 her finish her question, but we'll break right
25 now.

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1 MS. HOFFLER: No, no, no, break right now
2 if it's that.

3 MR. GARY: Go ahead and break.

4 MS. HOFFLER: We'll break.

5 THE WITNESS: I just said I was going to
6 call.

7 MS. HOFFLER: Yeah. But no, no, go ahead
8 and break.

9 MR. HUTCHISON: We were going to call his
10 family in five minutes.

11 (Whereupon, a recess was taken from
12 3:37 p.m. to 4:05 p.m.)

13 MS. HOFFLER: The plaintiff,
14 Anthony Pugliese, and the other plaintiffs in
15 the lawsuit that Mr. Pugliese has brought, as
16 well as the defendants in the case that
17 Mr. DeLuca and some of his companies have
18 brought against us, feel that we would prefer
19 not to continue with the deposition out of
20 respect for Mr. DeLuca given his mother's
21 condition. And we will reconvene the
22 deposition in the near future at a time that
23 works for Mr. DeLuca and others.

24 We simply feel that it would not be
25 appropriate or actually even humane to continue
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1 the deposition under these circumstances. Each
2 of us on the plaintiff's side is very sorry for
3 his mother fate and our prayers are with him
4 and his family.

5 MR. HUTCHISON: Thank you all.

6 THE WITNESS: Thank you.

7 *****

8 (The videotape deposition was adjourned at
9 4:10 p.m.)

10 (Reading and signing of the deposition was
11 not waived by the witness and all parties.)

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CERTIFICATE OF OATH

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, Kimberley A. Ross, Florida Professional Reporter, Notary Public, State of Florida, certify that FREDERICK A. DELUCA personally appeared before me on the 28th day of August, 2012, and was duly sworn.

Signed this 6th day of September, 2012.

Kimberley A. Ross

KIMBERLEY A. ROSS, FPR
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 deposition of FREDERICK A.
8 DELUCA, pages 354 through 446; that a review of the
9 transcript was requested; and that the transcript is a
10 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 August, 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
2 TO: FREDERICK A. DELUCA
3 c/o RICHARD C. HUTCHISON, ESQ.
4 Holland & Knight, LLP
5 222 Lakeview, Suite 1000
6 West Palm Beach, Florida 33401

7
8 IN RE: FD DESTINY, LLC, ET AL., vs.
9 AVP DESTINY, LLC, ET AL.

10
11 Please take notice that on the 28th day of August, 2012,
12 you gave your deposition in the above cause. At that time
13 you did not waive signature. The transcript is now
14 available at our office for your review.

15
16 Please call (561) 835-0220 to schedule an appointment
17 between the hours of 9:00 a.m. and 4:00 p.m., Monday
18 through Friday, at a U.S. Legal Support office located
19 nearest you.

20
21 If you are a party in this action and your attorney has
22 ordered a copy of this transcript, you may wish to read
23 his copy of the transcript. In that event, please execute
24 the Errata Sheet, which can be found at the back of the
25 transcript, and return it to us for distribution to all
parties. We have enclosed a self-addressed envelope for
your convenience.

If you do not read and sign the deposition within a
reasonable amount of time or 30 days, the original, which
has already been forwarded to the ordering attorney, may
be filed with the Clerk of the Court.

If you wish to waive your signature now, please sign your
name in the blank at the bottom of this letter and return
it to us.

Very truly yours,

20
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