

U.S.L.S. # 951380
IN THE CIRCUIT COURT
OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 50 2009 CA
040295 XXXXAG

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

Plaintiffs,

vs.

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

Defendants.

_____/
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.

_____/
VOLUME 5
CORRECTED TRANSCRIPT
CONTINUED VIDEOTAPED DEPOSITION
OF FREDERICK A. DELUCA
Pages 354 through 468

Monday, September 24, 2012
9:19 o'clock a.m. to 1:10 o'clock p.m.
444 Railroad Avenue
West Palm Beach, Florida 33401

Stenographically Reported By:
TERRI BECKER, FPR, RPR, CSR
Florida Professional Reporter
CORRECTED TRANSCRIPT

APPEARANCES

1 ON BEHALF OF ANTHONY V. PUGLIESE:

2 EDMOND & LINDSAY
3 344 Woodward Avenue Southeast
4 Atlanta, Georgia 30312
5 Tel: (404) 525-1080
6 Email: ckhoffler@edmondfirm.com
7 BY: TRICIA (C.K.) HOFFLER, ESQ.

8 ON BEHALF OF ANTHONY V. PUGLIESE:

9 LAW FIRM OF GARY, WILLIAMS, LEWIS
10 & WATSON, P.L.
11 221 Southeast Osceola Street
12 Stuart, Florida 34994
13 Tel: (772) 283-8260
14 Email: weg@williegary.com
15 Email: aphid@williegary.com
16 BY: WILLIE GARY, ESQ.
17 ALICIA PHIDD, ESQ.

18 ON BEHALF OF AVP DESTINY:

19 BELAVAL LAW FIRM, P.A.
20 101 Northeast Second Avenue
21 Suite 200
22 Delray Beach, Florida 33444
23 Tel: (561) 454-1630
24 Email: attorneyfla@gmail.com
25 BY: EDGAR BELAVAL, JR., ESQ.

ON BEHALF OF THE PUGLIESE COMPANY:

THE PUGLIESE COMPANY
101 Pugliese's Way
Pugliese Corporate Center
Delray Beach, Florida 33444
Tel: (561) 330-7000
Email: dmarek@pugliesco.com
BY: DOUG MAREK, ESQ.

1 APPEARANCES (CONTINUED)

2 ON BEHALF OF ANTHONY V. PUGLIESE:

3 FOWLER WHITE BOGGS, P.A.
4 1200 East Las Olas Boulevard
Suite 500
5 Fort Lauderdale, Florida 33301
Tel: (954) 703-3900
6 Email: robert.butterworth@fowlerwhite.com
BY: ROBERT A. BUTTERWORTH, JR., ESQ.7
8 ON BEHALF OF JOSEPH REAMER:9 LAW OFFICES OF GUY FRONSTIN, P.A.
10 1875 Northwest Corporate Boulevard
Suite 290
11 Boca Raton, Florida 33431
Tel: (561) 447-4011
Email: guy@fronstinlaw.com
12 BY: GUY FRONSTIN, ESQ.

13 ON BEHALF OF FREDERICK DELUCA:

14 HOLLAND & KNIGHT, LLP
15 222 Lakeview, Suite 1000
West Palm Beach, Florida 33401
16 Tel: (561) 650-8333
Email: rickhutchison@hkklaw.com
BY: RICHARD C. HUTCHISON, ESQ.17
18 ON BEHALF OF FREDERICK DELUCA:19 HOLLAND & KNIGHT, LLP
20 515 East Las Olas Boulevard
Suite 1200
21 Fort Lauderdale, Florida 33301
Tel: (954) 468-7977
Email: chapman@hkklaw.com
22 BY: JOHN R. CHAPMAN, III, ESQ.
23
24
25

1 APPEARANCES (CONTINUED)

2 ON BEHALF OF FREDERICK DELUCA,
3 FD DESTINY, FD MANAGEMENT4 LAW OFFICES OF JOHN P. PFANNENBECKER, LLC
5 9 Research Drive
6 Suite 4
7 Milford, Connecticut 06460
8 Tel: (203) 874-4308
9 BY: JOHN P. PFANNENBECKER, ESQ.

10 ALSO PRESENT:

11 ANTHONY V. PUGLIESE
12 JOE ROVNER, Videographer
13 ROBERT RAY, Corporate Representative
14 FD DESTINY, LLC
15 (Telephonic)16 ***
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FOR IDENTIFICATION PAGE

9 Letter dated August 11, 2005. 434

1 Deposition taken before Terri Becker,
2 Florida Professional Reporter and Notary
3 Public in and for the State of Florida at
4 Large in the above cause.

5 ****

6 THE COURT REPORTER: Do you swear or
7 affirm the testimony you are about to give
8 will be the truth, the whole truth, and
9 nothing but the truth?

10 THE WITNESS: Yes.

11 THEREUPON,

12 FREDERICK A. DELUCA

13 having been first duly sworn to tell the whole
14 truth, as hereinafter stated, was examined and
15 testified as follows:

16 MS. HOFFLER: Now, John Pfannenbecker is
17 here on behalf of the plaintiffs in your
18 suit?

19 MR. HUTCHISON: Yes.

20 MS. HOFFLER: All of them?

21 MR. HUTCHISON: For intents and purposes
22 he is here and for the purposes of
23 deposition for all of them

24 DIRECT EXAMINATION (CONTINUED)

25 BY MS. HOFFLER:

1 Q Mr. DeLuca, hello. We've met before and
2 we've talked a little bit for about a day and a
3 half, a day and three-quarters, about some of
4 your knowledge and information surrounding the
5 litigation you're engaged in. Is that a fair
6 assessment?

7 A We did speak for a day and
8 three-quarters.

9 Q First I want to offer my condolences. I
10 understand your mother did pass. On this side
11 we're very saddened by that. It is my intention
12 because your mother was involved in the business
13 early on, to ask you a few questions about your
14 mother at some point in the course of this
15 deposition, but I did want to offer you my
16 condolences.

17 A Thank you.

18 Q When we talked about your loan with
19 Wachovia... over the past day and a half or day
20 and three-quarters, we spent quite a bit of time
21 going through your loan with Wachovia; do you
22 remember that?

23 A The money that I borrowed from
24 Wachovia?

25 Q Yes, the money that you borrowed from

1 **Wachovia that served as the monies that you then**
2 **used to make a loan to LCOC.**

3 MR. HUTCHISON: Object to the form.

4 **Q Do you understand we're talking about**
5 **the same monies?**

6 A Yes. The money that I borrowed from
7 Wachovia, the 105 million or something like that.

8 **Q Do we need to go through the documents**
9 **again? It is an exhibit. It do we need to**
10 **refresh your recollection?**

11 A I think I know what you're talking
12 about.

13 MS. HOFFLER: Madam Court Reporter, do
14 we have the exhibits from the last day and a
15 half?

16 (Pause in the proceedings.)

17 MS. HOFFLER: I've handed your client a
18 marked copy of the exhibits.

19 MR. HUTCHISON: All eight of them?

20 MS. HOFFLER: Yes.

21 THE VIDEOGRAPHER: Back on the video
22 record.

23 **Q Mr. DeLuca, previously in this**
24 **deposition, you and I talked about your loan from**
25 **Wachovia, right?**

1 A We did.

2 Q I would like you to turn to Exhibit 5,
3 if you would?

4 A (Witness complies with counsel's
5 request.)

6 Q For your convenience, I've put tabs so
7 you can access them easier.

8 Previously we talked about the closing
9 costs as it related to your loan with Wachovia,
10 right? Do you recall we went through costs
11 related to or connected to your loan with
12 Wachovia?

13 A I believe that we did.

14 Q And we talked about commitment fees as
15 well, didn't we?

16 A I believe that we did.

17 Q We talked about commitment fees that you
18 paid in connection with your loan from Wachovia,
19 remember?

20 A I think we did.

21 Q Then we talked about commitment fees
22 that you, Fred DeLuca, charged to LCOC for the
23 loan you made to LCOC; do you recall that?

24 A Yes.

25 Q I would like you to keep Exhibit 5, that

1 document, with you, and I would like you to also
2 now go to Exhibit number 8. If you would, Mr.
3 DeLuca, refresh your recollection and glance at
4 number eight if you need to.

5 (Discussion off the record.)

6 Q I would like you to review Exhibit 8
7 again, and just for the record, Exhibit 8 is an
8 email from David Worroll to SanGiacomo, dated
9 September 19, 2006, a string of emails, and
10 ultimately that email was forwarded to Joe
11 Reamer. Take a moment to look at that.

12 A Okay.

13 MS. HOFFLER: I assume you have the
14 exhibits from last time?

15 MR. HUTCHISON: I'm good. On these
16 eight.

17 MS. HOFFLER: Yes.

18 A (Witness reviews document.)

19 Q Let me know when you've finished
20 reviewing this exhibit.

21 A I will...

22 MS. HOFFLER: Anyone else in the room
23 with you, Mr. Ray?

24 MR. RAY: No.

25 MS. HOFFLER: Anyone else conferenced in

1 with you?

2 MR. RAY: No.

3 MS. HOFFLER: Now, while you are
4 reviewing that, Mr. Ray, while you are on
5 the line, is anyone else in the room with
6 you? Is there anyone else conferenced in on
7 your call with you that is not in the room?

8 MR. RAY: There is no one else.

9 A I read this.

10 **Q Mr. DeLuca, this is the same document I**
11 **questioned you about before we broke on the 28th**
12 **of last month; isn't that right?**

13 A I don't recall talking about this
14 document.

15 **Q You don't recall talking about this**
16 **document?**

17 A I don't.

18 **Q Let's refresh your recollection. David**
19 **Worroll in 2006 was your comptroller, right?**

20 A Yes.

21 **Q For Doctor's Associates?**

22 A Correct.

23 **Q And David Worroll was intimately**
24 **involved, was he not, in the negotiations with**
25 **the loan that you made to LCOC for the Destiny**

1 **project, right?**

2 A What do you mean "intimate"?

3 **Q He was very involved in the**
4 **negotiations, wasn't he?**

5 A He was involved in the negotiations.

6 **Q Because he was your controller right?**

7 A No, not because he was my comptroller,
8 he and Joe Esposito were involved in the
9 negotiations.

10 **Q Who is Joe Esposito?**

11 A Joey -- Joe Esposito is a lawyer.

12 **Q Sir, if you could speak up, I'm right**
13 **beside you, having a hard time hearing you.**

14 **Is David Worroll still your controller**
15 **today?**

16 MR. HUTCHISON: Object to the form.

17 "Your"?

18 A Yes, David Worroll today is the
19 controller of Franchise World Headquarters.

20 **Q This is going to be a long deposition.**
21 **I think we will really have to speak up.**

22 **(Conversation off the record.)**

23 **Q Mr. DeLuca, David Worroll was, in fact,**
24 **the person who for Doctor's Associates in 2006,**
25 **who was responsible for a lot of the financial or**

1 **all of the financial transactions that took place**
2 **during that period of time for Doctor's**
3 **Associates; isn't that right?**

4 MR. HUTCHISON: Object to the form.

5 A No, not all the financial transactions,
6 but he was the controller.

7 **Q What financial transactions, for**
8 **example, was he not responsible for, for Doctor's**
9 **Associates in the 2006 period?**

10 A Well, it is a big company. We've got
11 over 1,000 employees and offices around the
12 world. I don't know exactly. I couldn't give
13 you an exhaustive list. I know that he couldn't
14 possibly be responsible for all financial
15 transactions.

16 **Q He was responsible for the financial**
17 **transaction related to the Destiny project,**
18 **right?**

19 MR. HUTCHISON: Object to the form.

20 A He and Joe Esposito would have done
21 that.

22 **Q But for Doctor's Associates, the persons**
23 **that were responsible for the negotiations on**
24 **your behalf, as related to the LCOC project, were**
25 **David Worroll and Mr. Esposito, right?**

1 MR. HUTCHISON: Object to the form.

2 A He wasn't working -- he was working for
3 Doctor's Associates and he undertook this work on
4 my behalf.

5 Q Within the scope of the work he
6 undertook on your behalf in connection with the
7 Destiny project, he sent this email, didn't he?

8 (Indicating.)

9 A I don't know. I imagine he did. I
10 don't know that he did.

11 Q Mr. DeLuca, we have three and a quarter
12 days together and I will commit to you that I
13 will do my level best to move it quickly, but I
14 would hope that you do your level best to just
15 not be evasive and answer the questions. You
16 have an email here from your controller. Are you
17 saying he fraudulently sent this email?

18 A I don't know what he did.

19 Q Anything he did, he did at your
20 direction, right?

21 A No.

22 Q It is your testimony that your
23 controller would have taken steps not at your
24 direction?

25 A Sending emails not at my direction?

1 Yes.

2 Q He operates within the scope of his
3 responsibilities as your controller, of Doctor's
4 Associates, right?

5 A Yes.

6 Q And certainly he's not sending emails
7 for his own personal edification, you're not
8 suggesting that, are you?

9 MR. HUTCHISON: Object to the form.

10 A I don't know about the emails that he
11 sent, is that --

12 Q Well, you have the email in front of
13 you. This is the only one I'm concerned about
14 right now.

15 A I know.

16 Q And in terms of email, is it your
17 testimony, Mr. DeLuca, that this email was sent
18 outside of the scope of his responsibilities as
19 your controller in 2006?

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

22 A I said I didn't know -- I don't know
23 what he did.

24 Q You have an email in front of you.

25 A I do.

1 **Q My question to you, sir, is: Was this**
2 **email sent within the scope of his**
3 **responsibilities when he was working for Doctor's**
4 **Associates in 2006?**

5 MR. HUTCHISON: Objection. Asked and
6 answered. He told you it was sent on behalf
7 of him personally.

8 MS. HOFFLER: Be quiet, you're not
9 testifying in this case. Make your
10 objection for the record.

11 **Q Go on, Mr. DeLuca.**

12 A (Looking at document.)

13 I don't know what he did with this
14 email. I'm not saying he didn't send it. I'm
15 not saying he did send it. I just don't know
16 about this email.

17 **Q Well, you know about it now, don't you,**
18 **sir?**

19 A Well, I have this here, yes.

20 **Q You knew about it a month ago when I**
21 **first asked you questions about this email?**

22 A I don't recall this.

23 **Q Tell me about what you did in between**
24 **our deposition about a month ago, the day and**
25 **three-quarters of deposition, and today. Did you**

1 do anything in terms of preparation for today?

2 A Yes.

3 Q What did you do, sir?

4 A I met with my lawyers on Friday and
5 yesterday and I... skimmed through my
6 deposition.

7 Q Did you review any documents?

8 A Um... I don't think we reviewed
9 documents.

10 Q Let me go back to this document. You
11 took an oath today again, so I just want to
12 remind you of that oath that you took.

13 Now, just so that everybody is clear:
14 Who paid David Worroll in 2006 when he was
15 working on your behalf? Who paid him?

16 A David Worroll worked for Doctor's
17 Associates, so I think he would have been paid by
18 Doctor's Associates.

19 Q Let's review this email that David
20 Worroll sent to Tom SanGiacomo on September 29,
21 2006.

22 Did you know who Tom SanGiacomo was at
23 that time in 2006?

24 A Yes.

25 Q Was he involved in the Destiny project?

1 A Yes.

2 Q So -- and this is what David Worroll,
3 your comptroller sends to Tom regarding the LCOCL
4 tax returns, and correct me if I'm not reading
5 this correctly, "Here is the details I have on
6 the loan and contribution amounts. If you agree,
7 then please finalize the tax return and get me
8 the K-1 as soon as possible." Do you see that?

9 A I do.

10 Q Then you see the email below that, and
11 that first email that I read was at 4:04 p.m.
12 Then there was an email at 4:08 p.m. that was
13 sent by David Worroll to Tom SanGiacomo,
14 importance, "Hi," and he says, "Tom, not sure
15 when you'll be back in the office but we need to
16 expedite the LCOCL returns so I can get Fred's
17 returns wrapped up and ready for his signature.
18 In order to meet the October 15th deadline in
19 filing his returns, we'll need this wrapped up,
20 and I'll need the LCOCL k-1 by the end of this
21 month at the latest. The items you and I need to
22 agree on is the costs to be included in the loan,
23 (the closing costs), and the capital contribution
24 required by Fred. Anything in excess will be
25 part of the loan and any shortage would be a

1 reduction of the loan.

2 "Here is a summary of what I have that
3 will need to be confirmed by you in order to wrap
4 up the tax returns for LCOCL."

5 Have I read that correctly?

6 A You did.

7 Q And then I will go and read the rest,
8 but do you recall in 2006, were there tax returns
9 filed for you, personally?

10 A Um...

11 Q That would have covered the 2005
12 reporting period?

13 A I think there are tax returns filed
14 every year.

15 Q So, you filed tax returns, as far as you
16 know, in 2005, 2006, 2007, and 2008, sir? As far
17 as you know?

18 A As far as I know.

19 Q Continuing on this with email from David
20 Worroll to Tom SanGiacomo, he states to Tom
21 SanGiacomo, "Fred has made the following
22 contributions:"

23 Have I read that correctly?

24 A You have.

25 Q And then it says, "On 06/06/05 W/T,"

1 then "\$4,237,836, and zero cents.

2 On 8/10 of '05 W/T, \$24,453.126.46.

3 Then the RPAC Funding per K-1 is
4 \$2,000,000.

5 Then it says, the LCOCL Equity
6 investment is \$26,690,962.46.

7 Have I read that correctly?

8 A You have read that correctly.

9 Q "Adjustment at loan closing - see below,
10 is \$2,809,037.54 and \$37," then says, "Fred's
11 equity contribution to LCOCL is \$29,500,000."

12 Have I read that correctly, sir?

13 A Yes.

14 Q "The RPAC Funding amount of \$2,000,000 I
15 got off the K-1 that Joe supplied me. It shows
16 \$20,000 in capital stock and \$1,980,000 in
17 shareholder loan."

18 Then the email from David Worroll
19 continues on the next page and it says, "The
20 following costs are included in the loan from
21 Fred to LCOCL."

22 So the record is clear, you're the Fred
23 being referred to here; is that correct?

24 A I would imagine that is what he was
25 referring to.

1 Q Because you were the one who made a loan
2 to LCOCL?

3 A Yes.

4 Q No one else made a loan to LCOCL during
5 this period?

6 A I think we know that.

7 Q Let's go through what your controller
8 says and writes on this email.

9 On 07/05/05, the appraisal fee paid to
10 Wachovia was \$38,650.

11 On 08/11/05, Wachovia loan proceeds,
12 \$104,864,870.10.

13 On 08/11/05 the closing cost filing fee,
14 \$5,800.

15 On 08/11/05 the legal fees were
16 \$49,829.90.

17 On 08/11/05 the closing fees/filing fee,
18 \$750.

19 On 08/23/05 the Loan registration, fee
20 Florida, \$2,450.

21 And on 09/16/05 closing cost/legal fees,
22 \$55,000, and the adjustment per above for adj
23 equity share is \$2,809,037.54.

24 Have I stated that correctly, sir?

25 A I think so, yes.

1 Q Then "Initial Loan balance,
2 \$102,208,312.46.

3 Continuing on with the email your
4 controller David Worroll sent to Tom SanGiacomo,
5 it says one percent of commitment fee of \$1.4
6 million dollars.

7 Have I read that correctly?

8 A You have.

9 Q That is in an email from Doctor's
10 Associates controller to Tom SanGiacomo.

11 Then further in his email it says
12 Monthly Funding, August, \$68,892.11.

13 Monthly Funding, September, \$86,672.53.

14 Monthly Funding, October, \$213,677.68.

15 Monthly Funding November, \$79,609.41.

16 Monthly Funding December, \$216,563.43.

17 Then says, interest charge up until
18 12/31/2005, \$3,244,948.67.

19 Loan Balance at 12/31/2005, so at the
20 end of 2005, the loan balance is \$107,509,676.29;
21 do you see that?

22 A I do.

23 Q It says, "If you have any questions on
24 the above, please do not hesitate to call me. If
25 you need more details on the closing cost or the

1 interest calculations I can get you additional
2 information."

3 You have no reason, Mr. DeLuca, to doubt
4 that Doctor's Associates' controller in 2006,
5 David Worroll, would have sent accurate
6 information for purposes of preparing your tax
7 return statements, right? You would no doubt
8 that he would have?

9 A Um... Well, this is pretty clear. He
10 says that he -- here is a summary of what he has
11 and he is looking for some confirmation, um...
12 But would I vouch for every number he ever puts
13 down on a piece of paper? I would say, he could
14 make mistakes.

15 Q Do you think he made a mistake in this
16 instance?

17 A I don't know.

18 Q Right, and you haven't done anything to
19 verify, since you got this document about a month
20 ago, whether he made a mistake when he sent this
21 email, did you?

22 A I didn't do anything with this document.

23 Q In fact, this is what he used as a basis
24 to prepare your tax returns for that year, didn't
25 he?

1 A I have no idea.

2 **Q You didn't do any -- you did not**
3 **undertake any independent actions to verify**
4 **whether this information was included in your tax**
5 **returns, did you?**

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

8 A I didn't do anything.

9 **Q So according to this -- according to**
10 **this email from Doctor's Associates' controller,**
11 **the commitment fee that you got at closing was**
12 **\$1.4 million, according to David Worroll's email;**
13 **isn't that right?**

14 A No. I got nothing at the closing, 1.4
15 million, which was the commitment fee, was put
16 into the loan.

17 **Q But \$1.4 million, Mr. DeLuca, you had**
18 **control over.**

19 A No.

20 **Q You're expecting people to believe that**
21 **you didn't have control over the monies that were**
22 **exchanged in this closing?**

23 MR. HUTCHISON: Objection, asked and
24 answered. Move to strike comment of counsel
25 and it is argumentative.

1 MS. HOFFLER: Just make your objection
2 for the record. What are you getting
3 nervous about?

4 MR. HUTCHISON: I'm not nervous, trust
5 me. I'm bored.

6 MS. HOFFLER: You look a little worried
7 and nervous and you're sweating.

8 MR. HUTCHISON: I want to cut the
9 comment of counsel. It is so
10 inappropriate.

11 MS. HOFFLER: Stop wasting your breath.
12 You ought to know --

13 MR. HUTCHISON: Don't attack me.

14 MS. HOFFLER: There's no attacking you.
15 You're making improper objections under
16 Florida rules, and you have been out of law
17 school more than five years and should know
18 better. Make your objections for the
19 record. Don't waste my time, and everyone
20 else's time. You're not impressing anybody.

21 **Q Now, Mr. DeLuca, whether this money went**
22 **into the loan or not, you benefited from this 1.4**
23 **million, because this was your loan that you made**
24 **to LCOCL, right?**

25 MR. HUTCHISON: Object to the form.

1 A No, I never benefited because I never
2 received this money.

3 **Q Mr. DeLuca, now you're splitting hairs.**
4 **This money, you were the only person -- it was**
5 **not Doctor's Associates although they were**
6 **involved with the loan, but you were the one, Mr.**
7 **DeLuca, that made the loan to LCOC, right?**

8 MR. HUTCHISON: Move to strike comment
9 of counsel. Form.

10 A I made the loan to LCOC.

11 **Q You made the loan to LCOC, right?**

12 A How many times are you going to ask me
13 the same question? Yes, I made the loan to
14 LCOC. You've asked me that question at least 50
15 times. The answer is yes.

16 **Q You want to check the record to see if**
17 **it was 50 times?**

18 A I will do that.

19 **Q I think it would be great if you**
20 **answered it, so I wouldn't have to ask it again.**

21 **Now, Mr. DeLuca, you made the loan to**
22 **LCOC but no one else but your name was on that**
23 **loan document, right? You were the one.**

24 A I made the loan to LCOC. I don't know
25 whose name is on the loan document.

1 **Q** And you, Mr. DeLuca, are the one that
2 **signed that loan document, right?**

3 A I would have to look at it again.

4 **Q** Do you want to look at it again?

5 A I would.

6 **Q** Let's look in your package, to make sure
7 **the record is clear here.**

8 Look at the promissory note from DeLuca
9 **to LCOC -- look at Exhibit 6, if you would, Mr.**
10 **DeLuca.**

11 A Six?

12 **Q** **Yes.**

13 MR. HUTCHISON: And again, my same
14 objection, you agreed you were going to take
15 the cover page off of these exhibits.

16 MS. HOFFLER: Right, we'll do that
17 probably at the end of the deposition, go
18 through all of them.

19 MR. HUTCHISON: What page on Exhibit 6?

20 MS. HOFFLER: I want him to look at
21 Exhibit 6 and confirm whether he signed the
22 loan document.

23 MR. HUTCHISON: Talking about the
24 promissory note, Exhibit 6?

25 MS. HOFFLER: Um-hum?

1 A (Looking through document.).

2 Q You signed the document, didn't you,
3 sir?

4 A Where should I look for my signature?

5 Q You have the page open. Isn't that your
6 signature?

7 A This says "Signed by Anthony V.
8 Pugliese, III, as manager."

9 Q You haven't signed anywhere on the loan
10 document?

11 A No, and it's both signatures are Anthony
12 Pugliese, III, as manager.

13 Q Let me just look at the first page of
14 this promissory note: It says "Fred A. DeLuca,"
15 does it say Fred A. DeLuca? Is your name on the
16 top of the promissory note?

17 A My name and address are on the
18 promissory note.

19 Q You're not here testifying or expecting
20 anyone to believe that you did not authorize this
21 promissory note or you did not make the loan;
22 that's not your testimony, is it?

23 MR. HUTCHISON: Object to the form.

24 Move to strike comment of counsel.

25 Answer, if you can?

1 A I made the loan but I didn't understand
2 your question.

3 Q Let me clarify, fair enough. I'll
4 clarify the question. Why don't you look at --
5 my question to you, and I want the record to be
6 clear, since it appears to be confusing... You
7 were the only person that made the loan to LCOC,
8 in connection with the Destiny project; isn't
9 that correct, sir?

10 A I made the loan to LCOC.

11 Q And in connection with that loan, sir,
12 you were the person that signed off on the
13 closing costs, on the closing statement.

14 MR. HUTCHISON: Object to the form.

15 A I don't know that to be the case.

16 Q When there is a closing statement for a
17 loan that you make, do you just typically not
18 read it?

19 A I don't... I typically don't read a lot
20 of documents.

21 Q But you understand, sir, that simply
22 because you don't read it doesn't mean you're not
23 responsible for it, right?

24 A I don't know what you're talking about.

25 Q You don't know what I'm talking about?

1 **Is it your understanding that if you don't read a**
2 **document that you signed, that you're not**
3 **responsible?**

4 A Which document are you referring to?

5 **Q As a general proposition, you said you**
6 **don't read a lot of documents. But you sign a**
7 **lot of documents, don't you?**

8 A I sign a lot of documents.

9 **Q If you don't read a document that you**
10 **sign, you don't think that that absolves you from**
11 **responsibility as relates to that document, do**
12 **you?**

13 A Depends on what document you're talking
14 about.

15 **Q You think there is a time you can sign a**
16 **document, put your name on it, and you would not**
17 **be responsible for the contents?**

18 A Sure, if somebody asked me to sign a
19 petition, I might sign the petition, but I'm not
20 responsible for the petition.

21 **Q You're responsible for what you're**
22 **signing the petition on behalf of. Whatever you**
23 **sign that petition --**

24 A I --

25 **Q You have to wait for me to ask the**

1 question, then you answer.

2 If you even sign a petition, let's use
3 that example, if you sign a petition, sir, you're
4 giving your name and saying that you believe in
5 whatever the cause is related to that petition,
6 and when you sign your name, you're saying you
7 believe in that. You take responsibility for
8 that, right? In the case for petition?

9 A Well, I'm not sure -- petitions take
10 many forms.

11 Q You used that example.

12 A A petition could be a request.

13 Q I understand. Let's be direct in this
14 case. When you signed loan documents, as 50
15 percent owner of Doctor's Associates, when you
16 signed a loan document, by putting your name on
17 that document, you are not absolved for
18 responsibility as relates to the consents of that
19 document, are you?

20 MR. HUTCHISON: Object to the form, and
21 to the extent it calls for a legal
22 conclusion.

23 A I don't know what you're talking about.
24 If there is a document you want me to review,
25 I'll be happy to look at it, but you're talking

1 in generalities.

2 Q Let me break it down since you have
3 difficulty understanding what I'm saying, and
4 this will take a while because it seems like this
5 is an easy question, but you don't understand it,
6 so let me break it down.

7 When you sign a document and you put
8 your name on it, you're responsible for that
9 signature; are you not?

10 MR. HUTCHISON: Move to strike comment
11 of counsel. I'm going to -- to the extent
12 it calls for legal conclusion, form.

13 Answer, if you can.

14 A It depends on the document.

15 Q Then I would like you to state for the
16 record that sometimes there are some documents
17 that you sign that you just feel that you're not
18 responsible for.

19 A I'm not going to have you put words in
20 my mouth. You asked me a question --

21 Q I just asked you another question, so
22 answer that.

23 A No, you gave me an order.

24 Q Answer the question.

25 A State the question.

1 **Q** **Sir, I would like you to then, because**
2 **you say that sometimes you're not responsible for**
3 **the contents of something that you sign, then I**
4 **would like you to put on the record that you're**
5 **not responsible for everything that you sign,**
6 **including loan documents. Put that on the**
7 **record.**

8 MR. HUTCHISON: Object to the form.

9 A That's not a question.

10 **Q** **Put that on the record --**

11 MR. HUTCHISON: Ask a question.

12 MS. HOFFLER: Excuse me.

13 MR. HUTCHISON: If you have a question,
14 then ask him a question.

15 MS. HOFFLER: Excuse me.

16 **Q** **Sir, I would like you to confirm that**
17 **you, Mr. DeLuca, can sign a legal document, a**
18 **financial document and feel that you are not**
19 **responsible for the contents of that document.**

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

22 A I have no idea what you're talking
23 about. There are documents that you sign as a
24 witness that you have no responsibility for that
25 are legal documents. This is such a broad

1 question, it is un -- I'm totally unable to
2 answer it. If you get specific --

3 Q Let's talk specifically about this
4 document that you looked at. The promissory
5 notes involved in the transaction between you,
6 Mr. DeLuca, and LCOC in 2005, okay?

7 MR. HUTCHISON: Exhibit 6?

8 A Exhibit 6, you're referring to?

9 Q I want you to look at Exhibit 6. We
10 will have to look at multiple documents, because
11 what I'll ask you for each of these documents is
12 I'm going to ask you if, by your signature, if
13 you believe that you have no responsibility for
14 the contents of those documents, okay?

15 Look at Exhibit number 5. I want you to
16 look at Exhibit number 6, and I want you to look
17 at Exhibit number 7.

18 Exhibit 7 is a promissory note. It
19 contains your signature?

20 A Where should I find that?

21 Q Exhibit number 7, the last page says
22 "Fred DeLuca," has your taxpayer identification
23 number and has your signature.

24 A (Witness reviews document.)

25 Q Exhibit number 5 is a promissory note

1 that also has your signature; and Exhibit 6 does
2 not have your signature, but it is addressed to
3 you, and your name is on the front page, August
4 9, 2005. Do you see all of those documents? We
5 went through these documents pretty thoroughly
6 about a month ago.

7 A (Witness examines documents.)

8 Q My question to you, sir, is: When you
9 sign a document, typically you're advised by
10 legal counsel; isn't that right?

11 MR. HUTCHISON: Are you talking about --

12 A Not necessarily.

13 MR. HUTCHISON: -- Exhibits 5 and 7?

14 Q Sir, did you understand my question?

15 A Um... I did.

16 Q So, when you sign a document, a
17 promissory note, for example, when you put your
18 name on a promissory note, you intend to sign
19 that document, if you sign it, don't you?

20 A I didn't understand that question.

21 Q Well, when you sign a document, you
22 intend to sign the document; isn't that right?

23 A I think, generally when I sign a
24 document, I intend to sign the document, but
25 there have been times I've signed documents that

1 were signed in error.

2 Q But certainly the promissory notes that
3 you have in front of you were not signed in
4 error, sir, were they?

5 A Which ones are you referring to?

6 Q The promissory note that you took out
7 with Wachovia, the Wachovia loan, that was not
8 signed in error, was it?

9 A There is two of them. Are you referring
10 to both of them?

11 Q Yes, you didn't sign either of those in
12 error, did you?

13 A No, I don't think I signed these in
14 error. I think I signed these correctly.

15 Q And the loan that you made to LCOC, that
16 was not made at the time that you made it, in
17 error, was it? You intended to make that loan to
18 LCOC in 2005 and you made that loan to LCOC;
19 isn't that right?

20 A Absolutely.

21 Q When you took out that promissory note,
22 those two promissory notes, you personally,
23 through Wachovia Bank, you never intended for
24 Anthony Pugliese to know any of the details of
25 those, right?

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

3 A On the money that I borrowed from
4 Anthony -- from Wachovia Bank, that was my
5 personal transaction and I did not intend to tell
6 Anthony the details. I told him the
7 generalities, but not the details.

8 Q In fact, you did not tell him the
9 details. It was not your intent to do it and you
10 did not do it?

11 A Correct.

12 Q Because you thought it was not his
13 business?

14 A It is not his business.

15 Q And today you feel it is not his
16 business?

17 A What I borrowed from the bank and what I
18 owed to the bank with my personal guarantee is my
19 business, it is not his business.

20 Q And even if you also used as a guarantee
21 the mortgage for property that he also had some
22 liability for, you still had no intentions of
23 letting him know that, did you?

24 A I don't know what you're talking about.

25 Q When you took out the promissory note

1 with Wachovia Bank, not only did you make
2 personal guarantees but you also guaranteed the
3 mortgage for the Destiny project, didn't you?

4 MR. HUTCHISON: Object to the form, and
5 foundation.

6 A I don't understand the question.

7 Q Why don't you look at your promissory
8 note that you took out with Wachovia.

9 A Which page, which note?

10 Q The promissory note that you took out
11 with Wachovia, the one that was 105 million.

12 A (Looking at requested document.)

13 Q Look on the page where it talks about
14 the guarantees. That's Exhibit 5, for the
15 record.

16 A (Looking at document.)

17 Q Do you have that document, sir?

18 A I'll read the whole thing, if you wish.

19 Q You can read the whole thing if you
20 want.

21 A Okay.

22 Q It is up to you. I'll bring to your
23 attention, and we reviewed this during the last
24 few days we did your deposition.

25 MR. HUTCHISON: Objection, asked and

1 answered.

2 Q Why don't we look at page 1 where it
3 says "Security," you're the borrower in this
4 instance, isn't that right, sir, on this
5 promissory note dated August 10, 2005 with
6 Wachovia?

7 A I'm the borrower.

8 Q Says under Security, "Borrower has
9 granted bank security interest in collateral
10 described in the loan documents, including but
11 not limited to personal property collateral
12 described in that certain security agreement of
13 even date, herewith, and the collateral described
14 in that certain assignment of note and mortgage
15 of even date herewith;" do you see that?

16 A I read that.

17 Q So -- do I need to go further? Do you
18 want further evidence that you did guarantee the
19 mortgage of the property connected to the Destiny
20 project?

21 MR. HUTCHISON: Object to the form.

22 A I don't understand that question, that
23 sentence, that paragraph.

24 Q Now you don't understand a paragraph in
25 a document that you signed; is that your

1 testimony here today?

2 A That's correct.

3 Q So your testimony here today, under
4 oath, is you just don't know whether you used the
5 Destiny property as a guarantee for the
6 promissory note that you took out with Wachovia
7 Bank; is that your testimony, sir?

8 A No, I did not use the property, the land
9 as a guarantee.

10 Q You did not use the land as a guarantee;
11 is that correct?

12 A I used -- well, I don't know what this
13 says. I believe that the mortgage that I held
14 from LCOC was part of the guarantee.

15 Q Which is what I said ten minutes ago.

16 A No.

17 Q My question to you, Mr. DeLuca, was:
18 Was the mortgage for LCOC used as a guarantee for
19 this promissory note that you took out with
20 Wachovia?

21 A I believe it was.

22 Q And who, Mr. DeLuca, was also -- Mr.
23 DeLuca, you were not the only person that had a
24 stake in that mortgage, were you?

25 MR. HUTCHISON: Object to the form.

1 A I was the only person that had a stake
2 in this.

3 **Q Did you get Anthony's permission to use**
4 **the mortgage for the Destiny project as a**
5 **guarantee for your promissory note that you had**
6 **with Wachovia Bank in 2005?**

7 MR. HUTCHISON: Object to the form, to
8 the extent it calls for a legal conclusion.

9 A I believe we did.

10 **Q You believe "we did"?**

11 A Yes.

12 **Q Do you have emails to reflect that?**

13 A Not on me.

14 **Q Not on you?**

15 A Not with me.

16 **Q But it is your testimony that you got**
17 **permission from Anthony Pugliese, even though you**
18 **didn't share with him any of the specific terms**
19 **of your loan with Wachovia, your promissory note**
20 **with Wachovia, but it is your testimony here**
21 **under oath that you got his permission to**
22 **encumber the mortgage for that property prior to**
23 **you signing these documents; is that your**
24 **testimony, sir?**

25 MR. HUTCHISON: Object to the form?

1 A I don't know about the time sequence of
2 things that you're referring to, but I believe
3 there was permission granted. It was asked and
4 permission granted to do just that.

5 **Q But was it before you executed your**
6 **promissory note with Wachovia Bank?**

7 A I don't know.

8 **Q Because it would be important for it to**
9 **be before, right? You don't ask permission for**
10 **something after the fact, do you?**

11 MR. HUTCHISON: Object to the form.

12 A I would have to see the details on all
13 this.

14 **Q You would have to see the details on all**
15 **this? Is that what you're saying?**

16 A That's what I said.

17 **Q What type of details, sir, would refresh**
18 **your recollection as to whether you got**
19 **permission from Anthony Pugliese to use the**
20 **mortgage for the Destiny project as a guarantee**
21 **for your promissory note with Wachovia Bank?**

22 A When I said I need to see the details,
23 it was in reference to your prior question, but I
24 can handle this question. Say that one again.

25 MS. HOFFLER: Please read back the

1 question.

2 (The record was read.)

3 A I think we would have to look at the
4 documents that were assembled to see what was
5 done in the transaction.

6 **Q Your promissory note, sir, your**
7 **promissory note for 105 million dollars with**
8 **Wachovia Bank was dated August 10, 2005, right?**

9 A (Looking at documents.)
10 It says August 10, 2005.

11 **Q Now, is it your testimony here under**
12 **oath, that you secured permission from Anthony**
13 **Pugliese prior to signing your promissory note**
14 **with Wachovia Bank to be able to encumber the**
15 **mortgage on the Destiny project?**

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

18 A I don't know what the date sequence was
19 of all these things.

20 **Q What does that mean, you don't know what**
21 **the date sequence was?**

22 A What it means is I don't know the dates
23 that each thing was done.

24 **Q But --**

25 THE WITNESS: Excuse me, I need more

1 water.

2 MS. HOFFLER: We can get some water and
3 pour it in your cup, if that's okay.

4 MR. HUTCHISON: Take a two-minute
5 break.

6 THE VIDEOGRAPHER: Off the video record
7 at 10:21.

8 (Pause in the proceedings.)

9 THE VIDEOGRAPHER: Back on the video
10 record at 10:36 a.m.

11 MS. HOFFLER: Thank you.

12 **Q Now, Mr. DeLuca, when we took this**
13 **little water break, before the water break I had**
14 **asked you to look at three documents primarily,**
15 **promissory notes, two promissory notes that you**
16 **signed with Wachovia and then another promissory**
17 **note that was signed in connection with the loan**
18 **to LCOC; isn't that right?**

19 A That's correct.

20 **Q You had a chance to look at those**
21 **documents before in your deposition that we had**
22 **about a month ago, right?**

23 A Yeah, I think we looked at all three of
24 them last month.

25 (Indicating.)

1 Q I would like to get back to -- keep
2 those loan documents there because I'm going to
3 cross-reference and go back, but please, now turn
4 back to Exhibit 8, which is, for the record, the
5 email sent from the controller of Doctor's
6 Associates to Tom SanGiacomo related to the LCOCL
7 tax returns, and that contains closing costs that
8 were included in the loan from you, Fred DeLuca,
9 to LCOCL.

10 Now, Mr. DeLuca, routinely when David
11 Worroll would prepare your taxes, did you review
12 the information that he furnished before signing
13 the income tax statements?

14 A David Worroll didn't prepare my taxes.

15 Q Well, he would put together the
16 information and someone else would prepare the
17 taxes?

18 A I had my accounting firm that prepares
19 the taxes.

20 Q David Worroll would furnish information
21 to the accounting firm; is that right?

22 A Yes.

23 Q Did you review typically the information
24 that David Worroll would submit to the accounting
25 firm?

1 A No.

2 Q Is it your practice, though, to trust
3 your controller to put together information that
4 would serve as a basis for your taxes?

5 A Um... Well, there is a number of people
6 that I rely on, that I hope do a pretty good job,
7 and David is one of them.

8 Q When I said "your comptroller," I meant
9 Doctor's Associates's controller. But certainly
10 if David Worroll were not performing in a way
11 that met your approval as the owner, part-owner
12 of Doctor's Associates, he would no longer be
13 your controller, right?

14 A Yeah, on balance when I look at his
15 overall work, if it is reasonably good, he stays.

16 Q It has been reasonably good for a number
17 of years, right, because he has been there for a
18 number of years as your controller?

19 A Yes.

20 Q When I say "your," I mean Doctor's
21 Associates's controller.

22 Let's talk again about the \$1.4 million
23 in the commitment fee that according to your
24 controller, David Worroll, it says, that was the
25 amount of money that was included in the loan

1 **from you to LCOCL; do you see that?**

2 A I see the \$1.4 million here.

3 (Indicating.)

4 **Q Right, \$1.4 million, one percent commit**
5 **fee, right?**

6 A And it is included in the loan balance,
7 yes.

8 **Q It says here the following costs are**
9 **included in the loan from Fred to LCOCL; and this**
10 **one percent commitment fee or \$1.4 million was**
11 **part of what was included by you in the loan that**
12 **you made to LCOCL, according to David Worroll**
13 **on -- in his email September 19, 2006.**

14 **According to him, that was something**
15 **that was included in the loan that you made to**
16 **LCOCL, right? According to him?**

17 A The one percent commitment fee was
18 included in the loan.

19 **Q According to your controller or the**
20 **controller of Doctor's Associates in September of**
21 **2005, right -- 2006, right?**

22 A Look, you're referencing this email
23 which I didn't see -- or I don't know about, but
24 I think it is reasonable that the \$1.4 million
25 was included in the loan, that seems to be

1 correct.

2 Q Sir, who was the person that came up
3 with this one percent commitment fee? Was that
4 you?

5 A I think it was Tom SanGiacomo and
6 Anthony.

7 Q It is your testimony that Tom SanGiacomo
8 and Anthony Pugliese came up with the one percent
9 commitment fee?

10 A I think it was related to the istar loan
11 they were trying to work on.

12 Q Who came up with the commitment fee that
13 you had to pay and for this I'll reference you to
14 an exhibit that we used previously. Let's look
15 at Exhibit 1, the second page of Exhibit 1, for
16 your 105 million dollar loan that you got from
17 Wachovia. Let's look at page 2. Who came up
18 with the \$78,750 as a balance of the commitment
19 fee that you paid to Wachovia? Was that you?

20 A Who came up with it?

21 Q Yeah.

22 A I don't know.

23 Q Well, you only paid \$157,500 in a
24 commitment fee to Wachovia, right? We went
25 through that in the last deposition.

1 A I think that's correct.

2 Q You would agree there is about a 1.2
3 million dollars and some change difference
4 between the 157,5, that you paid in a commitment
5 fee to Wachovia and the \$1.4 million that you
6 charged as a commitment fee to LCOC, right?

7 A That's correct.

8 Q And that \$1.2 million that you were able
9 to get and profit at closing was not something
10 that you shared with or had any intentions of
11 sharing with Anthony Pugliese at any point?

12 MR. HUTCHISON: Object to the form.

13 A I don't understand the question.

14 Q You never told Anthony Pugliese at any
15 point, because you said you didn't intend on
16 sharing any of the details of your loan with
17 Wachovia with him, at no point did you say, "Hey,
18 Anthony, when we close on this loan, I'm going to
19 make about \$1.2 million in commitment fees on the
20 loan that I'm making with LCOC." You never
21 shared that with Anthony Pugliese at any point,
22 did you?

23 MR. HUTCHISON: Object to the form.

24 A No, because the commitment fee was \$1.4
25 million, and I told him that the commitment fee

1 was \$1.4 million.

2 Q Sir, my question to you is this: We
3 know the commitment fee was \$1.4 million, and now
4 you're saying that you told him it was, and you
5 said it was his idea, okay, so, whatever it was.
6 Anthony Pugliese knew that it was a \$1.4 million
7 commitment fee that he and LCOC had to pay.

8 But my question to you is as follows,
9 Mr. DeLuca: You never told Anthony Pugliese
10 ever, that the profit you were going to make in a
11 commitment fee alone, with these transactions was
12 \$1.2 million and some change; you never told him
13 that, did you, sir?

14 MR. HUTCHISON: Objection.

15 A That's an incorrect statement.

16 Q You --

17 A Let me finish my answer.

18 Q I'm sorry, I interrupted. Go ahead.

19 A I told him the commitment fee was \$1.4
20 million, that -- nothing to do with the previous
21 loan that I borrowed. The entire \$1.4 million
22 would have been profit if the loan had been paid,
23 but the loan was never paid. I never received
24 \$1.4 million or any money -- any money from LCOC
25 and Anthony Pugliese.

1 Q Is it your testimony here today, sir,
2 that you would not have -- you would not get a
3 commitment fee or did not get a commitment fee
4 unless the loan was paid off? Is that your
5 testimony here today under oath, sir?

6 A I would not receive cash unless the loan
7 was paid off for that commitment fee.

8 Q For that commitment fee, so that is your
9 testimony under oath?

10 A Yes.

11 Q And then, let me just ask you now,
12 Wachovia got its commitment fee from you of
13 \$157,500, right?

14 A Yes.

15 Q And, because that's the way a commitment
16 fee works; isn't that correct, you get the
17 commitment fee before the loan, right?

18 A I don't know what you're talking about.

19 Q What is a commitment fee, sir?

20 A In these cases there was an amount that
21 was paid for the commitment.

22 Q Right, and you paid Wachovia 157,500?

23 A I did.

24 Q And Wachovia got that commitment from
25 you and you got the loan, right?

1 A Yes.

2 Q They didn't get that money only after
3 the loan was paid off, they got that money at the
4 time the loan was made, right?

5 A These are two separate transactions that
6 I --

7 Q Just answer my question.

8 A I'm answering it.

9 Q You answer my question.

10 Wachovia, sir, got that commitment fee
11 of 157,500 from you --

12 A That's correct.

13 Q -- before making the loan. I haven't
14 finished.

15 A Well --

16 Q Before making the loan and it was part
17 of the closing statement, wasn't it, on your loan
18 with Wachovia?

19 A I don't know about the closing statement
20 for my loan with Wachovia.

21 Q Well, let me put it to you this way,
22 sir: Isn't it true that Wachovia got its 157,500
23 from you, from you, at the time, or around the
24 time that you closed on your loan with Wachovia?

25 A I think that's correct.

1 Q That's correct. And that, sir, has been
2 your experience with commitment fees; has it not?

3 A I don't know what you're talking about.

4 Q You're a seasoned business person; are
5 you not?

6 A What does that mean?

7 Q What does "seasoned business person"
8 mean to you?

9 A Well, I'm old.

10 Q I'm old, too. Welcome to the old
11 person's club.

12 A seasoned business person to you means
13 you have been -- you run a billion dollar
14 corporation now, we've established that already,
15 right?

16 A Yes.

17 Q Okay, in running a billion dollar
18 corporation you've taken out several loans,
19 haven't you?

20 A Not too many.

21 Q Even better. You finance things
22 yourself without loans because you are a
23 successful business person, right?

24 MR. HUTCHISON: Object to the form.

25 Q You don't need to take out a lot of

1 **loans, do you?**

2 A I have not had to take out a lot of
3 loans.

4 **Q But when you have taken out loans, there**
5 **is usually a commitment fee attached to the**
6 **loans, isn't there?**

7 A I don't know.

8 **Q You don't know? Why don't you look in**
9 **the camera and say "I don't know."**

10 A I don't know.

11 **Q You don't know whether when you take a**
12 **loan from the bank, whether it is standard to**
13 **have a commitment fee?**

14 A I don't know that.

15 **Q One thing you do know, that you, sir,**
16 **charged 1.4 million in a commitment fee to LCOC,**
17 **LCOCL, when you loaned the money for the Destiny**
18 **project, right?**

19 A There was a \$1.4 million commitment fee
20 that was rolled into the loan that I never
21 received.

22 **Q That was charged, right?**

23 **It was charged?**

24 A It was included in the loan.

25 **Q It was charged; was it not?**

1 A ... Well, it was one of the costs that
2 was included in the loan.

3 **Q Right, and there was no opportunity for**
4 **them to say, "Well, no, we don't want to pay that**
5 **\$1.4 million in commitment fee;" that was one of**
6 **the terms?**

7 A Absolutely not. They did not have to
8 take this loan. They could have rejected it in
9 its entirety. There was no obligation to take
10 this loan.

11 **Q I see.**

12 A The loan was negotiated and that is what
13 was agreed upon. I didn't have to make the
14 loan. LCOC didn't have to take the loan.
15 Anthony Pugliese didn't have to sign the loan.

16 **Q And you didn't have to. When we talk**
17 **about LCOC, you're acting like you're not part of**
18 **LCOC, but that's not true, is it?**

19 A I'm not part -- I -- I -- I have a
20 company that I formed that is a member in LCOC.

21 **Q Just like Anthony Pugliese has a company**
22 **that he formed that was a member of LCOC, right?**
23 **Right?**

24 A Yes, I think that's correct.

25 (Witness shrugs.)

1 Q Both of you had to guarantee certain
2 things, right?

3 A I don't know what you're talking about.

4 Q As part of the LCOC deal, did you have
5 to provide -- were you personally engaged or was
6 it just through your company that you formed?

7 A It was an investment that was made
8 through a company.

9 Q Through a company that you owned?

10 A Yes.

11 Q This was not a company that you -- is it
12 Peter Buck, is that your partner, Peter Buck?

13 A Yes.

14 Q The company you created was not a
15 company Peter Buck also owned, was it?

16 A He had nothing to do with LCOC or the
17 company I formed, or the investment.

18 Q Or the investment. This was just your
19 investment, right?

20 A Correct.

21 Q Just as Anthony Pugliese made an
22 investment, right, he made an investment through
23 his company, right?

24 A What is the question?

25 Q Anthony Pugliese made an investment

1 through his company, right, into LCOC?

2 A Right.

3 Q You made an investment through your
4 company through LCOC, right?

5 A Correct.

6 Q You all were 50 percent -- your
7 companies, you all owned that corporate entity as
8 equal partners, right?

9 A No, we weren't partners.

10 Q Well, you owned the company with equal
11 shares, shall we say?

12 A Um... FD Destiny owned 50 percent of
13 LCOC.

14 Q And, AVP Destiny owned the other 50
15 percent, right?

16 A I believe that's correct.

17 Q Anthony owned AVP, right?

18 A I believe that's correct.

19 Q And you owned FD Destiny?

20 A That's correct.

21 Q So those corporate entities owned 50
22 percent of that business, right?

23 A That's correct.

24 Q When you're talking about LCOC as if it
25 is some entity you're not engaged in, that is

1 **part of a company that you owned, right?**

2 A No.

3 **Q You owned FD Destiny, didn't you?**

4 A Yes.

5 **Q FD Destiny was part of LCOC, wasn't it?**

6 **It was an investor in LCOC, wasn't it?**

7 A That's correct.

8 **Q You're knee deep in LCOC, through your**
9 **company, right?**

10 MR. HUTCHISON: Object to the form.

11 **Q Fifty percent owner?**

12 MR. HUTCHISON: Move to strike comment
13 of counsel?

14 A Explain "knee deep."

15 **Q Just like you're knee deep in Doctor's**
16 **Associates. You own 50 percent of Doctor's**
17 **Associates --**

18 A I don't know what you mean.

19 **Q You don't know what I mean by "knee**
20 **deep," you're intricately involved.**

21 A Not true.

22 **Q You're not intricately involved in**
23 **Doctor's Associates?**

24 A Oh, yes, Doctor's Associates, I work
25 there. I provide a lot of work and I am

1 intricately involved in Doctor's Associates -- as
2 I'm involved with Doctor's Associates, and I have
3 an investment in Doctor's Associates.

4 **Q And your investment in Doctor's**
5 **Associates is 50 percent, right?**

6 A That's correct.

7 **Q Your investment in the LCOC deal through**
8 **your company that you own is 50 percent, as well,**
9 **right?**

10 A FD Destiny owns 50 percent.

11 **Q And you own 100 percent of FD Destiny,**
12 **right?**

13 A That is correct.

14 **Q Now, that \$1.4 million that you charged**
15 **LCOC, was not simply -- it wasn't charged**
16 **directly to Anthony Pugliese, was it?**

17 A It was charged to LCOC.

18 **Q It was charged to LCOC. And just as**
19 **Wachovia got its commitment fee that was**
20 **disclosed on the closing statement prior to the**
21 **loan being executed, you got your \$1.4 million**
22 **commitment fee prior to the loan being executed**
23 **for the LCOC project, right?**

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

1 A No, not at all. I never got any money
2 over than that \$1.4 million.

3 **Q Certainly in agreeing to a commitment**
4 **fee of \$1.4 million it was certainly your intent**
5 **to get that money wasn't it, otherwise, you**
6 **wouldn't have put it in there?**

7 A No, the intent was to make it part of
8 the loan.

9 **Q And you made it part of the loan. It**
10 **was a cost associated with the loan, right?**

11 A Um... It was part of the loan.

12 **Q It was a cost associated with the loan,**
13 **right?**

14 A I -- I don't know-- I know the word
15 "Cost" but you're unclear, a cost --

16 **Q Let's be clear. This is David Worroll's**
17 **words, "The following costs are included in the**
18 **loan from Fred to LCOCL." That's your controller**
19 **or Doctor's Associates's controller's words in**
20 **writing on September 19, 2006 at 4:08 p.m. Those**
21 **are his words, he said they were costs of the**
22 **loan that you, Fred, made to LCOCL; that \$1.4**
23 **million. My question to you, sir, is: Isn't it**
24 **true that \$1.4 million was a cost --**

25 A It --

1 **Q** Excuse me, a cost for the loan that you,
2 **Fred DeLuca, made to LCOCL?**

3 A It was part of the loan.

4 **Q** Was it a cost?

5 A I don't know what you're talking about.

6 **Q** You don't know what "cost" is?

7 A Depends on -- explain the question. I
8 know it was part of the loan. I know that 1.4
9 million was rolled into the loan and that was the
10 commitment fee.

11 **Q** It was part of the loan and it was a
12 **cost that you taxed, that you taxed?**

13 A I didn't --

14 **Q** Excuse me, it was the \$1.4 million was a
15 **cost that you taxed to LCOC as part of the cost**
16 **that you assessed in the loan?**

17 MR. HUTCHISON: Object to the form.

18 A I didn't understand the question.

19 **Q** We need to go over it again because
20 **evidently you have difficulty understanding**
21 **cost.**

22 Let me go through this again. I want
23 you to look again at Exhibit 8, if you could.
24 The reason why I want to look at Exhibit 8 is
25 because I don't want to put words in your mouth,

1 I want your controller's words -- I want you to
2 respond to your controller's words.

3 Your controller says in connection with
4 the loan, you, Fred DeLuca, made to LCOCL on page
5 2, "The following costs are included in the loan
6 from Fred to LCOCL;" do you see that?

7 A I see that.

8 Q And in that statement that he makes,
9 below that he lists a number of costs according
10 to him including a one percent commitment fee; do
11 you see that?

12 A That's not true.

13 Q He does not list a one percent
14 commitment fee?

15 A No, what he does here is he says there
16 is costs, and he lists one, two, three, four,
17 five, six, seven, eight items, and comes up with
18 a total, and then after that, he says one percent
19 commitment fee.

20 Q Which is a cost that when he -- sir,
21 again, this is from your comptroller, not from
22 anyone else. He says, "The following costs are
23 included in the loan from Fred to LCOCL." In the
24 middle of this list he doesn't say, by the way, I
25 finished with the costs, now let's go to

1 something else.

2 MR. HUTCHISON: Do --

3 MS. HOFFLER: Excuse me.

4 Q What he said, sir, he said the following
5 costs are included from Fred to LCOCL and the
6 next paragraph where there's a narrative, what he
7 says, "If you have any questions on the above,
8 please don't hesitate to call me. If you need
9 more details on the closing costs or the interest
10 calculations, I can get additional information."

11 Have I read that correctly?

12 A This last sentence? I didn't track it
13 with you.

14 Q Let's track it. "If you have any
15 questions on the above, please do not hesitate to
16 call me." Have I read that correctly?

17 A You've read it correctly.

18 Q "If you need more details on the closing
19 cost or the interest calculations, I can get you
20 additional information." Have I read that
21 correctly, Mr. DeLuca?

22 A You've read that correctly.

23 Q This \$1.4 million commitment fee, no
24 matter where you claim it went after, it was a
25 cost, that you taxed --

1 A That I what? I didn't understand.

2 Q **Taxed, t-a-x-e-d.**

3 MR. HUTCHISON: Object to the form.

4 Q **-- to LCOC in connection with the loan**
5 **that you made to LCOC; isn't that correct, sir?**

6 MR. HUTCHISON: Objection.

7 A I don't understand the question. I
8 don't understand taxation and this commitment
9 fee.

10 Q **You don't understand a commitment fee?**
11 **This was the commitment fee for your loan.**

12 A I don't understand this word "taxing,"
13 and tax in accordance with the commitment fee.

14 Q **That's a fair commentary. Let me use a**
15 **different word.**

16 **A cost that you assessed, to LCOC when**
17 **you made the loan. Just as Wachovia assessed a**
18 **tax of 157,5 to you as a commitment fee, right?**

19 A First of all, one doesn't have anything
20 to do with the other. This is a fee, not a tax.

21 Q **I took away the word "tax."**

22 MR. HUTCHISON: Let him finish his
23 answer. Finish your answer.

24 A This is a fee, not a tax... A tax. It
25 wasn't assessed, it was negotiated between the

1 parties and it was rolled into the loan and I did
2 not receive this cash.

3 **Q Where did it go, sir? You didn't**
4 **receive it, where did it go?**

5 A In the loan. I was not paid.

6 **Q Where did it go? Where in the loan did**
7 **it go? You don't know where it went, this amount**
8 **you claim went into the loan. You cannot sit**
9 **here right now under oath and say where the \$1.4**
10 **million went, can you?**

11 MR. HUTCHISON: Objection.

12 Argumentative, asked and answered.

13 A I said to you it went into the loan.

14 **Q Do you have any documentation that**
15 **proves that it went into the loan, sir?**

16 A This is your deposition.

17 **Q I'm asking you. You have to answer my**
18 **questions. Do you have any documentation that**
19 **proves it went into the loan, sir?**

20 A Well...

21 MR. HUTCHISON: Not with him.

22 MR. GARY: Wait a minute. That wasn't
23 called for.

24 MS. HOFFLER: Move to strike and for
25 that, you will hear from the judge.

1 MR. GARY: You're suggesting answers.

2 MS. HOFFLER: Inexcusable,
3 inappropriate, unethical. You should know
4 better and be ashamed of yourself.

5 MR. HUTCHISON: If you're discussing --
6 If you're talking about --

7 MS. HOFFLER: Move to strike.

8 MR. HUTCHISON: Are you talking about
9 the discovery process?

10 MS. HOFFLER: Have you lost your mind?
11 You're not a witness in this case. Act like
12 a lawyer.

13 MR. HUTCHISON: Quit the personal
14 attacks --

15 MS. HOFFLER: Act like a lawyer, make
16 the objection for the record and that's it.

17 MR. GARY: You know you're trying --

18 MS. HOFFLER: That's completely
19 inappropriate. We're going to see the judge
20 later today.

21 MR. HUTCHISON: Fine.

22 MS. HOFFLER: Make your objection for
23 the record and let it go. You don't sit and
24 testify --

25 MR. HUTCHISON: I made my objection. My

1 objection is to the form of the question.

2 MS. HOFFLER: You're not a witness and
3 you don't testify.

4 MR. HUTCHISON: Quit the personal
5 attacks --

6 **Q Let me ask you this, sir: You do not**
7 **have --**

8 MR. GARY: Can we get the question that
9 you had before back from the reporter?

10 MS. HOFFLER: I was going to ask the
11 exact same question.

12 MR. GARY: You have it?

13 MS. HOFFLER: Yes.

14 **Q You don't have a single bit of proof,**
15 **sir, that this \$1.4 million went back into the**
16 **loan, do you?**

17 A I didn't hear you.

18 **Q You didn't hear me? Do you want me to**
19 **raise my voice then? Shall I raise my voice?**

20 A So I can hear you.

21 **Q Mr. DeLuca, you don't have a single**
22 **shred of proof that this \$1.4 million in**
23 **commitment fee went back into the loan, do you?**

24 A That's not true. I do.

25 **Q Where is the proof, sir?**

1 A It is in the documents.

2 **Q Want us to produce the documents and --**

3 A Excuse me?

4 **Q I'll produce the documents and I want**
5 **you to show, because we've got all the**
6 **documents. I want you to show where there is**
7 **proof that this \$1.4 million went back into the**
8 **loan. Okay? When we talk about documents, what**
9 **documents are you referring to? You want to look**
10 **at the closing documents for --**

11 A I'm talking about all the documents
12 related to the loan, including all the emails
13 that went back and forth between the attorneys,
14 the whole sum and substance of what was put
15 together, so... (Witness shrugs.)

16 **Q I want to make sure I'm clear on the**
17 **record. Your testimony here today is that**
18 **somewhere in the documents, including all the**
19 **emails that went back and forth to the attorneys,**
20 **there will be evidence that this \$1.4 million**
21 **went back into the loan, right? That's your**
22 **testimony?**

23 A Yes.

24 **Q The one thing those documents will also**
25 **reveal is that you intended to charge this \$1.4**

1 million to LCOC, didn't you?

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

4 A Absolutely. That was part of the
5 negotiations and there was a \$1.4 million fee
6 that was included.

7 Q The one thing that's true is that you
8 intended for the commitment fee that you paid to
9 Wachovia to only be 157,500 right, you intended
10 for that to be the case?

11 MR. HUTCHISON: Object to the form.

12 A Not at all.

13 Q And that, in fact, was the case because
14 that's all you paid a commitment to Wachovia for
15 your loan, right?

16 A I agree that that was what was the
17 commitment fee. It was not my intention to make
18 it that amount.

19 Q You paid it, didn't you?

20 A I did pay it.

21 Q After you paid it, you knew it was all
22 you were going to have to pay because it was in
23 the documents we reviewed during the last part of
24 your deposition, you knew it would only be
25 157,500, right?

1 A You're a little fast on that. Please
2 slow down.

3 **Q You knew it was true, Mr. DeLuca, that**
4 **all you would have to pay in a commitment fee was**
5 **157,500 --**

6 MR. HUTCHISON: Object to the form.

7 Asked and answered. Now you can
8 answer. Do you remember the question?

9 A I think it was about the \$157,000
10 commitment fee?

11 **Q I'll ask the question again.**

12 And you knew, Mr. DeLuca, that all you
13 were going to have to pay in a commitment fee in
14 connection with your loan to Wachovia Bank was --
15 your loan from Wachovia Bank was 157,500, you
16 knew that before closing on that loan?

17 A Correct.

18 **Q You knew that, in fact, before even**
19 **assessing or making as a cost to LCOC for their**
20 **loan, a commitment fee of \$1.4 million, you knew**
21 **that there was a difference between the amount**
22 **that you had to pay Wachovia as a commitment fee**
23 **and the amount that you were charging LCOC as a**
24 **commitment fee, you knew there was a difference**
25 **in that amount?**

1 A Oh, first of all, I wasn't charging. It
2 was a negotiated deal. I knew it was \$1.4
3 million that the commitment fee would be, that
4 was agreed to buy Anthony Pugliese and that was
5 included in the loan.

6 **Q And you also knew, at the same time,**
7 **sir, you also knew that all you were going to**
8 **have to pay was -- to Wachovia for your loan, was**
9 **157,5 as a commitment fee; you knew that as well,**
10 **right?**

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

13 A Yes.

14 **Q Anthony Pugliese didn't know that**
15 **because you never told him the only amount you**
16 **had to pay as a commitment fee for your loan from**
17 **Wachovia was 157,5; you never told him that,**
18 **right?**

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

21 A I never told him that.

22 **Q You never intended to tell him that,**
23 **right?**

24 A You didn't let me finish the answer.

25 **Q Sorry, I didn't realize you didn't**

1 **finish. You never told Anthony that, right?**

2 A I never told Anthony that. They were
3 two separate transactions. He had nothing to do
4 with the loan that I took from Wachovia to borrow
5 money.

6 **Q Other than you, you know, mortgaging the**
7 **property that his company had an interest in,**
8 **without his knowledge. You mean other than that**
9 **it was a separate transaction, right, other than**
10 **that?**

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

13 A He knew about the mortgage that he
14 granted from the land. He signed the loan
15 documents and granted me a mortgage.

16 **Q But he didn't know that there was a 1.2**
17 **million dollar difference in the commitment fee**
18 **that Wachovia charged you, versus the commitment**
19 **fee that you charged LCOCL; he did not know that,**
20 **did he, Mr. DeLuca?**

21 A I think we've covered this many times --

22 **Q Answer my question, please.**

23 MR. HUTCHISON: He is answering your
24 question. Let him finish the answer.

25 MS. HOFFLER: Be quiet.

1 MR. HUTCHISON: No, I won't be quiet.

2 A I was answering the question.

3 Q Let me ask again so we have a clean
4 record. He did not know, did he, Mr. DeLuca,
5 that there was a 1.2 million dollar difference in
6 the commitment fee that Wachovia charged you for
7 your loan versus the \$1.4 million commitment fee
8 that you charged LCOC, he did not know about that
9 \$1.2 million difference, did he?

10 A He knew the commitment fee was \$1.4
11 million from my loan to LCOC, but in a separate
12 transaction where I borrowed money from Wachovia,
13 I paid \$157,500, he did not know what I paid to
14 Wachovia.

15 Q So, by definition he did not know about
16 the \$1.2 million difference between the
17 commitment fee that you paid to Wachovia and the
18 \$1.4 million commitment fee that you charged to
19 LCOC, did he?

20 A This is totally unrelated transaction.
21 Two different transactions.

22 Q I understand they are unrelated. You
23 can explain. I need a "yes" or "no" to my
24 question. Let me ask it again.

25 So Anthony Pugliese did not know about

1 the difference between the 157,5 commitment fee
2 that you paid to Wachovia, versus the \$1.4
3 million that you charged to LCOC in a commitment
4 fee; he did not know about that difference, did
5 he?

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

8 A That's correct, he did not know what I
9 paid to Wachovia for a commitment fee.

10 Q And he did not know about the \$1.2
11 million difference between the commitment fee
12 that you paid to Wachovia and the commitment fee
13 that you charged to LCOC, did he?

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

16 A Correct, he did not know that.

17 Q Mr. DeLuca, you, through FD Destiny, the
18 company you created to be a part of the LCOC
19 company, you got basically a 50 percent interest
20 in that deal, right? Through your company.

21 A Um --

22 MR. HUTCHISON: Object to the form.

23 A Yes, FD Destiny was a 50 percent owner.

24 Q Why did you get 50 percent of that deal,
25 sir?

1 A Because that's the deal that we
2 negotiated.

3 **Q Right, but why did you want to negotiate**
4 **to get 50 percent of the deal?**

5 A Why did I want to negotiate to...

6 **Q Yes, why? Why didn't you just provide**
7 **the financing for LCOCL and get no percentage of**
8 **the deal?**

9 A These are two totally unrelated
10 transactions.

11 **Q Then answer the question, sir.**

12 A I don't understand the question.

13 **Q Why is it that you negotiated to get 50**
14 **percent of the LCOCL deal? Why? Do you know?**

15 A Because Anthony asked me if I would
16 invest in the land project.

17 **Q Yes?**

18 A And we negotiated a deal where he -- he
19 would make a company that would own 50 percent,
20 and I would make a company that would own 50
21 percent, and both companies had funding
22 obligations to pay into LCOC. So, there were
23 investments that both companies were making on a
24 monthly basis and that's the deal that we struck.

25 **Q Why was it important to you to get a 50**

1 **percent -- to get 50 percent of that deal?**

2 A It wasn't necessarily important.

3 **Q Why did you do it?**

4 A Because that's the deal we struck.

5 **Q What was your interest in doing that,**
6 **sir?**

7 MR. HUTCHISON: Asked and answered.

8 A I don't understand the question.

9 **Q You have investments, you have a lot of**
10 **investments, don't you, Mr. DeLuca?**

11 A I do.

12 **Q And when you have investments in**
13 **companies, right, you do so presumably because**
14 **you want to invest in that company, right?**

15 A Not necessarily.

16 **Q Sometimes you invest in companies that**
17 **you don't want to invest in?**

18 A Sometimes other people make investments
19 for me.

20 **Q I'm asking about companies you invest**
21 **in, not what other people do for you. I'm asking**
22 **about companies you, Mr. DeLuca, invest in.**
23 **Okay? Let's start the questions over again.**

24 In reference to companies that you
25 invest in, Mr. DeLuca, presumably you invest in

1 **companies because you want to invest in those**
2 **companies, right?**

3 A Not always.

4 **Q So it is your testimony here, under**
5 **oath, that sometimes you invest in companies that**
6 **you don't want to invest in?**

7 A That's correct.

8 **Q But that, of course, was not this**
9 **company, not LCOCL?**

10 A No, that was -- no, that wasn't this
11 company.

12 **Q Because you wanted to invest in LCOCL,**
13 **right?**

14 A Yes, based upon what Anthony Pugliese
15 told me about the work he had done, the land that
16 he had and the money he was going to invest also,
17 I was willing to make this investment.

18 **Q It was a little more than that because**
19 **even before, even before you negotiated the terms**
20 **of the operating agreement, right, even before**
21 **you negotiated and signed the operating**
22 **agreement, sir, isn't it true that you wanted to**
23 **invest in this project because you thought it was**
24 **a lucrative project, right?**

25 A ... I thought it would be a reasonable

1 investment.

2 Q Well, you weren't going to just make a
3 \$105 million dollar loan for something you didn't
4 think was a good investment, would you?

5 A That's a totally separate thing.

6 Q What do you mean "It is a totally
7 separate thing"?

8 A You were asking me about the
9 investment --

10 Q I'm asking, what do you mean it was a
11 totally separate thing, sir?

12 A I'm explaining.

13 Q Go ahead.

14 A First you asked me about the 105 --
15 excuse me. First you asked me about the
16 investment that FD Destiny made in LCOC.

17 Q I'm referring to the last question.
18 I've asked you a lot of questions.

19 A Let me finish. I did not finish. The
20 first question you asked me was about my
21 investment through FD Destiny in LCOC, and then
22 you asked me, then why did I loan the money?
23 These were two totally separate endeavors.

24 Q Why were they totally separate
25 endeavors?

1 A Because they were.

2 Q How were they separate endeavors? They
3 were connected to the same deal? How were they
4 separate?

5 A One was an investment that FD Destiny
6 made in, um... LCOC.

7 The second one was a loan that I made to
8 LCOC.

9 Q So what you're saying is separate is
10 because one was made through a corporate entity
11 that you own 100 percent of, that's different
12 than an investment made by you, and you
13 presumably own 100 percent of yourself, as well.
14 So, explain to us how that is different, sir.

15 A I don't think it needs much of an
16 explanation.

17 Q Explain.

18 A Let me finish. Doesn't need an
19 explanation. The 50 percent investment in LCOC
20 that was made by FD Destiny would have happened
21 whether -- no matter which bank or which entity
22 made a loan to LCOC.

23 THE VIDEOGRAPHER: Counsel, I have to
24 change.

25 MS. HOFFLER: Okay.

1 THE VIDEOGRAPHER: Going off the video
2 record at 11:16 a.m.

3 (Pause in the proceedings.)

4 THE VIDEOGRAPHER: Back on the video
5 record at 11:57 a.m.

6 Q Okay, Mr. DeLuca. We talked previously
7 about some litigation that you had been involved
8 in. Do you remember that discussion?

9 A Today?

10 Q No, no, previously in your deposition.

11 A We talked about some litigation, yes.

12 Q Some litigation that you had against
13 you, right?

14 A Yes.

15 Q Other than this litigation that is the
16 subject of this deposition, and we talked about
17 the punitive damages verdict against you and a
18 few other defendants; do you remember that?

19 A Yes.

20 Q And I'm going to hand you a document
21 that I had premarked as Exhibit 9 and ask that
22 you take a look at it.

23 (Handing.)

24 A (Witness reviews at document.)

25 ... Do I staple these together?

1 Q I had them clipped together. If you
2 want to staple them together, I can staple them
3 together. I think what makes sense is to staple
4 the Hodkin's letter together and make this an
5 exhibit.

6 Mr. DeLuca, have you had a chance to
7 look at this exhibit which we've marked as
8 Exhibit number 9?

9 (Letter dated August 11, 2005 was marked
10 as Deposition number 9 for identification,
11 as of this date.)

12 A I took a peek at each page, but I
13 haven't finished the letter.

14 Q Go ahead and finish the letter because
15 I'm going to ask quite a few questions on it.

16 A All right, I'll read the letter then...
17 (Looking at requested document.)

18 Q Let me know when you're finished, sir.

19 A I'm on page 4...

20 (Witness continues to examine the
21 document.)

22 Okay, I read the letter.

23 Q Have you ever seen this letter before?

24 A I don't think I have.

25 Q This letter dated, for the record, dated

1 August 11, 2005 is a letter from your lawyer,
2 correct me if I'm wrong, whose name is Adam
3 Hodkin, and he drafted this letter in relation to
4 the loan that you had with Wachovia Bank in 2005,
5 that's connected to this deal, to the Destiny
6 project; is that right?

7 A Um... Adam signed the letter. I think
8 he must have drafted it, I don't know, and...
9 This is not, uh -- and this is the loan --
10 references the loan where I borrowed money from
11 Wachovia.

12 Q Yes, it references the loan that you
13 borrowed from Wachovia, and in this letter that
14 references the loan that you borrowed from
15 Wachovia, it talks about the guarantees, the
16 guarantees associated with these loans, right?

17 A Yes.

18 Q Now, on page 1, number "C" it says
19 "Allonge Endorsement to Promissory note,"
20 A-l-l-o-n-g-e -- did I pronounce that correctly?

21 A I never heard the word before.

22 Q Okay. You've never heard of that word
23 before?

24 A I never did.

25 Q You don't know what that references?

1 A I don't know.

2 Q It basically lays out the various
3 documents which pertain directly to the loan; is
4 that right, under "Documents Reviewed"?

5 A (Looking at document.)

6 Q On the first page under "Documents
7 reviewed"?

8 A It has a list of documents reviewed.

9 Q It says in paragraph one, under
10 "Documents Reviewed," "For purposes of rendering
11 our opinions set forth herein, we've reviewed
12 originals or copies of the following documents
13 which pertain directly to the loan, each of
14 which, unless otherwise noted, is dated as of the
15 date hereof." Do you see that, sir?

16 A I do.

17 Q It goes through a number of documents;
18 is that correct?

19 A It does.

20 Q In this document, which is an opinion
21 letter from your lawyers, right? This is an
22 opinion letter from your lawyers?

23 A ... I'm not sure what I would call it.

24 Q Okay, then let's read together. I just
25 read it, but let's read it again under Documents

1 Reviewed, "For purposes of rendering our opinions
2 set forth herein." Do you see that?

3 A Yes.

4 Q So, this is a letter where your lawyers
5 set forth their opinions; is that not right?

6 A Set forth whose opinions?

7 Q Their opinions. They are not setting
8 forth your opinions, are they?

9 A I didn't hear your question.

10 Q This is a letter where your lawyers set
11 forth their opinions as relates to this loan; is
12 that correct, or these loans?

13 A Well... I think -- I think it does
14 render opinions.

15 Q Now, within the context of the opinions
16 that your lawyers have rendered to Wachovia Bank,
17 on page three there is a section, .5, of the
18 opinions that discuss the litigation that you or
19 Doctor's Associates have been involved in. Do
20 you see that?

21 A Let me read that.

22 Q Okay.

23 A (Witness reviews document.)

24 I see that.

25 Q And it references a Tab "A," which is

1 attached to this letter; does it not, on the
2 third line?

3 A It does.

4 Q I would like to now turn to Tab "A,"
5 which is after page seven of the letter; do you
6 see that?

7 A (Witness nods.)

8 Q It is entitled, if you turn over the
9 first page, it is entitled "Exhibit L:
10 Litigation." Now, just for the record, the
11 proceeding 25 pages basically goes through a
12 summary of pending actions at the time that you
13 or Doctor's Associates were involved in. This is
14 as of August 11, 2005; isn't that correct?

15 A No.

16 Q It does not reference that, so your
17 lawyers are incorrect in that statement?

18 A You asked me a question. I answered
19 your question.

20 Q What does it set forth based on your
21 review of this document?

22 A It is explained here, I think.

23 Q Let's to expedite this, page "1 A,
24 Pending Actions;" do you see that?

25 A Yeah, there is pending actions on the

1 first several pages.

2 Q First several pages. Pending actions
3 goes on for, let's count it so the record is
4 clear, under "Pending Actions" as of that time...
5 there were... as of that date, and that would be
6 August 11, 2005, there were -- appears to be over
7 70 pending actions against you?

8 A I don't think that's correct.

9 Q What is the correct number? How many
10 actions were against you as of the date of this
11 opinion letter drafted by your lawyers?

12 MR. HUTCHISON: Form. Him, individually
13 as Fred DeLuca?

14 MS. HOFFLER: I said Fred DeLuca and/or
15 Doctor's Associates.

16 MR. HUTCHISON: Thank you.

17 A Um, and there might be some other
18 companies mentioned that are not either Fred
19 DeLuca or Doctor's Associates, but in the first
20 section -- I also should clarify one thing. This
21 exhibit doesn't reference that exact date.
22 Um...

23 Q I said as of -- this is what your lawyer
24 furnished to Wachovia Bank.

25 A Yes.

1 Q This is what your lawyer disclosed to
2 Wachovia Bank, and I referenced paragraph five of
3 the document under "Opinions" on page 3.

4 A Yes.

5 Q Where they reference "Tab A." So this
6 is something that your lawyers prepared and
7 disclosed to Wachovia Bank in connection with the
8 loans related to the Destiny project, right?

9 A It appears that way, yes.

10 Q So you said that there were not -- I
11 said there were about 70 odd pieces of litigation
12 against you and Doctor's Associates and other
13 companies, and that your lawyer disclosed and you
14 said that was not correct. So what was the
15 correct number?

16 A First of all, there were two parts of
17 your question. First you said, "As of this
18 date" --

19 Q As of the date of the letter your lawyer
20 drafted.

21 MR. HUTCHISON: Let him finish.

22 A I was trying to finish. I was trying to
23 clarify what Exhibit "L" is.

24 Q Um-hum?

25 A Exhibit "L" is -- an exhibit that is

1 included in the franchise disclosure documents
2 for purchases of Subway franchises. I would
3 classify this exhibit as current -- current as of
4 the date it was prepared, which would probably be
5 somewhere in early 2005, and I think that on the
6 pending actions, if I'm not mistaken, there were
7 30 something items listed.

8 **Q Where does, in your assessment, where do**
9 **the pending actions stop?**

10 A Pending actions are listed under "A."
11 (Indicating.)

12 **Q Where does "A" stop?**

13 A And it goes halfway through page 9.

14 **Q Okay, yes, halfway through page 9 and**
15 **there were 37 of those pending actions.**

16 A Correct.

17 **Q And then under "B," civil actions which**
18 **have been settled, dismissed, reached judgment or**
19 **withdrawn prior to final judgment; and how many**
20 **are there, in that section.**

21 A (Looking at document.)

22 (No response.)

23 **Q There are 82 at those if you look at the**
24 **end of page 24; isn't that correct?**

25 A I'll take a look... That's correct.

1 Q So, at the time, and sometime in 2005,
2 according to you, there were roughly 37 actions
3 against you or Doctor's Associates pending.
4 There were another 85 actions that had been
5 settled, dismissed, reached judgment or were
6 withdrawn prior to final judgment, and then there
7 were two restrictive orders that were entered; is
8 that right?

9 A Um, well, you got the numbers wrong.
10 There was 82 --

11 Q I'm sorry, 82. Let me get it right for
12 the record. As of the date of this letter,
13 August 11, 2005, based on the information that
14 your lawyer disclosed to Wachovia, there were 37
15 actions pending against you or Doctor's
16 Associates or a company you were affiliated
17 with. There were 82 actions, civil actions which
18 had been settled, dismissed, reached judgment or
19 withdrawn prior to final judgment, and there were
20 two restrictive orders that were entered and the
21 date on this document says 7 of '05; is that
22 correct? Have I read it correctly?

23 A Um... Almost. I don't know that every
24 one of these cases, um... pertained where -- that
25 Doctor's Associates or myself were either a

1 plaintiff or defendant in. I think some of them
2 are third parties and have to be disclosed.

3 Q There are a number of them and we will
4 go through each and every one of them, but a
5 number of them you were personally named as a
6 defendant; is that correct?

7 A I saw my name in several of them, yes.

8 Q As well, there were a number of them and
9 we will go through each one where Doctor's
10 Associates was also named as a defendant; isn't
11 that right?

12 A That's correct.

13 Q There were a number of them where you
14 and/or Doctor's Associates were sued for
15 committing common law fraud, breach of contract,
16 breach of covenant, good faith and fair dealing,
17 violations of Disclosure Act, violations of the
18 Lanham Act, that's 15 USC 1125... There were
19 allegations that you committed fraud, made untrue
20 statements, omitted material facts, made
21 misrepresentations of facts in advertising
22 materials, offering circulars, and in the
23 franchise agreements. I mean, there were all
24 types of fraud claims that were alleged in much
25 of this litigation against you and Doctor's

1 **Associates; isn't that right?**

2 A I didn't understand the question. You
3 said that many of these --

4 **Q Let me say it differently.**

5 A Yes.

6 **Q In many of these instances of litigation**
7 **against you and Doctor's Associates, there were**
8 **allegations of fraud, common law fraud, breach of**
9 **contract, breach of covenant of good faith and**
10 **fair dealing, violations of Disclosure Acts,**
11 **violations of the Lanham Act, violations of the**
12 **duty to operate in good faith, omission of**
13 **material facts, misrepresentations of facts in**
14 **advertising materials, making untrue statements.**

15 **In many of these pieces of litigation**
16 **there were those types of allegations against you**
17 **and/or Doctor's Associates; isn't that right?**

18 A Are you saying that in many of the
19 litigations, that set of allegations was
20 included.

21 **Q You don't understand my question?**

22 A I don't.

23 **Q Let me repeat it and take it in baby**
24 **steps for you, so we have a clear record.**

25 **In many instances, and we will go**

1 through all of them, in these pending actions,
2 there were allegations against you, Mr. DeLuca,
3 and Doctor's Associates, including that you
4 engaged in common law fraud; you agree with that,
5 there were allegations against you in some of
6 these cases that you engaged in common law fraud?

7 A Let me say this, I've read everything
8 here but I would agree there would be a whole
9 host of allegations, uh... of any type and nature
10 against, uh... against me or the company, or
11 third parties, because, that's what allegations
12 are all about.

13 Q You and Doctor's Associates, that's all
14 I'm interested in.

15 A Um... (Witness shrugs), I haven't read
16 this document.

17 Q We will go through each one, each
18 instance where there is an allegation of fraud
19 against you. What I would like, you've looked at
20 this document, you've taken the time, all of our
21 time, you read the document, confirmed on the
22 record that you read the document, so what I
23 would like you to confirm, if you can, is that
24 based on your reading of the document today, you
25 have seen that in a number of instances there

1 were allegations against you and Doctor's
2 Associates, that included common law fraud,
3 breach of contract, breach of the covenant of
4 good faith in fair dealing, consumer fraud and
5 deceptive practices, making untrue statements,
6 omitting material facts and making
7 misrepresentations of fact in advertising
8 materials, offering circulars and the Franchise
9 Agreement; you would agree that those are in many
10 instances where those types of allegations were
11 made against you and Doctor's Associates in the
12 pending actions that were disclosed by your
13 counsel in 2005?

14 MR. HUTCHISON: Object to the form.

15 Answer --

16 A I didn't read this document and I didn't
17 confirm on the record that I read it.

18 Q So you're saying there aren't such
19 allegations?

20 A No, I'm saying I haven't read this.

21 Q Let's turn to page 1.

22 A Okay.

23 Q To make sure the record is clear, this
24 came from your counsel, your lawyer, to Wachovia
25 in the section where they felt the need to

1 disclose to Wachovia in connection with the loan
2 for the Destiny project, certain types of pending
3 actions. Let's look at the first action.

4 The first action where it says "Pending
5 Actions," can you read that? You can read that?

6 A It is a little fuzzy, but I can read
7 it.

8 Q Where you can't read it, then I will
9 read it. In the first action of pending actions,
10 I want you to go to the... halfway down --
11 halfway down the sheet --

12 A Can I read the first section?

13 Q Sure. I thought you had read this. Go
14 ahead.

15 A No, I told you I had not read it.

16 Q Go ahead.

17 A (Looking at requested document.)

18 Q While you're reading, I'll read the
19 caption into the record, "Wesam S. and Linda
20 Youmarin, plaintiffs, versus Doctor's Associates,
21 Inc., Franchise World Headquarters, Inc.,
22 Frederick A. DeLuca, Peter Buck, Subway
23 Restaurants, Inc., Subway Sandwich Shops, Inc.,
24 Subway Sandwiches and Salads, Inc., Subway
25 Management, Inc., Subway Real Estate Corporation,

1 Inc., Subway Leasing Corporation, Inc., Subway
2 East, Inc., Subway South, Inc., Subway West,
3 Inc., Subway Central, Inc., Subway Systems, Inc.,
4 Subway Development, Inc., Subway Restaurants,
5 Inc., and Subway Sandwiches, Inc., Subway
6 Development of America, Inc., defendants.

7 Do you see that? That's the first one.

8 A I see that's the first five, six lines.

9 Q First six lines and this is a series of
10 pieces of litigation, and then there is a
11 description after it of the claims alleged in all
12 of this litigation; do you see that?

13 A Uh...

14 Q I'll ask you to read the claims with
15 me.

16 A You say this is a series of
17 litigations?

18 Q Well, there is a second piece of
19 litigation. That was the first one. The
20 second: Jose Alberto Brenes, plaintiff, versus
21 DAI, Franchise World Headquarters, Inc.,
22 Frederick A. DeLuca, Inc.; do you see that, Mr.
23 DeLuca, where I'm reading?

24 A I do.

25 Q -- Peter Buck, Subway Restaurants, Inc.,

1 and it goes through basically the same parties.
2 That's a second piece of litigation within number
3 one, Pending Actions, right?

4 A I'm not sure.

5 Q You agree that's different from the
6 Wesam case, because there is a semicolon
7 separating the cases?

8 A Uh... There could be, yes.

9 Q And then go about five lines down, there
10 is a third case, Alvaro Guerero and Maria
11 Guerero, plaintiffs, versus DAI, Franchise World
12 Headquarters, Inc., Fred A. DeLuca, Peter Buck,
13 Subway Restaurants, Inc., and it goes on and on
14 with a number of your other companies that are
15 affiliated with you.

16 Do you see that?

17 A I see that.

18 Q Then there is another case, and this is
19 all within the first line of Pending Action.
20 There is Louis Loennike and Maryann Bookout,
21 plaintiffs, versus DAI, Franchise World
22 Headquarters, Inc., Fred A. DeLuca. Do you see
23 that?

24 A I do.

25 Q Then further down there is another case,

1 Julie Shino, Albert Yonan, Jr., Johnson Shino,
2 Albert Yonan and Leyiah Yonan, plaintiffs, versus
3 DAI, Franchise World Headquarters, Fred A.
4 DeLuca. Do you see that?

5 A I do.

6 Q And a number of other companies. So
7 after all those different pieces of litigation
8 are listed, then I would like you to read what
9 the narrative that your attorneys provided says
10 about that litigation starting with, "On December
11 22, 1993."

12 A Let me just read this, then I'll read it
13 out loud.

14 Q Certainly.

15 A (Reading document silently.)

16 Q I'm going to only ask you to read, in an
17 interest in moving this along, from "On December
18 2, 1993" and five lines down to the end of
19 "Franchise Agreement."

20 A Okay.

21 (Witness reviewing document.)

22 Q That's it for one. As you've read this
23 section, the first action under Pending Action
24 actually contains multiple lawsuits; isn't that
25 right, sir?

1 A Yeah -- number one has --

2 Q No, just wait, then you can explain.

3 The first number one contains multiple lawsuits;
4 isn't that right, sir?

5 A I was answering the question.

6 Q Well, I didn't hear "Yes" --

7 MR. HUTCHISON: Let him finish his
8 answer.

9 Q -- you can always explain.

10 Does the first one, number one listed
11 under Pending Actions, contain multiple lawsuits,
12 sir?

13 A I'll start again.

14 Q Do you want me to ask the question
15 again? I'm happy to ask the question again, if
16 you don't understand.

17 A I think I can answer it now, but if you
18 want to ask it again --

19 Q I'll ask it again.

20 Under Pending Actions, again, we're
21 referring to a document that your lawyer
22 furnished to Wachovia in August of 2005, where
23 your lawyer disclosed pending litigation against
24 you or Doctor's Associates, under "Pending
25 Actions," the first item listed contains multiple

1 **lawsuits; does it not, sir?**

2 A The first item listed contains multiple
3 lawsuits and it goes on to say that most of them
4 were settled.

5 **Q But it also goes on to say the remaining**
6 **cases are now stayed pending arbitration; it says**
7 **that, too, doesn't it?**

8 A Yes. What remains --

9 **Q I would like --**

10 A What remains was stayed.

11 **Q I would like you to read into the record**
12 **starting, "On December 22, 1993," what the**
13 **statements that are made by your counsel.**

14 A This is not the statements made by my
15 counsel.

16 **Q This is a disclosure by your counsel,**
17 **sir.**

18 A No.

19 **Q Please read it into the record.**

20 A Let's get it straight. This is not
21 statements by my counsel. This is prepared as
22 part of a public filing that goes into our
23 disclosure documents for a purchase by -- for
24 when franchisees purchase Subway franchisees and
25 Adam Hodkin included this.

1 **Q** **Better still, statements you use to**
2 **disclose for franchisees, better than it coming**
3 **from your counsel.**

4 **Please read into the record from "On**
5 **December 22, 1993" down to "Franchise Agreement."**

6 MR. HUTCHISON: Object to the form, move
7 to strike counsel's comments.

8 **Q** **Read it, please.**

9 A Okay. "On December 22, 1993, the above
10 actions were filed by current and former
11 franchisees claiming DAI and its affiliates
12 committed common law fraud, breach of contract,
13 breach of covenant of good faith and fair
14 dealing, violation of the Illinois Franchise
15 Disclosure Act, violation of the Lanham Act, 15
16 USC 1125, and violation of the Illinois Consumer
17 Fraud and Deceptive Practices Act, because the
18 leasing corporations are shell corporations and
19 alter egos of DAI."

20 Should I continue?

21 **Q** **Yes, until the next sentence, that will**
22 **be it.**

23 A "They also claim that the defendants
24 committed fraud, made untrue statements, omitted
25 material facts and made misrepresentations of

1 fact in the advertising materials, offering
2 circular and Franchise Agreement."

3 Q Then I would like you, sir, to go to the
4 next page under number two; read with me where it
5 says "Emily Distajo, Renato Distajo, Constantino
6 Lamando, Milo Lamando, plaintiffs versus Doctor's
7 Associates, Inc., Franchise World Headquarters,
8 Inc., Fred A. DeLuca, Peter Buck, Subway
9 Restaurants, Inc., Subway Restaurants, Inc.,
10 Subway Development Corporation of Chicago, and
11 Phil Mesi, M-e-s-i, defendants." Do you see that?

12 A You did pretty good at reading it --
13 missed a few.

14 Q Well, that's the first caption. I want
15 to get it correctly. Maybe I mispronounced a
16 name but that is a lawsuit, an action filed
17 against you, as well? You and others, as well;
18 isn't that correct?

19 A Yes.

20 Q I would like you to read into the record
21 starting from, "This action," what was disclosed
22 as part of this opinion letter of your attorneys
23 under that action, and I would like to you read
24 where it says "This action was filed."

25 A First I'll read the paragraph.

1 (Reading silently.)

2 MR. GARY: Asking him to comment on it
3 or read it? I don't understand.

4 MS. HOFFLER: I just asked him to read
5 it.

6 A (Continues to read silently.)

7 I read it.

8 **Q What I would like you to read into the**
9 **record is starting with, "This action was filed"**
10 **all the way down to "filed against plaintiffs,"**
11 **please.**

12 A "This action was filed on February 18,
13 1994 by franchisees claiming DAI and its
14 affiliates committed common law fraud, breach of
15 contract, conspiracy to commit common law fraud,
16 violation of the Illinois Franchise Disclosure
17 Act, and violation of the Illinois Consumer Fraud
18 and Deceptive Business Practices Act, because the
19 leasing corporations are shell corporations and
20 alter egos of DAI, and eviction proceedings were
21 unfairly filed against plaintiffs."

22 **Q And in that case as of the date of this**
23 **letter the arbitration was pending, isn't that**
24 **right, in the last sentence of that paragraph?**

25 A Yes.

1 Q And I'm going to quickly go through
2 number three. "John S. Papaleo and J.S.P., Inc.,
3 plaintiffs, versus Doctor's Associates, Inc.,
4 Fred DeLuca, Peter Buck, Subway Restaurants,
5 Inc., Subway Development of Chicagoland, Inc.,
6 Phil Mesi, defendants," and correct me if I'm
7 wrong, but in this disclosure it reads, "On July
8 29, 1994 this action was filed by a franchisee
9 claiming DAI, its affiliate and local development
10 agent committed fraud and violated the Illinois
11 Franchise Disclosure Act."

12 It further reads, "They also claimed"
13 this is a line down, "that the plaintiffs claim
14 DAI's offering circular, Franchise Agreement and
15 advertising materials are untrue
16 misrepresentations of facts and have deceptive
17 omissions. They also claim that DAI
18 intentionally used unfair methods of competition
19 and deceptive acts and practices, to fraudulently
20 induce prospective franchisees to purchase a
21 franchise and that the leasing corporations are
22 shell corporations and the alter egos of DAI."

23 Do you see that?

24 A I do.

25 Q Going with number four --

1 A Let me just finish reading it. I want
2 to see what it says here.

3 Q I'm now on four. You should start
4 reading four.

5 A You're asking me questions --

6 Q I didn't ask you a question.

7 MR. GARY: She is on number four.

8 Q I didn't ask you a question. I read
9 into the record and you followed along. I'm now
10 on number four. Your lawyer can go back and ask
11 whatever questions he wants. I'm on number
12 four.

13 That would be Sandra and Raymond Bickel,
14 plaintiffs, versus Subway Sandwich Shops, Inc.,
15 Leonard H. Axelrod, Fred DeLuca, Peter Buck,
16 Doctor's Associates, Inc.," that would be DAI,
17 "Subway Development of Chicagoland, Inc., Phil
18 Mesi, defendants.

19 Number four, "This action was filed on
20 December 16, 1994 by former franchisees who sold
21 their franchises in 1990, claiming defendants and
22 franchisor and its local development agent
23 committed fraud, misrepresentation of facts,
24 breach of contract and willful breach of
25 contract. The claimed DAI's offering circular,

1 Franchise Agreement and advertising materials
2 made untrue statement of facts,
3 misrepresentations and had material omissions
4 which induced them to purchase a franchise."

5 Do you see that, sir? Did I read that
6 correctly?

7 A You did a reasonably good job on that.

8 Q Then we go to number five. Litigation
9 on number five again, disclosed by your counsel
10 in an opinion letter to Wachovia Bank.
11 Sudarshan, S-u-d-a-r-s-h-a-n, Sharma,
12 S-h-a-r-m-a, Neelan, N-e-e-l-a-n Sharma, Iftikhar
13 Sheikh, Naushin, N-a-u-s-h-i-n, Sheikh,
14 S-h-e-i-k-h, Michael Aram, Dan Roghany,
15 R-o-g-h-a-n-y, and Navdeep Kumar, N-a-v-d-e-e-p,
16 K-u-m-a-r, C-h-o-p-r-a, Rohini Chopra,
17 R-o-h-i-n-i, Kamaljit Brah, K-a-m-a-l-j-i-t,
18 B-r-a-h, plaintiffs, versus Oh Cal Foods, Inc.,
19 Doctor's Associates, DAI, Subway Sandwiches and
20 Salads, Inc., Fred A. DeLuca, Peter H. Buck and
21 Does 1 through 20 inclusive, defendants; do you
22 see that?

23 A Yes.

24 Q And in that case it says, "All the
25 plaintiffs are claiming breach of the Covenant of

1 Good Faith and Fair Dealing based on territorial
2 encroachment because the defendants allowed other
3 franchisees to open in close proximity to their
4 subway stores and intentional interference with
5 present and prospective business relations, since
6 they have suffered loss of sales and business due
7 to the proximity of other subway stores.

8 "In addition, two sets of the
9 franchisees are claiming breach of the applied
10 Covenant of Good Faith and Fair Dealing because
11 the defendants conducted inaccurate audits,
12 alleged that plaintiffs were out of compliance
13 and tried to terminate the plaintiffs' franchise
14 agreements." Do you see that?

15 A I saw that.

16 Q Have I read that correctly, sir?

17 A Pretty close.

18 Q Now, number six, another action, number
19 six, and for purposes of the record so we can
20 expedite this, am I correct in stating, Mr.
21 DeLuca, in number six you were also named, and
22 that would be the seventh line down as "The
23 defendant in this action," which is entitled
24 David Hollingsworth, and we'll say, "et al." And
25 the seventh line down your name is listed, as

1 **well as Peter Buck?**

2 A Number six?

3 **Q This is number six.**

4 A Okay, I'll read it.

5 (Reading to silently.)

6 I read it.

7 **Q Okay. Now in this case, you were a**
8 **defendant, right, in this case, Mr. DeLuca?**

9 A One of 20.

10 **Q But you were a defendant, whether one of**
11 **20 or one of two, you were a defendant; were you**
12 **not, sir?**

13 A I was one of about 20.

14 **Q Right, but when you're a defendant, you**
15 **take that seriously?**

16 A What does that mean?

17 **Q If you're a defendant in a case, do you**
18 **take that seriously?**

19 A I assigned a lawyer to handle it and --

20 **Q Whether you're one of 20 or a sole**
21 **defendant, you take it seriously, don't you?**

22 A Uh, yeah.

23 **Q Now, in this case in Illinois it says,**
24 **"The franchisees claim that the defendants,**
25 **which include the Subway franchisee advertising**

1 trust, board members and selected vendors gave
2 false information about the expenditures made by
3 SFAFT, which was the Subway Franchise Advertising
4 Trust, used the collective advertising monies,
5 contrary to the interest of the franchisees and
6 failed to use diligence in determining the
7 purpose for which the advertising funds are
8 expended.

9 "Additionally they assert that the
10 vendors entered into the agreements whereby they
11 increased price of products in goods sold to the
12 franchisees and this increase is then transferred
13 to the SFAFT, which is Subway Franchise
14 Advertising Trust, Mr. DeLuca, Dr. Buck and/or
15 companies owned by them."

16 Have I read that correctly, sir?

17 A Uh... Generally, yes.

18 Q And at that time this case was stayed
19 pending arbitrations, isn't that what it says in
20 the last sentence?

21 A Yes.

22 Q Going on with number seven. You were
23 also a defendant in, if you want to look at
24 number seven --

25 A Let me read it, yes.

1 Q -- in litigation number seven. You, as
2 well as, Doctor's Associates.

3 A (Reading portion of the document.)

4 Q Sir, while you're reading that, if you
5 can go to line ten where it says here --

6 A Let me just read it.

7 Q I would like you to read along with me.

8 A I'm in the middle of something here.

9 Q Okay. After you read the first sentence
10 of the parties, I would like you to read along
11 with me.

12 A (Reading document silently.)

13 So I read the underlined part with, "The
14 defendants"?

15 Q Yes, if you go down two lines, read with
16 me into the record, "The plaintiffs claims that
17 defendants made misrepresentations of fact" --

18 A Excuse me, where does it start?

19 Q I'm sorry, three lines down.

20 A Okay, got it.

21 Q Okay. I'll start with the line with the
22 previous sentence, "This action" -- do you see
23 that?

24 A Yes.

25 Q -- was filed on February 4, 1997 by

1 franchisees claiming breach of fiduciary duties,
2 fraud, violation of the Illinois Franchise
3 Disclosure Act, consumer fraud and Deceptive
4 Business Practices Act violations, and violations
5 of the Illinois Antitrust Statute. The
6 plaintiffs claim that the defendants made
7 misrepresentations of fact and material omissions
8 inducing them to execute franchise agreements
9 that the defendants did not provide promised
10 services and assistance to them once they
11 purchased franchises, and the defendants used the
12 advertising fund for their own purposes and
13 benefit and that they required the franchisees to
14 purchase John Amoco Hair Care products even when
15 the franchisees did not use them. They claimed
16 that Mr. DeLuca and Dr. Buck had prior knowledge
17 of the viability of the We Care Hair Development,
18 Inc., when they became investors in March of
19 1991."

20 I read that correctly, sir?

21 A Uh, pretty close.

22 Q If I've only read it pretty close, then
23 I would like you to read the section that I read
24 because maybe you can do it better. I would like
25 you to read into the record the two sentences

1 that I read, or three sentences that I read,
2 starting with "This action was filed on February
3 4th of 1997" because I think I read it exactly
4 right. If you feel you can read it better, I
5 would like to you do that.

6 A I didn't say I could read it better. I
7 would just like to read number seven, so I
8 understand the context.

9 (Reading silently.)

10 (Discussion off the record.)

11 **Q Mr. DeLuca --**

12 A I'm almost done.

13 **Q I'm sorry.**

14 A (Reading silently.)

15 **Q I would like you to go down -- first of**
16 **all, confirm, based on the fourth line down, that**
17 **you and Doctor's Associates, Inc., were**
18 **defendants in this case. It is Lela Bishop, et**
19 **al. If you confirm that based on the fourth line**
20 **down on this disclosure?**

21 A That's correct.

22 **Q Then I would like you to read into the**
23 **record the sentence beginning with "This action**
24 **was filed," down to "March of 1991," sir, if you**
25 **could.**

1 A "This action was filed on February 4,
2 1997 by franchisees claiming breach of fiduciary
3 duties, fraud, violation of the Illinois
4 Franchise Disclosure Act, Consumer Fraud and
5 Deceptive Business Practices Act violations, and
6 violation of the Illinois Antitrust Statute.

7 "The plaintiffs claim the defendants
8 made misrepresentations of fact and material
9 omissions, inducing them to execute franchise
10 agreements, that the defendants did not provide
11 promised services and assistance to them once
12 they purchased franchises, and the defendants
13 used the advertising fund for their own purposes
14 and benefit, and that they required the
15 franchisees to purchase John Amico Hair Care
16 products, even when the franchisees did not use
17 them. They claim that Mr. DeLuca and Mr. Buck
18 had prior knowledge of the viability of We Care
19 Hair Development, Inc., when they became
20 investors in March 1991."

21 **Q Thank you. And it said -- it says here**
22 **"Dr. Buck," does it not? Not Mr. Buck, it said**
23 **"Dr. Buck"?**

24 A Yes, it said "Dr. Buck."

25 MS. HOFFLER: That's it for that

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paragraph, let's take a lunch break.

THE VIDEOGRAPHER: Off the video
record.

(Whereupon at 1:10 o'clock p.m., the
deposition was adjourned, to be continued
after recess in Volume 5.)

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U.S.L.S. # 951380

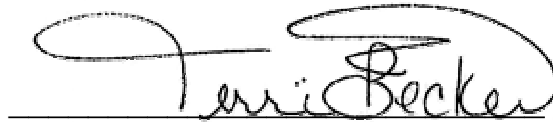
CERTIFICATE OF OATH

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, Terri Becker, Registered Professional Reporter, Florida Professional Reporter, Certified Shorthand Reporter, Notary Public, State of Florida, certify that FREDERICK A. DELUCA personally appeared before me on September 24, 2012 and was duly sworn.

Signed this 25th day of September 2012.



Terri Becker, RPR, RPR, CSR
Registered Professional Reporter,
Florida Professional Reporter,
Certified Shorthand Reporter,
Notary Public, State of Florida.
Commission No: EEO42235
Expires: March 13, 2015

1 U.S.L.S. # 951380

2 CERTIFICATE OF REPORTER

3 STATE OF FLORIDA

4 COUNTY OF PALM BEACH

5 I, Terri Becker, Florida Professional
6 Reporter, certify that I was authorized to and
7 did stenographically report the continued
8 videotaped deposition of FREDERICK A. DELUCA,
9 pages 354 through 468; that a review of the
10 transcript was requested; and that the transcript
11 is a true record of my stenographic notes.

12 I further certify that I am not a
13 relative, employee, attorney, or counsel of any
14 of the parties, nor am I a relative or employee
15 of any of the parties' attorneys or counsel
16 connected with this action.

17 Dated this 25th day of September 2012.

18 
19 _____



20 Terri Becker, RPR, FPR, CSR,
21 Registered Professional Reporter
22 Certified Shorthand Reporter
23
24
25

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