

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CASE No.50 2009 CA 040295 XXXXAG  
CASE NO.: 50 2009 CA 029903 XXXXMB  
CONSOLIDATED FOR DISCOVERY ONLY

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.

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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.

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CONTINUED DEPOSITION OF FREDERICK A. DELUCA  
VOLUME 10  
Tuesday, September 26, 2012  
1:38 p.m. - 5:02 p.m.

444 W. Railroad Avenue  
Suite 300  
West Palm Beach, Florida 33401

Reported By:  
Patricia A. Lanosa, RPR, FPR, CSR, CLR  
Notary Public, State of Florida  
US Legal Support, Inc.  
West Palm Beach Office Job # 951382

## 1           A P P E A R A N C E S:

2  
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A P P E A R A N C E S: (Continued)

On behalf of The Pugliese Company:

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1           A P P E A R A N C E S:   (Continued)

2  
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10           ALSO PRESENT:

11                   ANTHONY V. PUGLIESE

12                   MICHAEL HOLLANDER, VIDEOGRAPHER

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WITNESS: DIRECT CROSS REDIRECT RECROSS  
Frederick A. DeLuca  
Continued By Ms. Hoffler 954

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E X H I B I T S  
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1 \* \* \*

2 (The following proceedings are a continuation from Volume 9, the a.m.  
3 session held on 9/27/12)

4 P R O C E E D I N G S

5 - - -

6 Deposition taken before Patricia A. Lanosa,  
7 Registered Professional Reporter and Notary Public in  
8 and for the State of Florida at Large, in the above  
9 cause.

10 - - -

11 Thereupon,

12 (FREDERICK A. DELUCA)

13 having been previously duly sworn or affirmed, was examined  
14 and testified as follows:

15 THE VIDEOGRAPHER: The time on the monitor is  
16 1:38. We're back on video record. This begins  
17 Tape No. 3.

18 MS. HOFFLER: Thank you.

19 Mr. Hutchison, have you undertaken any efforts  
20 to research the privilege issue as relates to the  
21 criminal investigation?

22 MR. HUTCHISON: No, to the extent that the  
23 Judge orders him to --

24 MS. HOFFLER: No, I just meant the question.

25 MR. HUTCHISON: --answer those questions, we

1 will answer those questions.

2 Did we even do a notice of appearance? I  
3 notice Willie Gary is not here this afternoon.  
4 Anybody other than that, the defendants or the  
5 plaintiffs in the 2009 case and the defendants in  
6 the December 2009 case, appearances are the same:  
7 Rick Hutchison, John Pfannenbecker, Robert Chapman,  
8 and Robert Ray.

9 MS. HOFFLER: So I just want to make sure on  
10 the record that I'm clear.

11 MR. HUTCHISON: Can we do appearances?

12 MS. HOFFLER: We've already -- we already made  
13 appearances.

14 MR. HUTCHISON: Oh. You got Willie not here,  
15 and it looks like Guy Fronstin is --

16 MR. FRONSTIN: Guy Fronstin just arrived.

17 MS. HOFFLER: So let me, let me pose the  
18 question again, just so the record is clear.

19 Mr. Hutchison, have you undertaken any efforts  
20 to get research done relative to whether the  
21 privilege asserted by you is proper under the  
22 Florida Rules of Civil Procedure or under Florida  
23 law?

24 MR. HUTCHISON: Other than what I said this  
25 morning, no.

1 MS. HOFFLER: Is it your intention to get any  
2 one of your team members here or anyone from your  
3 office that's currently open today to do that  
4 research during the pendency of this deposition?

5 And I'm asking this because there are  
6 questions that we want to ask related to that; and  
7 we feel that certainly, even if there were a valid  
8 privilege -- which we know there isn't -- but even  
9 if there were, certainly the question whether he  
10 met with the and whether he went to the State  
11 Attorney's Office, those types of questions he  
12 should be able to answer; not any questions if your  
13 privilege were accurate, we could understand him  
14 not answering questions such as, what was  
15 discussed; what was the scope of; that, if your  
16 privilege were correct -- which we submit is not --  
17 we can understand him not answering those  
18 questions.

19 But the question whether he went to the State  
20 Attorney's Office certainly should not be precluded  
21 just as if there were attorney/client privilege,  
22 did you meet with your attorney about this, that  
23 would be permissible, not what did you discuss.

24 So subject to that, I'm going to ask you  
25 again: Is your position still the same as relates



1 to Mr. DeLuca answering the question whether he has  
2 met with the State Attorney's Office or made any  
3 contact with the State Attorney's Office?

4 MR. HUTCHISON: Do you have any law that says  
5 this is okay to ask him about a criminal  
6 investigation?

7 MS. HOFFLER: Well, it's not a question of  
8 whether we have law. This is -- under the normal  
9 Rules of Civil Procedure, you can ask any questions  
10 that are relevant.

11 And obviously, our position is it's relevant  
12 because all of the alleged information or what  
13 could be going on in terms of criminal  
14 investigation has to do with this case; has to do  
15 with it. So there is relevance.

16 While we understand you're making objections  
17 for the record, there is relevance. And, again, I  
18 don't think the Judge would say it's not relevant.

19 The scope of and the discussions that were  
20 had, if there was a privilege, I'm not going to go  
21 into that until the judge rules on that, and we  
22 want to leave the deposition open until he rules.

23 But I think that certainly we should be  
24 entitled to know if Mr. DeLuca met with the State  
25 Attorney or made any contact with the State

1 Attorney.

2 So that's -- that's what I'm asking, and I  
3 think that he should be allowed to answer that  
4 question.

5 MR. HUTCHISON: Well, we disagree for the  
6 records [sic] I cited earlier. He's here to  
7 answer -- Mr. DeLuca is here to answer questions  
8 about the pending complaints which include the  
9 civil theft allegations. And to the extent he can  
10 answer your questions about the pending complaints  
11 and the allegations and the business transaction  
12 underlying this lawsuit, he's here to answer those  
13 questions.

14 He's not here to answer any questions about a  
15 criminal investigation of Mr. Pugliese by the State  
16 Attorney's Office.

17 MS. HOFFLER: So, then, we're going to take  
18 the position that we will keep the deposition open  
19 until such time.

20 MR. HUTCHISON: All right.

21 DIRECT EXAMINATION

22 BY MS. HOFFLER: (Continued)

23 **Q Mr. DeLuca, I'd like to take you back, if we**  
24 **could, to when you first met Anthony Pugliese. I**  
25 **believe it was in 2004, 2005.**

1 Do you recall that?

2 A I think it was 2005.

3 Q 2005. And you met Anthony Pugliese through a  
4 friend, a mutual friend that you had, a banker. And  
5 we've already asked questions about your mutual friend,  
6 so I won't go back into that, but that's correct, you  
7 met through a mutual friend; isn't that right?

8 A I'd say that's accurate.

9 Q And as you've testified previously, you  
10 oftentimes get involved in and form business  
11 relationships with persons or businesses when there is a  
12 project that's of interest to you; fair statement?

13 MR. HUTCHISON: Objection as to form.

14 THE WITNESS: I sometimes do that.

15 BY MS. HOFFLER:

16 Q In fact, that's what happened here; isn't that  
17 right?

18 A I -- yes. After speaking to Mr. Pugliese, I  
19 made an investment in LCOC.

20 Q Well -- well -- let's -- you did more than  
21 make an investment. Let's just go further back.

22 Now, before we get to LCOC, you and  
23 Mr. Pugliese became business partners in a Green Sky  
24 deal, isn't that right, in New Jersey?

25 MR. HUTCHISON: Objection to form.

1 THE WITNESS: No. We didn't become partners.  
2 That was a separate transaction.

3 BY MS. HOFFLER:

4 Q No. It was a separate transaction,  
5 absolutely. But prior to -- prior to you-all teaming up  
6 on LCOC, LCOCL Project, you-all were engaged in a  
7 business deal involving Green Sky Company, right?

8 A We did make a business arrangement regarding a  
9 company called Sazaro Brothers.

10 Q Which ultimately became what is now known as  
11 the Green Sky?

12 A Which is now known as Green Sky, yes, that is  
13 correct.

14 Q And that project -- and that project was  
15 consummated, if you will, before the Destiny Project,  
16 right?

17 I want you to think back to 2005. I can help  
18 you out with some documents if you need, but ...

19 A Yes, I think that that is correct.

20 Q All right. You closed on the Green Sky deal  
21 before you closed on the LCOC deal, right?

22 A I believe so.

23 Q And, in fact, you and Anthony Pugliese at that  
24 time were talking about when you met him in 2005,  
25 you-all became social friends; isn't that right?

1           A     I wouldn't say that.

2           **Q     You socialized together, didn't you?**

3           A     I've been to his house.

4           **Q     You've been to his house on --**

5           A     I've had --

6           **Q     I'm sorry.**

7           A     I've had dinner with him.

8           **Q     And you went to his house on more than one**  
9 **occasion, right?**

10          A     Maybe three times.

11          **Q     And also you, you socialized with he and his**  
12 **wife, right?**

13          A     Yeah. I wouldn't call it socializing. Well,  
14 I would say for most times that I went, I went -- we  
15 went and conducted some business, and we had dinner.  
16 And once I went to a party that was being thrown for  
17 Anthony. I don't recall what the --

18          **Q     Was it a birthday party?**

19          A     It could have been a birthday party. I just  
20 don't recall.

21          **Q     And he socialized with you on a -- on a -- you**  
22 **have a boat?**

23          A     I had a boat. I don't recall if he was on the  
24 boat.

25          **Q     Okay. You had a boat during that time, and**

1           you, you had social events on your boat; isn't that  
2           right?

3           A       Yes.  Occasionally, I would have groups of  
4           people, and we'd go out on the boat.  I just don't  
5           recall if Anthony was on the boat.

6           Q       But during that time, certainly there was no  
7           hostility or animosity between you and Anthony, right?

8           A       Which time are you referring to?

9           Q       I'm referring to the time when you were in  
10          business with him.

11                    Let's talk about early when you-all first met.  
12          We discussed that you met through a mutual friend --  
13          let's call her a mutual friend -- and you decided to go  
14          into business with him on the Green Sky deal?

15          A       Are you talking about --

16          Q       During that time, let's just talk about --

17          A       -- 2005?

18          Q       2005.  Let's just talk about during that time.

19          A       Yeah, things were fine in 2005.

20          Q       Right.  And, and during that time when things  
21          were fine on the Green Sky deal -- and so the jury is  
22          pretty clear about this -- you and Anthony bought a  
23          recycling business together in New Jersey, right?

24          A       The answer is that there may have been other  
25          shareholders --

1           **Q     Yes.**

2           A     -- in that. But basically in concept, that is  
3 correct.

4           **Q     Okay. And you and Anthony, even if there were**  
5 **others involved in it, you-all were the principal**  
6 **shareholders involved in that deal, the Green Sky deal,**  
7 **weren't you?**

8           A     I would say that's correct.

9           **Q     And at that time, you were very -- you felt**  
10 **very positive about Anthony Pugliese, didn't you?**  
11 **You-all got along very well, right?**

12          A     I felt that in terms of Anthony himself, he  
13 seems to be, yes, he seemed to be a very credible guy.  
14 He told me about his business experience, and he told me  
15 that he was going to be putting up 25 percent of the  
16 cash.

17          **Q     You're referring to the Green Sky deal?**

18          A     The Green Sky deal.

19          **Q     Yes.**

20          A     And, and, and he told me that his associate  
21 Tom San Giacomo was an expert in the recycling business.  
22 And Tom told me about his credentials in the recycling  
23 business, and they told me about the profitability that  
24 they expected in the recycling business, and I thought  
25 it was a reasonable thing to invest with them.

1           **Q**    And, in fact, he did invest in the Green Sky  
2 business, didn't he? He did put up the cash investment  
3 in the Green Sky business, didn't he?

4           A    Who's the "he" you're referring to?

5           **Q**    I'm sorry, I'm referring to Mr. Pugliese.

6           A    I believe he put up -- I believe he put up  
7 investments in the Green Sky business.

8           **Q**    And, and not only were you pleased with  
9 Anthony Pugliese, pleased enough to go into business  
10 with him in New Jersey, but then you also decided that  
11 you felt comfortable and confident enough in your  
12 relationship with him that you go into another business,  
13 and that's the Destiny Project, right?

14           MR. HUTCHISON: Object to the form.

15           THE WITNESS: It was discussed, yes. It was  
16 discussed at about the same time.

17           And at -- and for the Destiny Project, Anthony  
18 told me about the land that he had acquired an  
19 option in, and he told me about the due diligence  
20 that he had done on the land.

21 BY MS. HOFFLER:

22           **Q**    Yes, sir. Uh-huh.

23           A    And he told me about the business experience  
24 he had. He talked about his history as a developer  
25 going way back to the early '90s or the '80s and the



1 number of times he'd gotten entitlements.

2 And he told me that there was -- how he was  
3 bidding more than the government for the land; that the  
4 government wanted to buy it for \$3,500 an acre.

5 But then he thought there was far more  
6 potential, based upon his due diligence, and he said he  
7 was going to put up 25 percent of the capital and that  
8 he had assembled a team of experts and that he was -- he  
9 had always gotten entitlements.

10 **Q And, and you, then, satisfied yourself that**  
11 **this land that he was referring to was something that**  
12 **you should also invest in, right?**

13 A I didn't do any due diligence on the land.

14 **Q So -- so -- you had, you had -- your**  
15 **confidence in Anthony Pugliese was such that you**  
16 **decided, I don't need to do any due diligence on this**  
17 **project because I have faith in Anthony Pugliese, right?**

18 **That's what happened?**

19 A No, that's not what happened.

20 **Q Well, you invested \$105 million.**

21 A What happened was -- what happened was Anthony  
22 told me about his business experience.

23 **Q Right. You already said that. And I don't**  
24 **mean to cut you off, Mr. DeLuca, but we only have three**  
25 **more hours. So let me -- so let me ask you a pointed**

1 **question because I don't want to cut you off.**

2 MR. HUTCHISON: Well, let him finish his  
3 answer.

4 MS. HOFFLER: Well, but no, I'm going to  
5 strike the question because I want him to give -- I  
6 don't want to go through what we've already been  
7 through. We have to be judicious with our time.  
8 So let me get to the point with you on this.

9 BY MS. HOFFLER:

10 **Q You just testified that you didn't do any due**  
11 **diligence as it relates to the Destiny Project, right?**

12 A I didn't do any due diligence on the land as  
13 it relates to the Destiny Project.

14 **Q Did you do any due diligence as related to the**  
15 **Destiny Project prior to -- prior to making the loan to**  
16 **LCOCL?**

17 A I --

18 **Q Yes?**

19 A What I did was, I met with Anthony Pugliese,  
20 and he told me all about the land, the studies that he's  
21 done on the land, the team of experts that he assembled.

22 He told me about the -- what he -- we call the  
23 "bottom-line value" of the land, which was \$3,500 an  
24 acre because that's what the government would pay. He  
25 told me about his extensive history in gaining

1 entitlements on a large number of properties.

2 **Q And other than that, did you do any -- other**  
3 **than doing the due diligence on that --**

4 A Let me finish.

5 **Q -- did you do any other due diligence?**

6 A Let me finish. I talked to Anthony. He told  
7 me about how much money he had made. He told me about  
8 his big house and how it was worth north of \$40 million,  
9 and he had paid for that himself out of his earnings.

10 **Q And other than --**

11 A And he had told me --

12 **Q And, Mr. DeLuca, other than --**

13 MR. HUTCHISON: Let him finish his answer.

14 THE WITNESS: He had told me --

15 BY MS. HOFFLER:

16 **Q Other than your due diligence as relates to**  
17 **Anthony DeLuca, we've already covered that. Remember,**  
18 **we're judicious with our time.**

19 **What other due diligence did you do, sir, as**  
20 **relates to the Destiny Project other than what you've**  
21 **already testified to ad nauseam in terms of your**  
22 **conversations with Anthony?**

23 **Did you do any other due diligence?**

24 A And -- and, and his -- his statement that he  
25 --

1           **Q**    **No, no. Did you do -- other than talking to**  
2           **Anthony?**

3           A    Oh, other than -- other than relying on  
4           Anthony?

5           **Q**    **Other than talking to Anthony, did you do any**  
6           **other --**

7           A    Other than the investment that he said he was  
8           going to make, no.

9           **Q**    **You didn't do -- so you never met with any of**  
10          **the consultants that you have, right?**

11          A    I never did.

12          **Q**    **You never met with any of the planners that he**  
13          **had lined up, did you?**

14          A    He never told me who they were, didn't offer  
15          to introduce me, and I didn't ask.

16          **Q**    **You didn't ask to have them introduced. You**  
17          **certainly had the ability to ask Anthony to be**  
18          **introduced to anyone if you wanted to meet them, right?**  
19          **There was nothing precluding you from doing that, was**  
20          **there?**

21          A    No. He made such a good presentation about  
22          how great this project was that --

23          **Q**    **And you didn't feel it was necessary?**

24          A    -- that I didn't feel it was -- that I needed  
25          to do anything more.

1           **Q**     And you never took a trip -- you never took a  
2     trip to see the land, did you?

3           A     No, I didn't take a trip to the land.

4           **Q**     And, and --

5           A     But what I did think was important was the  
6     fact --

7           MR. HUTCHISON: No, I'm -- Let him finish his  
8     answer.

9     BY MS. HOFFLER:

10          **Q**     No, no, no, no, no.

11                 Mr. DeLuca, again, we're doing better than  
12     we've done. Let's focus on the question.

13                 My question is this: Did you ever take a trip  
14     to visit the land? Not -- and we can get to all the  
15     other stuff -- did you ever take a trip to visit the  
16     land?

17          A     No. I relied on the fact that he was going --

18          **Q**     That's fine.

19          A     -- going to invest a substantial amount of  
20     money in this --

21          **Q**     Did you ever --

22          A     -- and that he could afford it.

23          **Q**     And did you ever -- did you ever ask to look  
24     at any of the underlying financial information that  
25     could have been available to you?

1 A He did explain to me the business.

2 Q Excuse me, Mr. DeLuca. I don't mean to  
3 interrupt.

4 Did you -- I want you to answer my question --  
5 did you ever ask to look at the underlying financial  
6 information; not what anyone told you?

7 Did you ask --

8 A Wait.

9 Q Excuse me. Let me explain my question because  
10 your answer didn't correspond to my question. Did you  
11 ever ask --

12 A I never said my answer.

13 Q Did you ever ask -- you, Mr. DeLuca, Fred  
14 DeLuca -- did you ever ask to see any of the underlying  
15 financial documents related to the Destiny Project? Did  
16 you ever ask to look at them? That's all I want to  
17 know.

18 MR. HUTCHISON: Objection to the form.

19 THE WITNESS: No. What I did was, I talked to  
20 Anthony Pugliese, and he explained to me --

21 BY MS. HOFFLER:

22 Q Right.

23 A -- the finances of the --

24 Q And I --

25 A -- project, and he explained to me how he

1 intended to make money.

2 And he explained to me that it was going to  
3 cost \$3 million to get entitlement.

4 **Q And my question to you: Did you ever ask to**  
5 **meet with -- meet with the sellers of the property to**  
6 **get a better understanding of that property? Did you?**

7 A No. I never --

8 **Q In fact, you never --**

9 A -- asked to meet with --

10 **Q Have you ever met --**

11 A -- the sellers.

12 **Q Have you ever met the sellers?**

13 A I didn't finish my answer.

14 **Q Have you ever met the sellers?**

15 A I have never met the sellers. Oh, I shouldn't  
16 say that. That's not exactly correct because one time,  
17 I did meet a realtor who was involved in the sale.

18 **Q Did you ever meet the seller? I didn't ask**  
19 **for a realtor. Did you ever meet the sellers?**

20 A The people who owned the property?

21 **Q The people -- the sellers typically are the**  
22 **people who sold the property.**

23 **Did you ever meet the sellers, Mr. DeLuca?**

24 A That's why I mentioned the realtor.

25 **Q No. The realtor is not the seller. Did you**

1           **ever meet the seller, Mr. DeLuca?**

2           A     I never met the sellers of the property.

3           **Q     All right.  And, Mr. DeLuca, when we talk**  
4           **about how you socialized, how would you characterize a**  
5           **socialization; how you and the Pugliese's socialized**  
6           **around 2005?**

7           A     Around 2005?

8           **Q     And this is when you were already in business**  
9           **with Anthony Pugliese and the Green Sky deal and when**  
10          **you had just begun to get in business with him on the --**  
11          **on the Destiny Project.**

12                   **How would you characterize how you-all**  
13                   **socialized?**

14          A     You mean -- you mean a few years before his  
15          party in the 2005?

16          **Q     No, no.  Just -- I'm -- do you need me to**  
17          **clarify my question?**

18          A     Well --

19          **Q     I said in 2005.**

20          A     What I would characterize is -- is that  
21          occasionally we would talk, have dinner and have a few  
22          drinks, and we'd talk about the business.

23          **Q     And then what about 2006?  How would you**  
24          **characterize -- a year later, how would you characterize**  
25          **how you-all socialized?**



1           A     I don't think we did much socializing in the  
2 next year. But I think generally it was the same sort  
3 of thing. Periodically, we would get together and talk  
4 about the business. Sometimes there would be some party  
5 that we would both attend.

6           MS. HOFFLER:    Okay. And I'm going to hand  
7 you -- I'm going to hand you a picture here. I  
8 want you to take a look at them. We're going to  
9 actually mark this. What exhibit are we at?

10          THE REPORTER:   Exhibit 16.

11          MS. HOFFLER:    16. We're going to mark this as  
12 Exhibit 16.

13          I'll just -- Do I need to put a number?

14          (Plaintiffs' Exhibit No. 16 was marked for  
15 identification.)

16          BY MS. HOFFLER:

17               **Q     Why don't you take a look at that picture. We**  
18 **only have one. Just one picture.**

19               **Do you remember that picture? Could you**  
20 **describe who's in that picture, please, Mr. DeLuca?**

21           A     I know some of the people in here.

22           **Q     Well, whoever you know in the picture.**

23           A     From left to right, on the left is Fred  
24 Florio.

25           **Q     That would be the Fred Florio who we -- I**

1 think Mr. Gary questioned you pretty extensively about  
2 Mr. Florio.

3 That's the same person who worked with you for  
4 a number of years?

5 A That's the only Fred Florio that I know.

6 Q I don't know if there is a junior or senior,  
7 so --

8 A This is Fred Florio who we talked about.

9 And then the next person, that's me. And then  
10 the woman in the front row, that's Laura Pugliese,  
11 Anthony's wife. I'm not sure who the next person is.  
12 The next one is Anthony Pugliese, and I'm not sure who  
13 the last person is.

14 Q Okay. I'm also going to mark this as an  
15 exhibit. Look at that picture. I think it's taken from  
16 the same party, right?

17 A I believe that's correct.

18 Q That's you with your -- I think Laura  
19 Pugliese's arm is around you?

20 A You want me to identify the people again?

21 Q Yes. Why don't you identify the people. I  
22 just want to -- I just want to -- and identify for the  
23 record so that the jury, in looking at that, knows  
24 exactly who that is.

25 A The first person is Anthony Pugliese.

1 MS. HOFFLER: This is going to be Exhibit  
2 Number 18 [sic].

3 (Plaintiffs' Exhibit No. 17 was marked for  
4 identification.)

5 THE WITNESS: 17.

6 MS. HOFFLER: 17, I'm sorry.

7 THE WITNESS: Anthony Pugliese is first, and  
8 I'm second, and then the third person is Laura  
9 Pugliese. And then there is a face in the  
10 background that I don't recognize; that would be  
11 the fourth person. And then the fifth person I  
12 don't recognize. And then there is a fraction of a  
13 face for a sixth person, and I don't recognize  
14 that.

15 BY MS. HOFFLER:

16 **Q Okay. Do you remember where that -- where**  
17 **these pictures were taken I'm going to now hand you,**  
18 **what were -- what we've marked as Number 18?**

19 (Plaintiffs' Exhibit No. 18 was marked for  
20 identification.)

21 BY MS. HOFFLER:

22 **Q Do you remember where that was taken?**

23 A I think these were taking -- taken at  
24 Anthony's house. I think. No, I don't know for sure,  
25 actually. You know, I don't know for sure. I'm

1 thinking, you know what, I really don't know where this  
2 was. I could tell you who I recognize in the pictures,  
3 but I don't actually know where this is.

4 **Q And so that the jury is very clear: In the**  
5 **Green Sky business project that you-all were involved in**  
6 **together, did you all invest about \$26 million into that**  
7 **project, or do you recall?**

8 A I don't recall the exact number.

9 **Q Does that sound about right, that you bought**  
10 **that business; you and Anthony together bought that**  
11 **business for about \$26 million?**

12 A I'd say plus or minus \$5 million. I think  
13 that's probably correct.

14 **Q Okay. And then within -- and that was in**  
15 **2005, right? Sometime, maybe, May 2005?**

16 A That was -- that was in, I think it was  
17 May 2005.

18 **Q And then -- then about three months later, you**  
19 **invested and you went into business again with Anthony**  
20 **Pugliese on the Destiny Project, right? That would be**  
21 **August, so between May and August, about three months?**

22 A I would classify it, yeah, it's -- it's within  
23 a few months.

24 **Q It's within a few months. And that deal was**  
25 **significantly bigger, wasn't it, than the Green Sky**

1 deal?

2 A Yes.

3 Q And certainly you don't go into business with  
4 someone who you don't have faith in, do you?

5 A I'd say that's correct.

6 Q And you don't go into business with someone  
7 that you don't have confidence in, do you?

8 A I'd say that's correct.

9 Q And in -- in that deal, the Destiny deal, in  
10 terms of the, the money, the money that was committed to  
11 that project -- let me not get into who financed what --  
12 but the money committed to that project, it was roughly  
13 about \$140 million?

14 A Well, that might be pretty close because there  
15 was a purchase price, and then there was \$3 million that  
16 we talked about for the entitlements. It's pretty close  
17 to that number.

18 Q And so in the span of about four months, you  
19 and Anthony were in business, in a business, in two  
20 businesses that ostensibly were valued at about  
21 \$170 million in 2005, right?

22 A Well, I made investments in two businesses --

23 Q Right.

24 A -- through corporations that I set up. And  
25 the total was somewhere pretty close to the number you

1 said.

2 Q Pretty close to \$170 million?

3 A I think that's correct.

4 Q And while you said you made investments, you  
5 made investments through some of your -- these  
6 corporations that we've talked about, right, that you  
7 own, though?

8 A The corporations, yes. That's correct. I  
9 made the investments. In each case, I set up a  
10 corporation or LLC and made the investment in the  
11 company.

12 Q Okay. Now -- and so going into -- as we  
13 progress into 2006, within actually six months, within  
14 six months of this, let's say 100 -- collectively  
15 \$170 million investment and business deals that you have  
16 with Anthony Pugliese, you and Anthony still don't --  
17 don't -- you're seeing eye-to-eye as it relates to both  
18 of those projects, right, within six months of the  
19 deals?

20 THE WITNESS: No.

21 MR. HUTCHISON: Objection to form.

22 THE WITNESS: I wouldn't say that exactly.

23 BY MS. HOFFLER:

24 Q Let's just talk about that.

25 In terms of the Green Sky deal which you --

1           **which you-all closed on in May of 2005, that deal,**  
2           **you-all basically took over a business, an existing**  
3           **business entity, right? You bought a business?**

4           A       There was a business that was purchased.

5           **Q       There was a business that was purchased.**  
6           **You-all didn't build the business from scratch, right?**

7           A       Correct.

8           **Q       And, and, and within the context of the Green**  
9           **Sky Project, you also acquired other businesses within**  
10          **the Green Sky Project, right? It wasn't just that one**  
11          **business that you -- that you took over or acquired.**  
12          **You also acquired other businesses, right?**

13          A       At some time later, maybe the next year, we  
14          made one acquisition.

15          **Q       Yes. And, and the whole concept -- correct me**  
16          **if I'm wrong -- of the Green Sky business was to -- was**  
17          **to become one of the largest recycling businesses in the**  
18          **country, right?**

19                   MR. HUTCHISON: Objection to form.

20                   THE WITNESS: No.

21                   BY MS. HOFFLER:

22           **Q       Oh, that wasn't it?**

23           A       No. The concept -- well, Green Sky itself,  
24           Sazaro at the time --

25           **Q       Let's talk about Green Sky because that's a**

1           **business that you all -- that you all -- that's what it**  
2           **became, and that's -- it's the Green Sky deal now?**

3           A     At the time, it was Sazaro.

4           **Q     But then you acquired it, right?**

5           A     Yes.

6           **Q     And it became the Green Sky deal?**

7           A     When did it become the Green Sky?

8           **Q     No. You're not asking me questions. I'm**  
9           **asking you questions.**

10           **Is it correct?**

11           A     I'm trying to get the context of time.

12           **Q     Well, at some point -- at some point, the loan**  
13           **that was taken out was not taken not in the name of the**  
14           **Sazaro Brothers, was it?**

15           A     Well, all I would tell you is --

16           **Q     Do you know?**

17           A     I don't know what the loan was taken out as.  
18           But I know the business operated as Sazaro for a good  
19           long time after the acquisition.

20           **Q     And how long was it? And that was by**  
21           **agreement if it operated that way; that was by agreement**  
22           **of you and Anthony, right? That was a deal that you**  
23           **struck?**

24           A     I don't know that we even talked about it. We  
25           bought a business named Sazaro, and we had -- we had, I



1 think, well, it was some kind of rights that allowed the  
2 company to operate under that name for a significant  
3 period of time.

4 **Q And then it became Green Sky, right?**

5 A And then at some later date, it became Green  
6 Sky.

7 **Q And the whole concept behind that project or**  
8 **that deal that you-all entered into was to acquire other**  
9 **recycling businesses, right, and to grow that business?**

10 A That wasn't the whole concept.

11 **Q No, no. I didn't say the whole concept. I**  
12 **said it was behind it. I didn't say the whole concept,**  
13 **sir.**

14 A Well, the con -- well, no, the first concept  
15 behind it was to make a profit on that business.

16 **Q Uh-huh.**

17 A And then Tom San Giacomo had talked about a  
18 plan to purchase other recycling companies if he could  
19 make good acquisitions. And that was something that we  
20 thought would be a good possibility and that we would  
21 look at each deal as it came along and consider it on a  
22 case-by-case basis.

23 **Q And -- and what was novel about that or**  
24 **interesting to you, sir, about that company? Was it was**  
25 **going to be an eco-friendly recycling business, right?**

1           **Or was it not of interest to you?**

2           A     Well, I think, no, I don't think that was the  
3           driving force at all because in the sense the recycling  
4           business itself is eco-friendly, so all the companies  
5           that do recycling are taking materials and recovering  
6           them and putting them back, turning them back into --  
7           helping them turn. They're in the stream of making  
8           products, taking them out of the landfills, and  
9           making -- using the materials again. So that wasn't --

10           **Q     Theoretically, that's -- theoretically?**

11           A     Yeah. So that wasn't really a consideration.  
12           What was consideration was that the profitability of the  
13           company was high and that it looked like it would be a  
14           reasonable investment and Tom San Giacomo and Anthony  
15           both thought that the business itself was a good value  
16           that could be sold for more. But just on the surface,  
17           looking at the profitability that they supplied to me, I  
18           thought it was a reasonable investment.

19           **Q     And you're not trying to suggest to this jury,**  
20           **sir, that you just relied on Anthony Pugliese's thoughts**  
21           **and Tom San Giacomo's thoughts in terms of making the**  
22           **decision to invest in this business.**

23                     **That's not what you're trying to tell this**  
24           **jury, is it?**

25           A     No.

1           **Q     I just wanted to make sure.**

2           A     No.  There was -- the business had an  
3     operating track record and financial statements.

4           **Q     So you did some due diligence, right?**

5           A     They showed me the -- the financial  
6     statements.

7           **Q     Right.  And did you, because it was important**  
8     **for your due diligence, for you to do due diligence, you**  
9     **were going to be investing and going into business, it**  
10    **was a new business for you, right?  You'd run a**  
11    **recycling business before, right?**

12           MR. HUTCHISON:  Objection to the form.

13           THE WITNESS:  It was just an investment for  
14    me.

15           BY MS. HOFFLER:

16           **Q     But it was a new type of investment.**

17                   **Had you ever been in the recycling business**  
18    **before?**

19           A     In terms of, I may have invested in recycling  
20    stocks, but never a big investment.

21           **Q     I just wanted to make sure.  You said that you**  
22    **may have involved in recycling stocks.  You're equating**  
23    **recycling stocks to a recycling business.  That's not**  
24    **what you are trying to convince this jury.**

25                   **Is that what you're trying to say?**

1           A     What was your question?

2           Q     You said you've been involved in recycling  
3     stocks. I said the "recycling business," the type of --  
4     the same type of businesses as Green Sky?

5           A     Well --

6           Q     Had you ever been involved in a business like  
7     that before, Mr. DeLuca?

8           A     I think what I said was consistent with --

9           Q     No.

10          A     -- what you're thinking.

11          Q     Had you ever been involved in a recycling  
12     business like Green Sky before, Mr. DeLuca?

13          A     Oh, did I -- well, I think the answer is still  
14     the same, which is --

15          Q     Well, had you?

16          A     Will you let me finish?

17          Q     If you're going to -- that's, like, a yes or  
18     no. Either you were involved in a recycling business  
19     before, or you weren't.

20                     I'm trying to figure that out.

21          A     Yeah.

22          Q     Not recycling stock. You weren't recycling  
23     stocks and bonds in the Green Sky Company. You were  
24     recycling materials.

25                     Had you ever been involved in that business

1           **before, Mr. DeLuca?**

2                   MR. HUTCHISON: Let him finish his answer,  
3           please.

4                   THE WITNESS: As I said before --

5           BY MS. HOFFLER:

6                   **Q    You hadn't said it before. So had you?**

7                   A    I did say it before.

8                   MR. HUTCHISON: Please just let him --

9           BY MS. HOFFLER:

10                   **Q    Yes or no?**

11                   MR. HUTCHISON: -- finish his answer.

12                   Go ahead and finish your answer.

13                   THE WITNESS: As I said before, I believe that  
14           I have invested in shares of recycling companies,  
15           but this would constitute the first big investment.

16           BY MS. HOFFLER:

17                   **Q    Right.**

18                   A    Right.

19                   **Q    And this would -- and how -- what percentage**  
20           **did you, through your company, own of the Green Sky**  
21           **company?**

22                   A    I don't recall exactly.

23                   **Q    Did you and Anthony Pugliese, through your**  
24           **companies, own equal amounts of shares?**

25                   A    I think -- I think we owned between a third

1 and a half each.

2 Q Okay. So each of you owned between a third  
3 and a half.

4 A Yes.

5 Q And it's fair to say you have never owned  
6 between a third and a half of any recycling business  
7 before?

8 A That is correct.

9 Q So this was a new -- this was a new venture  
10 for you in many respects, wasn't it, in terms of getting  
11 into the recycling business?

12 A This? Yeah, this was a new investment.

13 Q Now -- and you talk in terms of investment. I  
14 just want to make sure we're very clear here when you  
15 use this term "investment" and "partners" and all that.

16 You were doing business with Anthony Pugliese  
17 at the time that you began working on the Destiny  
18 Project with Anthony Pugliese, right?

19 MR. HUTCHISON: Objection to form.

20 BY MS. HOFFLER:

21 Q You were doing business with him?

22 MR. HUTCHISON: Objection to the form.

23 THE WITNESS: No. I don't think that's  
24 correct, because --

25

1 BY MS. HOFFLER:

2 Q You weren't doing --

3 A -- because we started --

4 Q Okay. Go ahead.

5 A Because we started talking about the Destiny  
6 Project first.

7 Q You were doing business with Anthony Pugliese  
8 in the Green Sky deal as we just established prior to  
9 LCOC even being formed and before you even gave the loan  
10 to LCOC, right?

11 A No, I think LCOC was formed.

12 Q And didn't you hear me say "and gave the loan  
13 to"?

14 A Well, are you going to let me finish?

15 Q I don't want you to finish in saying something  
16 else that isn't -- you're not listening to my question.

17 You have to -- don't talk about -- we already  
18 established LCOC, that loan, was given in August of  
19 2005. Green Sky closed in May of 2005. So by the time  
20 we got to August, three months after, you're already in  
21 business with Anthony Pugliese on the Green Sky deal.

22 MR. HUTCHISON: Objection as to form.

23 BY MS. HOFFLER:

24 Q Right?

25 A Well, you asked a different question before.

1 But to answer this question, I had made an investment at  
2 Green Sky.

3 **Q No, no.**

4 MR. HUTCHISON: Let him finish his answer.

5 MS. HOFFLER: I'm going to move to strike.

6 No. We're not letting him finish anyone's answer.

7 BY MS. HOFFLER:

8 **Q Mr. DeLuca, you need to hear me. You're**  
9 **trying to make distinctions. You act like a -- hear my**  
10 **question so you can answer it.**

11 **Not every other question, but my question.**

12 **When you went into business with Anthony**  
13 **Pugliese and made a loan to LCOCL, you were already in**  
14 **business with him on the Green Sky deal; isn't that**  
15 **right, sir?**

16 MR. HUTCHISON: Objection as to form. Asked  
17 and answered.

18 THE WITNESS: I wasn't in business with him.  
19 I had made an investment in a company, and he was  
20 also an investor in the company.

21 BY MS. HOFFLER:

22 **Q So according to you, Anthony and you were**  
23 **investors in the Green Sky deal, and Anthony and you**  
24 **were investors in the Destiny deal; is that how you**  
25 **perceived it?**



1           A     Yes. They were two separate deals. And  
2 Anthony and I were investors in the Green Sky deal, and  
3 we were investors in the LCOC.

4           **Q     And that's how you perceive the relationship.**  
5 **In fact, from the way you look at it, you and Peter Buck**  
6 **are investors in Doctor's Associates as well, right?**

7                     **He's not your partner? He's --**

8           A     Well --

9           **Q     I haven't finished the question.**

10          A     Go ahead. Go ahead.

11          **Q     And based on how you perceive things in your**  
12 **testimony here today under oath and in front of this**  
13 **jury, you and Peter Buck are investors in Doctor's**  
14 **Associates and the other businesses that you own where**  
15 **there is common ownership where you invest and he**  
16 **invests, right?**

17          A     Well, yeah, legally, Pete and I are --

18          **Q     Well, you're not -- well, I'm not asking you**  
19 **to give a legal opinion because you're not a lawyer.**

20                     MR. PUGLIESE: Let him answer the question.

21                     BY MS. HOFFLER:

22                     **Q     So please answer without giving a legal**  
23 **opinion.**

24                     MR. HUTCHISON: Let him finish the question.

25                     THE WITNESS: Pete and I were shareholders,

1           and we're both investors in Doctor's Associates.  
2           And occasionally we call each other partners  
3           because we're in it together, but we are investors  
4           in the business.

5           BY MS. HOFFLER:

6           **Q     But you made it very clear that since the**  
7           **'60s, you and Peter Buck were not partners, right? You**  
8           **made that clear in your testimony.**

9           A     Oh, no. Oh, we're not partners.

10          **Q     And, and, and just as you and Peter Buck are**  
11          **shareholders and investors, you and Anthony Pugliese**  
12          **were shareholders and investors in the Green Sky deal.**

13          A     We were shareholders? Well, our companies.

14          **Q     When I say "you," the companies.**

15               MR. HUTCHISON: Objection to form.

16               Finish your answer.

17               THE WITNESS: Well, yeah, at least in my case,  
18               I know that my company was an investor in the Green  
19               Sky deal.

20          BY MS. HOFFLER:

21          **Q     And a shareholder?**

22          A     And the shareholder.

23          **Q     Okay. Just as Anthony was an investor and a**  
24          **shareholder, right?**

25          A     I believe that's the case.

1           **Q**     **In the Destiny Project, you and Anthony**  
2           **Pugliese were investors and shareholders in the Destiny**  
3           **Project, right?**

4                   MR. HUTCHISON:   Objection to form.

5                   THE WITNESS:   Through our company, through my  
6                   company, FD Destiny.  FD Destiny invested in LCOC.  
7           BY MS. HOFFLER:

8           **Q**     **Now, let me clarify something -- and perhaps**  
9           **you forgot -- but isn't it true, Mr. DeLuca, that you**  
10          **are a personal investor in your individual capacity in**  
11          **the Green Sky deal?  It's not some shell company or**  
12          **other company you created.  You, Fred DeLuca, are an**  
13          **individual shareholder in the Green Sky company.  Think**  
14          **back.**

15                  A     Actually, if that's the case, it could be the  
16                  case.  I don't recall it that way.

17          **Q**     **And do you know what "RPAC" is?**

18                  A     I'm not sure what RPAC is, but I think the  
19                  initials --

20          **Q**     **What is it?**

21                  A     -- stand for --

22          **Q**     **Tell the jury what it is.**

23                  A     What is what?

24          **Q**     **What is RPAC?  You don't have to say what it**  
25          **stands for, but what is it?  Tell the jury.**

1           A     I'm not sure. I call -- when I hear "RPAC," I  
2 think of Recycled Paper Acquisition Company.

3           **Q     And you're an individual shareholder in that**  
4 **company?**

5           A     I don't know if I'm an individual shareholder  
6 or I have a company that holds the shares.

7           **Q     But in your mind, do you draw a distinction**  
8 **between being an individual shareholder and having a**  
9 **company that holds shares?**

10          A     Yes.

11          **Q     You do? And because if you're an individual**  
12 **shareholder, you're more engaged, right? You're more on**  
13 **the hook, right?**

14          A     No.

15          **Q     You're not? What's the difference, then, for**  
16 **you?**

17                   MR. HUTCHISON: To the extent it doesn't call  
18 for a legal conclusion, you could answer.

19 BY MS. HOFFLER:

20          **Q     You don't need to start being a lawyer.**  
21 **You're not one.**

22          A     Well, if -- if I own shares directly, I own  
23 the shares in my name. If the shares are owned by a  
24 company that I own, then the shares are owned by the  
25 company.

1           **Q     And why, Mr. DeLuca, have you made a**  
2 **determination in some instances to own shares in your**  
3 **own name versus in a company, a corporate entity?**

4           A     I don't know.

5           **Q     You don't know why you made that decision?**

6           A     I don't know.

7           **Q     Well, why would you make that decision?**

8           A     I don't know.

9           **Q     You don't know why you'd make that decision?**

10           MR. HUTCHISON:  Objection as to form.

11           THE WITNESS:  I don't.

12           BY MS. HOFFLER:

13           **Q     You don't know if it's because your advisors**  
14 **told you to do it?**

15           A     Well, I can't recall those investments, who  
16 told me what.  But I think that the answer that my  
17 advisors suggested doing something was probably what  
18 happened because I wouldn't independently just decide  
19 one way or the other.

20           **Q     You wouldn't independently just decide to be**  
21 **an individual shareholder without consulting with your**  
22 **advisors?**

23           A     In -- in -- yes.  I think that's correct.

24           **Q     And, and, of course, you consulted with your**  
25 **advisors before going in business with Anthony Pugliese,**

1           **didn't you?**

2                   MR. HUTCHISON:  Objection to form.

3                   THE WITNESS:  About the structure of my  
4                   investment?

5           BY MS. HOFFLER:

6                   **Q     I didn't say about the structure of your**  
7                   **investment.  I said you consulted with your advisors**  
8                   **prior to going into business with Anthony Pugliese,**  
9                   **didn't you, just consistent with what you're saying?**

10                   A     Yeah, okay.  Yes, I consulted with my advisors  
11                   on the structure of the investment.

12                   **Q     And you also consulted with advisors prior to**  
13                   **going into business with Anthony Pugliese as related to**  
14                   **the Destiny Project, didn't you?**

15                   A     Yes.  I, I consulted with them on the  
16                   structure of the investment.

17                   **Q     And that was important to you, wasn't it?**

18                   A     What was important to me?

19                   **Q     Well, to consult with your advisors.  That's**  
20                   **why you pay them, right?**

21                   A     Well, I pay them to advise me, so that's why I  
22                   hire them.

23                   **Q     And you -- you follow their advice, don't you?**

24                   A     In what respect is that?

25                   **Q     Well, you don't -- do I need to explain?  You**

1 follow your lawyers' -- you follow your advisors' advice  
2 when they give you advice?

3 A Are you -- I don't know what you're --

4 Q In general?

5 A I think -- I think, in general, I would follow  
6 the advice of the advisors, but I would certainly  
7 question advice, and sometimes I might seek a second  
8 opinion; or, I think, generally in areas that I'm not  
9 familiar with, I would follow their advice.

10 Q But you did not when it came to doing business  
11 with Anthony Pugliese.

12 I'm going to ask you questions about those  
13 pictures.

14 You did not seek a second opinion about going  
15 into business with Anthony Pugliese, did you?

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

17 Q Well, you don't know what you did?

18 A Well, are you talking about the --

19 Q We talked -- you just said you sought the  
20 opinion of your advisors prior to going into business  
21 with Anthony Pugliese.

22 MR. HUTCHISON: Objection as to form;  
23 misstates his testimony.

24 BY MS. HOFFLER:

25 Q My question to you is: You didn't seek a

1           **second opinion, did you, Mr. DeLuca, prior to going into**  
2           **business with Anthony Pugliese, whether it was on the**  
3           **Green Sky deal or Destiny, did you?**

4           A     On how to structure the company?

5           **Q     Just in general.**

6           A     I, I don't know if I sought a second  
7           opinion --

8           **Q     You don't remember.**

9           A     -- how to structure the company.

10          **Q     And that was only thing that you sought advice**  
11          **on: How to structure the company as it relates to the**  
12          **Green Sky deal?**

13          A     Well, I'm not sure that that's correct either.  
14          I don't recall the advice that I sought.

15          **Q     Because, of course, if you were an individual**  
16          **shareholder and there was no company, then obviously you**  
17          **could not have sought advice on how to structure the**  
18          **company, but --**

19          A     I didn't understand the --

20          **Q     So -- so you -- so you did not -- did you seek**  
21          **advice on more than just how to structure the company as**  
22          **related to the Destiny deal prior to entering into the**  
23          **Destiny business?**

24          A     I don't recall.

25          **Q     Now, we talked about you being an investor in**



1           **Doctor's Associates as an investor in Doctor's**  
2           **Associates.**

3                     **You're pretty hands-on, aren't you?**

4           A       No, not as an investor. But as the president  
5           of Doctor's Associates, which is a job that I have, I'm  
6           pretty hands-on, and I manage the company.

7           **Q       And you manage the company. And you take that**  
8           **very seriously, right? Any company that you're**  
9           **responsible for managing, you're going to take**  
10          **seriously, right?**

11          A       Well --

12          **Q       No?**

13          A       Depends on the company and the size of it  
14          and --

15          **Q       So there are some companies that you're**  
16          **responsible for managing that you don't take seriously?**

17          A       No. I think you're -- the question is far too  
18          broad that you're asking. You're asking me specifics.

19          **Q       Well, no. I can ask general questions. You**  
20          **can answer them however you see fit.**

21          A       Okay.

22          **Q       My general question to you is when you have**  
23          **the responsibility of managing a company, you're**  
24          **hands-on, aren't you? Isn't that your role?**

25          A       Well, that's a different question. But...

1           **Q     It's not a different question. Answer the**  
2 **question.**

3           A     What's the definition of "hands-on"?

4           **Q     However you describe it.**

5           A     Well, I would say that in companies that I  
6 have a responsibility for, sometimes I spend more time  
7 with some companies and less time with others.

8           **Q     But the bottom line is if you're responsible**  
9 **for managing them, the buck stops with you, right?**

10          A     I don't know what "the bucks stops with me"  
11 is.

12          **Q     Well, it's interesting you don't know what it**  
13 **means. When you use the expression, you know what it**  
14 **means; but when we ask the question, you don't know what**  
15 **it means.**

16                    So let me describe "the buck stops with  
17 you --"

18          A     Okay.

19          **Q     -- because you seem to not have understood**  
20 **that terminology.**

21                    So let me ask you this: What do you  
22 understand when I use the term "the buck stops with  
23 you," Mr. DeLuca, CEO of Doctor's Associates and Subway?

24                    What do you understand that to mean?

25          A     What I understand it to mean is that there

1 is -- you have the final say in all matters, and nobody  
2 else has any say whatsoever.

3 **Q And do you share -- do you have or enjoy that**  
4 **posture in any of the companies that you manage?**

5 A I -- I have to look through the list of  
6 companies. I'm not sure.

7 **Q Well, you're advisors -- let's just talk about**  
8 **2005 who your advisors were who you sought advice from**  
9 **as relates to the Destiny Project.**

10 **And one was Joe Esposito, right?**

11 A Not in relation to the Destiny Project; in  
12 relationship to how I would structure it.

13 **Q Okay. How you would structure the Destiny**  
14 **Project is the Destiny Project, meaning that's part of**  
15 **the Destiny Project, right?**

16 A That's a part of the --

17 **Q Right. That's part, that's a part of the**  
18 **business that you had?**

19 A No. I wouldn't even say that. It's not --  
20 structuring investment is not the business. That's  
21 structuring an investment.

22 **Q So it's your testimony that the only thing**  
23 **that you relied on Joe Esposito to do in 2005 as relates**  
24 **to the Destiny Project was how to structure the**  
25 **business? Is that your testimony under oath?**

1           A     He may have had some communications with in  
2 terms of the investment itself in Destiny?

3           **Q     I didn't get into the investment. I said what**  
4 **you relied on them for.**

5           A     I don't recall what I relied on Joe Esposito  
6 for.

7           **Q     You don't recall that you relied on Joe**  
8 **Esposito to assist in negotiations of loan documents in**  
9 **2005 as related to the loan that you made to LCOCL?**

10           **You don't recall that?**

11           A     The loan document? The loan to LCOC?

12           **Q     That's what I said, the loan to LCOCL.**

13           A     Yeah, I think that Joe Esposito was -- I'm not  
14 sure he was involved in negotiations, but he was  
15 involved in some communications.

16           **Q     Right. And, and just so jury is clear, LCOCL,**  
17 **when we use that, we're also referring to the Destiny**  
18 **Project. It means all it's all tied together, isn't it?**

19           MR. HUTCHISON: Objection to the form.

20           THE WITNESS: I'm not sure what the answer is.  
21 I know -- I know I generally talked about it as  
22 LCOC.

23           Is there a difference between LCOC and --

24 BY MS. HOFFLER:

25           **Q     It's your investment.**

1           A     -- LCOCL?

2           Q     It's your investment. I'm asking you the  
3 question. It's your investment.

4                     Are you telling this jury you don't know the  
5 difference between LCOCL and Destiny?

6           A     Well, no. I asked you the difference.

7           Q     Don't ask me the questions. You're to answer  
8 the questions.

9           A     You're --

10          Q     So answer the question.

11                     Let me pose it again because you seem to be  
12 confused again: Is there a difference, sir, between  
13 LCOCL and Destiny, the Destiny Project? Is there a  
14 difference?

15          A     If LCOCL is the same as LCOC, then I would say  
16 that LCOC is the owner of the Destiny Project.

17          Q     And you also used Joe Esposito to assist in  
18 negotiating the Wachovia loan, didn't you?

19          A     I'm not sure if he ever talked to Wachovia.

20          Q     When I talk about the "Wachovia loan," I mean  
21 your loan that you took out from Wachovia in August of  
22 2005, that \$105 million loan. That's what I'm referring  
23 to.

24          A     Yeah. I don't know if he talked to Wachovia.

25          Q     You don't know if he was involved in that?

1           A     I don't know.

2           **Q     What about David Worroll? What was David**  
3 **Worroll's role in 2005 as it related to the loan that**  
4 **you took out with Wachovia?**

5           A     I think David Worroll spoke to the people at  
6 Wachovia.

7           **Q     And he was one of those advisors that you**  
8 **talked about when you said you consulted your advisors**  
9 **prior to going into the Destiny business? Was he one of**  
10 **those people?**

11          A     In terms of structuring the company? In terms  
12 of --

13          **Q     You need me to read back the question? Was he**  
14 **one of those people that you went to as an advisor prior**  
15 **to going into the Destiny business?**

16          MR. HUTCHISON: Objection as to form.

17          THE WITNESS: I think David Worroll's job was  
18 to -- well, I think -- well, in terms of the loan,  
19 I think that the answer is --

20          MS. HOFFLER: I didn't say anything about a  
21 loan.

22          THE WITNESS: Oh, repeat the question, please.

23 BY MS. HOFFLER:

24          **Q     Was David Worroll one of those advisors that**  
25 **you said you consulted with prior to going into the**

1 **Destiny business?**

2 A In terms of the investment in the Destiny  
3 business and how I made my decision to invest in  
4 Destiny?

5 **Q I'm asking you the question, sir; you need to**  
6 **answer.**

7 A Yeah, I'm saying that I -- Dave -- I was  
8 saying that Dave Worroll's job was to --

9 **Q Well, let me --**

10 A In terms of the loan that was contemplated,  
11 his job was to suggest to me whether or not it would be  
12 better to loan the money directly from my own assets  
13 without borrowing from a bank or if it would be better  
14 to borrow from the bank.

15 **Q So David Worroll would have intimate knowledge**  
16 **of those -- of the fees that you paid to Wachovia,**  
17 **right? He'd have firsthand knowledge of that?**

18 A Yes. I think that David Worroll knew all  
19 about the fees with Wachovia.

20 **Q The commitment fees to Wachovia?**

21 A I think he knew about the commitment fees and  
22 any other fees.

23 **Q And similarly, David Worroll was one of those**  
24 **advisors, Mr. DeLuca, that you talked to prior to going**  
25 **into the -- prior to making the loan to LCOCL, right --**

1 MR. HUTCHISON: Objection; objection as to  
2 form.

3 BY MS. HOFFLER:

4 Q -- for the Destiny Project?

5 A I talked to Dave Worroll about the project,  
6 about the Destiny loan.

7 Q And he's someone who would -- who would have  
8 knowledge of the commitment fees that were charged in --  
9 for the loan that you made to LCOCL for the Destiny  
10 Project, right?

11 A The commitment fees that I charged to LCOC?

12 Q Uh-huh.

13 A That's correct. Yes.

14 Q Okay. And what about Joe Esposito? The same  
15 question: Was Joe Esposito someone who would have  
16 knowledge of the commitment fees that you paid, that you  
17 paid Wachovia wack in connection with your loan from  
18 Wachovia, that \$105 million loan from Wachovia in August  
19 of 2005?

20 A I don't know.

21 Q And similarly, was Joe Esposito one of the  
22 advisors that you had in August of 2005 that would have  
23 any knowledge of the commitment fees that you charged  
24 LCOCL in connection to the loan you made in August of  
25 2005?



1           A     I don't know.

2           **Q     Now, in 2005, David -- David Worroll and Joe**  
3 **Esposito were Doctor's Associates employees, right?**

4           A     Yes. They were Doctor's Associates employees,  
5 but Doctor's Associates wasn't involved. They were  
6 advising me personally.

7           **Q     They were advising. This is one of the favors**  
8 **you talked about before where you had people that worked**  
9 **with you, they did favors with you on personal projects.**

10          **This is an example?**

11          A     I wouldn't classify it as a favor.

12          **Q     That was your word.**

13          A     I did use that word, but I -- they worked for  
14 me. And they worked -- they worked on this personally  
15 for me, not for Doctor's Associates in any way.

16          **Q     So they -- they didn't get compensated for**  
17 **work that they did during this time?**

18          A     No. They were paid salaries by Doctor's  
19 Associates --

20          **Q     This was --**

21          A     -- and they were employees of Doctor's  
22 Associates, but they did this work for me personally as  
23 a -- as an individual who was making an investment.

24          **Q     They did this for you because you were an**  
25 **individual who was making an investment?**

1           A     No.  They did -- well, they did this -- well,  
2           this -- they did this -- they did it for me because I  
3           asked them to do it because they work for me --

4           **Q     Okay.**

5           A     -- and Doctor's Associates.

6           **Q     And they were not independent contractors,**  
7           **were they?**

8           A     No.

9           **Q     They were not paid separately for work that**  
10          **they did because you asked them to do it, right?**

11          A     They were not.

12          **Q     And, and, and just as we've seen in a lot of**  
13          **documents, these two individuals who were on Doctor's**  
14          **Associates' payroll, they were doing work on Destiny**  
15          **Project whenever you asked them to do it, right?**

16          A     I think they did work.  I think the answer is  
17          basically yes.

18          **Q     An example of that is this famous e-mail that**  
19          **David Worroll sent to Tom San Giacomo related to the**  
20          **LCOCL tax returns.  That was an example of something**  
21          **that you had asked him to do, even though he was an**  
22          **employee of Doctor's Associates, right?**

23                   MR. HUTCHISON:  Objection to form; move to  
24                   strike.

25                   THE WITNESS:  I --

1 MR. HUTCHISON: Let me finish. Objection to  
2 form; move to strike comment of counsel.

3 MS. HOFFLER: Wow, he's being aggressive.

4 BY MS. HOFFLER:

5 Q So, so, so -- let's go back. So this document  
6 that -- Exhibit Number 8 that we looked at -- why don't  
7 you take a look.

8 Pull it up so you can see what I'm referring  
9 to so the record is clear.

10 THE WITNESS: Can I take two minutes? I'll be  
11 right back. Everybody could sit here. I just need  
12 to stretch a little bit.

13 MS. HOFFLER: Can you stretch in here?

14 MR. HUTCHISON: You can get up and walk.

15 MS. HOFFLER: We'll go off the record. We  
16 don't have a lot of time. I don't want to take --

17 THE VIDEOGRAPHER: The time on the monitor is  
18 2:38. Going off the record.

19 (A recess was taken.)

20 THE VIDEOGRAPHER: The time on monitor is  
21 2:46. This begins Tape No. 5. We're -- 4. We're  
22 back on the video record.

23 MS. HOFFLER: Okay. All right. I'm going to  
24 again, counsel for Mr. DeLuca, now that it's been  
25 roughly five hours since counsel instructed his

1 client -- Counsel Rick Hutchison instructed his  
2 client not to answer questions that were posed by  
3 counsel for the plaintiffs in this case relative to  
4 Mr. DeLuca whether Mr. DeLuca had met with the  
5 State Attorney's Office or had any contact with the  
6 State Attorney's Office, I'm going to ask counsel  
7 again if he has undertaken any efforts to, to  
8 research and to provide any case law to support his  
9 assertion of a privilege which we believe has no  
10 foundation or basis in Florida law -- in fact, any  
11 law in the country because it's a federal --  
12 whether it's federal or state.

13 So I'm asking Mr. Hutchison if he's undertaken  
14 any efforts whatsoever to research that privilege.

15 MR. HUTCHISON: Five hours ago, you were  
16 trying to get the Judge on the line.

17 MS. HOFFLER: Yes or no?

18 MR. HUTCHISON: Did you get the Judge on the  
19 line?

20 MS. HOFFLER: We couldn't get the Judge on the  
21 line because the court is closed. You're aware of  
22 that. Excuse me.

23 MR. HUTCHISON: You were trying to get the  
24 duty judge.

25 MS. HOFFLER: Can't get the Judge.

1 MR. HUTCHISON: I'm willing to talk to the  
2 Judge right now.

3 MS. HOFFLER: You're the one asserting the  
4 privilege, so you have the duty to provide these.  
5 When you assert a privilege, and if it's  
6 challenged, you as a officer of the court must  
7 provide the basis for the privilege.

8 This is not an attorney/client privilege.  
9 There is no privilege that you've asserted that is  
10 recognized with Florida Rules of Civil Procedure.  
11 If it were, you would cite the rule.

12 I've asked you for the rule. You said you  
13 have no rule; you have no case law. But what you  
14 do have is access to hundreds of attorneys that can  
15 research that.

16 We have challenged it. We have, just as you  
17 have access to criminal defense lawyers, lawyers  
18 that practice in federal court, state court in the  
19 State of Florida, so do we.

20 We asked you -- you mentioned here that Bob  
21 Butterworth is here, a former State attorney, but  
22 when Mr. Gary probed you and said, "If he gives you  
23 an opinion or he says what he believes is the case,  
24 would you follow it," you said, "No, no, no. I'm  
25 going to wait for the Judge."

1           So I'm posing the question again for our  
2           record, obviously for a reason, and the reason is  
3           because we believe that Mr. DeLuca, by and through  
4           his attorneys, through his attorneys, through his  
5           advisors, however you want to call them, is trying  
6           to use and manipulate the State Attorney's Office  
7           to have an impact on this civil litigation.

8           So the information is directly relevant.  
9           You're trying to improperly use State -- State  
10          officials and trying to manipulate a process and  
11          present erroneous information.

12          And so for that reason, we have a right to ask  
13          if Mr. DeLuca has engaged in any discussions with  
14          the State Attorney's Office, particularly as it  
15          pertains to issues that have been litigated in this  
16          case and that are germane to the lawsuit.

17          Now, should you-all choose to continue to  
18          assert this bogus privilege without any -- without  
19          any support and case law, then we need to make sure  
20          the record reflects that.

21          We are going to keep the deposition open, and  
22          we have about five hours of questioning of this  
23          witness that we would have done related to those  
24          issues. So if you -- if you are not prepared to do  
25          that, let us know now. I'm going to continue to

1 ask you because I think you have an ethical duty to  
2 do so.

3 MR. HUTCHISON: Early this morning, you were  
4 going to try to get ahold of the duty judge.

5 Did you do that?

6 MS. HOFFLER: We did try to get ahold, and we  
7 were not able to get ahold of any judge.

8 MR. HUTCHISON: And the duty judge is not  
9 available this afternoon?

10 MS. HOFFLER: We were not able to get ahold of  
11 a duty judge.

12 But it is your duty as a person as properly  
13 asserting the privilege. And we did that because  
14 we really want to ask these questions of this  
15 witness. We wanted to when we had seven hours left  
16 in the examination. Now we have two and a half  
17 hours left.

18 You still have done nothing, and you have  
19 asserted a privilege, as you know and you admitted,  
20 you don't have any case law to support it. And we  
21 did.

22 And just for the record, we left a message and  
23 we have not received a call back. But you are the  
24 one, Mr. Hutchison -- you've been a lawyer for a  
25 number of years. And, again, you have access to

1           your firm -- you have three lawyers here -- who  
2           should be about the business of trying to get some  
3           type of support for the privilege you've asserted.

4           And I submit that the reason why you haven't  
5           is because you know there is no support, and you're  
6           taking advantage of the fact that today is a  
7           holiday. You're taking advantage of the fact that  
8           today there is no judge available. You're taking  
9           advantage of the fact that we conveyed to you and  
10          we sat here and tried to call the Judge's chambers  
11          with you here in person so you couldn't turn around  
12          make some misrepresentations to the Court.

13          And you know you have a duty to do something  
14          more, and you just haven't lifted a finger to call  
15          a judge to try to get an opinion. You have an  
16          associate who is sitting here who knows the facts  
17          intimately in this case and he's undertaken no  
18          effort to research this issue.

19          You have another lawyer out of Connecticut.  
20          You have Mr. DeLuca, who has someone here on the  
21          line. You certainly could have done that. You've  
22          got a whole firm of Holland & Knight. You're a  
23          partner. You could get any associate to research  
24          this issue and give you and me -- as an officer of  
25          the court, this is going to be a hotly contested



1 issue -- to give you the frame of reference so you  
2 could be protected on this issue.

3 Your client is wide open. So you do whatever  
4 at your peril, but I'm asking you as an officer of  
5 the court: What efforts have you undertaken and  
6 what efforts do you plan on undertaking before the  
7 end of this deposition because we have five hours  
8 of questioning for this witness on that topic, and  
9 we should be entitled to know the answers to those  
10 questions.

11 MR. HUTCHISON: I've got nothing to add to  
12 what I've said previously today, both this morning  
13 and this afternoon.

14 BY MS. HOFFLER:

15 Q Mr. DeLuca, we talked about how you classify  
16 the relationship that you had with Anthony Pugliese.  
17 And I'm going back to the 2005 period. Okay? Remember  
18 we talked about that your relationship?

19 We talked about how you socialized with  
20 Mr. Pugliese, and you talked about -- I showed you some  
21 pictures, and you kind of gave the jury a sense of the  
22 type of relationship that you had with Anthony Pugliese,  
23 right?

24 A Yes.

25 Q And we also talked about how you classified

1 your business relationship with Peter Buck, who have you  
2 been in business with since the '40s -- since the '60s,  
3 right?

4 A Yes.

5 Q We talked about that.

6 A Yes.

7 Q And you talked about with Peter Buck, even  
8 though you're not partners, you said from time to time  
9 you may refer to each other as partners, right? Is that  
10 your testimony?

11 A I said that, yes.

12 Q And, and, and, of course, it's also true in  
13 the case of the Destiny Project that you and Anthony  
14 DeLuca [sic] were referred to commonly as partners,  
15 right?

16 MR. HUTCHISON: Objection to the form; to the  
17 extent it calls for a legal conclusion.

18 THE WITNESS: Refer to?

19 BY MS. HOFFLER:

20 Q Did I say Anthony? I meant -- okay. Let me  
21 rephrase the question because, Lord knows, we don't want  
22 that on the record.

23 Okay. Well, isn't it true also, Mr. DeLuca,  
24 that as it relates to the Destiny Project, you, Fred  
25 DeLuca, and Anthony Pugliese have also been referred to

1           **as "partners"?**

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

4                   THE WITNESS:  By other people?

5           BY MS. HOFFLER:

6                   **Q    By other people, by you, by Mr. Pugliese.**

7                   A    I think that's probably correct.

8                   **Q    Yes.  And just so that -- who don't -- I want**  
9           **to give you a few examples of what I'm talking about, if**  
10           **that's okay with you.**

11                   MS. HOFFLER:  And I'd like to mark these as  
12           exhibits.  I'm going to go through them very  
13           quickly.  I'll keep them in order, and then at a  
14           break, I'll make sure all the labels are right.  
15           Okay?

16                   I think the last exhibit we were on was 18.

17                   Do you have the blank exhibit thingies?

18                   THE REPORTER:  You took them.

19                   MS. HOFFLER:  If you could start maybe 20.

20                   We're going to --

21                   MR. HUTCHISON:  May I have a copy, please?

22                   MS. HOFFLER:  I only have one copy, so we're  
23           just going to all operate off of one copy.  The  
24           first one I'm going to label as DeLuca 19.  We'll  
25           just put the number.

1 Yes, thank you.

2 (Plaintiffs' Exhibit No. 19 was marked for  
3 identification.)

4 BY MS. HOFFLER:

5 Q I'd like you to take a moment. I've  
6 highlighted the parts. And this is not designed to have  
7 you read everything because, again, I'm not going to  
8 take the time for that.

9 I've highlighted what I want you to focus on.  
10 And at the end, I'll make sure have you copies of all of  
11 this. Mr. DeLuca, I'm sorry, but we're going to have to  
12 share the document.

13 You saw the highlighted area. And just for  
14 the record, this is entitled -- this is a one-page piece  
15 of marketing materials entitled "Climate Destiny  
16 Florida, Destiny Florida USA," and this is a document  
17 that basically talks about the Destiny Project; isn't  
18 that right?

19 A I haven't finished reading it.

20 Q Well, let's look at it. It basically talks  
21 about the Destiny Project, does it not? And, again, I'm  
22 not going to ask you --

23 A Hold on.

24 MR. HUTCHISON: With respect to this exhibit,  
25 I object to form and foundation.

1 MS. HOFFLER: Doesn't matter. Make your  
2 objection. We're moving on.

3 THE WITNESS: All right. Yeah.

4 BY MS. HOFFLER:

5 Q Okay. And in the highlighted area that I've  
6 showed you -- we're going to go through this quickly --  
7 it says: "Project developer, Anthony V. Pugliese III  
8 and Fred DeLuca."

9 Do you see that?

10 A I saw that.

11 MS. HOFFLER: Now I want to hand what you  
12 we're going to mark as Exhibit 20.

13 (Plaintiffs' Exhibit No. 20 was marked for  
14 identification.)

15 BY MS. HOFFLER:

16 Q Exhibit 20, it says -- it's an article from a  
17 newspaper. I'm going to put this on the side. And the  
18 newspaper article -- and I'm not going to have you read  
19 the entire article -- is titled "Delray Developer Sees  
20 Destiny in Yeehaw Junction." And the subtitle is:  
21 "Anthony Pugliese plans a 65-square-mile,  
22 self-sustaining environmental 'model city.'"

23 And the text of this -- and this is by Travis  
24 Reed of The Associated Press -- and the text of it --  
25 and I've highlighted the area that I want you to look at

1 and read and confirm.

2 It says -- but -- it says here: "That's the  
3 name of the Delray -- of the new city, the Delray Beach  
4 Developers are planning where out -- where overgrown  
5 bush [sic] and cattle pastures now spread wide. Within  
6 25 years, he and billionaire partner and Subway founder  
7 Fred DeLuca envision a biotechnology hub, 40 miles of  
8 navigable lakes, a sustainable energy source, and some  
9 150,000 people."

10 And I'm going to highlight that. And either  
11 you can read this into the record -- but since I know  
12 that you speak very softly, I thought it would be  
13 quicker if I read it into the record.

14 MR. HUTCHISON: Exhibit 20, same two  
15 objections as I had to 19.

16 MS. HOFFLER: Fine.

17 MR. HUTCHISON: Form and foundation.

18 MS. HOFFLER: Fine.

19 BY MS. HOFFLER:

20 Q Okay. And, Mr. DeLuca, I want you to confirm  
21 the -- I read the caption of the article?

22 A What is the caption?

23 Q I read the caption -- well you can read it.  
24 The caption is: "Delray Developer Sees Destiny in  
25 Yeehaw Junction." And then I just read this paragraph.

1           **If you want to read it into the record, maybe that's**  
2           **quicker.**

3                       **You need to, because you speak softly, turn to**  
4           **the court reporter.**

5           A        **"That's the name of the new city the Delray**  
6           Beach developer is planning, where overgrown brush and  
7           cattle pasture now spread wide. Within 25 years, he and  
8           billionaire partner and Subway founder Fred DeLuca  
9           envision a biotechnology hub, 40 miles of navigable  
10          lakes, a sustainable energy source, and some 150,000  
11          people."

12                       (Plaintiffs' Exhibit No. 21 was marked for  
13          identification.)

14          BY MS. HOFFLER:

15                       **Q        Okay. Now I'm going to hand you which -- and**  
16           **subject to your counsel's objection -- also what we're**  
17           **going to mark as Exhibit 21. It's from Ethanol Producer**  
18           **Magazine, "The World Of Energy At Your Fingertips."**

19                       **This is a article that's dated**  
20           **August 29, 2008. It's entitled "Florigy [sic] --**  
21           **Florida Energy Farm to Research Biofuels Crops."**

22                       **And the highlighted portion in this article**  
23           **says: "The city of Destiny is being developed by real**  
24           **estate developer Anthony V. Pugliese, III, and Subway**  
25           **restaurant founder Fred DeLuca."**

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**Do you see that?**

MR. HUTCHISON: Take a moment to look at it.

MS. HOFFLER: Take a moment to look at it.

MR. HUTCHISON: Same two objection to the  
prior two exhibits, both to form and foundation.

(Plaintiffs' Exhibit No. 23 was marked for  
identification.)

BY MS. HOFFLER:

**Q All right. Now I'm going to hand you an  
article, Exhibit 23. It's entitled -- it's entitled  
"Energy Farm Part of Larger Destiny Plan." It's from  
Osceola News-Gazette dated September 20, 2008. It's an  
article written by Rick Madewell, and I'm going to read  
highlighted section:**

**"Another developer in the city [sic] project  
is Subway restaurants founder Fred DeLuca, who along  
with Pugliese purchased the Destiny Project [sic] in  
2005. They also own Green Sky Industries, a recycling  
operation headquartered in New Jersey."**

**Do you see that?**

MR. HUTCHISON: Did you skip 22 on purpose?

MR. BELAVAL: No. It was an accident.

MR. HUTCHISON: Oh.

MS. HOFFLER: Okay. So we're going to go  
to 22. Sorry about that.



1 (Plaintiffs' Exhibit No. 22 was marked for  
2 identification.)

3 BY MS. HOFFLER:

4 Q Do you see that, Mr. DeLuca?

5 A I see that.

6 Q Now I'm going to hand you Exhibit 22 --  
7 inadvertently, we skipped 22 -- which is a Farm Dairy  
8 Auction Guide & Rural Marketplace article dated  
9 September 1, 2008, and it's entitled "Destined for  
10 Greatness: Florida Town Lays Claim to State's First  
11 Wind Farm."

12 Have I read that correctly?

13 A Yes.

14 Q And it's a September 1, 2008 article. And on  
15 the second page of that article, it says about the town:  
16 "He and his partner, Subway restaurant founder Fred  
17 DeLuca, purchased the Destiny property in 2005. They  
18 also own Green Sky Industries, one of the Northeast's  
19 most successful vertical recycling operations,  
20 headquartered in New Jersey."

21 Would you look at that and see if I read that  
22 correctly?

23 MR. HUTCHISON: Same objections as to  
24 Exhibit 22 as to the other exhibits, both to form  
25 and foundation.

1 BY MS. HOFFLER:

2 Q Have I read that correctly, Mr. DeLuca?

3 THE WITNESS: I haven't looked at it yet.

4 BY MS. HOFFLER:

5 Q Okay.

6 A I didn't track while you were reading.

7 Should I read it in?

8 Q Why don't you read it into the record  
9 starting -- you could say "He and his"...

10 A "He and his partner, Subway restaurants'  
11 founder Fred DeLuca, purchased the Destiny property in  
12 2005. They also own Green Sky Industries, one of the  
13 Northeast's most successful vertical recycling  
14 operations, headquartered in New Jersey."

15 (Plaintiffs' Exhibit No. 24 was marked for  
16 identification.)

17 BY MS. HOFFLER:

18 Q Okay. I'm going to hand you now what we're  
19 going to mark as Exhibit Number 24. If you could follow  
20 with me, Energy Daily, the Power of Earth and Beyond.  
21 It's an article dated March 13th of 2009, and the title  
22 of the article is: "Destiny to be America's First  
23 Eco-Sustainable City."

24 Have I read that correctly, Mr. DeLuca?

25 A Yes.

1           Q     And then I'd like to read this part in the  
2     article, if you could read along with me: "Destiny is  
3     the vision of Anthony V. Pugliese, III, President and  
4     CEO of the Pugliese Company, a leading land development  
5     corporation. Pugliese and his partner, Subway  
6     restaurants cofounder Fred DeLuca, purchased the  
7     41,300-acre property in 2005."

8                     Do you see that?

9           MR. HUTCHISON: Let me look at it.

10   BY MS. HOFFLER:

11           Q     Have I read that correctly, Mr. DeLuca?

12           A     I think you read that correctly.

13                     (Plaintiffs' Exhibit No. 25 was marked for  
14     identification.)

15   BY MS. HOFFLER:

16           Q     And I'm going to hand you another article  
17     dated August 28, 2008 from the South Florida Business  
18     Journal, entitled "Farm-to-Fuel Initiative Takes Shape  
19     in Osceola." Business Journal staff writer by the name  
20     of Susan R. Miller.

21                     Do you see that, Mr. DeLuca?

22           A     Susan R. Miller?

23           Q     Yes. And I'm going to read the highlighted  
24     areas. It says: "Three years ago, Delray Beach  
25     developer Anthony V. Pugliese, III, made a successful

1 bid of \$137 million for 27,400 acres of pasture land in  
2 rural Southeast [sic] Osceola."

3 I'm going to read further down.

4 Are you with me thus far?

5 A You made a little error.

6 Q I'm going to read it again. I want no errors:  
7 "Three years ago, Delray Beach developer Anthony V.  
8 Pugliese, III, made a successful bid of \$137 million for  
9 27,400 acres of pasture land in rural Southern Osceola."  
10 Okay?

11 Then I'm going to read further down. I'm  
12 reading from the side. That's why it might be turned.

13 And then follow with me, Mr. DeLuca:  
14 "Pugliese is working with partner Fred DeLuca, founder  
15 of Subway restaurants. They also own Green Sky  
16 Industries, a vertical recycling operation based in New  
17 Jersey."

18 Have I read that correctly Mr. DeLuca?

19 A Yes.

20 MR. HUTCHISON: Same objections to this  
21 Exhibit 25, both form and foundation.

22 BY MS. HOFFLER:

23 Q Now, Mr. DeLuca -- you can put that up now.

24 Now, Mr. DeLuca, much as we discussed earlier  
25 how you are referred to with -- when people talk about

1 Peter Buck as a partner in these articles, you're also  
2 referred as to as a partner of Anthony Pugliese on this  
3 Destiny Project; isn't that right?

4 A That's what -- that's how they reference us --

5 Q Now, Mr. --

6 A -- but that's not the case of what actually  
7 was. It's just how the articles reference us.

8 Q Did you ever send out any press releases  
9 saying, well, we're not partners? Did you ever try to  
10 correct that if that's indeed how you felt?

11 A Oh, I think, the --

12 Q Did you ever send out any press releases?

13 MR. HUTCHISON: Objection; form.

14 BY MS. HOFFLER:

15 Q That's my question. Mr. DeLuca, I want to  
16 make sure the question is clear and we have a clean  
17 answer for the record.

18 Did you, Mr. DeLuca, if you felt indeed you  
19 weren't partners, ever send out a press release or  
20 send -- have your team of professionals that you have,  
21 advisors, send letters to all these news journals saying  
22 "Mr. Pugliese and I are not partners on the Destiny  
23 Project"?

24 Did you ever do that, Mr. DeLuca?

25 MR. HUTCHISON: Objection as to form.

1 THE WITNESS: No, for two reasons. First, I  
2 didn't see these articles; but, number two, the  
3 ownership of these properties is a public record,  
4 and everyone is on notice.

5 BY MS. HOFFLER:

6 Q And certainly -- but certainly if that's a  
7 perception, that's a perception, right?

8 MR. HUTCHISON: Objection as to form --

9 THE WITNESS: It's not a perception.

10 MR. HUTCHISON: -- to the extent it calls for  
11 a legal conclusion.

12 BY MS. HOFFLER:

13 Q Let me just ask you this: Did you ever,  
14 because there are -- you would agree with me that there  
15 multiple references to you -- if you pull up Peter Buck  
16 and Fred DeLuca, you'll see you-all are listed as  
17 partners. That's a perception. You-all are partners,  
18 you've been in business together or investors,  
19 shareholders, for over 40 years, right? And we already  
20 discussed that people perceive that you-all are  
21 partners.

22 We talked about that, right?

23 MR. HUTCHISON: Objection to form.

24 THE WITNESS: I don't think we talked about  
25 that. I thought we talked people sometimes or I

1           sometimes refer to us as partners.

2           BY MS. HOFFLER:

3           **Q     People do refer to you-all as partners,**  
4           **including you?**

5           A     I would say from time to time people refer to  
6           us as partners.

7           **Q     And did you take out -- did you ever send out**  
8           **a press release, ever, in the 40-plus years that you've**  
9           **done business with Peter Buck, saying, "Well, we were**  
10          **partners 45 years ago, but we're no longer partners.**  
11          **Please don't refer to us as partners."**

12          **Did you ever do that?**

13          A     No.

14          MR. HUTCHISON:  Objection to form.

15          BY MS. HOFFLER:

16          **Q     No, you didn't.  Okay.**

17          **Now, Mr. -- and, you know, your trusted**  
18          **advisors that you had, you know -- we talked about David**  
19          **Worroll, we talked about Mr. Esposito -- did you talk to**  
20          **them about the publicity surrounding the Destiny**  
21          **Project?**

22          MR. HUTCHISON:  Objection to form.

23          THE WITNESS:  At the time of the transaction,  
24          no.

25

1 BY MS. HOFFLER:

2 Q And Fred Florio was in the office -- was in  
3 the offices where LCOCL was run, right, when  
4 Mr. Pugliese was the manager?

5 A He went there often.

6 Q He was there almost every day, wasn't he?

7 A No, I wouldn't say that.

8 Q Well, let me ask you this: If he testifies  
9 that he was there almost every day, would you dispute  
10 that?

11 A I don't think he'll testify to that.

12 Q If he testifies he was there almost every day,  
13 would you dispute that, Mr. DeLuca?

14 A I would.

15 Q So you would be calling Mr. Florio a liar?

16 MR. HUTCHISON: Objection to form; it's  
17 improper to have a witness opine on the credibility  
18 of a witness.

19 MS. HOFFLER: We know about your objections.  
20 Make your objections for the record because we know  
21 your bases are very questionable.

22 BY MS. HOFFLER:

23 Q But -- okay. So would you, if Mr. Florio --  
24 if Mr. Florio testified that, that he went to the LCOC  
25 office that is were run out of Mr. Pugliese's building



1           **when he was the manager almost every day, would you**  
2           **dispute that?**

3                       MR. HUTCHISON:  Objection to form.

4                       THE WITNESS:  Yes.  Because in the --

5           BY MS. HOFFLER:

6                       **Q     Why?  Were you with him every day?**

7                       A     In the beginning -- let me finish.  Yes.  In  
8                       the beginning, he didn't go there very often at all; but  
9                       I know that towards the end, he went there much more  
10                      frequently.

11                      **Q     Well, he was there for four and half years,**  
12                      **right?  He was detailed to work, by you, to work with**  
13                      **LCOCL on the Destiny Project, right?**

14                      MR. HUTCHISON:  Objection to form.

15                      THE WITNESS:  No, that's not correct.

16           BY MS. HOFFLER:

17                      **Q     You didn't tell him --**

18                      A     He wasn't -- let me finish.  Let me finish.  
19                      No, it's not correct.  I didn't give him direction to go  
20                      there, and I know that in the first few years, he didn't  
21                      go there very often.

22                      **Q     You didn't -- so your testimony under oath is**  
23                      **that you did not direct Fred Florio to go over to where**  
24                      **the Destiny Project was being run?  You did not direct**  
25                      **him to do that?**

1 A I didn't give him specific directions.

2 Q He just did that on his own?

3 A He had, basically, yes.

4 Q And this is your employee for how many years?

5 A Fifteen years.

6 Q So you want this jury to believe your employee  
7 of 15 years just took it upon himself to go to the  
8 offices where Destiny was run on a regular basis without  
9 direction from you. That's what you expect the jury to  
10 believe?

11 A Almost. Here's what happened: He thought --  
12 Fred Florio, as the project wore on, thought it would be  
13 a good idea to go to the office more often, and I  
14 thought that was fine because he didn't have much else  
15 to do.

16 Q So right then, he did receive direction from  
17 you; if you thought it was fine, then you thought it was  
18 okay for him to go to the to the office on a regular  
19 basis.

20 A I wouldn't classify that as "direction."

21 Q You made him the treasurer, did you not,  
22 Mr. DeLuca? He was the treasurer of that -- of that  
23 business that you and Mr. Pugliese were involved in. I  
24 mean, that was at your insistence, wasn't it?

25 A No, I wouldn't classify it as my insistence.

1 It was just a brief discussion, and Fred Florio was put  
2 down as the treasurer at the inception of the business,  
3 and he did not go to the office every day.

4 Q Now, Fred Florio was put down as treasurer  
5 because he's someone who worked for you, right? He  
6 didn't know Mr. Pugliese. He worked for you?

7 A Correct.

8 Q Now, let's talk a little bit Mr. DeLuca about  
9 IStar. I know we touched on this briefly before, and  
10 you testified under oath earlier today that you really  
11 didn't know much about the IStar Project, is that right;  
12 what IStar was proposing in terms of financing for the  
13 Destiny Project?

14 Is that right?

15 MR. HUTCHISON: Objection as to form.

16 THE WITNESS: I don't -- I don't have any  
17 recollection about IStar until I can recall Tom  
18 San Giacomo calling me about IStar.

19 BY MS. HOFFLER:

20 Q So you didn't -- you don't have any  
21 recollection now. It's not that you didn't know who  
22 they were, you just don't have a recollection of knowing  
23 who they were; is that right?

24 A Yeah. I -- my recollection is that when he  
25 called me and talked to me about this, this is the first

1 time the name IStar clicked in. I never went to their  
2 offices. I don't remember talking to anybody from  
3 IStar.

4 **Q Did you direct any of these advisors that you**  
5 **had that were having -- that were giving you guidance on**  
6 **the structure of this new business you were entering**  
7 **with Anthony Pugliese, did you have your advisors talk**  
8 **to the IStar people?**

9 MR. HUTCHISON: Objection to form.

10 THE WITNESS: Well, no. Certainly not before  
11 I heard of it, and I don't think they talked to the  
12 IStar people ever, actually. I never gave them  
13 instructions to call the IStar people.

14 BY MS. HOFFLER:

15 **Q You never gave them instructions.**

16 **Now, we talked about David Worroll, and we**  
17 **talked about Joe Esposito.**

18 **Did either one of them have any interaction**  
19 **with IStar?**

20 A Not to my recollection.

21 **Q Because they were two people that you**  
22 **testified previously that -- that gave you advice as it**  
23 **relates to the loans: Both the Wachovia loan as well as**  
24 **the loan to LCOCL?**

25 A I said that -- I did say that Dave Worroll did

1 some work on the loans, but I don't know that Joe  
2 Esposito gave me advice on the loans.

3 **Q Well, were you aware that there was a IStar**  
4 **representative in May of 2005 that spent time at**  
5 **Subway's World Headquarters in Connecticut -- were you**  
6 **aware of that --**

7 A No.

8 **Q -- meeting with some of your advisors?**  
9 **Were you aware of that?**

10 A Not to my recollection.

11 **Q In fact, Mr. DeLuca, you committed to**  
12 **Mr. Pugliese that you felt you could match the deal that**  
13 **IStar was putting on the table at the time; isn't that**  
14 **correct?**

15 A At what time frame are you talking about?

16 **Q We're talking about 2005.**

17 **I'm sorry. What was your answer?**

18 A I haven't answered yet. You were talking.

19 **Q You're still thinking about it?**

20 A No. I'm just waiting for you to finish  
21 talking.

22 **Q No, no. I asked the question. I want you to**  
23 **answer.**

24 A Would you repeat the question, please.

25 MS. HOFFLER: Madame Court Reporter, would you

1 read back the question.

2 (A portion of the record was read by the  
3 reporter.)

4 BY MS. HOFFLER:

5 **Q You can answer the question, please.**

6 A Sure. I think in early in early June of 2005,  
7 there came a point when I said that I thought I would be  
8 able to loan money to the project and that I would --  
9 and I thought I would be able to match -- actually, I  
10 said I'd slightly beat the terms that Tom San Giacomo  
11 talked to me that IStar was talking to him about and  
12 that I would possibly loan the money directly after  
13 selling some stocks or I would borrow some money and  
14 loan the money to Destiny.

15 And I told Anthony that I was confident  
16 that -- I said if I loaned the money directly, I'll make  
17 all the interest on it. And if I borrow the money, I'll  
18 be able to borrow at a pretty low rate. But once I see  
19 what is available on the market, I'll know. And at that  
20 point --

21 **Q Okay. You finished?**

22 A I was going to say -- At that point, I put in  
23 \$4.2 million. It was the amount of money that Anthony  
24 Pugliese needed to put down to complete the option on  
25 the land.

1 MS. HOFFLER: Move to strike as nonresponsive.  
2 Could you read back the question, please, before  
3 that diatribe?

4 (A portion of the record was read by the  
5 reporter.)

6 (Plaintiffs' Exhibit No. 26 was marked for  
7 identification.)

8 BY MS. HOFFLER:

9 **Q Okay. I'd like to hand you, Mr. DeLuca, what**  
10 **we've marked as Exhibit 26.**

11 MR. HUTCHISON: Are you withdrawing that  
12 question?

13 MS. HOFFLER: No.

14 I just move to strike.

15 MR. HUTCHISON: Okay. Do you have a copy of  
16 Exhibit 26?

17 MS. HOFFLER: You know what? Mine has writing  
18 all over it.

19 MR. BELAVAL: I think I got another one.

20 MS. HOFFLER: He won't mind the writing, but  
21 the one in the record will. Here you go.

22 You know, if I'm not mistaken, I think we used  
23 this as Exhibit Number 3. Well, I'm not going  
24 to -- well, I think it was Number 3. We'll square  
25 up the exhibit numbers later.

1 MR. HUTCHISON: Leave it the way it is for  
2 now.

3 MS. HOFFLER: Right.

4 BY MS. HOFFLER:

5 Q Mr. DeLuca, I'll just make a representation on  
6 the record.

7 We have -- you and I have gone through this.  
8 It's been a couple of days. That's why, you know, I'm  
9 looking at Exhibit 26. But you and I reviewed this  
10 e-mail exchange between Al Quentel, who was one of the  
11 attorneys who was working on the -- working on the  
12 closing and some of the legal issues associated with the  
13 Destiny deal and David Worroll, who at the time was your  
14 comptroller for Doctor's Associates.

15 And I'd like to look at the last paragraph of  
16 the e-mail that Al Quentel -- that Dave Worroll sent on  
17 July 11, 2005, at 8:26 a.m. to Al Quentel.

18 The last paragraph reads as follows. And  
19 follow with me:

20 "The terms of Fred DeLuca's arrangement with  
21 Wachovia are between him and the bank. Fred is  
22 borrowing the money personally and will be loaning the  
23 money to the land acquisition company that he and  
24 Anthony own to purchase the property."

25 Are you with me thus far, Mr. DeLuca?



1           A     I am.

2           Q     "Fred was going to discuss and work out the  
3 terms of that loan with Anthony with the intent to make  
4 the terms better than what IStar was offering."

5                     Do you see that?

6           A     I see that.

7           Q     So according to what David Worroll, your  
8 comptroller at the time from Doctor's Associates, sent  
9 to Al Quentel, who wanted to know the terms of your loan  
10 to Wachovia, the arrangement that it was your intention  
11 to make terms better than what IStar was offering at the  
12 time. And this was in July of 2005; isn't that right?

13          A     Slightly better than what IStar was offering.

14          Q     So for it to be slightly better than what  
15 IStar was offering, you had to know what IStar was  
16 offering; isn't that true?

17          A     Not necessarily.

18          Q     Oh, you could offer terms better without  
19 knowing the original terms? Mr. DeLuca, come on. Tell  
20 the jury how you can do that.

21          A     Okay, well, I remember know Tom San Giacomo --

22          Q     I'm sorry, my question is: You can offer  
23 better terms without knowing the original terms,  
24 Mr. DeLuca? That was my question.

25                     So tell the jury your answer to that question.

1           A     Yes, yes, yes. Well, when I spoke to  
2 Tom SanGiacomo, he explained to me the general terms of  
3 the deal, but not all the specific terms. There is a  
4 lot of parts to it. And so I focused mainly on some of  
5 the pricing of the deal, but I didn't focus on all of  
6 the terms of the deal.

7                     What I told Dave was to work out a program  
8 that would have terms that would be slightly better than  
9 IStar.

10           **Q     And -- and -- but one thing that you did know,**  
11 **IStar had not contemplated being a 50 percent owner of**  
12 **the new business, right? You knew that?**

13                     MR. HUTCHISON: Objection to form.

14                     THE WITNESS: Yes. I knew that IStar as a  
15 lender was not going to be getting an equity stake  
16 in the business, just as Fred DeLuca, a lender, was  
17 not going to be getting an equity stake in the  
18 business.

19 BY MS. HOFFLER:

20           **Q     Well, Fred DeLuca, owner of FD Destiny and all**  
21 **these other shell companies that you set up, certainly**  
22 **did get a stake in the business; isn't that right?**

23           A     Yes, because those were two separate  
24 transactions. One was a loan where I had to loan a  
25 large sum of money; and the second transaction was stock

1 purchase transactions. That's an equity transaction  
2 where I had to invest money. So one has nothing to do  
3 with the other.

4 Q And, Mr. DeLuca, you certainly could have just  
5 stopped at being an investor. You could have stopped at  
6 loaning the money. You could have done that. You could  
7 have stepped right in IStar's shoes and done just like  
8 IStar contemplated and just loaned the money at  
9 4 percent, right? You could have done that?

10 A I mean, theoretically, I could have done that.

11 Q Right. But what you decided to do,  
12 Mr. DeLuca, which distinguished this deal from IStar had  
13 on the table, was you decided, through your company, to  
14 acquire 50 percent of this business.

15 Isn't that right, Mr. DeLuca?

16 MR. HUTCHISON: Objection to form.

17 THE WITNESS: Well, the answer is yes, that  
18 prior to discussing the financing, I did talk to  
19 Anthony about acquiring 50 percent of the business,  
20 and we had a business arrangement outlined.

21 And then later, quite a while later, when  
22 Anthony was not able to get the financing on time,  
23 he came to me and asked for help. And that's when  
24 I gave consideration to the financing.  
25

1 BY MS. HOFFLER:

2 Q And in your mind -- you know, I can certainly  
3 move to strike that as nonresponsive, but we'll just let  
4 it go because you've given certainly part of an answer  
5 to my question.

6 Now, Mr. DeLuca, you testified that you had  
7 not read the operating agreement, is that right, ever?

8 A I don't recall read the operating agreement.

9 Q Ever?

10 A Ever.

11 Q So it -- would it be fair to tell this jury  
12 that your advisors are the ones that kept you apprised  
13 of what was in the operating agreement?

14 A In general terms, I will say that when the  
15 operating agreement was being worked out, I got an idea  
16 of the general terms; but in terms of an ongoing,  
17 keeping me apprised, I'd say no.

18 Q And if the operating agreement, as it does,  
19 contemplated that there was one deal, one transaction,  
20 as it does, you wouldn't even know it because you didn't  
21 have any part -- you never even read the operating  
22 agreement, right?

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

24 Q Well, you said there were two separate deals:  
25 One for part ownership of your company, of the business;

1 and the other was your investment in terms of the  
2 mortgage. You said they were two completely separate  
3 deals. Well, the operating agreement links them  
4 together in one business transaction; but because you  
5 didn't ever read the operating agreement, you didn't  
6 even know that, did you?

7 MR. HUTCHISON: Objection; asked and answered.

8 BY MS. HOFFLER:

9 Q Didn't even know it.

10 MR. HUTCHISON: Form, foundation.

11 BY MS. HOFFLER:

12 Q Right? You didn't even know it.

13 A All I know is I signed the operating  
14 agreement --

15 Q Yeah.

16 A -- and whatever the operating agreement says  
17 is what is it says.

18 Q Right. And whatever the operating agreement  
19 says, that's what it is, and that's what you're bound by  
20 because you signed it. And you're certainly not trying  
21 to move away from the operating agreement, are you?

22 A No. I'm not trying to move away from the  
23 operating agreement.

24 Q Now, Mr. DeLuca, now, if there was any failure  
25 to disclose any information to Anthony Pugliese as it

1 relates to the Wachovia loan that you had, the buck  
2 would stop with you, right, because you're the one who  
3 took out that loan in your individual capacity?

4 MR. HUTCHISON: Objection as to form.

5 THE WITNESS: There was no requirement for me  
6 to provide Anthony with information about personal  
7 loans that I took out, and I did not tell him the  
8 amount, what the financing rate would be.

9 But he did talk to me about what I would be  
10 able to borrow money at, and I told him that if I  
11 put up adequate capital --

12 BY MS. HOFFLER:

13 Q Is that a yes or no?

14 A -- I would be able to borrow at a very good  
15 rate. He asked me what the rate was, I told him that  
16 that's a matter between me and the bank --

17 Q Uh-huh.

18 A -- and he accepted that.

19 Q Oh, yeah. You gave him a lot of choices,  
20 right?

21 A He had -- he could.

22 Q Okay. Let's -- let's -- I withdraw that  
23 question because, Lord knows, the answer is going to be  
24 interesting. I withdraw that question.

25 Let's -- let's -- let's go a step further.

1                   When you -- you talked earlier about how you  
2 draw a distinction, Mr. DeLuca, between when you do  
3 something individually and when one of your businesses  
4 does something, even if it's a business you own  
5 100 percent, right?

6                   Remember that discussion?

7           A       Refresh my recollection on that.

8           Q       Well, I asked you whether there was a  
9 difference for you of when you enter into a business  
10 deal individually as Fred DeLuca versus you entering  
11 into a business deal through a company such as  
12 FD Destiny Credit, for example. I asked if there was a  
13 difference for you, and you said there was, right?

14                   MR. HUTCHISON: And I object to the extent  
15 that calls for legal conclusion.

16 BY MS. HOFFLER:

17           Q       Without you being a lawyer and calling for a  
18 legal conclusion, is there a difference, you as a  
19 businessperson -- and if there is none, you can  
20 certainly revise your answer -- but as a businessperson,  
21 is there a difference for you, Mr. DeLuca, when you  
22 enter into a business deal as you, Fred DeLuca, versus  
23 as you, for example, through FD Destiny Credit?

24           A       As I explained earlier --

25           Q       No. You could just say yes or no. Then

1 **explain.**

2 **Is there a difference?**

3 A Yes. As I explained earlier, that if --

4 **Q Well, you explained it earlier. So you don't**  
5 **need to explain it again.**

6 MR. HUTCHISON: Let him finish his answer.

7 MS. HOFFLER: I just wanted to know if there  
8 is a difference, and the follow-up question is --

9 MR. HUTCHISON: Let him finish his answer, CK.

10 MS. HOFFLER: I mean, we're wasting time  
11 explaining it. It was -- by definition, when you  
12 say, "as I explained earlier," been there and done  
13 that.

14 MR. HUTCHISON: Well, then, you asked it  
15 earlier.

16 MS. HOFFLER: No, I didn't ask it earlier.

17 BY MS. HOFFLER:

18 **Q What is it you want to say?**

19 **You have to speed it up.**

20 A Yes, as I said earlier, if I invest money  
21 directly into a company, I would hold the shares. And  
22 if a company that I'm an investor in makes an  
23 investment, that company would own the shares.

24 **Q Right. And -- and so when you make an**  
25 **investment, Mr. DeLuca, as you did, you in your**



1 individual capacity are the one that loaned the money to  
2 LCOCL, right? It was you, Fred DeLuca?

3 A That was a loan.

4 Q Yes. But it was not from Doctor's Associates,  
5 was it?

6 A No.

7 Q It was not from FD Destiny, was it?

8 A No.

9 Q It was not from FD Destiny Management, was it?

10 A No.

11 Q It was not from FD Destiny Credit, was it?

12 A No.

13 Q It wasn't from Rockridge Capital, was it?

14 A No.

15 Q It was just from you, Fred DeLuca, right?

16 A I think I was the lender.

17 Q And if you, the lender, chose or intended to  
18 hide information, then that would be your decision.

19 That would be you, Fred DeLuca, right? Not some  
20 company, but you?

21 MR. HUTCHISON: Objection to form.

22 THE WITNESS: I didn't hide any information  
23 from Anthony Pugliese because --

24 BY MS. HOFFLER:

25 Q I'm just saying if you did. No, no, I didn't

1 even say what information, but if you did, Mr. DeLuca.  
2 If you did. Not saying you did. In this question, I'm  
3 not saying you did, but if you did, the buck would stop  
4 with you, wouldn't it?

5 A You want me to speculate about a situation?

6 Q Yes. I'm giving you a hypothetical: If you  
7 did --

8 MR. HUTCHISON: Objection to form.

9 BY MS. HOFFLER:

10 Q -- the buck would stop with you.

11 I can ask you a hypothetical.

12 MR. HUTCHISON: Objection to the form; it  
13 calls for speculation.

14 THE WITNESS: If there was information about  
15 the loan that -- to LCOC that Anthony should have  
16 known and didn't get the information on, I'm sure  
17 his lawyers would have called his attention to  
18 that.

19 MS. HOFFLER: Move to strike as nonresponsive.

20 BY MS. HOFFLER:

21 Q My question to you, Mr. DeLuca, is very  
22 simple: If you took out the loan and if there was a  
23 failure to disclose information, the buck would stop  
24 with you, wouldn't it?

25 A I can't imagine the situation where, as a

1 lender, in this case, there was failure to --

2 **Q Right. But if there were.**

3 MR. HUTCHISON: Objection.

4 BY MS. HOFFLER:

5 **Q I know you can't -- I know you cannot imagine**  
6 **the situation. Obviously, that's why we're in**  
7 **litigation. But if there were a situation, and you,**  
8 **Mr. DeLuca, didn't disclose it, the buck would stop with**  
9 **you, right?**

10 MR. HUTCHISON: Objection as to form to the  
11 extent it calls for a legal conclusion and asked  
12 and answered.

13 BY MS. HOFFLER:

14 **Q Right? Right?**

15 A I can't imagine the situation.

16 **Q But if there were, yes or no, would the buck**  
17 **stop with you?**

18 A I'd have to take a look at the information  
19 that you're referring to.

20 **Q But is there anybody else whose name is on**  
21 **that loan but you?**

22 You know the answer to that question, at least  
23 that.

24 A No. I loaned the money.

25 **Q Right. Anyone else's name on that loan?**

1 MR. HUTCHISON: You mean as the lender?

2 BY MS. HOFFLER:

3 Q Anyone else's name on that loan?

4 A No. I loaned the money.

5 MR. HUTCHISON: We're going to take a  
6 two-minute break.

7 THE WITNESS: May be a little bit longer than  
8 two minutes.

9 THE VIDEOGRAPHER: Time on the monitor is  
10 3:33. We're going off the video record.

11 (A recess was taken.)

12 THE VIDEOGRAPHER: The time on the monitor is  
13 3:51. We're back on video record.

14 BY MS. HOFFLER:

15 Q Now, Mr. DeLuca, I'd like to hand you what has  
16 already been marked in this deposition as Exhibit 11,  
17 and it's the operating agreement. I'm just going to  
18 hand it to you.

19 And I'm only going to refer to -- this is not  
20 for to you read the whole document -- and I'm going to  
21 ask you a couple of questions.

22 Now, you will -- now, Mr. DeLuca, you would  
23 agree with me that the loan from you, Fred DeLuca, to  
24 LCOC was for a total amount of \$140 million when all  
25 said and done?

1 A No.

2 Q It wasn't for \$140 million?

3 A The loan was for \$11 million.

4 Q Where did the \$140 million come from?

5 A I don't know.

6 MR. HUTCHISON: Objection to form.

7 BY MS. HOFFLER:

8 Q Let's turn to page 15 of the operating  
9 agreement since you don't seem to know. And, of course,  
10 by the way, we've already used this as an exhibit, and  
11 we'll come back to you to it.

12 You do remember that in the letter that your  
13 attorney, your attorney sent to Wachovia, the opinion  
14 letter, on the front of it, it did say "\$140 million  
15 loan."

16 But let's go to the operating agreement, and  
17 then I'll come back to that.

18 MR. HUTCHISON: What exhibit is that?

19 MS. HOFFLER: That is exhibit -- I think it  
20 was exhibit -- I have it right here. It was  
21 Exhibit Number 309. It was the August 11, 2005,  
22 letter. I'll come back to that.

23 BY MS. HOFFLER:

24 Q Right. Now, Mr. DeLuca, I want you to focus  
25 on 5.2 on page 15 of the operating agreement. And I

1 want you to read with me where it says -- the last part  
2 of that paragraph.

3 And, again, my only question to you was: You  
4 would agree with me that the loan from you to LCOC was  
5 for 140 million, a total of 140 million, everything  
6 included.

7 And you said no, that wasn't the case.

8 So I want you to read with me on 5.2 of the  
9 operating agreement which says: "Payment of operating  
10 expenses; payment of mortgage."

11 And read with me. It says: "Drawdowns by the  
12 land company or the company on the mortgage in excess of  
13 the amount of the mortgage funded at the closing in  
14 which the mortgage was executed" -- and then in  
15 parenthesis -- "drawdown expenses shall be used from  
16 time to time as needed to pay the operating expenses of  
17 the company. At such time as the total of (a) the  
18 amount of the mortgage funded at the closing in which  
19 the mortgage was executed plus (b) the total of all  
20 drawdown expenses, plus (c) all the accrued and unpaid  
21 interest on the mortgage shall exceed 140,000 --  
22 \$140,000,000" -- then it says in parenthesis, "FD Entity  
23 Commitment, the company shall pay all this accruing  
24 interest on the mortgage currently."

25 Do you see that?

1           A     I saw that.

2           Q     Now, I want you to put a pen in that and then  
3 we're going to turn back to an exhibit that you and I  
4 reviewed, and I think Mr. Gary reviewed it with you as  
5 well. It's Exhibit Number 9, and it will be in this  
6 pile because -- there it is. There we go. Like  
7 clockwork.

8                     Exhibit Number 9, Mr. DeLuca, do you remember  
9 that exhibit? I'm not asking you to read it because  
10 we've already been through it.

11          A     What did you want me to do with this?

12          Q     Just leave -- stay on that page. We're going  
13 to come back.

14                     Look at Exhibit Number 9. Exhibit Number 9 is  
15 a letter from your attorney, Adam Hodkin, dated  
16 August 11, 2005, to Wachovia Bank, National Association.

17                     And it says: "Lender," on the front page,  
18 "Wachovia Bank, National Association.

19                     "Borrower:" it says "Frederick A. DeLuca."

20                     "Property: Approximately 27,410 acres in  
21 Osceola and Indian River Counties, Florida," in  
22 parenthesis, "the property."

23                     "Loan Amount:" And this is what's important.  
24 Mr. DeLuca, tell me if I'm reading this correctly. It  
25 says "Loan Amount: One Hundred Forty Million Dollars."

1 In parenthesis, it's got "\$140 million," then in  
2 parenthesis, it says "the loan."

3 Do you see that?

4 A I see that.

5 Q Now, this is a letter that your counsel, Adam  
6 Hodkin, sent to Wachovia in reference to that loan.

7 Do you see that?

8 A Which loan are you talking about?

9 Q This is the letter on the front page. Let's  
10 talk about the docs.

11 A Which loan are you talking about?

12 Q Which line am I talking about?

13 A Loan. Loan.

14 Q Well, it says here "loan amount." This is  
15 what your lawyer put in the letter to Wachovia --

16 A But you're talking about two different loans.

17 Q Excuse me. Don't interrupt me. Don't  
18 interrupt me.

19 In this letter to Wachovia, your lawyer, Adam  
20 Hodkin, on August 11, 2005, sent a letter to Wachovia.  
21 And it says "Loan amount, \$140 million." Then when it  
22 talks about the documents reviewed, there is a  
23 \$105 million promissory note, and then there is a  
24 \$45 million line of credit, which we talked about as  
25 well. And the total of that is \$140 million.



1                   So in this letter to Wachovia, your counsel  
2 talks about a \$140 million loan amount relative to the  
3 27,410 acres in Osceola And Indian River Counties,  
4 Florida.

5                   MR. HUTCHISON: Objection.

6 BY MS. HOFFLER:

7                   Q     That's what I'm referring to.

8                   Are you following me, Mr. DeLuca?

9                   A     Not exactly.

10                  MR. HUTCHISON: Objection as to form.

11 BY MS. HOFFLER:

12                  Q     Okay. Okay. You don't follow me yet?

13                         Let's go to -- we're going to go straight to  
14 your promissory note because we reviewed this as well.  
15 You don't follow me when it comes to your attorneys'  
16 documents, so we're going to go to the promissory note  
17 which you should be familiar with. But if you're not --  
18 it's going to be --

19                         Okay. This was Exhibit -- Exhibit Number 6.  
20 I reviewed this with you, this document, this promissory  
21 note with you, the first day or two of the deposition.  
22 And I know it's been a while, but -- okay -- and I'm  
23 going to show this to you again, Mr. DeLuca. I'm going  
24 to ask you to look.

25                  MR. HUTCHISON: Exhibit Number 6?

1 MS. HOFFLER: Exhibit Number 6, which is  
2 entitled -- and we went through this -- "Promissory  
3 Note, 111,000 -- \$111 million, August 9, 2005."

4 And it talks about repayment terms, and it  
5 talks about in that paragraph at the bottom, the  
6 loan amount.

7 Go ahead and look at it, Mr. DeLuca.

8 BY MS. HOFFLER:

9 Q No, no. I'm not asking you to look at the  
10 whole document.

11 A I'm trying to see what it is on the face.

12 Q We went through this exhaustively.

13 A I think that was a month ago.

14 Q No, it wasn't a month ago. It was two days  
15 ago, not a month.

16 A Maybe it just seems like a month.

17 Q It probably does seem like a month. Hey, join  
18 the club on that one.

19 So read along with me, Mr. DeLuca.

20 Under "Payment terms," page 3 of the  
21 promissory note, it's a note that is --

22 MR. HUTCHISON: If you need to look at the  
23 exhibit, take your time.

24 MS. HOFFLER: We're not going to get into  
25 that. That's going to be explosive.

1                   The promissory note --

2           BY MS. HOFFLER:

3                   **Q     The promissory note that we reviewed ad**  
4                   **nauseam two days ago, I just want you to confirm here**  
5                   **that it says -- it talks about here "not withstanding**  
6                   **the foregoing and without" -- paragraph -- the second**  
7                   **full paragraph on page 3 under "Repayment terms."**

8                   **Do you see that? Do you see where we are?**

9                   A     I see "Repayment terms."

10                   **Q     And then I'd like you to -- let's go to the**  
11                   **part where it says -- one, two, three, four, five -- the**  
12                   **seventh line from the bottom.**

13                   A     Let me read the paragraph at least.

14                   **Q     Okay. You can read the paragraph at least.**

15                   MR. HUTCHISON: He can read whatever he needs  
16                   to read.

17                   MS. HOFFLER: He can read the paragraph at  
18                   least.

19                   MR. HUTCHISON: The Judge ruled on it.

20                   MS. HOFFLER: Excuse me. When I'm speaking,  
21                   you don't speak.

22                   MR. HUTCHISON: Does that go both ways?

23                   MS. HOFFLER: When I'm speaking, you don't  
24                   speak. It's my deposition. You interrupt me,  
25                   which is completely inappropriate, so do not do

1           that. You -- as an officer of the court, you need  
2           to make your objection for the record, and that's  
3           it.

4           BY MS. HOFFLER:

5           A     I read the paragraph.

6           **Q     Thank you very much. Now, when the -- you**  
7           **would agree, based on -- again, we looked at this**  
8           **document that your lawyer sent to Wachovia bank on**  
9           **August 11, 2005, which was -- and we discussed this**  
10          **letter where he has opinions in the letter and where the**  
11          **caption in terms of loan amount on the document that**  
12          **your lawyer sent to Wachovia is \$140 million.**

13          **Do you see that?**

14          A     I see "\$140 million" on that document.

15          **Q     Do you simply disagree with your lawyer's**  
16          **representations to Wachovia Bank in it's opinion letter**  
17          **dated August 11, 2005?**

18          MR. HUTCHISON: Objection as to form.

19          THE WITNESS: Well, no. I agree that this  
20          loan to Wachovia bank -- that I took from Wachovia  
21          bank is not the same loan that's being referred to  
22          here.

23          BY MS. HOFFLER:

24          **Q     Well, you took out two loans here, didn't you?**  
25          **Well, okay. Okay. Let's go with that.**

1                   But the loan that's in the promissory note for  
2 LCOC, it does talk about a maximum amount of  
3 \$140 million, doesn't it? I mean, that's a promissory  
4 note, Mr. DeLuca.

5           A     Yes.

6           MR. HUTCHISON:  Objection.

7           THE WITNESS:  This one.

8           MR. HUTCHISON:  It misstates the document and  
9           form.

10          BY MS. HOFFLER:

11           Q     So it does, Mr. DeLuca.  It refers to  
12 \$140 million in there, does it not?

13          A     It is correct that under this paragraph --

14          Q     Now I want you to --

15          A     -- there is reference to \$140 million.

16          Q     That's good.  Now I want you to look at --  
17 that's all I want you to confirm.

18                   Let's look at Section 5.2 of the operating  
19 agreement, if we could.

20                   And I'll take that back.  I'll take the  
21 first -- the top one back, the promissory note.

22                   Thank you, sir.

23                   Let's go to 5.2 of the operating agreement.

24                   Now, 5.2 of the operating agreement describes  
25 the \$140 million as "FD entity commitment."

1 Do you see that?

2 MR. HUTCHISON: Objection; mischaracterizes  
3 and to form.

4 BY MS. HOFFLER:

5 Q Do you see under Section 5.2 under "Payment of  
6 operating expenses," colon, "Payment of mortgage"?

7 A Let me read the paragraph, please.

8 Q Okay. I'm just going to ask you a question  
9 about the last part.

10 Okay. And you see the term where it says at  
11 the end of that paragraph 5.2, it talks -- it states  
12 \$140 million -- it defines \$140 million, the mortgage,  
13 "that the mortgage shall exceed -- at a point where it  
14 exceeds \$140 million," then it says in parentheses "FD  
15 entity commitment."

16 Do you see that?

17 MR. HUTCHISON: Objection as to form.

18 THE WITNESS: I see that.

19 BY MS. HOFFLER:

20 Q And to complete the sentence, 5.2 small  
21 paragraph C, it says: "All accrued and unpaid interest  
22 on the mortgage shall exceed \$140 million," then in  
23 parenthesis, it says, quote, FD entity commitment,  
24 right? Close quote.

25 So now I'd like you to turn to page 6 of the

1           **operating agreement if you could.**

2           A     Do we have some paper clips so I can keep  
3 track of these?

4           MS. HOFFLER:    Sure.

5           THE WITNESS:   Thank you.   Okay.

6           BY MS. HOFFLER:

7           **Q     And this says -- 5.1 basically has a number of**  
8 **definitions, right?  Do you see that on page 6?  Do you**  
9 **see that?**

10          A     That 5.1 has a number of definitions?

11          **Q     And one of the definitions is "FD entity --**  
12 **entity commitment," right, which is a term we just**  
13 **reviewed.**

14                   And it says "that term shall have the meaning  
15 ascribed to it on paragraph 5.2."

16                   That's what we just reviewed, right?

17                   And the other thing at that same point is "FD  
18 entity."

19                   Do you see where it says "FD entity"?

20          A     I see that.

21          **Q     And it says "the entity, which is a member and**  
22 **which is controlled by Frederick A. DeLuca, and in which**  
23 **he is the majority owner."**

24                   Do you see that?

25          A     I do.

1           **Q**     So, according to this operating agreement, "FD  
2     entity commitment" is defined as the entity which is a  
3     member and which is controlled by you, Frederick A.  
4     DeLuca, and in which you are the majority owner, right?

5           MR. HUTCHISON:  Objection; form, document  
6     speaks for itself.

7           THE WITNESS:  I'm not -- repeat the question  
8     again.

9     BY MS. HOFFLER:

10          **Q**     Okay.

11                  And I'm going to observe counsel's objection  
12     so he doesn't obstruct.

13                  "FD Destiny -- FD entity commitment," which we  
14     just looked at -- look at this page -- is defined as  
15     "the entity which is a member," under this operating  
16     agreement, "and which is controlled by Frederick A.  
17     DeLuca and in which he is the majority owner."

18                  Do you see that?

19           A     I see that.

20          **Q**     And that is FD Destiny, LLC; isn't that  
21     correct?

22           A     FD Destiny, LLC is a member.  So that might be  
23     correct.

24          **Q**     So the operating agreement which was prepared  
25     by your lawyers and signed by you in August 10, 2005,



1 contemplated that the loan that you made to LCOC and  
2 your company were connected -- not separate, as you've  
3 testified -- but connected, right?

4 That's what this operating agreement  
5 contemplates?

6 MR. HUTCHISON: Objection as to form, and the  
7 document speaks for itself.

8 THE WITNESS: First, I don't know who prepared  
9 the operating agreement.

10 BY MS. HOFFLER:

11 Q You signed it.

12 A I did sign it.

13 Q Now, Mr. DeLuca, let me just ask you -- what  
14 I'd like you to do is I'd like you to now turn to -- and  
15 we can put that aside. I'm going to ask you to look at  
16 some other documents.

17 I'm going to ask you, Mr. DeLuca, do you have  
18 a copy of the promissory note again, Exhibit 6? The  
19 one --

20 MR. HUTCHISON: Which one?

21 MS. HOFFLER: The promissory note, which is  
22 Exhibit 6.

23 Do you have it?

24 MR. PUGLIESE: I only have the marked one.

25 MS. HOFFLER: Here. I'll give you a copy of

1           it. Has some marks on it, but ignore the marks  
2           because we have an official one that's in the  
3           record.

4           BY MS. HOFFLER:

5           Q       Now, this is the promissory note that I just  
6           referred to.

7                       Now, this was the promissory note, is it not,  
8           Mr. DeLuca, that was entered into by LCOC, LLC --  
9           sometimes referred to "LCOC," sometimes it's "LCOCL" --  
10          and you -- or, I'm sorry -- yes, and you, in relation to  
11          the \$111 million loan that you made to LCOC; isn't that  
12          right?

13                       And this, too, is a document that we reviewed  
14          and spent quite a bit of time on two days ago. I just  
15          mention that.

16                       And I'm going to go back to a provision in  
17          this document that we also spent quite a bit of time on  
18          two days ago.

19                       And I'd like to you turn, Mr. DeLuca, to  
20          page 4. And I'd like to you focus on -- we looked at  
21          the default provision previously, but I'd like you to  
22          look at midway through the paragraph, at the midway and  
23          through the last paragraph on page 4. There is a  
24          section that starts with "Cross default."

25                  A       Let me read the paragraph.

1           **Q**     Okay. And you've already read this, so time  
2     **is running short. So if you could just refresh your**  
3     **recollection.**

4           THE VIDEOGRAPHER: Would this be a good time  
5     to change tapes?

6           MS. HOFFLER: Sure.

7           THE VIDEOGRAPHER: The time on the monitor is  
8     4:15. We're going off the record.

9           (A recess was taken.)

10          THE VIDEOGRAPHER: The time on the monitor is  
11     4:18. We're back on the record.

12     BY MS. HOFFLER:

13           **Q**     Okay, Mr. DeLuca. You looked at the default  
14     **provision of the -- of the promissory note for the**  
15     **\$111 million loan that you made, Mr. DeLuca, to LCOC,**  
16     **right? You just looked at that?**

17           A     Yes.

18           **Q**     I would like you to -- and keep that open --  
19     **I'd like you to look also at the cross default**  
20     **provision. I'm going to hand you what we reviewed**  
21     **previously, as -- which was Exhibit Number 7.**

22           Do you have it?

23           MR. PUGLIESE: What is that one?

24           MS. HOFFLER: It's the \$35 million line of  
25     credit.

1 BY MS. HOFFLER:

2 Q Here. I'm going to hand you mine. Okay, I'm  
3 sorry, why don't you take this one.

4 And I want you to turn specifically,  
5 Mr. DeLuca, to page 3, and I want you to read -- I want  
6 you to read to yourself the provision under "Cross  
7 default." And you'll have a chance to read that, to  
8 read that provision, and you probably already know the  
9 answer because we reviewed this before.

10 But, sir, isn't it true that what you did in  
11 terms of the loan that you made to LCOC, the loan that  
12 you took out from Wachovia, and the line of credit that  
13 you had of \$35 million from Wachovia -- when I said "the  
14 loan from Wachovia," I mean the \$105 million loan --  
15 that you cross defaulted those three loans?

16 In other words, if you defaulted on your loan  
17 to Wachovia for \$105 million or if you defaulted on that  
18 line of credit that you got for \$35 million, that that  
19 would have impacted, from a default standpoint, the  
20 \$111 million loan that you made to LCOC.

21 That's correct, isn't it?

22 MR. HUTCHISON: Objection as to form.

23 THE WITNESS: I don't understand the question.

24 BY MS. HOFFLER:

25 Q You made -- you took out two loans from

1           **Wachovia: One was for 105 million; one was for**  
2           **\$35 million.**

3                       **Are you following me thus far?**

4           A       I took out one loan.

5           **Q       And one line of credit?**

6           A       Yes.

7           **Q       So that totaled \$140 million, right, 105 plus**  
8           **35 million?**

9           A       Yes.

10          **Q       Okay. Now -- and if you defaulted,**  
11          **Mr. DeLuca, not that you would, but if you had defaulted**  
12          **under the terms of your \$105 million loan from Wachovia**  
13          **or the \$35 million line of credit, that would have had a**  
14          **negative impact on the \$111 million loan that you made**  
15          **to LCOC; isn't that right?**

16                   MR. HUTCHISON: Objection as to form; the  
17                   document speaks for itself.

18          BY MS. HOFFLER:

19                  **Q       And if you don't know, it's fine to say you**  
20                  **don't know.**

21                   MR. HUTCHISON: And it calls for a legal  
22                   conclusion.

23                   THE WITNESS: No, I don't think that's right.

24          BY MS. HOFFLER:

25                  **Q       Okay. Well, then, you know what? I'd like**

1           you to read -- what I'd like to you read is -- I'd like  
2           you to go to the document I just forwarded to you. It  
3           says "Cross default."

4                     MR. HUTCHISON: Which document is that? Which  
5           exhibit?

6                     MS. HOFFLER: That's Exhibit -- that's Exhibit  
7           Number -- Number 7, previously marked on page 3  
8           which you have there.

9                     THE WITNESS: Which one is Number 7?

10           BY MS. HOFFLER:

11                     Q       Number 7, it's a \$35 million promissory note  
12           in front of you, what I just handed you, page 3. You  
13           have it in front of you, and I've highlighted and I want  
14           you to read with me, it says "Cross default: At bank's  
15           option, any default in payment or performance of any  
16           obligation by borrower."

17                     Now the "borrower" would be you, right, of the  
18           \$35 million line of credit?

19                     MR. HUTCHISON: I'm sorry, where are you  
20           reading?

21                     MS. HOFFLER: Where it says "Cross default."

22                     MR. HUTCHISON: On page 3. I got it.

23                     MS. HOFFLER: You got it. Okay.

24                     Let me start again and make sure you follow.  
25

1 BY MS. HOFFLER:

2 Q It says: "At bank's options, any default in  
3 payment of performance of any obligation by borrower  
4 under any other loans, contracts, or agreements, the  
5 aggregate principal amount of which in each case is in  
6 excess of a million dollars of borrower, Doctor's  
7 Associates, Inc., the Franchise Development Team, Inc.,  
8 FDTI, FD Destiny, LLC, FD Destiny, or any affiliate of  
9 either DAI, FDTI, or FD Destiny, any defaults in  
10 performance under the promissory note in the original  
11 principal amount of \$111 million from the companies of  
12 the borrower dated August 9, 2005," in parenthesis,  
13 "land promissory note, or the mortgage assignment of  
14 rents, security agreement, and fixture filing from  
15 LMLC" -- and they define "LMLC" as, on page 1, Land  
16 Company of Osceola County, LLC and LM Land Company, LLC,  
17 a Florida Limited Liability Company, and that's how they  
18 define LMLC -- "and together with LLOC, collectively the  
19 companies." Okay?

20 A What line are we on now?

21 Q Okay. We're on the line where it says  
22 "security agreement and fixture filing from LMLC to the  
23 borrower" --

24 A Where does it say the "collectively known as  
25 the company"?

1 Q Okay. Mr. DeLuca, you got page 1 right there,  
2 of that promissory note. Page 1 of that promissory  
3 note, what does it say when it says "Use of proceeds"?

4 It defines LL -- LMLC, does it not? Look on  
5 the fourth line.

6 A Page 1?

7 Q Yes. Under "Use of proceeds." I have it  
8 highlighted there for you.

9 A I know. I was looking on page 3 before.

10 Q Right. Page 3, but I -- okay, look at  
11 page 1 --

12 A Okay.

13 Q -- where it's defined "LMLC."

14 Do you see that?

15 A No.

16 Q Fourth line down. "LMLC," towards the end of  
17 the fourth line down.

18 A I see ML -- LMLC.

19 Q Right. LMLC. LMLC is defined in that  
20 paragraph as, it says, "in connection with the loan the  
21 borrower is making to Land Company of Osceola Company,  
22 LLC, a Florida Limited Liability Company" -- and it says  
23 in parenthesis "LLOC" -- "and LM Land Company, LLC, a  
24 Florida Limited Liability Company," and then it says  
25 "LMLC, and together with LLOC, collectively the



1           **companies."**

2                       **Do you see that?**

3           A       Yeah, it's a short paragraph. Let me just  
4 read it, okay, in its entirety.

5           **Q       All I want is for you to understand what LMLC**  
6 **means, that's all.**

7                       **So you understand, Mr. DeLuca, what LMLC**  
8 **means, right?**

9           A       I'm getting to it.

10          **Q       Okay.**

11          A       I read that.

12          **Q       All right. So now you know that "LMLC" refers**  
13 **to LLOC and LM Land Company, LLC, right?**

14                      **You got that, right? You understand that now,**  
15 **Mr. DeLuca?**

16          A       Yes.

17          **Q       Okay. Now let's go back to the paragraph**  
18 **"Cross default," and I'm going to read it again now that**  
19 **you have that understanding.**

20                      **And it reads as follows:**

21                      **"At bank's option" -- follow along with me,**  
22 **Mr. DeLuca. Are you there?**

23          A       I'm reading it.

24          **Q       "At bank's option, any default in payment or**  
25 **performance of any obligation by borrower under any**

1 loans, contracts or agreements, the aggregate principal  
2 amount of which in each case is in excess of a million  
3 dollars of borrower, Doctor's Associates, Inc., DAI, The  
4 Franchise Development Team, Inc., FDTI, FD Destiny, LLC,  
5 FD Destiny, or any affiliate of either DAI, FDTI, or  
6 FD Destiny, any default in payment of any principal of  
7 any obligation of either company to the borrower or any  
8 default in performance honor the promissory note in the  
9 in the original principal amount of \$111 million from  
10 the companies to the borrowers dated August 9th of 2005,  
11 the land promissory note or the mortgage, assignment of  
12 rent, security agreement, and fixture filing from LMLC  
13 to the borrower beyond any applicable grace period,  
14 affiliates shall have the meaning as defined in  
15 11 USC 101 as an effect of time to time, except as the  
16 term 'borrower' shall be substituted for the term  
17 'debtor' therein."

18 Do you see that, sir?

19 A I read that.

20 Q So that is a, what we call, as they labeled  
21 it, a "cross default provision" within the default  
22 provision of a promissory note that you signed; isn't  
23 that right, Mr. DeLuca?

24 A You said "what we call."

25 Q Well, you signed the promissory note, didn't

1           **you? On the last pages, look at it. You signed it?**

2           A     I think you are using this sentence as a word  
3           of art or something. I see this whole paragraph that  
4           you read.

5           **Q     Right.**

6           A     And it is in this promissory note.

7           **Q     Right. And in that promissory note, you have**  
8           **crossed-defaulted the LCOC promissory note. The**  
9           **promissory note that you made to LCOC for \$111 million**  
10          **is cross-defaulted to this loan, which means,**  
11          **Mr. DeLuca, this line of credit, if you defaulted in any**  
12          **way, you or Doctor's Associates in any way on more than**  
13          **a million dollars, but particularly as it relates to**  
14          **this note, there would be a negative impact on that**  
15          **\$111 million loan that you made to LCOC, right?**

16          MR. HUTCHISON: Objection as to form.

17          THE WITNESS: No, it doesn't.

18          MR. HUTCHISON: Go ahead. Go ahead.

19          MS. HOFFLER: He made the objection to form.

20          It's all he can do.

21          THE WITNESS: No, it doesn't say that.

22          BY MS. HOFFLER:

23          **Q     You just don't understand what it says, then?**

24          A     Well, I don't understand the legal codes, the  
25          "11 USC."

1           **Q**     Put aside legal code 11 USC. You don't  
2 understand what this cross default provision says?

3           A     I don't know what 11 USC paragraph 101 is.

4           **Q**     Right. But other than that, is it your  
5 testimony before this jury under oath that you don't  
6 understand what this cross default provision means?

7                     Because if you don't, that's fine.

8           A     I can tell you how I read it.

9           **Q**     Do you understand what it means?

10          A     I think what it says is --

11          **Q**     No. My question is: Do you understand what  
12 it means?

13                     MR. HUTCHISON: Objection to the extent it  
14 calls for a legal conclusion; and form.

15 BY MS. HOFFLER:

16          **Q**     Do you understand what it means, Mr. DeLuca?

17          A     I'll tell you what I think it means.

18          **Q**     No, I asked you a question: Do you understand  
19 what it means, Mr. DeLuca?

20          A     Am I sure that I know what it means? No, I'm  
21 not sure that I know what it means.

22          **Q**     And, and is this one of those documents that  
23 you signed without looking at?

24          A     I, I, I looked at it. I didn't read it.

25          **Q**     It's one of these documents you signed without

1 reading?

2 A Yeah.

3 Q And did you know, Mr. DeLuca -- just tell me  
4 if you did -- did you know that you cross-defaulted,  
5 cross-defaulted your \$105 million promissory note from  
6 Wachovia and your \$35 million line of credit from  
7 Wachovia to the loan that you made to LCOC in August of  
8 2005?

9 MR. HUTCHISON: Objection.

10 BY MS. HOFFLER:

11 Q Did you know that, sir?

12 MR. HUTCHISON: Objection to the form and  
13 objection to the extent it calls for a legal  
14 conclusion and the document speaks for itself.

15 BY MS. HOFFLER:

16 Q Go ahead and answer, sir.

17 If you don't know, that's fine.

18 But did you know that?

19 A Well, I think you're talking about different  
20 things.

21 Q No. I asked the question. I need you to  
22 answer my question, sir.

23 A Are you withdrawing the question relating to  
24 the \$35 million?

25 Q Let me restate the question.

1           A     Okay.

2           Q     You need to answer the one question I'm posing  
3 to you, Mr. DeLuca.

4                     Did you know -- strike that.

5                     Didn't you know, Mr. DeLuca, that when you  
6 loaned that \$111 million to LCOC, that loan was tied to  
7 your \$35 million line of credit and to your \$105 million  
8 loan from Wachovia? And one way that it was tied was in  
9 the default provision so that if you defaulted on that  
10 \$105 million loan from Wachovia or the \$35 million line  
11 of credit from Wachovia, you would be defaulting on that  
12 100 -- there would be a default on that \$111 million  
13 loan that you made to LCOC; isn't that right?

14                     MR. HUTCHISON: Same objection as before.

15                     THE WITNESS: No. That's not my understanding  
16 at all.

17 BY MS. HOFFLER:

18           Q     And, and, and better still, Doctor's  
19 Associates, if there is any defaults of Doctor's  
20 Associates, even though this is -- this is a line of  
21 credit for you personally, if Doctor's Associates  
22 defaulted on any of its loans to Wachovia in excess of  
23 million dollars, that there was a cross default  
24 provision that would negatively impact that \$111 million  
25 loan that you made to LCOC on August 10 of 2005 --

1 **August 9 of 2005?**

2 MR. HUTCHISON: Objection.

3 THE WITNESS: What do you mean by "negatively  
4 impact"?

5 BY MS. HOFFLER:

6 **Q Well, you default on one, it's going to have**  
7 **an impact on the other. If you defaulted on your**  
8 **\$111 million loan, because they were linked, if you**  
9 **defaulted on your \$111 million -- \$105 million loan from**  
10 **Wachovia, it was going to impact or have an effect on**  
11 **the -- on the loan that you made to LCOC because they**  
12 **were linked; isn't that true?**

13 MR. HUTCHISON: Same objections.

14 THE WITNESS: I don't -- I don't know that.

15 BY MS. HOFFLER:

16 **Q Great. Let's move on, Mr. DeLuca.**

17 **A few other things that you may not know.**  
18 **Now, now, Mr. DeLuca, you also -- what that line of**  
19 **credit that you took out, that line of credit was**  
20 **restricted -- and go back to that document -- for your**  
21 **personal use, was it not?**

22 A I thought we were on this document.

23 **Q Yes. That line of credit was restricted to**  
24 **your personal use?**

25 MR. HUTCHISON: Which document? Which exhibit

1 number? Is it still 7, Exhibit 7?

2 MS. HOFFLER: I think it's Exhibit 7, yes.

3 THE WITNESS: The promissory note for  
4 \$35 million?

5 BY MS. HOFFLER:

6 **Q \$35 million, yes.**

7 **A It says 4 on mine.**

8 MR. HUTCHISON: No, that's not the exhibit  
9 number.

10 BY MS. HOFFLER:

11 **Q It's Exhibit Number 7. See, we agreed on one**  
12 **thing. Exhibit Number 7.**

13 **It says "Use of proceeds."**

14 **Do you see that?**

15 **A I see that.**

16 **Q And it says: "Borrower shall use the proceeds**  
17 **of the loans evidenced by this note for personal use,"**  
18 **right?**

19 **A Yes.**

20 **Q And so this promissory note, this line of**  
21 **credit was restricted to your personal use, was it not?**

22 **A Yes, with some restrictions.**

23 **Q Right. Well, the restriction was you couldn't**  
24 **use it for LCOC, right?**

25 **A That's one of the restrictions.**



1           **Q**     It was for your personal use. And despite the  
2 fact that it was for your personal use, Mr. DeLuca,  
3 going back to this cross default provision, the default  
4 provision in this document, in this document, tied this  
5 line of credit to the \$111 million loan that you made  
6 for the LCOC project, right?

7           MR. HUTCHISON: Objection to form.

8 BY MS. HOFFLER:

9           **Q**     Page 3.

10          MR. HUTCHISON: Objection to form. The  
11 document speaks for itself --

12          MS. HOFFLER: Page 3.

13          MR. HUTCHISON: -- and to the extent it calls  
14 for a legal conclusion.

15          THE WITNESS: Let me just read it again.

16 BY MS. HOFFLER:

17          **Q**     No, no, no. I'm not going to ask you. If you  
18 can't answer the question -- we already read this. This  
19 is the third time you're looking at this document,  
20 Mr. DeLuca.

21                 The first time, I allowed you to read it in  
22 full, and that was two days ago, I allowed you to read  
23 the paragraph again. I'm just asking, based on your  
24 knowledge, based on what you read, if you know, please  
25 say, tell the jury what you know. If you don't; that's

1 fine. Just say "I don't know."

2 A Okay. I can't draw a conclusion that's  
3 similar to yours based upon what I'm reading here.

4 Q And, Mr. DeLuca, let's go a little bit  
5 further.

6 Now, you have -- isn't it true, Mr. DeLuca,  
7 you've begun foreclosure proceedings against LCOC for  
8 your \$111 million loan, right?

9 A Yes.

10 Q And we established previously when you and I  
11 discussed the loan that you made to LCOC that the loan  
12 that you made to LCOC was for -- it was a 4 percent  
13 interest rate, right?

14 A I'm not sure that that's accurate.

15 Q It was 4 percent over LIBOR?

16 A I'm not positive of the amount.

17 Q You're not positive. Is it that you don't  
18 remember, because we reviewed this at nauseam two days  
19 ago?

20 Do you want to refresh your recollection where  
21 I can give you the -- I think you got it there in front  
22 of you. You got it there in front of you. It's  
23 exhibit -- it's the \$111 million note there in front of  
24 you.

25 Take the time to look at it, Mr. DeLuca. If

1 you take the time to look at it, I think it's on the  
2 front page that you just saw a minute ago. I'm sorry,  
3 it's on the second page, page 2, under "Interest rate  
4 definitions."

5 See where it says "4 percent"? See "LIBOR  
6 plus 4 percent"?

7 A I see "LIBOR plus 4 percent."

8 Q So that was the interest rate that was charged  
9 to LCOC for the \$111 million loan, right, we reviewed  
10 that a couple days ago? That's all I wanted you to  
11 confirm.

12 A I think that's correct.

13 Q Yes. And when it -- when it came to your  
14 105 million-dollar loan that you took out with  
15 Wachovia -- let's go back at exhibit -- it's Exhibit 5.  
16 Let me give you my copy. I'm just going to ask you a  
17 question about the interest rate. It's right here,  
18 Mr. DeLuca.

19 Look at this document. See "104 million --  
20 \$105 million promissory note," and it says here under  
21 "LIBOR rate" -- what does it say there? The percentage,  
22 the interest rate that you were able to secure in your  
23 \$105 million loan from Wachovia?

24 A It says LIBOR-based rate -- quote, LIBOR-based  
25 rate, unquote, means each of one month LIBOR plus

1 0.9 percent for three months. LIBOR plus 0.9 percent.

2 Q Okay. Thank you, Mr. DeLuca. So for your  
3 loan, you secured an interest rate of .9 percent over  
4 LIBOR, right, according to this document?

5 A That's correct.

6 Q And for the loan that you made to LCOC, it was  
7 for 4 points over LIBOR; isn't that right? We just  
8 reviewed that?

9 A That's correct.

10 Q And so the difference, the difference in  
11 between that is 3.1 percent, right? The difference  
12 between 4 percent over LIBOR and .9 percent over LIBOR  
13 is 3.1 percent, isn't it?

14 A That's correct.

15 Q And so that 3.1 percent that you negotiated  
16 less, it was 3.1 percent less than what you charged  
17 LCOC. That's -- that's profit that you made off of the  
18 loan to LCOC, right?

19 MR. HUTCHISON: Objection; asked and answered.

20 THE WITNESS: No. I never made any profit off  
21 the loan. In fact, I never received a single  
22 payment from the loan, so there is no profit.

23 BY MS. HOFFLER:

24 Q And I'm glad you said that. Let's  
25 fast-forward because now -- now, the loan, the LCOC

1           **loan, is in foreclosure as we speak; isn't it right?**

2           A     I think that's correct.

3           **Q     Yes. You have foreclosed on that loan to**  
4           **LCOC; isn't that correct, Mr. DeLuca?**

5           A     I don't know the legal term, but it's in  
6           foreclosure.

7           **Q     Well, it's your loan, right? We established**  
8           **it was your loan, and you have foreclosed on LCOC?**

9           A     When I hear that, I think it's in the past  
10          tense and that --

11          **Q     No, I said you have --**

12          A     -- the hearing is done.

13          **Q     You have foreclosed, present tense, you have,**  
14          **I have, you have. You have foreclosed on the loan to**  
15          **LCOC; isn't that right?**

16          A     I would say it's in foreclosure.

17          **Q     You are foreclosing now.**

18          A     What's the question?

19          **Q     You are foreclosing now on the loan that you**  
20          **made to LCOC?**

21          A     Not -- not me personally.

22          **Q     Not -- oh, not you personally because you, you**  
23          **then sold your, your -- did you -- well, let's talk**  
24          **about this.**

25                    **Who now owns that loan?**

1 A I think that loan is owned by --

2 Q It's FD Destiny, correct?

3 A FD Destiny Credit.

4 Q And you paid off your loan to Wachovia, didn't  
5 you, the \$105 million loan you paid that off to  
6 Wachovia, didn't you?

7 A Yes. They declared me in default when Anthony  
8 did not make payments.

9 Q Answer my question. You paid off your loan to  
10 Wachovia, Mr. DeLuca.

11 Did you or did you not pay off your loan to  
12 Wachovia?

13 A I'm explaining.

14 Q No, no.

15 A I started with yes.

16 Q You've got to answer the question, Mr. DeLuca.

17 A I did. I'm trying to explain it.

18 Q No, no, no. Let's start again. Let's start  
19 again.

20 You paid off your loan, Mr. DeLuca, to  
21 Wachovia, didn't you?

22 A Yes.

23 Q Yes, you did.

24 A I was forced --

25 Q Wait a minute.

1           A     -- to pay off my loan to Wachovia --

2           **Q     Wait, wait, wait.**

3           A     -- when --

4           **Q     Mr. DeLuca.**

5           A     -- when Mr. -- when Anthony Pugliese --

6           **Q     Mr. DeLuca, I'm going to give you ample time.**

7           **I just need the first part of my question answered.**

8                     **Did you pay off your loan to Wachovia? And**  
9           **you will have ample time to do whatever.**

10                    **Did you? Yes or no. That's what I want to**  
11           **know?**

12           A     As I led off before --

13           **Q     Just say yes or no. I just want to know yes**  
14           **or no so I can give you the follow-up questions so we**  
15           **can move this quickly.**

16           A     I'm going to say yes with an explanation,  
17           which is --

18           **Q     Did you -- did you?**

19           A     Let me finish my explanation, and then you  
20           could ask the follow-up.

21           **Q     Let me strike that question and ask you this:**  
22           **After you paid off your loan to Wachovia for**  
23           **\$105 million, then you transferred your ownership of the**  
24           **loan to LCOC to FD credit, FD Destiny credit, didn't**  
25           **you?**

1           A     I don't know the sequence.

2           **Q     Well, now FD Destiny credit owns the loan,**  
3 **owns LCOC's loan; isn't that right?**

4           A     I think that's correct.

5           **Q     And that loan is in foreclosure; isn't that**  
6 **right?**

7           A     Yes. It's in foreclosure because no payments  
8 have been made.

9           **Q     Excuse me. Is it -- is it in foreclosure? Is**  
10 **it in foreclosure?**

11          A     I answered yes because --

12          **Q     Yes.**

13          A     -- because no payments have been made on the  
14 loan.

15          **Q     Right, it's in foreclosure. Now, now, you,**  
16 **Mr. DeLuca, are 100 percent owner of FD Destiny credit;**  
17 **isn't that right?**

18          A     I think that's correct.

19          **Q     Yes. And so when the foreclosure proceedings**  
20 **are over, right, and you get -- and by the way, you**  
21 **foreclosed on FD Destiny, which is also a company that**  
22 **you own, right? I mean, they're a member -- they're a**  
23 **member of LCOC, right, FD Destiny?**

24                    Do you need to go back to the operating  
25 agreement?



1           A     I don't know. I think the foreclosure is on  
2 the mortgage.

3           **Q     On the mortgage. And who owns the mortgage?**

4           A     FD credit owns the mortgage.

5           **Q     FD credit owns the mortgage.**

6                     **And what is the mortgage? What is secured?**

7           **What secures the mortgage?**

8           A     The land secures the mortgage.

9           **Q     Land secures the mortgage. And who is part**  
10 **owner of that land?**

11          A     Who owns the land?

12          **Q     Yeah.**

13          A     LM Land Company.

14          **Q     LM Land Company. And who is a member of the**  
15 **LM land company?**

16                     MR. HUTCHISON: Objection to form.

17                     THE WITNESS: I don't know that it has any  
18 members.

19 BY MS. HOFFLER:

20          **Q     Who owns LM Land Company?**

21          A     Who owns LM Land Company?

22          **Q     That would be LCOC. Let me help you out.**

23                     **You agree with that?**

24          A     I think LCOC owns LM Land Company.

25          **Q     Yes. And who are the members, the two members**

1 of LCOC, Mr. DeLuca?

2 A Who are the two members?

3 Q Yes. Who are the two members of LCOC?

4 A AVP Destiny is one member, and FD Destiny is  
5 the other member.

6 Q And FD Destiny is a company that you own  
7 100 percent of, right?

8 A Correct.

9 Q So a company that you own 100 percent of --  
10 that would be FD Destiny credit -- has foreclosed on a  
11 company, one company, as a foreclosure proceeding with  
12 one company that is FD Destiny that you own 100 percent,  
13 and in foreclosure with another company, AVP, which  
14 Anthony Pugliese owns 100 percent; isn't that right?

15 MR. HUTCHISON: Objection as to form;  
16 misstates his testimony.

17 THE WITNESS: I don't understand the question  
18 exactly, but I know that's not right.

19 BY MS. HOFFLER:

20 Q Let me just put it to you this way, and this I  
21 know you'll understand: Did you know that your lawyers  
22 were in court in the foreclosure proceeding, they had  
23 lawyers who were representing FD Destiny Credit in the  
24 foreclosure proceeding and lawyers that were  
25 representing FD, FD Destiny, FD Destiny Management, and

1 they didn't realize that Fred DeLuca owned both of those  
2 companies?

3 Did you realize that? Did you know that,  
4 Mr. DeLuca?

5 A I don't know what happened in court.

6 Q But you didn't know that, did you?

7 A I, I don't know -- say the question again.  
8 Sorry.

9 Q Did you know, Mr. DeLuca, that in a court of  
10 law, in a proceeding related to the foreclosure of the  
11 LCOC property, your lawyers for FD Destiny Credit, who  
12 were there because of the foreclosure, were not even  
13 aware that the lawyers who were there representing  
14 FD Destiny Management that also you owned 100 percent  
15 of, were owned -- that those two companies were owned by  
16 the same person; namely, you? Did you know that?

17 A I didn't even know there was a court  
18 proceeding.

19 Q Didn't even know there was a court proceeding.

20 Well, let's talk about what happens if the  
21 foreclosure goes through. Let's talk about who  
22 benefits.

23 What -- who is going to benefit? Who is going  
24 to benefit, Mr. DeLuca, once that, that loan is paid off  
25 or when the foreclosure proceeding is completed?

1           A     Well, what's going to happen when the  
2 foreclosure proceeding finishes, the land will be put up  
3 at auction. And if it's sold at a loss, then there will  
4 be a loss that will be suffered by LCOC. And if it's  
5 sold at a profit, then LCOC will make a profit.

6           **Q     If there is a foreclosure, let's say there is**  
7 **a foreclosure and it goes through and the land is**  
8 **foreclosed on, then FD Destiny Credit will own that**  
9 **land, right?**

10          A     No.

11          **Q     It won't own that land?**

12          A     No. Not at all. My understanding is that it  
13 would be sold at auction, and the auction proceeds will  
14 be used to pay whatever could be paid on the mortgage.  
15 Maybe it pays --

16          **Q     It will --**

17                 MR. HUTCHISON: Let him finish his answer.

18                 BY MS. HOFFLER:

19          **Q     Paid to who on the mortgage?**

20                 MR. HUTCHISON: Let him finish his answer.

21                 THE WITNESS: It may -- it may wind up  
22 paying --

23                 BY MS. HOFFLER:

24          **Q     You?**

25          A     -- FD Credit only 50 cents on the dollar. Or,

1 if the land sells for a high price, it may fully pay off  
2 the loan, and then there would be a profit to LCOC. So  
3 potentially, LCOC could benefit.

4 But I don't know what will happen.

5 **Q And that potential benefit to LCOC would**  
6 **potentially benefit you because you are a 50 percent**  
7 **owner through FD Destiny of LCOC, right, Mr. DeLuca --**

8 A Yes. It would benefit me.

9 **Q -- right?**

10 A And it would benefit Anthony Pugliese, who is  
11 a 50 percent owner.

12 **Q And so do you see, Mr. DeLuca, how there could**  
13 **be a conflict that you may have because you are both the**  
14 **plaintiff and the defendant through your corporate**  
15 **entities in this foreclosure proceeding?**

16 Do you see how that could be a conflict,  
17 Mr. DeLuca?

18 MR. HUTCHISON: Object; calls for a legal  
19 conclusion.

20 THE WITNESS: I don't understand what's going  
21 on in the foreclosure.

22 BY MS. HOFFLER:

23 **Q That's fine. If you don't understand, you**  
24 **don't understand.**

25 How much did FD Destiny Credit pay for the

1           **note that was transferred to it by you?**

2           A     I don't know how that was done.

3           **Q     Oh, you didn't authorize it?**

4           A     I don't know who -- you asked me how much it  
5 was paid, paid?

6           **Q     Right.**

7           A     I don't know. I don't know what actually  
8 happened.

9           **Q     Right, because it would be this: It would be**  
10 **you, Fred DeLuca, who owns the note, charging FD Destiny**  
11 **Credit, which you own 100 percent, for the note. So you**  
12 **don't know how much you charged yourself, do you, for**  
13 **the note? I suppose you don't know that. You just**  
14 **don't know?**

15                   MR. HUTCHISON: Objection; asked and answered.

16           BY MS. HOFFLER:

17           **Q     You don't know?**

18           A     I already said I don't know.

19           **Q     And does FD Destiny Credit have a bank**  
20 **account?**

21           A     I don't know.

22           **Q     And does FD Destiny Credit own any assets**  
23 **other than the asset now that it could have in**  
24 **foreclosure or going through the foreclosure proceeding?**  
25                   **Does it own any other assets?**

1 A I don't know.

2 **Q Does it have any employees?**

3 A I don't know.

4 **Q Does it have any stationery?**

5 A I don't know.

6 **Q Anyone sitting in the office?**

7 A What does that mean?

8 **Q Does anyone sit in the office at FD Destiny**  
9 **Credit?**

10 A You mean like an employee?

11 **Q Yeah.**

12 A I wouldn't know because I don't know if there  
13 is employees.

14 **Q Why did you transfer the promissory note to**  
15 **you from FD Destiny Credit, Mr. DeLuca?**

16 MR. HUTCHISON: Objection; asked and answered.

17 BY MS. HOFFLER:

18 **Q Why?**

19 A I don't know.

20 **Q Let's move on, Mr. DeLuca. Now --**

21 MS. HOFFLER: Oh, Edgar, he broke the little  
22 microphone.

23 Oh, it's clipped.

24 MR. BELAVAL: Sorry.

25 MS. HOFFLER: A little broken, but it will

1 work.

2 Can you hear me? It's broken. I can do this.

3 Can you hear me?

4 THE VIDEOGRAPHER: Yeah.

5 MS. HOFFLER: Okay. Now, I want to take a  
6 one-minute break, if I could.

7 MR. HUTCHISON: We only have five minutes left  
8 of the day.

9 MS. HOFFLER: I don't about five minutes.

10 What time is it?

11 MR. HUTCHISON: It's five of five.

12 MS. HOFFLER: You-all took -- I'm sure you'll  
13 let me just have a break.

14 THE VIDEOGRAPHER: The time on the monitor is  
15 4:54. We're going off the video record.

16 (A recess was taken.)

17 THE VIDEOGRAPHER: The time on the monitor is  
18 4:57. We're back on video record.

19 BY MS. HOFFLER:

20 **Q Okay. Now, Mr. DeLuca -- Mr. DeLuca, did**  
21 **Doctor's Associates make any of the transfers for the --**  
22 **for the drawdown expense for LCOC?**

23 A I don't understand the question.

24 **Q There were transfers of moneys made for**  
25 **drawdown made into LCOC's account, right? There was a**



1           **loan, and there were transfers of money made into the**  
2           **LCOC account?**

3           A     On the loan?

4           **Q     Yes.**

5           A     I don't think -- you mean at the time the loan  
6           was made?

7           **Q     There was a 6 million -- did Doctor's**  
8           **Associates make any transfers whatsoever?**

9           A     On the loan?

10          **Q     On the loan.**

11                   MR. HUTCHISON:  Objection to form.

12                   THE WITNESS:  I don't -- I don't know.

13           BY MS. HOFFLER:

14          **Q     On the \$111 million loan that you made to**  
15          **LCOC?**

16                   MR. HUTCHISON:  Objection as to form.

17                   You can answer.

18           BY MS. HOFFLER:

19          **Q     Okay.  Let me put it this way:  After the**  
20          **initial \$105 million loan that was made by you to LCOC,**  
21          **right, there was a \$6 million loan that was made to --**  
22          **it was -- it was made to LCOC, okay, because 105 plus**  
23          **6 million is 11.  And that is what you loaned LCOC.**

24                   **My question to you, Mr. DeLuca, is:  Did**  
25          **Doctor's Associates, the corporate entity, make any**

1           **transfers of monies in connection with that \$6 million**  
2           **deferred advance into, into LCOC's account?**

3                   MR. HUTCHISON:  Objection as to form.

4                   THE WITNESS:  I don't know.

5           BY MS. HOFFLER:

6                   **Q     Did Doctor's Associates --**

7                   MR. HUTCHISON:  It's the last question.

8           BY MS. HOFFLER:

9                   **Q     -- Mr. DeLuca, make any transfer into LCOC's**  
10           **account for any drawdown expenses --**

11                   MR. HUTCHISON:  Objection as to form.

12           BY MS. HOFFLER:

13                   **Q     -- pursuant to the terms of the loan?**

14                   MR. HUTCHISON:  And asked and answered.

15                   THE WITNESS:  I don't know what you're talking  
16           about.

17           BY MS. HOFFLER:

18                   **Q     Did Doctor's Associates transfer a single**  
19           **solitary penny into any account for any purpose --**

20                   MR. HUTCHISON:  Objection.

21           BY MS. HOFFLER:

22                   **Q     -- for LCOC --**

23                   MR. HUTCHISON:  Objection.

24           BY MS. HOFFLER:

25                   **Q     -- in connection with the loan?**

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

3 THE WITNESS: Not that I know of. But if any  
4 money was transferred, that would have been my  
5 personal money that was sent for this investment  
6 because Doctor's Associates was not an investor.

7 MS. HOFFLER: Okay. We -- I have no further  
8 questions today, but we -- I have to put something  
9 on the record.

10 Mr. Hutchison, have you undertaken any efforts  
11 since the last time we broke to find out the legal  
12 basis either in statute or in case law under  
13 Florida Rules of Civil Procedure under Florida law  
14 that would serve as a basis for Mr. DeLuca not  
15 answering questions related to whether he has met  
16 with the State Attorney since this deposition has  
17 begun?

18 MR. HUTCHISON: Nothing additional.

19 MS. HOFFLER: I'd like to make a statement for  
20 the record.

21 Given that we believe that Mr. DeLuca, by his  
22 attorneys, the defendants in this case as well as  
23 the plaintiffs in the other case, are using the  
24 State Attorney's Office trying to manipulate the  
25 State Attorney's Office to file criminal charges

1           against Mr. Pugliese and are using it for their own  
2           game -- gain in an unethical way.

3           We want to make sure the record is clear that  
4           we have asked Mr. Hutchison as an officer of the  
5           court to provide any type of research,  
6           justification, case law, or anything to  
7           substantiate his position in advising his client,  
8           Mr. DeLuca, not to answer questions related to the  
9           investigation.

10           He has furnished no such justification, no  
11           such case law, no such Florida law, despite the  
12           fact that seven hours later he had -- and he the  
13           ability to do that -- seven hours later, I have  
14           asked him on the record four times, on an average  
15           of every hour and a half, and he's failed to do so  
16           intentionally in an effort to obstruct this  
17           deposition and to present the plaintiffs in the  
18           case against Mr. DeLuca and other entities and the  
19           defendants in the case defending against the claims  
20           of Mr. DeLuca in an effort for us to prosecute and  
21           defend our case.

22           It's obstructionist, it's unethical, and we  
23           certainly will take it up with the Judge.

24           MR. HUTCHISON: I have nothing to add other  
25           than what I said previously --

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MS. HOFFLER: Okay. All right.

MR. HUTCHISON: -- and I disagree with  
everything she said.

THE VIDEOGRAPHER: The time on the monitor is  
5:02, and we're going off the video record.

(Witness excused.)

(At 5:02 p.m., the deposition was concluded.)

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CERTIFICATE OF OATH

THE STATE OF FLORIDA  
COUNTY OF PALM BEACH

I, the undersigned authority, certify that  
FREDERICK DELUCA personally appeared before me and was  
previously duly sworn on the 26th day of September,  
2012.

Dated this 27th day of September, 2012.



A handwritten signature in black ink, appearing to read "Patricia A. Lanosa", written over a horizontal line.

Patricia A. Lanosa, RPR, FPR, CSR, CLR  
Notary Public - State of Florida  
My Commission Expires: 10/09/2014  
My Commission No.: DD 594347

Job #951382

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C E R T I F I C A T E

THE STATE OF FLORIDA  
COUNTY OF PALM BEACH


I, Patricia A. Lanosa, Registered Professional Reporter and Notary Public in and for the State of Florida at large, do hereby certify that I was authorized to and did report said deposition in stenotype; and that the foregoing pages are a true and correct transcription of my shorthand notes of said deposition.

I further certify that said deposition was taken at the time and place hereinabove set forth and that the taking of said deposition was commenced and completed as hereinabove set out.

I further certify that I am not attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

Dated this 27th day of September, 2012.

  
Patricia A. Lanosa, RPR, FPR, CSR, CLR

Job #951382

1           DATE:       September 27, 2012

2           TO:        FREDERICK DELUCA   Job #951382  
3                    c/o RICHARD C. HUTCHISON, ESQ.  
4                    HOLLAND & KNIGHT  
                  222 Lakeview Avenue, Suite 1000  
                  West Palm Beach, Florida 33401

5           IN RE: AVP DESTINY, ET AL, VS. DELUCA, ET AL.

6           CASE NO.: 502009CA040295XXXXAG

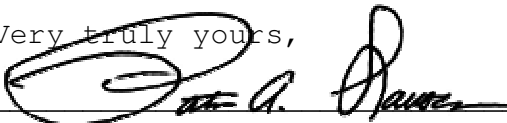
7                    Please take notice that on Tuesday, the 26th  
8                    of September, 2012, you gave your deposition in the  
9                    above-referred matter. At that time, you did not waive  
                  signature. It is now necessary that you sign your  
                  deposition.

10                   As previously agreed to, the transcript will  
                  be furnished to you through your counsel. Please read  
                  the following instructions carefully:

11                   At the end of the transcript you will find an  
12                   errata sheet. As you read your deposition, any changes  
13                   or corrections that you wish to make should be noted on  
14                   the errata sheet, citing page and line number of said  
                  change. DO NOT write on the transcript itself. Once  
                  you have read the transcript and noted any changes, be  
                  sure to sign and date the errata sheet and return these  
                  pages to me.

15                   If you do not read and sign the deposition  
16                   within a reasonable time (i.e., 30 days unless otherwise  
17                   directed) the original, which has already been forwarded  
18                   to the ordering attorney, may be filed with the Clerk of  
                  the Court. If you wish to waive your signature, sign  
                  your name in the blank at the bottom of this letter and  
                  return it to us.

19   Very truly yours,

20     
  \_\_\_\_\_

21   Patricia A. Lanosa, RPR, FPR, CSR, CLR  
22   US Legal Support, Inc.  
23   444 West Railroad Avenue - Suite 300  
  West Palm Beach, Florida 33401

24           I do hereby waive my signature.

25           \_\_\_\_\_  
                  FREDERICK DELUCA



C E R T I F I C A T E

- - -

THE STATE OF FLORIDA

COUNTY OF PALM BEACH

I hereby certify that I have read the foregoing deposition by me given, and that the statements contained herein are true and correct to the best of my knowledge and belief, with the exception of any corrections or notations made on the errata sheet, if one was executed.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
FREDERICK DELUCA

Job #951381

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E R R A T A S H E E T

IN RE: AVP DESTINY, ET AL, VS. DELUCA, ET AL. CR: PATTY LANOSA  
 DEPOSITION OF: FREDERICK DELUCA - VOLUME 10  
 TAKEN: 9/26/12 JOB NO.: 951381

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PAGE #	LINE #	CHANGE	REASON

Please forward the original signed errata sheet to this office so that copies may be distributed to all parties.  
 Under penalty of perjury, I declare that I have read my deposition and that it is true and correct subject to any changes in form or substance entered here.

DATE: \_\_\_\_\_

SIGNATURE OF DEPONENT: \_\_\_\_\_

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