

1 THE COURT: Okay, welcome back. Thank you.
2 Are you ready for the next witness. Okay,
3 welcome back. Thank you. Are you ready for the
4 next witness.

5 MR. HUTCHISON: No, Your Honor, we got a
6 couple of preliminary issues we need to address.
7 First is the timeline.

8 THE COURT: Okay.

9 MR. HUTCHISON: This is the timeline from
10 the opening statement. It's got from the
11 beginning to the end all types of things like
12 Destiny is born, dream team. It goes through the
13 RLSA.

14 THE COURT: I thought we had taken care of
15 that at the time of the openings. We had excised
16 those --

17 MS. HOFFLER: We did, Your Honor.

18 THE COURT: -- that were not going to be
19 used.

20 MR. HUTCHISON: Well, they're still on
21 there.

22 MS. HOFFLER: No.

23 MR. HUTCHISON: These ones that I'm talking
24 about are still on here.

25 MS. HOFFLER: Okay, let me --

1 MR. HUTCHISON: Let me finish.

2 MS. HOFFLER: Okay, I'm sorry.

3 MR. HUTCHISON: Number two is he's our
4 accounting person.

5 THE COURT: Who is going to be called?

6 MR. HUTCHISON: Mr. Joe Reamer.

7 THE COURT: Mr. Reamer, okay.

8 MR. HUTCHISON: He's the in-house
9 accountant. He wasn't involved in the
10 entitlements. They've got this timeline that,
11 you know, Destiny is born. Anthony signs a
12 contract in 2004. It goes all the way through.
13 To leave it up there -- first of all, it walls
14 off the jury from this side of the room. And
15 when I sit with my co-counsel, all I hear is,
16 he's a party and one of the most important
17 witnesses on their side, and Mr. Pugliese.

18 Secondly, this is the type of stuff that's
19 on the timeline.

20 MS. HOFFLER: Why don't we give him the
21 actual timeline. That is not the actual
22 timeline. That is not accurate.

23 THE COURT: Turn it around for me so I can
24 see.

25 MS. HOFFLER: And, Your Honor, I have a

1 small copy here for you of the timeline, and I
2 want the Court to know that it is identical to
3 what I used in opening. We vetted this. We went
4 through it. We corrected what the Court said.
5 They agreed.

6 And so it's ironic and disingenuous since we
7 went through all of that. It's the exact same
8 timeline. Nothing has been altered.

9 THE COURT: And you don't have it in the
10 format that can be put on the screen?

11 MS. HOFFLER: Well, we tried that. And the
12 problem with that is because it's this way --
13 this is a copy for the Court.

14 THE COURT: Okay, thank you.

15 MS. HOFFLER: And this is just a
16 demonstrative. Because it's that way --

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

19 MS. HOFFLER: Sure, I was going to hand it
20 to you when we use it.

21 MR. HUTCHISON: I mean, this is an
22 accounting witness --

23 MS. HOFFLER: I haven't finished.

24 THE COURT: I'm sorry.

25 MS. HOFFLER: I haven't finished.

1 Your Honor, we went through an extensive
2 process with you beforehand. This is exactly
3 what we used in opening. You said we could
4 not -- there were three items we had to take off.
5 We took them off.

6 And in addition to that, he's not just the
7 accountant. He is their business manager. He is
8 probably next to Mr. Pugliese -- not only is he a
9 defendant, but he's the only person that frankly
10 can talk, can speak to some of these things.

11 He was the person who was responsible for
12 the funding. He was the person processing the
13 monies that came in, processing the monies that
14 went out. He was the one who would -- when a
15 check needed to be written -- the \$2.6 million,
16 when the property was first purchased, he's the
17 one that did it --

18 THE COURT: Okay. I don't really need very
19 much more discussion on this. What it comes down
20 to is this. If it's the exact same thing that
21 was used in opening statement as represented by
22 counsel, that's what the jury has already been
23 exposed to. So they've already been exposed to
24 the same thing.

25 The only issue now is one of logistics and

1 how it's going to be done so that the FD parties'
2 counsel can see the jury during the presentation,
3 because it is their right to be able to watch
4 what the jury is doing and be able to see exactly
5 what's going on.

6 So that's the only issue that's left.

7 MS. HOFFLER: Can I make a recommendation,
8 Your Honor? Because we've done this in many
9 cases, with Mr. Gary as well, what we typically
10 do, counsel, and we do that as well, there are
11 seats right here, very comfortable seats. We run
12 the seats out. Counsel can sit there.
13 Mr. Reamer will not be sitting there. So there
14 are one, two, three, four, five, six seats that
15 they could sit at.

16 Actually, they'll be closer to the jury than
17 we will right here. They can see exactly what's
18 going on. They can see the timeline. And they
19 can see the jury's reaction. That's what I've
20 done in the past 30 years as a lawyer whenever we
21 have large exhibits like this, and I think that's
22 perfectly reasonable, feasible in this courtroom.

23 This courtroom is slightly smaller than the
24 last one, but we can put the chairs there
25 quickly, and the jury can see them, they can see

1 the jury, and we can keep it moving.

2 THE COURT: I believe it's the same size.
3 But, in any event, I'm not going to quibble with
4 you over that.

5 Your thoughts?

6 MR. HUTCHISON: Well, Judge, my thoughts
7 are, I want to sit with my -- pass notes, sit
8 next to each other, have a table. I don't have a
9 table to be able to write on.

10 I mean, my thoughts on the timeline --

11 THE COURT: I'm done with the timeline.

12 MR. HUTCHISON: I know. But, you know, I
13 put up with it in opening and sat over that and
14 tried to take my notes. But, you know what, I
15 want to sit next to my co-counsel. Mr. Reamer is
16 the accountant. We're going to go through
17 numerous documents with them, which I want to
18 get -- that's the next part of my objection to
19 her exhibits. But I just want to go with the
20 timeline for now.

21 So logistically, can't you just put up
22 one-third at a time? I mean, do you have to put
23 up all three panels during his whole direct
24 examination?

25 THE COURT: I agree. So why don't we do, at

1 least for the time being, until such time as you
2 need it, we'll keep it down. There's a gentleman
3 there, I guess, that's helping you with the
4 logistics.

5 Once you need it, you can put it up, and
6 then put one panel at a time so that we can at
7 least get the opportunity to -- or they can have
8 the opportunity to be able to see the jury and we
9 can move with some dispatch to proceed now.

10 MS. HOFFLER: Can I mention something about
11 the panels? Unfortunately, the way the panels
12 are divided, they're midsentence. So I can deal
13 with the first -- I'll put the first panel down,
14 and then -- but it's split midsentence. So I
15 don't know how to --

16 THE COURT: Well, as I said, the problem
17 perhaps is and can be dealt with by moving it
18 down a little bit.

19 MS. HOFFLER: Can we try that? Let's see
20 how far we could -- we were concerned about the
21 Court also being able to see.

22 THE COURT: That won't interfere with me.

23 MR. HUTCHISON: Can they do it two panels at
24 a time?

25 MS. HOFFLER: No, if we could move it down,

1 that --

2 THE COURT: Let's say, as long as you can
3 see the jury, that's my next issue.

4 MS. HOFFLER: You know what we can do,
5 because our team can move up, we can put it this
6 way. How about that? Like put it here, move
7 this part here. It will block our table, but, I
8 mean, we can just move over.

9 THE COURT: Just fold it further down, if
10 you would, please.

11 MS. HOFFLER: Let's move this table.

12 (Discussion off the record.)

13 THE COURT: All right, what's next on the
14 hate parade?

15 MR. HUTCHISON: It's our Exhibit 102. It
16 was a deposition Exhibit 131. It wasn't on their
17 exhibit list. It's a summary. There was no
18 notice of summary provided they were going to use
19 it. It's pursuant to 90.956. There is no
20 summary.

21 THE COURT: I'd like to see it, if I could,
22 please.

23 MS. HOFFLER: Your Honor, I'm going to give
24 you -- what are you objecting to, Exhibit 131?

25 MR. HUTCHISON: Yeah. It's hearsay,

1 something he prepared --

2 THE COURT: Hold on, please. Let me take a
3 look at it.

4 MS. HOFFLER: Your Honor, if I might
5 respond. Exhibit 131 --

6 THE COURT: Let me see it first and then
7 I'll ask for argument.

8 MS. HOFFLER: Okay, thank you.

9 Okay, Exhibit 131 --

10 THE COURT: Hold on. Let me see it first.
11 You can clearly see that I'm taking out my
12 glasses so I can read what is otherwise
13 unreadable fine print. So once I have that
14 opportunity, as I indicated, I'll then invite
15 argument.

16 All right. I've seen this before. This was
17 dealt with when Mr. Reamer testified in some
18 hearing. I remember that.

19 Okay, so what's your objection?

20 MR. HUTCHISON: You've seen it before?
21 Because that's their interrogatory answer. In
22 fact, if you look at the last page, it's even got
23 the certification on it still of part of the
24 interrogatory answer.

25 That is the alleged reserve account.

1 THE COURT: Okay.

2 MR. HUTCHISON: So, one, it's hearsay if
3 they're using it, right? It's different if I use
4 it, it's part of the admission. It was an answer
5 to an interrogatory from them to me. My
6 interrogatory, their response, number one.

7 So, A, it's hearsay if they want to use it.

8 B, it's a summary, which they never gave us
9 a notice of summary that they were going to use
10 it.

11 C, it wasn't even on their exhibit list.

12 And, D, Judge, and probably most important,
13 is it adds up to \$2.6 million when you've already
14 ruled -- that contains all the fake companies,
15 that contains the legitimate companies, that
16 contains the 1.2 million from the criminal case.
17 I guess, let's sum it up that way.

18 So it can't possibly be used as a composite,
19 a compilation of all of them because that
20 includes the criminal case.

21 THE COURT: But what's wrong with that? I
22 don't see --

23 MR. HUTCHISON: How are they going to --

24 THE COURT: What's the prejudice to your
25 side, first of? All, because this has been used,

1 to my recollection, as a sword during at least
2 part of your presentation when I heard some
3 hearing, and I can't remember what it was, but
4 the one where Mr. Reamer at some length.

5 So you used it to your advantage during that
6 period of time, you know about it, it's been in
7 existence for quite some period of time. Is this
8 a summary or is this a bookkeeping process that
9 was used by Mr. Reamer and compiled at or near
10 the time of its compilation?

11 MR. HUTCHISON: No, that's the reserve
12 account. He had handwritten notes, and he
13 destroyed the handwritten notes and typed that
14 up. That's not out of their accounting software.

15 THE COURT: Okay, well, what is your
16 understanding of the background?

17 MS. HOFFLER: My understanding is this is
18 not a summary. This is actually a compilation of
19 the actual invoices, how much they were, and the
20 dates. This exhibit, Your Honor, you've stated
21 correctly, has been used so many times in this
22 case. It was on their exhibit list, and we
23 had -- in our exhibits, we said we reserve the
24 right to use all exhibits that they use, and they
25 did the same for us.

1 So in terms of notice, they knew about this
2 because I brought it to their attention in
3 opening. They objected to it in opening. I
4 backed off. We didn't even present it to Your
5 Honor, even though I -- because I wanted to get
6 going with opening.

7 This is something that has been used time
8 and again. I'd be devastatedly surprised if they
9 didn't plan on using it in their cross, but maybe
10 now that we're having this discussion, they
11 won't.

12 THE COURT: Well, I don't want to get into
13 potential strategies. My review of an exhibit
14 for admissibility purposes and something of this
15 nature is this. I have to balance the issue
16 regarding notice and whether or not it was listed
17 with prejudice.

18 Because I'm familiar with it, there's no
19 question in my mind that Mr. Hutchison, because
20 of his long-standing commitment to the case, is
21 also familiar with it. It was used, as I
22 recollect, during Mr. Reamer's testimony at an
23 earlier hearing at some length.

24 The document, therefore, is not an issue of
25 surprise.

1 MR. HUTCHISON: It is not an issue of
2 surprise, I'll admit that.

3 THE COURT: Okay. And I appreciate that.

4 So the next thing I have to deal with is
5 what it is and whether or not it's relevant.
6 Clearly, as far as I'm concerned, it's relevant.
7 And I'm taking Counsel's representations at their
8 face value, and that is, that this is not a
9 summary, but instead, essentially an accounting
10 of LCOC's expenditures that appears starting
11 sometime in 2008 through sometime in 2009.

12 Whether or not it is a bona fide compilation
13 is certainly subject to rigorous
14 cross-examination. What it contains and whether
15 or not it is accurate and whether or not it is
16 truthful, again, I'm not passing on its veracity.
17 I don't know if it is or isn't. But that would
18 again be subject to rigorous cross-examination by
19 counsel as well.

20 So the objection is overrule.

21 MR. HUTCHISON: She has about three other
22 summaries that she's using, Judge. Again --

23 THE COURT: Well, I need to see them
24 because, again, I'd rather not be told what they
25 are without seeing them. That wouldn't be fair

1 to you as attorneys in the case, nor would it be
2 fair to me in trying to make a ruling on
3 something that I haven't seen.

4 MR. HUTCHISON: I don't have a copy, Your
5 Honor. I just saw them at lunch.

6 THE COURT: Okay.

7 MS. HOFFLER: Your Honor, this is a document
8 that was also created in the ordinary course of
9 business by Mr. Reamer. This is a document that
10 pertains to when -- and our position is that
11 Mr. DeLuca breached the operating agreement. And
12 this is a document was created by Mr. Reamer that
13 reflects the dates of the breach, the amount of
14 monies -- and this is what I spoke to in opening,
15 and Your Honor had indicated that in opening you
16 didn't want us to -- I could talk about it, but
17 certainly --

18 THE COURT: This is the LCOC accounts
19 payable funding delinquency report.

20 MS. HOFFLER: Yes.

21 THE COURT: And Mr. Reamer is going to
22 testify that this was compiled when?

23 MS. HOFFLER: It was compiled -- in terms of
24 the exact date?

25 THE COURT: I don't need an exact date, but

1 was it done contemporaneously with the acts that
2 are being complained of here, or was it prepared
3 in preparation for litigation?

4 MS. HOFFLER: Your Honor, I just want to
5 double-check. My understanding is it wasn't
6 prepared -- it wasn't prepared, for example,
7 since it goes from September through January, so
8 it wasn't prepared in September, but I think it
9 was prepared after January.

10 MR. HUTCHISON: Did you give me copies of
11 this?

12 MS. HOFFLER: I have a whole set of
13 everything for you, but I was going to give it to
14 you, you know, as we progress with the exhibits.

15 MR. HUTCHISON: That was not out of
16 QuickBooks, that report itself. I mean, that is
17 clearly the delinquency report. They didn't have
18 a funding delinquency report --

19 THE COURT: Well, have you seen that before?

20 MR. HUTCHISON: No, at lunchtime.

21 THE COURT: You haven't seen it before?

22 MR. HUTCHISON: I don't recall seeing it
23 before.

24 MS. HOFFLER: Mr. Hutchison, let's be
25 candid. I showed you this in opening. This was

1 exactly what I wanted to use --

2 MR. HUTCHISON: Maybe in opening. I don't
3 even remember.

4 MS. HOFFLER: And, by the way -- I don't
5 mean to touch you. You know I'm a touchy person.
6 But anyway --

7 THE COURT: Let me ask this: Is this report
8 on the exhibit list?

9 MS. HOFFLER: Could I just check, Your
10 Honor?

11 THE COURT: Sure, of course.

12 MR. HUTCHISON: Because I was going to use
13 this -- I was actually going to use this as a
14 demonstrative.

15 THE COURT: See, again, I take a pretty
16 strong stance, and I think I may have explained
17 this to you, relative to what is often called
18 demonstrative aids. When demonstrative aids blur
19 the line of substantive evidence, then I opt not
20 to allow it because, again, it's a way of
21 avoiding the requirement that an open hand is
22 shown prior to the trial being started and that
23 something of that nature would, in my view, be
24 considered substantive evidence.

25 MS. HOFFLER: Okay.

1 THE COURT: Mr. Reamer, again, can talk
2 about it if he wishes too. You can write the
3 numbers on the board, but using it as a document
4 to show the jury, if it is not on your exhibit
5 list, would not be appropriate.

6 So if you'd like to check your exhibit
7 list, that's fine, but if it's not there, then
8 I'm going to sustain the objection in that case
9 because it would not be in the Court's view a
10 demonstrative aid.

11 It can be marked for identification, if you
12 like, but it would be more suitable as
13 substantive evidence by way of description. And
14 hence, if it's not on the exhibit list, it would
15 not be permitted.

16 Let's go to the next issue. Someone else
17 can check on that exhibit list, please, one of
18 the many lawyers that are here for both sides.
19 Thank you.

20 MS. HOFFLER: Thank you, Your Honor.

21 THE COURT: Is there anything else?

22 MR. HUTCHISON: More summaries, I believe,
23 Your Honor.

24 MS. HOFFLER: Your Honor, just so that I'm
25 clear on your ruling, so if a witness --

1 Mr. Reamer, of course, is not an expert, but
2 because there's so many numbers, he has charts
3 and things like that he's kept in the normal
4 course of business that do provide summaries and
5 backup.

6 THE COURT: Well, if his documents were
7 prepared in the normal course of business and
8 they are representative of what his accounting
9 was during the course of the project, there's no
10 issue, as far as I'm concerned, regarding its
11 admissibility so long as it's been provided on
12 the exhibit list and the other side has had the
13 chance to digest it and vet it and be able to use
14 it in their -- in the prosecution of their case
15 and the defense of yours.

16 But again, that's going to be the threshold
17 question right now, and we need to address that.
18 In other words, I'm not going to permit anything
19 that's been manufactured for trial. And again, I
20 am going to err on the side of caution by calling
21 it more akin to substantive evidence than a
22 demonstrative aid.

23 A demonstrative aid, as I indicated earlier,
24 in the usual course of events are things like a
25 doctor bringing in a spine model or a model spine

1 made out of wood or plastic to be able to show
2 the jury the vertebral columns and the vertebrae
3 themselves and how a disc becomes herniated.
4 That's a demonstrative aid.

5 We already had the radiographic finding
6 that's been admitted into evidence of a herniated
7 disc, and the doctor is bringing in that model to
8 demonstrate, thus stemming from the word
9 demonstrable or vice versa, how the disc, the
10 jelly part of the disc becomes extruded and
11 herniated. It's not anything other than showing
12 what is otherwise on an admitted radiograph.

13 This is different. This is -- again, what
14 was shown to me earlier is something that was
15 prepared without notice to the other side, at
16 least from what I'm understanding at this
17 juncture, from the other side and would be more
18 akin to a -- would be more akin to substantive
19 evidence.

20 What's the next issue?

21 MS. HOFFLER: This is something, Your Honor,
22 that -- it's hard to read, but we have it blown
23 up. Those are the breaches.

24 THE COURT: Right. This is what I saw the
25 other day.

1 MS. HOFFLER: And your Honor said that we
2 could not use it in opening, but this witness
3 worked on this with me because this witness is
4 going to testify about the breaches.

5 THE COURT: Well, again, was it provided to
6 the other side?

7 MS. HOFFLER: In opening.

8 THE COURT: If it's not been provided to the
9 other side, it can be identified. But again, I'm
10 not going to allow something like this because if
11 Mr. Reamer is going to testify to -- it's
12 entitled "DeLuca's 34 breaches of the operating
13 agreement, September 2007 through June 2009."

14 If the other side hasn't had a chance to see
15 this, then ipso facto they haven't had a chance
16 to question Mr. Reamer on these summarized 34
17 breaches; which is, again, the heart of your
18 respective cases when it comes to a claim that's
19 been brought by the Pugliese parties.

20 So it would be a matter of fundamental
21 fairness that this would have had to be given to
22 the other side well before trial before I'd allow
23 it to be blown up in front of this jury, because
24 it would be an absolute surprise.

25 And again, I'm not trying to be anything

1 more than using the terminology used by the
2 appellate courts, and that is, I do not
3 countenance trial by ambush, and this type of
4 document, which will get identified if you wish,
5 would constitute same.

6 MS. HOFFLER: So just so that -- because I
7 want to make sure I respect the Court. So what I
8 can do is I can mark it for identification, show
9 it to the witness, and he can speak and read from
10 this --

11 THE COURT: No, you're -- excuse me. I'm
12 sorry, I didn't mean to sound so pedantic.

13 MS. HOFFLER: Okay.

14 THE COURT: You were going down the wrong
15 path, and I wanted to stop you before it went any
16 further. And I apologize for interrupting.

17 MS. HOFFLER: Okay.

18 THE COURT: What I was going to say is, it
19 is only going to be identified now. Okay. The
20 witness -- if the witness wants to use it to
21 potentially just to, you know, refresh his
22 recollection --

23 MS. HOFFLER: Your Honor, that's actually
24 the only reason why I was going to use it was
25 because there were 34 -- you know, the periods of

1 time --

2 THE COURT: What's your position on having
3 it in front of him?

4 MR. HUTCHISON: He's going to read from it.
5 How's he going to -- that's going to refresh his
6 recollection? She can say, look -- I don't have
7 a copy of it -- but did they fund in September of
8 2007? No. Okay. He can't say it's a breach.

9 THE COURT: Well, I agree. If he's helped
10 prepare it --

11 MS. HOFFLER: Yes.

12 THE COURT: -- then he obviously knows
13 what's in it. So it's not something that you're
14 using somebody like -- and I don't mean to pick
15 on anybody -- but Mr. Basehart who hasn't been
16 really familiar with the project in the last
17 seven or eight years, okay.

18 Mr. Reamer has gone through not only the
19 case in its entirety as a party, but also, of
20 course, has had to answer to criminal charges
21 which he's pled to. So he's been intricately
22 involved by your own suggestion that he assisted
23 in preparing that document.

24 I don't want that document to create
25 confusion by its very presence and have this jury

1 ask the question, can we see the document that
2 he's reading from?

3 Again, I don't think it's necessary that he
4 has it. And you can use it in your questioning
5 of him, but I'm not going to allow him to read
6 from it or to use it at the witness stand.
7 Because again, it could create confusion, it
8 could create a false impression on this jury that
9 we're keeping something from them, and I don't
10 want that to happen.

11 Again, it wasn't provided to the opposite
12 side. The first time they've had a chance to
13 look at that was at opening. And it would be,
14 again, countenancing trial by ambush if I was to
15 otherwise allow it any further than simply having
16 it identified now for purposes of the record
17 only.

18 MS. HOFFLER: Okay.

19 MR. HUTCHISON: A couple of other summarize,
20 Judge, including one that has the loan balance.

21 THE COURT: Let me see them. We'll do the
22 best we can. I hate to keep this jury waiting,
23 but I'd rather do it now than having to send them
24 out of the courtroom.

25 MS. HOFFLER: So consistent, Your Honor,

1 with your ruling, even though Mr. Hutchison --
2 eight and nine.

3 Your Honor -- and I'd like to mark this for
4 identification too, Your Honor. This is one that
5 you -- are you objecting to this?

6 MR. HUTCHISON: Yeah, for the same reason.
7 I didn't see it.

8 MS. HOFFLER: I want it clear --

9 THE COURT: So let me just identify these by
10 name so that we have it clear on the record. The
11 first one is titled "Net Effect of Reserve
12 Accounting."

13 Have you seen this before?

14 MR. HUTCHISON: If I have at all, I saw it
15 at opening.

16 THE COURT: In opening statement. Okay.
17 Have you seen it before opening statement? Was
18 it part of the exhibit list?

19 MR. HUTCHISON: I don't believe it is part
20 of the exhibit list. I don't even have a copy
21 now.

22 THE COURT: Okay. So the same ruling would
23 apply. I'm not going to allow something that is
24 not on the exhibit list to be a substantive
25 exhibit nor a demonstrative aid. Because, again,

1 this net effect of reserve accounting clearly
2 goes to the heart of the claims and would, in
3 this Court's respectful view, not be a
4 demonstrative aid, but instead be substantive
5 evidence.

6 And that would again potentially confuse
7 this jury in the sense that they would perceive
8 the fact that it should have been -- or would
9 have gone to the other side before opening
10 statement and they would have had the opportunity
11 to properly prepare for it. And I don't want
12 that confusion to exist.

13 MS. HOFFLER: Your Honor, I apologize. For
14 these -- this one is very similar, so it's going
15 to be the same ruling.

16 THE COURT: Okay.

17 MS. HOFFLER: For these two, just like the
18 other short chart, you had indicated that I can
19 mark it for identification. And can the witness
20 have -- because these are short, unlike the other
21 long 35 breaches, I heard the Court distinguish
22 between the 34 breaches -- not 35, 34 breaches
23 versus a document that's prepared in the course
24 of business that is a summary that would help --
25 because there's so many numbers.

1 THE COURT: I understand there's numbers,
2 but I have to again make a determination of
3 prejudice to the other side. That has to begin
4 the analysis if these documents were not listed
5 on the exhibit list. And thus far, I have not
6 heard anything to the affirmative to suggest they
7 have.

8 Hence, my analysis begins there and pretty
9 much ends there when it comes to these documents
10 that I have been shown, that is, these
11 calculations that were done, which could have
12 well been done at any time during the seven-year
13 period in which this case has been litigated --
14 and again, this is not meant to be disparaging,
15 but not wait till the last minute to provide
16 these calculations to the other side, whether the
17 last minute be opening statement which was last
18 week, we're talking about in comparison to seven
19 years of litigation.

20 So that's where we are right now. And
21 again, I put this on the record again not to be
22 disparaging or disrespectful, but only to explain
23 why the Court is doing what it's doing.

24 MS. HOFFLER: And, thank you, Your Honor, I
25 understand. I think we misapprehended when it

1 came to what we felt were demonstrative exhibits.
2 We felt that those only needed to be provided to
3 the other side the day before.

4 So I understand the Court's rulings. I just
5 wanted to explain why these were not provided
6 until the day before, just as they gave as a
7 bunch of demonstrative exhibits.

8 THE COURT: Again, the same type of rule
9 will apply. If you can demonstrate to me that
10 something was given to you that constitutes what
11 I perceive to be substantive evidence, the same
12 rulings will hold for each side.

13 So I'll be glad to review them when the time
14 comes.

15 MR. HUTCHISON: There's one more with the
16 loan balance on it, Judge.

17 THE COURT: Okay, let me see that, please.

18 MR. HUTCHISON: There might be more than one
19 more. I don't have a list of them.

20 MS. HOFFLER: You've seen all of them.

21 MR. HUTCHISON: All right. Well, all the
22 summaries, and you know my objections on the
23 summaries. So if there's any other summaries,
24 please show the Court.

25 THE COURT: Okay, thanks. This is entitled

1 "Land Company of Osceola County, LLC Partnership
2 Contributions."

3 MR. HUTCHISON: And from what I can
4 remember, this is the loan. So August 11th --

5 THE COURT: Well, I'm not asking for an
6 explanation. I'm asking whether or not you've
7 seen it before opening statement.

8 MR. HUTCHISON: I don't recall seeing this,
9 Judge, or at least in this format, number one. I
10 mean, I saw a lot of loan balances that our guys
11 had provide during discovery. I don't remember
12 seeing this one at all that added the loan and
13 the capital call. So I've never seen it in this
14 format, number one.

15 Number two, there's notes hear saying DeLuca
16 funded a hundred percent and 75 percent. I know
17 I didn't see that because I don't agree with that
18 position. My people never prepared anything like
19 that or even DeLuca's representatives during the
20 former lawsuit never prepared anything like this.

21 THE COURT: You mean before trial?

22 MR. HUTCHISON: Before trial and before the
23 lawsuit was even --

24 THE COURT: Oh, and before the lawsuit,
25 okay.

1 MR. HUTCHISON: So I don't recall ever
2 seeing this in this format. It wasn't on our
3 exhibit list, number one. It wasn't provided a
4 copy in this format to me, number two. And
5 number three, Judge, it's got all the loan
6 balance and it says DeLuca funded. DeLuca didn't
7 fund it. It was a loan to the company. It's
8 misleading.

9 THE COURT: That same ruling. If it's not
10 on the witness list, it constitutes substantive
11 evidence. There are statements made there that
12 are in dispute, and it would not constitute a
13 demonstrative aid from this Court's perspective
14 by any means.

15 MS. HOFFLER: And, Your Honor, just so the
16 record is clear, this was prepared in the normal
17 course of business, I would challenge. But I
18 don't have the ability right now, and I want to
19 get the jury in, and I know you do too, to show
20 where they'd seen it before, and so I'm going to
21 let it go.

22 THE COURT: All right.

23 MS. HOFFLER: But I do want the Court to
24 know --

25 THE COURT: Well, check your notes. Like I

1 said, you have a fine cadre of lawyers over
2 there. They can check back and see whether or
3 not it's been introduced in the past. If it's
4 been introduced in the past, that's a different
5 story.

6 But again, I know that the issues that were
7 raised by Mr. Hutchison relative to some of the
8 statements on the bottom concerning funding and
9 the percentages and the like, in my view, they
10 would be objected to and they would be brought to
11 the Court's attention before they would be
12 utilized.

13 So it would be the same ruling again for
14 purposes of the record that because they're not
15 on the witness -- on the exhibit list, then they
16 would be excluded because again, this accounting
17 summary would constitute, in this Court's view,
18 substantive evidence as opposed to merely a
19 demonstrative aid.

20 MS. HOFFLER: Finally, Your Honor -- oh, you
21 said you don't to object this?

22 MR. HUTCHISON: I don't object.

23 (Discussion off the record.)

24 MR. HUTCHISON: I have no objection to the
25 Stumberger.

1 THE COURT: Stumberger what?

2 MS. HOFFLER: Your Honor, it's Land Company
3 of Osceola County, LLC, all payments issued from
4 Meril Stumberger, Inc."

5 THE COURT: Okay.

6 MS. HOFFLER: Your Honor, if I could take --
7 have one minute, I want to make sure that my
8 witnesses know this, and I just want to
9 reconcile.

10 THE COURT: Well, he's been in the room the
11 whole time.

12 MS. HOFFLER: Right, but he has -- the other
13 thing I was going to ask -- I don't know how the
14 Court wants me to do it. I was going to have
15 them bring his folder up with the documents, but
16 if you prefer that I just do it the traditional
17 way. I just thought it would be quicker if we
18 could do it that way.

19 THE COURT: Well, the documents that are
20 allowed into evidence --

21 MS. HOFFLER: Yes.

22 THE COURT: -- he can bring them up with
23 him, that's fine. I have no problem with that.
24 You have a copy of those, Mr. Reamer? Yes, I do.
25 That's fine. It's easier to do it than just

1 going back and forth. I agree with you there.
2 But let's not mix up the ones that need to be
3 excised.

4 MS. HOFFLER: And that's why I'm taking them
5 out right now.

6 THE COURT: Thank you. You can certainly
7 have 30 seconds. No problem.

8 (Discussion off the record.)

9 THE COURT: Okay. How we doing?

10 MS. HOFFLER: Five minutes, Your Honor. I
11 want to make sure the copies are pristine.

12 THE COURT: Thanks a lot, I appreciate that.
13 And I appreciate, counsel, I know it's been a
14 yeoman's effort by both sides, and I know it's
15 taken a lot of effort, so I appreciate that as
16 well.

17 All right.

18 MS. HOFFLER: We're good.

19 THE COURT: Let's go, then, Deputy, if you'd
20 kindly summon the jury, please.

21 THE BAILIFF: Jury is entering.

22 (Whereupon the jury entered the courtroom
23 and the following proceedings were had:)

24 THE COURT: All right. Welcome back, ladies
25 and gentlemen. Thank you for your patience. We

1 did have some issues that we needed to address
2 which hopefully will in fact streamline the
3 presentation. So it wasn't all in vein, in my
4 view. It will hopefully, as I said, streamline
5 it.

6 And without further ado, next witness,
7 please, Ms. Hoffler.

8 MS. HOFFLER: May it please the Court,
9 Your Honor, the plaintiff calls Joseph Reamer.

10 THE COURT: All right, Mr. Reamer, if you'd
11 kindly step forward, watch your step, sir, as
12 there are stairs there. And thank you.

13 First take the oath.

14 THE CLERK: Good afternoon, sir.

15 Thereupon:

16 JOSEPH REAMER

17 was called as a witness and having been first duly
18 sworn, was examined and testified as follows:

19

20 THE WITNESS: I do.

21 THE COURT: Thank you, again.

22 THE BAILIFF: Watch your step, sir.

23 THE COURT: And when the witness is seated,
24 you may proceed, Counsel.

25 MS. HOFFLER: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MS. HOFFLER:

3 Q. Good afternoon, Mr. Reamer.

4 A. Good afternoon.

5 Q. You have been seated in this courtroom thus
6 far throughout this entire trial; is that correct?

7 A. Yes.

8 Q. Are you a defendant in this case, in one of
9 the cases that have been consolidated in this
10 courtroom?

11 A. Yes, I am.

12 Q. And you're a defendant -- just so the jury
13 is clear because we have these two cases, you're a
14 defendant in the second case that was brought by the
15 DeLuca parties; is that correct?

16 A. That is correct.

17 THE COURT: Okay. Can you state your full
18 name for the record, please.

19 THE WITNESS: Joseph Reamer.

20 THE COURT: Thank you.

21 MS. HOFFLER: I apologize, Your Honor.

22 THE COURT: Not a problem.

23 BY MS. HOFFLER:

24 Q. So, Mr. Reamer, could you introduce yourself
25 to the jury first by stating your name -- well, you

1 said your name.

2 And, sir, are you married?

3 A. Yes, I am.

4 Q. And how long have you been married, sir?

5 A. 23 years.

6 Q. And is your wife employed at this time?

7 A. Yes, my wife is a CPA and she has her own
8 firm.

9 Q. And do you have any children, Mr. Reamer?

10 A. Yes, I do. I have a daughter.

11 Q. And how old is your daughter?

12 A. 39 years old.

13 Q. And she is a lawyer, I believe; is that
14 correct?

15 A. That's correct. She's admitted in the
16 California Bar and the Florida Bar.

17 Q. And not to belabor this, but do you have any
18 grandchildren?

19 A. I have four beautiful grandchildren.

20 Q. If you could just share with the jury
21 a little bit about your educational background.

22 A. Yes, I would love to.

23 I -- as CK had mentioned to you in her
24 opening, I am one of ten children. College was not a
25 possibility for me. I'm number six in the family.

1 And I wanted to obtain my college education, so I
2 decided to do it through my employer.

3 My first -- I've had three jobs in my life.

4 My first job was McDonald's, and I started
5 in the store when I was 16 years old. I started as a
6 crew member. I was promoted to a crew chief and then
7 was promoted to assistant manager.

8 As assistant manager, I was responsible for
9 the paperwork in the store. So that paperwork went to
10 our corporate headquarters. Our corporate
11 headquarters used to send me awards for the best
12 paperwork of the month. So by those awards and
13 recognition, I was then promoted from the store level
14 to the corporate office working in the accounting
15 department, and that's how my career started.

16 McDonald' had a benefit of tuition
17 reimbursement. They told me if I took any courses at
18 the local college, they would reimburse me for
19 accounting related classes. So I worked a 40-hour
20 week, and then I would go to class at night.

21 So I finished approximately two years' worth
22 of credits during my night classes, and they were all
23 accounting related.

24 Now, I was doing accounting at the time I
25 was learning, you know, the basics in college. So it

1 made me more valuable because I was putting to -- my
2 knowledge to work every day.

3 And I have worked in the accounting field
4 for approximately 38 years, not counting when I was in
5 the McDonald's stores, obviously. So my work
6 experience is as important to me as the college
7 classes that I have taken.

8 Q. So just so the jury is clear, you didn't
9 graduate from college?

10 A. I did not. I completed basically two years
11 of basically only accounting classes.

12 Q. And you talked about being actually in the
13 general field of accounting for 38 years. You worked
14 at McDonald's. How long did you work for McDonald's?

15 A. Including the stores and the office, it was
16 approximately six years.

17 Q. And how long of those six years did you work
18 in the accounting division?

19 A. Three.

20 Q. And just so the jury is aware, where are you
21 from originally?

22 A. I grew up in West Orange, New Jersey. If
23 you remember Mr. Florio's testimony, he is also from
24 West Orange. Mr. Pugliese is from South Orange.
25 Although, my family lived about a mile from

1 Mr. Pugliese's home, but I didn't meet him till much
2 later.

3 Q. So you grew up in New Jersey. You worked
4 for McDonald's in New Jersey.

5 At some point did you work to Florida?

6 A. Yes. We're actually skipping a part that I
7 would like to share with the jury.

8 Q. Certainly.

9 A. McDonald's was moving their accounting
10 department out of state. Half of the office was going
11 to move to Boston, and a half the office was going to
12 move to Virginia. My base family was in New Jersey,
13 and I'm very close with my family, so at that time I
14 didn't think it was consideration for me to move out
15 of state.

16 So I went to a headhunter to look for a new
17 job. And McDonald's had a benefit if you stayed until
18 the actual move, you got a bonus. But, you know, I
19 was living on my own. You know, obviously I explained
20 to you I'm from a family of ten children, so I
21 couldn't rely on my family. I knew I had to have
22 another job to be secure. So I went to a headhunter
23 immediately, and I decided the bonus program wasn't
24 going to work for me. I wanted the find a new job.

25 The first job they sent me on was for a real

1 estate developer in New Jersey. He's one of the top
2 ten developers, and his name is Alfieri. If you
3 remember, one of the jurors also had the name Alfieri,
4 but no relation.

5 I walked into the Alfieri office -- and
6 there's a connection here, so just bear with me. I
7 walk into the Alfieri office and I see a picture on
8 the wall of the McDonald's headquarters where I work.
9 And I said to the gentleman, "I work in that building
10 there."

11 And he says, "I own that building there."
12 He said, "Who do you work for?"

13 I said, "I work for the McDonald's
14 Corporation."

15 He said, "You're hired."

16 Because he was the landlord. McDonald's was
17 the tenant. And he knew the fantastic training
18 programs that McDonald's offered to their employees.
19 So there's a link in my career in how I've moved, and
20 each step led to the next phase of my career.

21 Q. And so when you were working for Mr.
22 Alfieri, for the Alfieri company, how did you meet
23 Mr. Pugliese?

24 A. Mr. Alfieri and Mr. Pugliese, both being
25 from New Jersey, met and decided to form a partnership

1 together in Florida. Mr. Alfieri asked me if I would
2 oversee that Florida operation, and I agreed.

3 So I would travel back and forth. I was two
4 weeks in New Jersey, two weeks in Florida. And I did
5 that for several months. And I lived out of
6 suitcases, and I had two apartments. And I finally
7 got tired of traveling, and I realized that I could be
8 away from my family and still be close to them.

9 So I asked Mr. Alfieri if I could have a
10 permanent transfer to Florida. And at first he wasn't
11 going to approve it. He finally did, and I moved
12 permanently to Florida to work with Mr. Pugliese.

13 Q. And when you moved to work with
14 Mr. Pugliese, did you then work for The Pugliese
15 Company?

16 A. Yes, I did.

17 Q. And have you worked for The Pugliese Company
18 over the past 32 years?

19 A. Yes, I have been a long-term employee for 32
20 years.

21 Q. And just so the jury is clear, you are an
22 employee of The Pugliese Company; is that right?

23 A. That is correct.

24 Q. Do you own any shares in The Pugliese
25 Company or any of the Pugliese companies?

1 A. No, I do not.

2 Q. Did you own any shares or do you have any
3 entitlement to any type of benefit from the Destiny
4 project?

5 A. No. I was not a financial owner of the
6 Destiny project.

7 Q. So just so we're clear, you didn't have any
8 interest in the Destiny project?

9 A. I had no interest.

10 Q. So you were paid merely as an employee of
11 The Pugliese Company?

12 A. That is correct.

13 Q. So the jury has heard a lot about the
14 Destiny project, and they've seen video footage,
15 actually, of the Destiny project. So let's just talk
16 about your responsibilities, Mr. Reamer, from the time
17 actually you started working at The Pugliese Company
18 to the present.

19 What are your responsibilities at The
20 Pugliese Company?

21 A. My title is business manager, and in that
22 capacity, I'm responsible for the accounting functions
23 for all of Mr. Pugliese's business interests, which at
24 the time of this project there were approximately 55
25 different companies that I was responsible for. And

1 as a business manager, I also set office policies and
2 procedures.

3 Q. So just so that we're clear, Mr. Pugliese is
4 a real estate developer principally; isn't that right?

5 A. That is correct.

6 Q. And so based on your experience as a
7 business manager for not just the Pugliese Company,
8 but also the Alfieri company, when real estate
9 developers do deals, is it routine for them to have
10 different companies?

11 A. Exactly. Every property is usually
12 basically formed in a separate company to keep
13 everything separate.

14 Q. And at some point -- as the business manager
15 of The Pugliese Company, at some point when the
16 Destiny project was part of Mr. Pugliese's vision and
17 dream -- we've heard it referred to as that building
18 of the Destiny city -- did you then become the
19 business manager of the Destiny project?

20 A. Yes, I did.

21 Q. And so were you -- just so the jury is
22 clear, were you involved continuously from the time
23 that Mr. Pugliese first expressed an interest in
24 purchasing the property at Yeehaw Junction, the
25 27,000 acres that was to be part of the city of

1 Destiny -- were you involved with Mr. Pugliese during
2 that time?

3 A. Yes, I was.

4 Q. Was there any interruption between that time
5 that Mr. Pugliese put a contract on that property
6 until the present?

7 A. No, there has not.

8 Q. I'm going the walk through certain parts of
9 this timeline that the jury has seen a lot of just
10 because I want to give the jury a sense of the
11 progress of the Destiny project.

12 So let's start with -- and I'm going to move
13 over here --

14 A. CK, can I pull my copy?

15 Q. Yes, absolutely.

16 MS. HOFFLER: And so, Brian, if you could,
17 if you could publish -- and it's not in a
18 readable format, but just we're going to
19 highlight certain portions of the timeline.

20 MR. HUTCHISON: Counsel, do you have an
21 extra copy for us?

22 MS. HOFFLER: I certainly do.

23 MR. HUTCHISON: Thank you.

24 BY MR. HUTCHISON:

25 Q. Before we get started, Mr. Reamer, you have

1 a folder in front of you right there?

2 A. Yes, I do.

3 Q. Can you tell the jury what that folder
4 contains?

5 A. It contains all my exhibits that I'm going
6 to be referring to in my testimony. You can
7 appreciate, I hope, that there is a lot of numbers and
8 a lot of dates. I can't possibly remember it all
9 without referring to my documents.

10 Q. And so that would help you to speed it along
11 while you're testifying?

12 A. Very much so.

13 Q. Which I'm sure the jury would appreciate.

14 So let's start from the beginning. So
15 Mr. Pugliese puts a contract on the property,
16 27,000 acres of property. The jury has heard about
17 that.

18 And for that, he had to put down a deposit;
19 is that right?

20 A. That is correct.

21 Q. And the reason why you know that, and
22 correct me if I'm wrong, is because you were in charge
23 of actually processing bills for The Pugliese Company;
24 is that correct?

25 A. That is correct.

1 Q. So here, December 6, 2004, Mr. Pugliese
2 makes a deposit of \$2,681,664; is that correct?

3 A. That is correct.

4 THE COURT: Go slow with the numbers,
5 please.

6 Q. And you were familiar with this contract
7 because of your responsibilities as a business manager
8 because you had to then write the check for the
9 deposit; is that correct?

10 MR. HUTCHISON: Objection, leading. I've
11 been paint, Judge, but --

12 THE COURT: The prefatory question is not a
13 problem, but when you get into the substantive
14 testimony, please abstain from leading.

15 MS. HOFFLER: I will, Your Honor.

16 THE COURT: Sustained. Go ahead. Thank
17 you.

18 BY MS. HOFFLER:

19 Q. I'm going to hand you, and ask you to look
20 in your folder, what we've marked as JR1, if you
21 could.

22 MR. HUTCHISON: Copy, Counsel?

23 MS. HOFFLER: Yes, I'm getting it for you.

24 MR. HUTCHISON: Thank you.

25

1 BY MS. HOFFLER:

2 Q. Are you familiar with that document,
3 Mr. Reamer?

4 A. Yes, I am.

5 Q. Can you share with the jury what that
6 document is in general?

7 A. This is the purchase contract for the
8 27,400 acres.

9 Q. And that was a contract that was -- before
10 we publish it -- don't publish it yet.

11 And you are familiar with that contract?

12 A. Yes, I am.

13 Q. And you saw that contract in the normal
14 course of business in working for The Pugliese
15 Company; is that correct?

16 A. Yes, I did. I would have used the contract
17 to issue the check for Mr. Pugliese's deposit.

18 MS. HOFFLER: Your Honor, I'd like to
19 publish this agreement to the jury with no
20 objection from the other side.

21 THE COURT: Talking about on the screen?

22 MS. HOFFLER: Yes.

23 THE COURT: Okay, that's fine.

24 BY MS. HOFFLER:

25 Q. And the first page of this contract that

1 we're looking at, it says, "As-is sale and purchase
2 contract, real property, the Latt Maxcy Corporation
3 and Land Company of Osceola County."

4 It's a contract between the two of them; is
5 that correct?

6 A. Yes, it is.

7 Q. And let's go to the last page, the signature
8 page.

9 You recognize that as Mr. Pugliese's
10 signature, sir?

11 A. Yes, it is.

12 Q. And let's go to the page before that for the
13 Latt Maxcy Corporation signature. I'm sorry, the page
14 after that, I apologize. There we go.

15 And it's signed by Latt Maxcy Corporation;
16 is that correct?

17 A. Yes, it is.

18 MS. HOFFLER: Your Honor, at this time I'd
19 like to move into evidence this exhibit.

20 THE CLERK: What's the number, please?

21 THE COURT: It's Pugliese AVP 4 admitted
22 without objection.

23 MR. HUTCHISON: Judge, we understand it's
24 just the purchase and sale agreement. We have no
25 objection.

1 THE COURT: Thank you.

2 (Whereupon a document/item was marked in
3 evidence as Defendant's Exhibit 4.)

4

5 BY MS. HOFFLER:

6 Q. Now, Mr. Reamer, just so the jury is clear,
7 you had no responsibility for any of the entitlements,
8 did you?

9 A. No, I did not.

10 Q. Was your role strictly to deal with the
11 invoices and money coming into The Pugliese Company as
12 it related to the Destiny project at any given time?

13 A. Yes. My responsibilities as the business
14 manager was all the accounting functions for the
15 company. So I kept, you know, the general ledger,
16 which is a record of all the transactions, which would
17 be cash coming in and payments going out and record
18 them under categories of expenses.

19 Q. And this property that Mr. Pugliese signed
20 the contract for was -- contract on was for
21 \$137 million; is that correct?

22 A. That is correct.

23 Q. And you understood that as a business
24 manager; is that correct?

25 A. Yes, I did.

1 And, CK, can I share with the jury the
2 excitement of the project?

3 Q. Certainly.

4 A. You know, eight years I've been involved in
5 this lawsuit, so this is my chance --

6 THE COURT: Sir, sir, sir, that is not
7 appropriate. Simply when a question is asked of
8 you, answer the question, and that is the
9 limitation that I am requiring you to follow. If
10 I allow everyone to speak their mind, it would
11 never be done in a way that has to be done in
12 terms of its efficiency.

13 So simply please stick with the question and
14 answer format and only answer those questions
15 that are asked of you. Thank you very much.

16 THE WITNESS: I'm sorry, Your Honor.

17 THE COURT: No, that's quite all right. I
18 understand.

19 BY MS. HOFFLER:

20 Q. Mr. Reamer, how did you feel about the
21 Destiny project?

22 A. There was an excitement in the office that I
23 had not seen before. Mr. Pugliese, you know, had this
24 excitement of the project, and it was contagious.
25 Everyone was very excited to be involved in this

1 project for the company.

2 And we are a team, The Pugliese Company.
3 You know, we don't work individually. We work as a
4 group. So Mr. Pugliese's excitement filtered through
5 the whole office, and everyone was committed to do
6 whatever they did. We work in an entrepreneurial
7 atmosphere, and so everyone doesn't have necessarily
8 an assigned routine. Everyone contributes to the end
9 goal.

10 Q. And as part of the excitement on the Destiny
11 project, were there a number of consultants that were
12 hired?

13 A. Yes. Mr. Pugliese put together the dream
14 team, which was the best experts in their field that
15 would contribute to bringing this project to
16 completion.

17 Q. And you knew about the dream team, if
18 you will, the consultants and experts, because you --
19 well, how did you know about them? You were
20 responsible for meeting payroll for those consultants;
21 is that right?

22 A. Yes.

23 MR. HUTCHISON: Objection, leading.

24 THE COURT: Sustained.

25 Q. Let me rephrase the question.

1 What was your responsibility as related to
2 those consultants and experts that were hired for the
3 Destiny project?

4 A. As I consultant was hired, I would usually
5 be given a contract. That contract would allow me to
6 set them up into the QuickBooks system which we use
7 for our accounting software and to make future
8 payments towards them, towards their contract.

9 Q. And did you do that, sir?

10 A. Yes, I did.

11 Q. Did you do that over the course of the
12 Destiny project while Anthony Pugliese managed the
13 project?

14 A. That is correct.

15 Q. Now, once Anthony Pugliese no longer managed
16 the project -- and we'll get to that -- did you have
17 any responsibility at that point for making payments
18 of salaries for any of the employees that worked on
19 the Destiny project?

20 A. Can you give me the timeframe?

21 Q. Yes, in May of 2009.

22 In May 2009 -- and the jury has heard
23 testimony about this -- the funding basically stops as
24 it relates to the Destiny project. Were you aware of
25 that?

1 MR. HUTCHISON: Objection, move to strike
2 comment of counsel. Keep it to questions, Your
3 Honor.

4 THE COURT: Sustained. Again, please make
5 sure that they're in the form of a question. I
6 only chuckle because it sounds like jeopardy.

7 Please make sure it's in the form of a
8 question and not a leading question, please.

9 MS. HOFFLER: Certainly, Your Honor.

10 THE COURT: Okay, thank you.

11 MS. HOFFLER: I was trying to speed up, but
12 I'll do that.

13 BY MS. HOFFLER:

14 Q. Were you aware in May of 2009 that the
15 funding stopped for the Destiny project?

16 A. Yes, I was.

17 Q. And how were you aware of that, sir?

18 A. Every month I would send a capital request
19 to the Connecticut office detailing each vendor and
20 what was the amount due for that particular month, and
21 I would physical issue checks. The capital call would
22 go to the Connecticut office, and they would typically
23 send a wire transfer to me so that I could release all
24 the checks I've written.

25 And our process was the 15th of every month.

1 So on the 15th of May, I sent a request to Connecticut
2 to the Subway office where Mr. DeLuca's office was,
3 and I never received any funds.

4 Q. And you mentioned that typically in the past
5 you would receive wire transfers from the Subway
6 offices; is that correct?

7 A. That is correct.

8 Q. I'm going to -- I'd like you to look at
9 Exhibit Number 11, I'd like to mark for
10 identification.

11 A. I have the document.

12 Q. And in looking at Number 11, could you just
13 take a moment to refresh your recollection, or look at
14 the document, unless you don't need to.

15 MR. HUTCHISON: Objection, Judge, to the
16 extent he's testifying from this. This is not in
17 evidence, and I have an objection to the
18 foundation of this document.

19 MS. HOFFLER: I'm laying foundation.

20 THE COURT: Okay, let's start from there,
21 then.

22 A. I am familiar with the document.

23 Q. And you received on a monthly basis wire
24 transfers from the LCOC partner FD Destiny; isn't that
25 correct?

1 A. That's correct.

2 Q. And where did those transfers come from?

3 A. They came from doctors and associates, which
4 is also known as Subway.

5 Q. And these transfers, were they made
6 directly -- how were they transmitted into your
7 account?

8 A. By wire transfer.

9 Q. And what account did they come from
10 typically?

11 A. They came from doctors and associates, which
12 is also known as Subway.

13 Q. And into which account were they transmitted
14 into?

15 A. At the beginning of the project our bank was
16 Fidelity Federal, and that's where the transfers were
17 made.

18 MS. HOFFLER: Your Honor, at this time I'd
19 like the move into evidence Plaintiff's
20 Exhibit 127 marked for identification as JR11.

21 MR. HUTCHISON: I just have the same
22 objection, Judge, authenticity and foundation.

23 THE COURT: Can I see it, please?

24 MS. HOFFLER: Yes, Your Honor.

25 (Whereupon counsel for the respective

1 parties approached the bench and the following
2 proceedings were had outside the presence of the
3 jury:)

4 MS. HOFFLER: No objection to that when we
5 talked previously.

6 MR. HUTCHISON: Our objections were filed,
7 and I did object.

8 Your Honor, these were his bank records.

9 THE COURT: Right.

10 MR. HUTCHISON: And on the receiving end, it
11 says the payment came from Doctors and
12 Associates, but we have the wire transfers and
13 they're on our exhibit list and the testimony has
14 been from Dave Worroll and others who handled
15 this on the other end, the wires were actually
16 from not Doctors and Associates, but from a
17 different entity that Fred DeLuca owns. That's
18 the issue.

19 THE COURT: He was the bookkeeper,
20 accountant, whatever you want to call it for the
21 company. These are bank records from the company
22 that he would be familiar with and have to use
23 all the time. As one of the appellate courts
24 say, this is probably effective fodder for
25 cross-examination, but it doesn't affect its

1 admissibility.

2 The authenticity issue is really not an
3 issue as far as the Court is concerned unless
4 there's some issue regarding its reliability or
5 voracity. They're on the Fidelity Federal Bank &
6 Trust letterhead. And he's identified them to my
7 satisfaction as far as his familiarity with same.

8 So that would be overruled. Thank you.

9 (Whereupon the following proceedings were
10 had within the presence of the jury:)

11 THE COURT: It's AVP Exhibit 127. I guess
12 127, there's something attached there. Also 128.

13 All right. 127 and 128 are admitted over
14 objection.

15 (Whereupon a document/item was marked in
16 evidence as Defendant's Exhibit 127.)

17 (Whereupon a document/item was marked in
18 evidence as Defendant's Exhibit 128.)

19 THE COURT: All right. You may proceed,
20 Counsel.

21 MS. HOFFLER: Thank you, Your Honor.

22 Q. So in reference to these bank records, these
23 are bank records you testified from, Fidelity Federal;
24 is that correct?

25 A. Yes.

1 Q. And I would like to -- Brian, if you could
2 publish the first page, please.

3 If you'll look on your screen.

4 Mr. Reamer, on this first page of this
5 exhibit, this is a statement from the period of
6 8/01/05 through 8/31/05; is that correct?

7 A. Yes, it is.

8 Q. Is this a -- this bank statement is a bank
9 statement that you kept in the normal course of
10 business; is that correct?

11 A. Yes, it is.

12 Q. And the wire, if we look down midway, on
13 8/19 of 2005, it says "wire Doctors Associates"; is
14 that correct?

15 A. That's correct.

16 Q. I'd like to turn to the next page if we
17 could. Statement period from 9/01/05 through 9/30/05.
18 Again this is from Fidelity Federal; is that correct?

19 A. That is correct.

20 Q. If we look at 9/16 of 2005, there's another
21 wire, is that correct, from Doctors Associates?

22 A. Yes.

23 Q. And the amount is \$85,672.53; is that
24 correct?

25 A. Yes.

1 Q. And I failed to mention that on the prior
2 page, the wire from Doctors Associates was \$68,892.11;
3 is that correct?

4 A. Yes, it is.

5 Q. So I'd like to move very quickly to the
6 third page.

7 MR. HUTCHISON: Counsel, can we get the
8 Bates number? Ending in dash three.

9 MS. HOFFLER: Yes. And I'm going in
10 sequence.

11 THE COURT: Thank you.

12 Q. Statement period is 10/01/05, October 1st
13 through October 31st of '05?

14 A. Yes.

15 Q. And on 10/20 there was a wire from Doctors
16 Associates for \$213,677.68. Have I read that
17 correctly?

18 A. Yes.

19 Q. Let's go to the next page. November 1 of
20 2005 through November 30th of 2005?

21 A. That is correct.

22 Q. 11/16 there was a wire from Doctors
23 Associates in the amount of \$70,609.41; is that
24 correct?

25 A. Yes, it is.

1 Q. The next page. December 2005, December 1,
2 2005 through December 28, 2005, midway down on
3 December 16th, a wire from Doctors Associates, Inc.
4 for \$216,563.43?

5 A. That is correct.

6 Q. And all these monies were for the Destiny
7 project; is that correct?

8 A. That's correct.

9 Q. Was this account set up solely for the
10 Destiny project?

11 A. Yes, it was.

12 Q. So let's continue to the next page.
13 December 29th, '05 through January 29th, '06. And
14 1/17 of 2006 there was a wire from Doctors Associates
15 in the amount of \$150,160.91; is that correct?

16 A. That is correct.

17 Q. Next, January 30th, '06 through February of
18 '06. On February 16th there was a wire from Doctors
19 Associates, Inc. in the amount of \$187,565.05?

20 A. That is correct.

21 Q. And these, based on your experience as a
22 business manager of The Pugliese Company and your work
23 as the business manager on the Destiny project, were
24 these expenses connected to the Destiny project?

25 A. Yes, they were.

1 Q. So these amounts that were furnished, that
2 were wired to the Fidelity Federal account were for
3 expenses incurred in connection with the Destiny
4 project; is that correct?

5 MR. HUTCHISON: Objection, leading.

6 THE COURT: Sustained.

7 A. That is correct.

8 Q. So let's go to the next page. March 1st
9 through March 28th of '06. Almost towards the end, on
10 March 16th, there is a wire from Doctors Associates in
11 the amount of \$211,048.11; is that correct?

12 A. That is correct.

13 Q. And what was -- what were the funds that
14 were wired used for, that were transferred in the
15 amount of \$211,048.11 from Doctors Associates?

16 A. To pay the expenses of the partnership.

17 Q. And when you say "the partnership," what
18 partnership are you referring to?

19 A. LCOC.

20 Q. And that's a partnership that managed the
21 Destiny project; is that correct?

22 A. That is correct.

23 MR. HUTCHISON: Objection, leading and
24 pretrial ruling as well, Your Honor.

25 THE COURT: I think partnership I've ruled

1 on and again, this is the last respectful warning
2 I'm going to give.

3 MS. HOFFLER: Yes, Your Honor.

4 THE COURT: Please do not lead the witness.
5 You may proceed.

6 MS. HOFFLER: Yes, Your Honor.

7 THE COURT: The jury is going to disregard
8 the terminology of "partnership" until it
9 is ordered otherwise.

10 And again I'm asking you not to lead the
11 witness, thanks. You may proceed.

12 MS. HOFFLER: Certainly, Your Honor.

13 Q. You were familiar with the business
14 relationship between Mr. Pugliese -- were you familiar
15 with the business relationship between Mr. Pugliese
16 and Mr. DeLuca in connection with the Destiny project?

17 A. Yes, I was.

18 Q. Were they in business together?

19 A. Yes, they were.

20 Q. So the expenses incurred in connection with
21 the wire transfers that we're seeing in these records,
22 were they in association -- were they in connection
23 with that business relationship?

24 A. Yes, they were.

25 Q. We are now at March 29th of '06 through

1 April 28th of '06. Can you share with the jury on
2 4/18 of 2006 what transpired, please?

3 A. I received a wire transfer from Doctors
4 Associates for \$234,541.99.

5 Q. Were the -- this -- the expenses incurred
6 associated with the Destiny project that were
7 correlated with this wire?

8 A. Yes.

9 Q. Next page, please. April 29th of 2006
10 through May 29th of 2006. Could you share with the
11 jury when the wire came in for the month of May of
12 2006.

13 A. Yes, on May 18th I received a wire transfer
14 from Doctors Associates in the amount of \$324,448.34.

15 Q. And did the amount of that wire correspond
16 to the expenses used for the Destiny project?

17 A. Yes, it did.

18 Q. Next page. April 29th of '06 through
19 May 29th of '06 -- and that's a duplicate page, I
20 apologize.

21 If we could turn to the next page. May 30th
22 of '06 to June 28th of '06. Could you share with the
23 jury if you received a wire from Doctors Associates?

24 A. Yes, on June 20th I received a wire from
25 Doctors Associates in the amount of \$251,084.22.

1 Q. Did that amount correspond to expenditures
2 used on the Destiny project?

3 A. Yes, it did.

4 Q. Next page, please. For the period of
5 8/01/06 through 8/31/06. Could you share with the
6 jury based on this document if you received a wire
7 from Doctors Associates?

8 A. Yes, there were actually two wires this
9 month. On August 21st I received a wire from Doctors
10 Associates in the amount of \$500,000 even, and on
11 September -- excuse me, August 22nd I received the
12 second wire from Doctors and Associates for
13 \$64,575.76.

14 Q. So we jumped from, the last statement that
15 we had was for the period of May 30th through June
16 26th of '06, and then we've jumped to 8/06 through --
17 which is August of '06, through August 31st of '06?

18 A. That is correct.

19 Q. Do you recall whether you received a wire in
20 July of 2006 from Doctors Associates?

21 A. I believe I did.

22 Q. So that is not contained in this record; is
23 that correct?

24 A. No.

25 Q. Was it unusual to receive based on your

1 experience as a business manager and working on the
2 Destiny project, was it unusual for you to receive
3 more than one wire per month from Doctors Associates?

4 A. It was unusual.

5 Q. Let's turn to the next page. Bank
6 statement, Fidelity Federal from August -- I'm sorry,
7 September 1st of 2006 through September 30th of 2006.
8 Could you share with the jury if you received a wire
9 in that period of time?

10 A. Yes, I received a wire on September 21st
11 from Doctors and Associates for \$418,792.88.

12 Q. And were all of the expenses incurred
13 totaling that amount for the Destiny project?

14 A. Yes, they were.

15 Q. And the previous month where you received
16 two wire transfers from Doctors Associates, were all
17 of the expenses incurred for -- totaling those two
18 amounts that were wire transferred from Doctors
19 Associates?

20 A. Yes, they were.

21 Q. Next page. October 1st, 2006 through
22 October 31st, 2006, can you share with the jury the
23 wire transfer that you received on information
24 regarding the wire transfer that you received from
25 Doctors Associates?

1 A. Yes. On October 18th I received a wire
2 transfer from Doctors Associates for \$630,559.33.

3 Q. Next page. November 1st, 2006 through
4 November 30th, 2006, did you receive a wire from
5 Doctors Associates in connection with the Destiny
6 project?

7 A. Yes. On November 21st I received a wire
8 transfer from Doctors Associates for \$481,445.06.

9 Q. Were all the expenses incurred in connection
10 with the Destiny project, that added up to that
11 amount?

12 A. Yes.

13 Q. And does that also hold true for the
14 transfer from the previous period of October 1st
15 through October 31st?

16 A. Yes.

17 Q. Next page. December 1st through
18 December 31st of 2006, can you share with the jury if
19 you received a wire from Doctors Associates in
20 connection with the Destiny project?

21 A. Yes, I did. On December 21st I received a
22 wire from Doctors Associates for \$372,203.13.

23 Q. And did that number reflect the amount in
24 expenses that were incurred in connection with the
25 Destiny project during this period?

1 A. Yes, it did.

2 Q. Next page. January 1st of 2007 through
3 January 31st of 2007. Did you receive a wire from
4 Doctors Associates, sir?

5 A. Yes, I did. On January 17th I received a
6 wire from Doctors and Associates for \$313,104.90.

7 Q. And were all of the expenses incurred during
8 that period, did they total that amount of the wire?

9 A. Yes, they did.

10 Q. And finally in this exhibit, February of
11 2007 -- February 1st, 2007 to February 28th, 2007 did
12 you receive a wire from Doctors Associates, sir?

13 A. Yes, I did. On February 20th I received an
14 incoming wire from Doctors Associates for \$240,519.67.

15 Q. And did that amount reflect the expenses
16 that were incurred on the Destiny project?

17 A. Yes, they did.

18 Q. And then finally on bank statement Fidelity
19 Federal, on March 1st of 2007 through March 31st of
20 2007, did you receive a wire transfer from Doctors
21 Associates?

22 A. Yes, I did. On March 19th I received an
23 incoming wire transfer from Doctors Associates for
24 \$493,237.71.

25 Q. Now, Mr. Reamer, can you explain to the jury

1 the process through which expenses were gathered and
2 information was sent to Connecticut for payment?
3 Could you explain that please?

4 A. Yes. As I explained to you before, we
5 issued checks on the 15th of each month. So all
6 month, you know, from the 15th of the prior month to
7 the 15th of the current month I am receiving invoices
8 in the mail from different departments within the
9 office and I'm organizing them. Usually around the
10 12th of the month I would summarize them.

11 I would give Mr. Pugliese a list of all of
12 the vendors and what was their amount due that
13 particular month. I would give a draft of the report
14 to Mr. Pugliese, so he could go through it. If he had
15 any questions he may ask to see the backup of a
16 particular vendor's payment or if he knew about it,
17 was knowledgeable about it, he would just, you know,
18 sign off on it. When he approved that I would then
19 physically issue checks.

20 That report would then be sent to
21 Connecticut with wire instructions where to send the
22 funds.

23 Q. And then from that when it was sent to
24 Connecticut, how long typically over the -- from the
25 period of 2005 up until March of 2007 did it take

1 roughly, just in general, for the funds to be wired to
2 you once the report was sent?

3 A. Typically it would be a few days. In one
4 case in particular it was nine days, which was, you
5 know, a delay, but we did get the funds.

6 Q. And once you got the funds then you would
7 pay the vendors that were working on the project?

8 A. Yes. Once I received the wire transfer I
9 then would release the checks that I had previously
10 written.

11 Q. I'd like you to look also at Exhibit 128
12 that has been introduced into evidence, which is in
13 the same folder.

14 MS. HOFFLER: If I could approach the
15 witness, Your Honor.

16 THE COURT: Sure.

17 A. I found it.

18 Q. This has also been introduced into evidence.
19 Are you familiar with this document?

20 A. Yes.

21 Q. Was this a document that was received in the
22 course of business when you were the business manager
23 of the Destiny project?

24 A. Yes, it was.

25 MS. HOFFLER: Your Honor, I'd like to

1 publish this to the jury.

2 THE COURT: All right. If it's already been
3 admitted.

4 MS. HOFFLER: Yes.

5 Q. Sir, what is this -- what does this document
6 represent?

7 A. It's an advice from our bank of an incoming
8 wire.

9 Q. And this is just a sampling, this is a
10 sample of one of the wires?

11 A. Yes.

12 Q. And could you go through with a little bit
13 more detail what we're seeing on this sheet that you
14 would receive as the business manager of the Destiny
15 project?

16 A. It was dated August 17th of '09 -- no,
17 excuse me, my copy is very hard to read.

18 February 17th of '09 and it's an incoming wire.

19 Q. And who is the originator of that wire?

20 A. Franchise development team.

21 Q. And what did you understand franchise
22 development team to be?

23 A. Mr. DeLuca's company.

24 Q. And is this wire, incoming wire advice that
25 you've described, is this a representative sampling of

1 what you would receive when you would receive -- prior
2 to receiving a wire from Mr. DeLuca or any of his
3 companies?

4 A. I would usually receive it afterwards.

5 Q. And is this a representative sampling?

6 A. Yes, it is.

7 Q. So for each wire that you received you would
8 receive something like this; is that correct?

9 A. Yes.

10 Q. You can take that down.

11 So Mr. Reamer, you also -- did you have any
12 familiarity with the operating agreement between AVP
13 Destiny and FD Destiny?

14 A. Yes, I did.

15 Q. And how are you familiar with the operating
16 agreement?

17 A. When the company was formed I received a
18 copy of the operating agreement which I read to see
19 what responsibilities were mine in the operating
20 agreement.

21 MS. HOFFLER: I'd like to if we could, it's
22 already in evidence, Your Honor, it's
23 Exhibit 125, if we could publish the first page
24 of the operating agreement, please.

25 THE COURT: Yes.

1 MS. HOFFLER: Thank you, Your Honor.

2 Q. So in this operating agreement and in your
3 exhibits this is --

4 A. Number three.

5 Q. Number three. Was this the only version --
6 was this the only fully-signed version of the
7 operating agreement that you saw?

8 A. Yes.

9 Q. Was this the document that -- did you rely
10 upon this document in fulfilling the responsibilities
11 as business manager of the Destiny project?

12 A. Yes.

13 Q. And why do you say that, sir?

14 A. Because this is basically the document that
15 dictates the business.

16 Q. And was there a particular section of the
17 operating agreement, you indicated that you reviewed
18 it, that you felt applied to you?

19 A. Yes.

20 Q. And what sections did you feel applied to
21 you?

22 MR. HUTCHISON: Pardon me, Counsel, I'm
23 sorry to interrupt. May I have a copy?

24 MS. HOFFLER: Certainly.

25 MR. HUTCHISON: And this is AVP Parties' 23.

1 MS. HOFFLER: 25.

2 MR. HUTCHISON: 25?

3 MS. HOFFLER: Yes, it was admitted into
4 evidence.

5 Q. Mr. Reamer, while you're looking at that
6 let's turn to page two or the section you felt applied
7 to you. Paragraph two of the operating agreement --
8 oh, I'm sorry.

9 Were you familiar, in general, with
10 Mr. Pugliese's responsibilities under the operating
11 agreement?

12 A. Yes.

13 Q. And what was your understanding of his
14 responsibilities?

15 A. Mr. Pugliese's responsibilities were to
16 obtain the approvals for the property to start
17 development.

18 Q. And in general, if you could describe for
19 the jury what your responsibilities were under the
20 operating agreement?

21 A. My responsibilities were to maintain the
22 records for the payments issued to the contractors,
23 the vendors and the employees.

24 Q. Did you have any responsibility for
25 determining or monitoring the percentage of

1 contribution of the members of LCOC?

2 A. Yes.

3 Q. And would you explain to the jury what that
4 meant to you?

5 A. In the beginning of the project Mr. DeLuca
6 funded 100 percent of all the operating expenses --

7 MR. HUTCHISON: Objection, Judge. Prior
8 trial order.

9 MS. HOFFLER: Your Honor, may we approach?

10 THE COURT: Yep.

11 (Whereupon counsel for the respective
12 parties approached the bench and the following
13 proceedings were had outside the presence of the
14 jury:)

15 MR. HUTCHISON: The basis of my motion, Your
16 Honor, is Mr. DeLuca did not fund a hundred
17 percent. It was a loan that the company had and
18 you saw the mortgage, you saw the note yesterday.
19 There was a loan that funded it. So to say
20 Mr. DeLuca funded it is misleading and this is
21 where they were going.

22 THE COURT: Yeah, I agree that the funding
23 was done through the note and mortgage that was
24 from, I guess FD Destiny.

25 MR. HUTCHISON: Well, no, the lender

1 individually was Fred DeLuca, the borrower was
2 the LCOC. So we're not going to get into Fred
3 DeLuca being the lender, that was a pretrial
4 ruling, if they want to say there was a loan on
5 the property and the loan funded the first six or
6 \$7 million, that's fine. But Fred DeLuca did not
7 personally fund it and that's misleading and
8 confusing to the jury and prejudicial to the FD
9 parties, and contrary to the document itself.

10 MS. HOFFLER: That isn't correct. Your
11 Honor, this witness had direct responsibilities
12 for monitoring --

13 THE COURT: I recognize that, but what's
14 important to note is the fact that even if he
15 believes that Mr. DeLuca was the one funding it,
16 it was not -- that's not -- that's not accurate
17 from the documentation. So we don't want to
18 mislead the jury from that standpoint and I think
19 that it would be overly prejudicial to continue
20 on this same mantra so to speak, with him using
21 DeLuca as the one who funded it as opposed to the
22 correct entity that did so.

23 So why don't we correct that now.

24 MS. HOFFLER: I certainly well.

25 THE COURT: Then you don't have to go

1 through any further issues in that regard.

2 MR. HUTCHISON: The correct entity, it's a
3 loan. So are they going to talk about just a
4 loan in general, are they going to say the loan
5 from DeLuca. Your pretrial ruling was the loan
6 from DeLuca is irrelevant. It's a loan.

7 THE COURT: Well, it's -- I understand. The
8 loan, the original loan that DeLuca received from
9 Wachovia was the loan I'm saying is not relevant.
10 The funding, however, is relevant and how that
11 funding was received should be clarified.

12 MR. HUTCHISON: You know, we can't get into
13 then a foreclosure, we can't get into ownership
14 of the property.

15 THE COURT: We're not even close to that
16 now. All I want to do is clarify the funding
17 through this witness and that's how I'd like you
18 to proceed, okay.

19 So the objection is sustained in part and
20 overruled in part.

21 MS. HOFFLER: Your Honor, so just so that I
22 am very clear, so I will clarify with the witness
23 the --

24 THE COURT: You can clarify with the witness
25 if you wish to the use of a leading question as

1 to the actual funding entity was.

2 MS. HOFFLER: FD Destiny.

3 MR. HUTCHISON: No.

4 MR. MARIANI: Your Honor, we just went
5 through all of the wire transfers that showed the
6 funding. So I think counsel -- opposing
7 counsel --

8 THE COURT: The wire transfers were from
9 Doctors and Associates.

10 MS. HOFFLER: Which is doing business as
11 Subway.

12 MR. MARIANI: That was the funding.

13 MR. HUTCHISON: Let's not confuse things.
14 That's what they're trying to do. The initial
15 six or \$7 million --

16 THE COURT: Well, I had already indicated
17 that I was going to allow one person to argue per
18 side. So let me hear from you.

19 MR. HUTCHISON: Judge, let's get it
20 straight. The wire transfers they just went
21 through was the six or \$7 million from the loan
22 and what they're saying is -- and Mr. DeLuca
23 funded that a hundred percent. Well, it came
24 from Doctors Associates. Their records say it.
25 I'm going to show you the wire transfers that --

1 where we started, but then we show it came from
2 Doctors and Associates, but that's neither here
3 nor there. It was the loan money. It was the
4 six or \$7 million. Because remember 104 went to
5 closing, went to the seller for property and
6 about -- there was maybe just -- went away and
7 the other seven total capped at 111. That's the
8 loan -- that's the wire transfer she just went
9 over.

10 THE COURT: Right.

11 MR. HUTCHISON: They kept saying it came
12 from DeLuca which is the reason why I objected,
13 because they're not. Yes, they're coming from
14 DeLuca, but he's not funding a hundred percent.
15 It's the loan that's funding it, right.

16 THE COURT: Well, I'd like to have it
17 clarified, but it may have to be just clarified
18 during cross examination so that we can get to --
19 when you say the money came from DeLuca, but it
20 didn't, I understand what you're saying, but I'm
21 not sure that he's able to explain that as well
22 as you can go through it through cross.

23 MR. HUTCHISON: I will go on cross, Judge,
24 and I will explain those wire transfers all
25 pertain to --

1 THE COURT: Let me do this. I think that it
2 would be appropriate now to go ahead and voir
3 dire the witness at this juncture as to the
4 funding source. Would you like to do that?

5 MR. HUTCHISON: I can do that very quickly.

6 THE COURT: That may help everybody
7 concerned. So let's go ahead and do that now.

8 MR. HUTCHISON: He may say the loan came
9 from DeLuca. Your Honor, are we going to voir
10 dire him in front of the juror or outside the
11 presence of the jury?

12 MS. HOFFLER: Your Honor, if I could just
13 say something. I object to that. This witness
14 was asked a question about the funding, the
15 responsibilities between the members and the
16 percentages and he answered his understanding.
17 That was his understanding, a hundred percent of
18 the funding was to be through, he said in the
19 beginning Mr. DeLuca. That was his
20 understanding.

21 Now, I think Mr. Hutchison can cross-examine
22 him, he's not an expert witness. This is his
23 understanding as the business manager as the
24 person who is monitoring --

25 THE COURT: Well, I don't want to purposely

1 mislead the jury. That's what I'm trying to
2 avoid here.

3 MS. HOFFLER: Certainly.

4 THE COURT: And I'm trying to determine what
5 the best way to do it is, to go about not doing
6 so would be at this point. If you're not
7 comfortable with the funding issue, then it can
8 be done through voir dire of the witness as to
9 that particular issue.

10 MS. HOFFLER: But it should be outside the
11 presence of the jury.

12 THE COURT: I don't have a problem with it
13 being outside the presence of the jury, that's
14 fine.

15 MR. HUTCHISON: Well, the jury is confused.
16 I want the jury to hear it.

17 THE COURT: Well, but I want to make sure we
18 don't get into anything that may not be
19 appropriate with the jury present.

20 MS. HOFFLER: It would be unduly prejudicial
21 for us, Your Honor, if it's done in front of the
22 jury.

23 THE COURT: Right. Well, I don't have a
24 problem with that. But then it could be -- well,
25 it could be -- voir dires happen all the time in

1 front of juries, okay. So I don't know what the
2 undue prejudice would be. I'm trying to
3 understand that. All I'm trying to do is make
4 sure that this jury is not confused as to the
5 funding source and if they understand the
6 breakdown in a simplified format.

7 (Whereupon the following proceedings were
8 had within the presence of the jury:)

9 Ladies and gentlemen, what I'm going to do
10 is just ask you to step out for a moment. This
11 is a good time to take our afternoon break
12 because we started a little bit later anyway. So
13 why don't we go ahead and do that and just be
14 back by 3:15, if you would please. Thank you
15 again for your continued courtesy and please
16 don't talk about the case to anybody, don't allow
17 anyone to talk to you about it or use any means
18 or methods to do any investigation on any of the
19 issues or people involved. Thank you again for
20 your courtesy. I'm sorry, 3:30.

21 (Whereupon the jury retired from the
22 courtroom and the following proceedings were
23 had:).

24 THE COURT: All right, Mr. Hutchison, go
25 ahead and do your voir dire of the witness,

1 please.

2 BY MR. HUTCHISON:

3 Q. You mentioned in response to your attorney's
4 questions that Mr. DeLuca funded the project for the
5 first couple of years. Do you recall that?

6 A. I didn't mention the time frame. I said in
7 the beginning of the project Mr. DeLuca funded
8 100 percent.

9 Q. And then you went through bank statements
10 for about -- a couple years' worth of bank statements,
11 you remember?

12 A. Yes.

13 Q. And now, when you say Mr. DeLuca funded a
14 hundred percent, you do understand that there was a
15 loan, correct?

16 A. Correct.

17 Q. And you understood that initially there was
18 about a six or \$7 million out of the loan that was
19 used to fund the project?

20 A. Yes.

21 Q. So when you said that Mr. DeLuca funded the
22 project for the first year or two or during the time
23 period you went over those bank statements, you were
24 referring to the money from the loan, correct?

25 A. Correct.

1 Q. And then when the loan ran out or capped out
2 at \$111 million, that was about August, 2007,
3 September 1, 2007?

4 MS. HOFFLER: I'm going to object, Your
5 Honor. Do you want me to put my objection? I'm
6 going to object. I think now we're --

7 MR. HUTCHISON: Well, that's a speaking
8 objection in front of the witness.

9 THE COURT: What's your objection?

10 MS. HOFFLER: My objection, Your Honor, is
11 this witness is giving an opinion or giving his
12 testimony based on his firsthand knowledge, based
13 on the person who received the wire transfers of
14 where the money came from.

15 THE COURT: You explained that to me already
16 and I responded to your explanation and that is
17 this. My major concern is that this jury is not
18 either intentionally or inadvertently mislead as
19 to the source of the funding and the correct
20 nature of the source of the funding. That is my
21 concern.

22 MS. HOFFLER: And Your Honor, we agree a
23 hundred percent. The reason why I objected to
24 that question was because we dispute that once --
25 where Mr. Hutchison is going, is once that six or

1 \$7 million was exhausted and he was going into
2 the percentages, that's in dispute in this case.

3 THE COURT: Well, I'm not going to allow
4 that to be asked.

5 MR. HUTCHISON: That's not where I was
6 going.

7 THE COURT: I'm not going to allow that to
8 be asked in a voir dire setting, but he can
9 answer in response to the objection. Where were
10 you trying to go, sir.

11 MR. HUTCHISON: All I wanted to do was --
12 when Mr. Reamer testified that for the first two
13 years, that it all came out of the loan, that's
14 all and that was what exactly Mr. Reamer said,
15 that he understood the loan capped out and you
16 can ask him yourself in August, September of
17 2007.

18 MS. HOFFLER: Your Honor, my objection,
19 that's completely misleading. Under the terms of
20 the operating agreement it says specifically that
21 the monies come from FD entity commitment.
22 That's what it says. This is in paragraph 5.2 of
23 the operating agreement. If you look at the
24 definition -- Your Honor, that's on page 15.

25 THE COURT: I have it in front of me. I

1 have it in front of me all the time.

2 MS. HOFFLER: So on page 155.2, payment of
3 operating expenses, payment of mortgage, it
4 specifically spells out the payment of those
5 expenses up until it reached -- until the
6 mortgage and interest reached \$140 million, and
7 that's the FD entity commitment.

8 So --

9 THE COURT: Right, I understand that but we
10 -- so your point is what.

11 MS. HOFFLER: So my point is if we look at
12 page six on FD entity commitment and FD entity,
13 it describes who those entities are. FD entity,
14 the entity which is a member and which is
15 controlled by Fred A. DeLuca and which he is
16 majority owner. FD entity commitment on page six
17 says this term shall have the meaning ascribed to
18 it in paragraph 5.2.

19 And we are -- I think we can cure this, Your
20 Honor, by allowing the witness to just use the
21 phrase "FD entity commitment" and we can have him
22 define that, but that's his understanding. I
23 think that is not misleading to the jury. It's
24 in the operating agreement. We are going
25 verbatim with the terms that are listed in the

1 operating agreement and I think that's the best
2 course, the most prudent course so as not to
3 mislead the jury.

4 THE COURT: Well, the objection was
5 regarding the implications that Mr. DeLuca was
6 funding at a hundred percent. That's where the
7 confusion and the controversy lied.

8 So Mr. Hutchison, what's your response?

9 MR. HUTCHISON: I'd like to do my response
10 outside the presence of the witness. Can
11 Mr. Reamer be excused for this discussion?

12 THE COURT: All right, that's fine.

13 (Whereupon Mr. Reamer left to the
14 courtroom).

15 MR. HUTCHISON: My response is simple. The
16 FD entity commitment in 5.2 is comprised of three
17 components; the amount of the mortgage funded at
18 closing -- and you went over the mortgage papers
19 yesterday, it was about \$104 million; the total
20 of the drawdown expenses which is the remaining
21 seven, so that makes \$111; and then the interest,
22 accrued interest up to 140 and that is defined as
23 the FD entity commitment.

24 That is a totally different subject than
25 saying Mr. DeLuca funded a hundred percent from

1 day one. It is that statement, Mr. DeLuca funded
2 a hundred percent from day one that is
3 misleading, it's confusing the jury, and it's
4 wrong. Mr. DeLuca did not fund it, the loan
5 funded it, and that is the basis of the prejudice
6 and the confusion.

7 MS. HOFFLER: Well, then we are getting
8 caught coming and going. We're not -- you don't
9 -- the defendants in this case don't want us to
10 talk about the loan that Mr. DeLuca made, but yet
11 they don't even want us to reference the actual
12 language in the operating agreement that defines
13 the FD entity and that defines the FD entity
14 commitment. I mean, that's what was committed
15 to.

16 If you don't want to say Mr. DeLuca, well,
17 we can go back to the definition that says what
18 the FD entity was and it was controlled by
19 Mr. Fred DeLuca. That's what it says. And that
20 is the clear language of the contract and so we
21 should be allowed in a breach of contract case to
22 rely on the plain language of the contract and
23 specifically with a witness who knows about this
24 section of it and conduct himself pursuant to
25 this section of the contract.

1 MR. HUTCHISON: I have a compromise and a
2 solution, Your Honor. First off, the FD entity
3 is one defined term and FD entity commitment is a
4 separately defined term. So let's not confuse
5 those two. FD entity commitment is defined in
6 5.2. That is one issue. What I would suggest we
7 do is just simply say there was a loan,
8 Mr. Reamer knows there was a loan, the loan
9 funded the first six or \$7 million and the loan
10 ran out in August of 2007 and that is what funded
11 the property for the first two years.

12 Then the fight begins. Was DeLuca supposed
13 to fund a hundred percent after the loan ran out
14 or was DeLuca supposed to fund 75 percent? That
15 is their breach of contract claim, Judge. Their
16 breach of contract claim, whole Count Seven and
17 I'll get it for you --

18 THE COURT: I have it here.

19 MR. HUTCHISON: Whole Count Seven, it starts
20 August of 2007. That is their breach of contract
21 claim. All this prior funding is irrelevant to
22 their claim, Count Seven. Beyond the claim --
23 and they shouldn't be able to go beyond their
24 claim on either end, the front end or the back
25 end.

1 MS. HOFFLER: That is simply incorrect. I
2 don't know if you want to hear further argument
3 on that. Mr. Hutchison has misstated the facts
4 and misstated or claims and misstated what we
5 have in terms of the breaches. We've been
6 consistent from the beginning that under the
7 terms of the operating agreement, Mr. DeLuca, the
8 FD entity commitment was up to \$140 million they
9 were to fund 100 percent of the expenses for the
10 stiff Destiny. That is what they were supposed
11 to do. After that threshold was reached under
12 5.3 of the contract then there was each of the
13 members were to do a capital contribution in
14 ratio of 75 to 25; 75 percent FD entity and
15 25 percent the AVP Entity. But only we reached
16 the \$140 threshold. That's been our contention
17 from the beginning and that's why for us the
18 first breach occurred -- of course he failed to
19 fund for five months, but then he continued with
20 the breaches because it hadn't reached the
21 threshold of \$140 million.

22 That's our position. The contract enables
23 us to do that and this witness should be able to
24 testify about that because he operated pursuant
25 to this position.

1 THE COURT: Paragraph 114 says under 5.2 of
2 the operating agreement, the defendant Subway F
3 FD Destiny Fred DeLuca, the FD Destiny entity
4 which is defined as the entity which is a member
5 and which is controlled by Frederick A DeLuca
6 which he is the majority owner to disburse funds
7 for ongoing operations until \$140 million, which
8 is define as FD entity commitment was reached.

9 Paragraph 115. Under paragraph 5.3 of the
10 operating agreement, for the funding of the
11 ongoing operating expenses, after the FD Destiny
12 had reached F would contribute 75 percent of the
13 capital contributions.

14 Paragraph 116, all funding disbursements and
15 capital contributions are made by Subway as an
16 entity of DeLuca and on behalf of FD Destiny.

17 Paragraph 117. From about August '07
18 through February '08 before the FD entity
19 commitment was reached, FD entity through Subway
20 either refused to delay disbursement of funding
21 requests as required under the operating
22 agreement. AVP Destiny as manager provided the
23 FD entity with notice of default. The.

24 This is paragraph 118. From about
25 February 8th -- strike that -- from about

1 February 2008 to May 2008 before the FD entity
2 commitment was reached FD entity through Subway
3 prematurely terminated the disbursement. Funds
4 under paragraph 5.2 of the operating agreement
5 and paid only 75 percent as per 5.3 of the
6 operating agreement for capital contributions.

7 And essentially because I have to say they
8 breached the paragraphs 5.2 and 5.3 of the
9 operating agreement.

10 MR. HUTCHISON: My point, Judge, is the only
11 funding obligation contained in this operating
12 agreement that anally says FD entity has to do it
13 is 5.3. That's where it talks about the funding
14 obligations, making capital contributions.

15 THE COURT: Yeah, but we can't ignore 5.2.

16 MR. HUTCHISON: I understand, but first of
17 all, the only parties to that operating
18 agreement -- I think we're in agreement the only
19 ones bound by that agreement are AVP Destiny and
20 FD entity, right and the manager.

21 THE COURT: And the manager being
22 Mr. Pugliese.

23 MR. HUTCHISON: Right they're the only
24 parties to that operating agreement. So the
25 lender Fred DeLuca has no obligations to fund

1 under that operating agreement and by order of
2 this Court it was Judge Crow dismissed Fred
3 DeLuca from the operating agreement and I can get
4 that order for you. 5.2 doesn't talk about
5 funding commitments or funding obligations. It
6 is only defined in FD commitment and it's really
7 talking about the loan and it's saying --

8 THE COURT: It talks about draw downs it
9 talks about payment of operating expenses and
10 payment of the mortgage.

11 MR. HUTCHISON: But the drawdown is totally
12 the loan \$6.7 million of the loan.

13 MS. HOFFLER: I beg to differ.

14 MR. HUTCHISON: Let me finishing.

15 So you have A, it is the amount of the
16 mortgage funded, which is the amount of the
17 mortgage funded at closing that was the 103 and
18 104 that went to purchaser. The drawer down
19 expenses that's the six or seven that went to
20 entitlement costs initially. That's all from the
21 loan most respectful to you and C all accrued and
22 unpaid interest.

23 Again all AB and C all pertain to the loan
24 and that's the language. AB and C. They're all
25 the loan. None of them is FD Destiny or FD

1 entity I don't care what you call it funding
2 obligation.

3 Because we all agree the lender Fred DeLuca
4 is not a party to that agreement. Fred DeLuca
5 can't have the, the lender can't have an on
6 gauges to fund under that agreement and AB and C
7 simply pertain to the loan. Here's your prior
8 order dismissing Fred DeLuca from the operating
9 agreement. Actually it's Judge Crowe's.

10 THE COURT: Yeah, Judge Crowe did.

11 MS. HOFFLER: Your Honor, if I could be
12 heard on this?

13 THE COURT: Yes, ma'am.

14 MS. HOFFLER: I believe that Mr. Hutchison
15 has misstated the plain language of the contract.
16 Underpayment of operating expenses, payment of
17 mortgage, first of all, the examination says
18 payment of operating expenses, 5.2. That in and
19 of itself clearly shows that this section was
20 designed to reflect the payment of operating
21 expenses. Drawdown by the land company or the
22 company on the mortgage in excess of the amount
23 of the mortgage funded at the closing in which
24 the mortgage was executed, and that's called
25 drawdown expenses, shall be used from time to

1 time as needed to pay the operating expenses of
2 the company.

3 Well, that's what we're talking about. The
4 operating expenses of the company. At such time
5 as the total of A, the amount of the mortgage
6 funded at closing in which the mortgage was
7 executed, plus B, the total of all drawdown
8 expenses, plus C, all accrued and unpaid interest
9 on the mortgage shall exceed \$140 million.

10 THE COURT: The company shall pay all of
11 them accruing interest on the mortgage currently.
12 So it all reverts back to the mortgage. And --
13 the amount of the mortgage funded at the closing,
14 which is important because the closing relates to
15 the closing of the purchase of the property and
16 that was the \$104 million that was used.

17 We can't ignore that. The amount of the
18 mortgage funded at the closing in which the
19 mortgage was executed, plus the total of all
20 drawdown expenses, plus all accrued and unpaid
21 interest on the mortgage shall exceed \$140,000.

22 MS. HOFFLER: \$143 million.

23 THE COURT: See I don't deal with those
24 number that's often. \$140 million. Shall pay
25 all then accruing interest on the mortgage

1 currently.

2 Mr. Fred DeLuca was dismissed well, before I
3 got involved in this by Judge Crowe. Mr. DeLuca
4 is in the a party to the operating agreement. I
5 remain stead fast in ensuring that Mr. DeLuca by
6 name without further explanation -- and I don't
7 have a problem with you going back to those
8 definitions, should not be used the 100 percent
9 financier.

10 That's really all we're getting into right
11 now. How this is going to be dealt with by
12 counsel on cross examination is fine, but what
13 I'm looking to do is to extricate Mr. DeLuca's
14 name individually from this section of the
15 operating agreement -- from the operating
16 agreement in its totality.

17 Now, the question remains what Mr. Reamer's
18 knowledge is of the funding commitment and the
19 sources of those commitments; because even though
20 I found the original mortgage between DeLuca and
21 Wachovia as irrelevant as it relates to the
22 claim, if we're going to get into the
23 technicalities of funding, there may be some
24 relevance there if it has to be does Linda in
25 detail. I don't think you can have it in both

1 ways.

2 MR. HUTCHISON: When you say -- all I
3 suggest is threw a loan for \$111 million
4 Mr. Reamer admitted he knew that. He knew that
5 six or seven million dollars was for funding the
6 operating expenses initially. Mr. Reamer
7 admitted that. We can have Alice read it back.

8 THE COURT: Well, he did say it during
9 Mr. Hutchison's voir dire.

10 MS. HOFFLER: Your Honor, if I could
11 interject. When the six or seven million dollars
12 was exhausted that's where there's a bone of
13 contention that did not mean that Mr. DeLuca
14 whatever that entity is called, did not have an
15 obligation to continue funding a hundred percent,
16 because that's where this section kicks in.

17 THE COURT: Well, Mr. Reamer in my view --
18 that's a matter for the Court to decide.
19 Mr. Reamer can't interpret this contract.

20 MS. HOFFLER: And he's not going to
21 interpret the contract. That's not what we're
22 going to do. My initial question is what was
23 your understanding, because he was operating
24 pursuant to his understanding and he was the
25 person for Mr. Pugliese for the Pugliese Company

1 and for LCOC, Mr. Pugliese being the manager at
2 that point, who was monitoring -- he received
3 regular reports from the people at Subway and if
4 it wasn't important to them I don't know why they
5 sent him regular reports about the threshold D we
6 reach \$140 million threshold and the reason he
7 received is because he wanted to know if he
8 reached \$140 million at that point Anthony was
9 obliged to fund 75-25. Before it reached the
10 threshold Anthony took money out of his pocket
11 because Fred DeLuca even then he wasn't opinion
12 obligated Fred DeLuca failed to fund.

13 So the question is what was his
14 understanding and he was operating as the
15 business manager pursuant to his understanding
16 and it was in email communication with Subway and
17 they were giving him fairly regular reports on
18 that threshold whether they met the \$140 million
19 threshold.

20 MR. HUTCHISON: Judge we're confusing apples
21 an oranges. The objection at that point was
22 prior to the \$111 million loan being met I
23 understand we have a bone of contention after it
24 was met. We say 75, they say a hundred. I
25 understand that. The prejudice is they're saying

1 up to 111, even prior to 75-25. Even prior to
2 the 11 Fred DeLuca is the founder and that is
3 confusing and prejudicial because that came from
4 the loan. Is that what you're trying to suggest
5 I'm not sure if that's the case.

6 MS. HOFFLER: No.

7 MR. HUTCHISON: They said Mr. DeLuca funded
8 a hundred percent of this project since day one
9 and that's been his testimony.

10 MS. HOFFLER: Not forever.

11 MR. HUTCHISON: From day one.

12 MS. HOFFLER: He started at the beginning.

13 MR. HUTCHISON: And Mr. DeLuca did not
14 fawned hundred percent, the loan funded a hundred
15 percent that's the misleading part. Just let me
16 finish please. The jury is sitting there saying
17 well, DeLuca paid a hundred percent since
18 August 1 closing, that is not accurate. That's
19 misleading this jury an it's prejudicial.

20 THE COURT: Okay I agree. We need to
21 extricate the DeLuca name himself. We need to
22 drill down to the \$111 million figure. We need
23 to drill down to the cost of the purchase of the
24 land at \$104 million, and we need to emphasize
25 that the loan funded the project and then we can

1 go from there.

2 So Mr. Reamer's competent to testify to
3 that, fine if not, then I don't want him to get
4 into a hundred percent or whatever the case may
5 be, in his understanding of the percentages from
6 the terms of the contract, because his
7 interpretation would not be appropriate and not
8 be legally permissible.

9 MR. HUTCHISON: May we voir dire.

10 MS. HOFFLER: One second. I would like to
11 object for the record, we feel we are prejudiced
12 by that ruling.

13 THE COURT: In what way are you prejudiced
14 by that ruling.

15 MS. HOFFLER: Because Your Honor, it is --
16 if we can't go into the terms of the loan.

17 THE COURT: Which loan? The Wachovia loan.

18 MS. HOFFLER: The Wachovia loan --

19 THE COURT: Well, that's why I'm saying --
20 I'm not saying that you can't. I'm saying that
21 at this point in time I want to drill down to
22 who -- what the entity is that funded it and
23 through what means it was funded and the fact
24 that Fred DeLuca obtained a loan from Wachovia
25 for \$140 million.

1 MR. HUTCHISON: No 103 or 105.

2 THE COURT: Original.

3 MR. HUTCHISON: It was less than 111.

4 MR. MARIANI: Mr. Pugliese had none of that
5 information.

6 THE COURT: I understand that. That's why
7 I'm questioning whether or not it's even
8 necessary to get into it. He gets that money
9 okay, from Wachovia. He in turn then loans not
10 he, FD Destiny.

11 MR. HUTCHISON: No, Fred DeLuca personally.

12 THE COURT: Loans the money to LCOC.

13 MR. HUTCHISON: With a separate mortgage and
14 a separate promissory note and separate terms.

15 THE COURT: And that's the 111.

16 MR. HUTCHISON: Correct.

17 THE COURT: Okay.

18 MR. HUTCHISON: The Wachovia loan the
19 totally irrelevant.

20 THE COURT: It's separate and apart and I
21 talked about that earlier yesterday. I believe
22 we got into that in more detail. So, the amount
23 that's funded is money that Fred DeLuca loans to
24 LCOC.

25 MR. HUTCHISON: The promissory note.

1 THE COURT: Yeah.

2 MR. HUTCHISON: You want the mortgage and
3 the note or just the note?

4 THE COURT: Probably both would be helpful.

5 MR. HUTCHISON: Gave you 283? Top right
6 one.

7 THE COURT: Yes.

8 Okay DeLuca is referred to as the lender and
9 Land Company of Osceola County LLC are
10 collectively referred to as borrower or
11 borrowers. Use of the proceeds. Borrower shall
12 use the proceeds of the loan evidenced by this
13 note for the commercial purposes of borrower; to
14 wit, \$105 million, the land loan, to be disbursed
15 at closing.

16 Which is what I perceived to be what is
17 dealt with by subparagraph 5.2A. It turned out
18 to be 103.

19 MR. HUTCHISON: 104.

20 THE COURT: So purchase 104 percent of the
21 membership units of left-hand company LLC,
22 27,410 acres in Osceola County and B, \$6 million,
23 the deferred advance to fund continuing
24 obligations of the borrowers for real estate
25 taxes and to obtain entitlements for the Florida

1 real estate. The project cost that's the land
2 loan shall not require the full allocation as
3 provided hereinabove then the borrower may apply
4 such excess to the project costs.

5 That's what we're dealing with because it
6 was a little less than \$5 million. So it's
7 \$6 million plus the million or so plus.
8 \$7 million or so.

9 MR. HUTCHISON: That would be B in 5.2.

10 THE COURT: That's the way that I had
11 perceived it when I was going through this
12 initially and how I perceive it now. Consistent
13 with my prior rulings.

14 Now, DeLuca is the lender. It's not FD
15 Destiny being the lender.

16 MR. HUTCHISON: That's correct. DeLuca is
17 not a party to the operating agreement.

18 THE COURT: DeLuca is not a party to the
19 operating agreement, but he's the lender.

20 MR. HUTCHISON: But the dispute is between
21 FD Destiny and AVP Destiny so if FD Destiny
22 didn't fund like it was supposed to fund and I
23 would suggest five possible three is the only
24 paragraph in the whole operating agreement, 5.2
25 deals with the loan only. Fred DeLuca cannot

1 have a funding obligation under the operating
2 agreement. He is not a party.

3 So 5.2 cannot bind FD Destiny and Fred
4 DeLuca can't have a funding obligation other than
5 the loan. The promissory note controls what it
6 is and it's \$111 million.

7 So they're mixing apples and oranges. 5.2
8 is clearly the loan. And once the 111 is over,
9 once the 111 is over DeLuca has discharged his
10 obligation as a lender. So the 111 is gone.
11 There's in dispute the 111 went out. The dispute
12 is who funds after it runs out, which is 5.3.

13 MS. HOFFLER: John why you don't address
14 that.

15 THE COURT: Go ahead.

16 MR. MARIANI: Well, Your Honor, to try the
17 rewrite the facts we find inappropriate quite
18 frankly. Counsel is making argument his only
19 argument is prejudice to the jury. We have
20 documents that we're going to introduce showing
21 that LCOC paid DeLuca's closing cost on that
22 Wachovia loan that we're not allowed to talk
23 about yet. This is all interwoven here in
24 respect of what you count and what dollars get
25 expended up to the \$140,000.

1 THE COURT: You keep saying that. I
2 understand.

3 MR. MARIANI: \$140 million. Excuse me.

4 THE COURT: That's all right.

5 MR. MARIANI: So here's the point. We have
6 four, five lawyers, we have an intelligent Judge,
7 and we're arguing about this issue now for 25, 30
8 minutes. Not you, Your Honor, but this approach
9 to the facts, this slicing and dicing so
10 carefully that we look at a fact retrospectively
11 because they want to make an argument, they want
12 to say this is where it's going so we can't put
13 on our case.

14 THE COURT: I understand where you're going
15 Mr. Mariani and you make excellent points
16 amendment it's not to interrupt you, but only to
17 say that I think instinctually my position that
18 we should cover it on cross is probably the best
19 way to go and you know, when I look at this note
20 and see Mr. DeLuca as the lender, it puts a bit
21 of a different light on the subject.

22 Who drew up the operating agreement.

23 MR. HUTCHISON: Counsel for both sides.

24 MR. MARIANI: Counsel on each side and the
25 longing a is different.

1 THE COURT: You know, I think I mentioned
2 that yesterday, it is what it is.

3 The operating agreement not naming
4 Mr. DeLuca is something of concern, at least from
5 my perspective.

6 MR. HUTCHISON: You mean in 5.2.

7 THE COURT: In 5.2 or 5.3.

8 MR. HUTCHISON: Well, DeLuca is not a party.

9 THE COURT: Or anywhere.

10 MR. HUTCHISON: Because he's not a party to
11 the operating agreement.

12 THE COURT: I know that.

13 MR. HUTCHISON: But my point is I will go
14 into the loan on cross, but I don't want to
15 violate the pretrial rule. This is DeLuca's loan
16 to LCOC. The other loan --

17 THE COURT: I'm not getting into the other
18 loan at this point. I see in reason to. The
19 mortgage note on this \$111 million is really the
20 operative instruments. The problem is and I have
21 to deal with the operating agreement, the
22 operating agreement says what it says. DeLuca is
23 not a party. Judge Crowe ruled in that regard
24 and the Operating Agreement was long gone by the
25 time this case went into litigation.

1 MR. MARIANI: Your Honor, I just want to
2 make one more factual point.

3 MR. HUTCHISON: Cap we have one lawyer.

4 THE COURT: That's okay.

5 MR. MARIANI: This loan is not a
6 \$111 million note it's a \$140 million loan -- or
7 excuse me, the loan, the loan is \$140 million.

8 THE COURT: You're talking about the
9 mortgage and note that I had in my hand.

10 MR. HUTCHISON: Look at the top left.
11 Mortgage is separate.

12 THE COURT: Doc stamps were paid on
13 \$111 million.

14 MR. MARIANI: But Your Honor, it goes up to
15 \$140 million. I'm in the saying the 140 was
16 funded. I'm saying the loan --

17 THE COURT: Where does it say that?

18 MR. HUTCHISON: It says interest is due at
19 140, accrued interest.

20 THE COURT: You're talking about in the
21 Operating Agreement. I'm talking about where in
22 the note and the mortgage does it say
23 \$140 million.

24 MR. HUTCHISON: It doesn't.

25 THE COURT: I'm asking the AVP parties. It

1 does say in the repayment terms, interestingly
2 enough, I just kind of caught a bit here,
3 fortunately or unfortunately depending upon how
4 you look at it, it says -- let's see. It's in
5 the repayment terms on page three. We mentioned
6 \$140 million in some fashion. Let me see what it
7 says. It's a long sentence.

8 I'll just read it again first of time
9 looking at the this specific section. Interest
10 shall accrue monthly and continue on the same day
11 of each month there after and interest shall be
12 due and payable at maturity. In any event all
13 principal and all accrued interest shall be due
14 on August 1, 2008 the maturity date provided so
15 long as no default exists on maturity date. The
16 maturity date by borrower other lender be
17 extended until October 1, 2009 and in an amount
18 equal to one quarter of the principal balance
19 shall be added to and become part of the
20 principal for the fourth loan year and so as long
21 as no default exists on August 1, 2009 it shall
22 be automatically extended till August 1, 2010 in
23 an amount equal to one percent shall be added to
24 and become part of the principal in the fifth
25 loan year and then it goes on to say,

1 notwithstanding the for going the maturity date
2 there tin in the accrued interest on this loan
3 state exceed \$140 million, borrower shall there
4 after on the first of each month pay at least all
5 interest accruing during the preceding month.
6 Even if the unpaid principal is subsequently
7 reduced and the principal and accrued interest
8 out standing on this note is less than
9 \$140 million.

10 So that seems to correlate interestingly
11 enough, with the 5.2C, but it doesn't say it's a
12 11 of \$140 million.

13 MR. HUTCHISON: On the first page it
14 specifically says 111.

15 THE COURT: I see that and as I said
16 typically the best proof of that is what the doc
17 stamps have been charged for, and that's on the
18 \$111 million.

19 So I don't know where we get \$140 million.

20 MR. MARIANI: Your Honor, the note would be
21 otherwise payable at 111 that. Language points
22 out that it's in the payable so long as it
23 doesn't reach that amount, except that the dates
24 that were indicated. So it's a facility to get
25 \$140 million into LCOC, though the wording of the

1 note notwithstanding or at least the doc stamps
2 notwithstanding, it's a facility to get
3 \$140 million --

4 THE COURT: I'll agree with you that it
5 extends the credit line so to speak for a five
6 year period to where it would not where the
7 principal an interest would not exceed
8 \$140 million, okay. The next question would be
9 your point is.

10 MR. MARIANI: The point is it's a facility
11 to have that amount of money for the purpose of
12 that operating agreement. That's why those
13 numbers match. That's not a coincidence, that's
14 interventional.

15 MR. HUTCHISON: It gets into a twisted
16 interpretation. It's a \$111 million loan.

17 THE COURT: Like I said I'm going to leave
18 it up to both counsel both deal with tissue on
19 direct and on cross and I don't want to have to
20 be forced obviously to have to instruct the jury
21 at all if find there's a material deviation from
22 either Judge Crowe's order or from the operating
23 agreement itself and I say that to both sides.

24 MS. HOFFLER: Your Honor, cap we have one
25 moment to converse meaning counsel converse.

1 THE COURT: Take as much time as you like.
2 I just need. It's almost 4 o'clock already.

3 (Whereupon a recess was taken.).

4 THE COURT: All right welcome back ladies
5 and gentlemen. Again thank you for your
6 patience. Ms. Hoffler you may proceed.

7 MS. HOFFLER: Thank you, Your Honor.

8 Brian if you could publish again for Tuesday
9 5.2 of the operating agreement.

10 BY MS. HOFFLER:

11 Q. So Mr. Reamer, could you share with the jury
12 from the standpoint of your responsibilities as the
13 business manager what you did on a day-to-day basis
14 relative to monitoring payments of expense on the
15 Destiny project.

16 A. As I mentioned to you before the department
17 heads would submit invoices to me, I with receive
18 invoices in the mail and it was my job to compile the
19 information together to begin the capital call
20 procedure.

21 Q. And you understand that to be a
22 responsibility that you had based on the operating
23 agreement; is that correct?

24 A. Yes.

25 Q. Did you get any direction from Mr. Pugliese

1 as well?

2 A. Yes, I would get input from Mr. Pugliese and
3 then give him a draft of the report to approve.

4 Q. Did you communicate via email or by phone
5 with anyone from Connecticut relative to the expenses?

6 A. In the beginning of the project I was
7 reporting to a person in my office identifies who
8 communicated directly with Connecticut. Lights in the
9 project, approximately 2009 I started communicating
10 directly with Connecticut.

11 Q. And when we say Connecticut, what are you
12 referring to in terms of Connecticut?

13 A. Subway.

14 Q. And the representatives of --

15 A. Mr. DeLuca.

16 Q. And what types of things were you
17 communicating with the Connecticut group surrounding
18 the Destiny project, what types of things?

19 A. In particular there was the loan on the
20 property and the Subway office would calculate the
21 interest on that loan and report to me periodically --

22 MR. HUTCHISON: Same objection, Your Honor.

23 THE COURT: Overruled.

24 Q. You can continue.

25 A. And periodically they would transmit the

1 information to me so I could record the interest, the
2 accrued interest in my Quickbooks general ledger.

3 Q. And why was that important, sir?

4 A. So that I can keep accurate records and to
5 reflect the principal balance and accrued interest on
6 the loan.

7 Q. Why did you want to reflect the principal
8 balance and accrued interest on the loan, sir?

9 A. In Exhibit 5.2 of this exhibit there is a
10 threshold of \$140 million --

11 MR. HUTCHISON: Objection calls for a legal
12 conclusion to the extent he's interpreting that
13 contract.

14 THE COURT: Sustained. And the jury is
15 instructed to disregard that last statement.

16 Q. And without interpreting the contract I
17 don't want you to interpret the contract, but why as
18 the business manager of Destiny was important for you
19 to monitor the \$140 million threshold, as the business
20 manager?

21 A. The \$140 million threshold dictated who can
22 tricked the funds for the capital call.

23 Q. And explain to the jury what that means, who
24 contributed the funds for the capital call.

25 A. Tunnel threshold of \$140 million was met,

1 Mr. DeLuca had to fund 100 percent of the operating
2 expenses of the project --

3 MR. HUTCHISON: Same objection, Your Honor,
4 and move to strike.

5 THE COURT: Well, again, the jury is
6 instructed that this is this gentleman's
7 understanding, okay. You can cover it as I
8 mentioned, in cross examination.

9 Q. I'm sorry, continue, sir.

10 A. So the \$140 million threshold, once it was
11 met, Mr. Pugliese would have to contribute 25 percent
12 of the capital call and Mr. DeLuca would contribute
13 75 percent of the capital call.

14 Q. And as the business manager of Destiny, when
15 was that threshold met based on the information you
16 received?

17 A. The loan which included the principal and
18 the accrued interest, totaled \$140 million in May of
19 2008.

20 Q. So what did that mean in terms of
21 Mr. Pugliese's contribution in May -- May of 2008?

22 A. Yes.

23 Q. So you're saying -- are you certain that in
24 May of 2008 the threshold was met?

25 A. Yes.

1 Q. And what did that mean in terms of
2 Mr. Pugliese's contribution in May of 2008?

3 A. That would mean in June of 2008 Mr. Pugliese
4 would be responsible for 25 percent of the capital
5 call.

6 Q. Now, idea like to go to the timeline for
7 just a moment. Are you familiar with the Rohde
8 property?

9 A. Yes, I am.

10 Q. Can you show the jury what the Rohde
11 property is just based on your understanding as the
12 business manager of Destiny?

13 A. The Rohde property was 14,000 acres adjacent
14 to our property which would increase the project's
15 value.

16 Q. And Mr. Reamer, did you ever see a contract
17 in the course of business as the business manager
18 relative to the Rohde property?

19 A. Yes, I did.

20 Q. And do you have a copy of that in your
21 little folder there? It's going to be JR4.

22 A. Yes, I do.

23 Q. And you're team with that document?

24 A. Yes, I am.

25 Q. And could you explain to the jury what that

1 document is?

2 MR. HUTCHISON: Excuse me can I just have a
3 copy, please.

4 MS. HOFFLER: Yes you can.

5 MR. HUTCHISON: Thank you.

6 A. Mr. Pugliese entered into a contract with
7 the Rohde family to purchase 14,000 acres adjacent to
8 our property, but there was a future payment due no.
9 Payment was due, no deposit was due at the time he
10 entered into the agreement.

11 MS. HOFFLER: Your Honor, I'd like to
12 introduce into evidence Exhibit JR4, which is the
13 contract between LCOC and the Rohde family.

14 THE CLERK: That's already in evidence. You
15 already introduced it in evidence.

16 MS. HOFFLER: I don't believe this is in
17 evidence.

18 THE CLERK: Clerk the sale and purchase
19 contract.

20 MS. HOFFLER: No this is a different
21 contract for the Rohde property.

22 THE COURT: Well, we have a four already in
23 evidence. You can't have another four. We have
24 an AVP four.

25 MS. HOFFLER: I'm sorry, Exhibit 30,

1 Exhibit 30, I apologize.

2 MR. HUTCHISON: Your Honor assuming --

3 THE COURT: Yeah, this is Exhibit 30.

4 MS. HOFFLER: I apologize.

5 MR. HUTCHISON: Assuming it's the Rohde
6 contract, Your Honor, I have no objection.

7 THE COURT: So stipulated. Thank you.

8 (Whereupon a document/item was marked in
9 evidence as Defendant's Exhibit 30.)

10 As number 30.

11 MS. HOFFLER: My sincere apologies.

12 Q. If you could publish the first page of the
13 Rohde contract, please.

14 Do you say that Mr. Reamer?

15 A. Yes.

16 Q. And this is what you were referring to, this
17 is an agreement that's made and entered into between
18 the Rohde family LLC and their other members as well
19 and Land Company of Osceola County LLC?

20 A. Yes.

21 Q. And if we could turn to the signature page,
22 Brian. The signature page is number 20. That was
23 signed 9/13/06?

24 A. That's correct.

25 Q. And then the next signature page, please,

1 Brian.

2 Is that Mr. Pugliese's signature?

3 A. Yes it is.

4 Q. And then let's look at the next signature
5 page, Brian.

6 Do you recognize that as two more Rohde
7 family members that have signed?

8 A. Yes.

9 Q. And then the final signature page, please,
10 Brian.

11 9/13/06 this contract is signed?

12 A. Yes.

13 Q. Mr. Reamer, from the standpoint of the
14 expenditures, you were in charge of the bills that
15 came in and the expenditures on the Destiny project?

16 A. That's correct.

17 Q. Did you notice a difference in terms of the
18 volume of bills and expenditures once the Rohde
19 contract was signed?

20 A. Yes the Rohde contract increased the project
21 from 27,400 square acres, excuse me, to 41,000 acres.

22 Q. And in terms of the volume of -- were their
23 more consultants that you had to as the business
24 manager write checks to that were hired?

25 A. Yes.

1 Q. And was there more in terms of the Destiny
2 family that was housed in the Pugliese office, did you
3 see any change in the numbers of people that were
4 involved on the Destiny project after the road
5 contract was signed?

6 A. Yes.

7 Q. Did you see any increase in bills after the
8 Rohde contract was signed?

9 A. Yes.

10 Q. And that was in 2006; is that correct?

11 A. Yes.

12 Q. Now, if you could describe for the jury, if
13 you could, from the period of September of 2006 until
14 September of 2007, based on your recollection, could
15 you describe for the jury how the payment schedule was
16 functioning or going on during that year-long period?

17 A. Yes, as I mentioned to you before, I would
18 compile all the bills, I would prepare the report,
19 Mr. Pugliese would approve the draft. I would then
20 issue the checks and send the capital call to
21 Connecticut.

22 Q. At some point there was a change in the
23 period of time in which you would submit the invoices
24 an the payments; is that correct? Was there a change
25 at some point?

1 MR. HUTCHISON: Objection, leading.

2 Q. Let me rephrase the question.

3 I had asked you about the payment process
4 between September of 2005 and September of 2006,
5 right?

6 A. Yes.

7 Q. And between September of 2006 and September
8 of 2007, did the payments also go on course in terms
9 of the money that you received in the wire from
10 Connecticut?

11 A. Would you just refresh the dates again.

12 Q. Between September of 2006 and September of
13 2007.

14 A. Okay, in 2007 Mr. DeLuca stopped funding the
15 project.

16 Q. And I'd like you to share with the jury to
17 the best of your recollection what is your name as the
18 business manager of the Destiny project, what was
19 going on in 2007 to the best of your recollection?

20 A. The project was in high gear moving forward
21 for the approvals and Mr. DeLuca not funding the
22 project caused very much concern from our staff.

23 Q. And I'd like you to look at your timeline
24 here. September of 2007 Mr. Fred DeLuca stopped
25 funding and there were payments that were outstanding

1 to families attend businesses that were involved in
2 the Destiny project isn't that correct?

3 A. That's correct.

4 MR. HUTCHISON: Objection, leading. I need
5 time to object, Your Honor.

6 MS. HOFFLER: I apologize.

7 MR. HUTCHISON: That was a league question.

8 THE COURT: Just wait a beat Mr. Reamer
9 before you answer a question, sir, first of all.

10

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: And counsel I am again imploring
13 you not to lead the witness. It is not difficult
14 for an attorney of your experience to follow tell
15 Court's directive. I've warned you several
16 times. Please go forward.

17 MS. HOFFLER: Yes, Your Honor.

18 THE COURT: I know that there's -- well,
19 let's just go forward. Thank you.

20 MS. HOFFLER: In September of 2007 you
21 testified that Mr. DeLuca stopped funding there
22 were payments that were due to family members and
23 businesses.

24 A. Yes there were.

25 Q. And how many payments were due to family

1 members in businesses when Mr. DeLuca stopped funding
2 in September of 2007?

3 A. There were 51 payments to businesses and
4 families totaling \$639,601.25.

5 MR. HUTCHISON: I'm going to object to this.
6 He's reading from something, Your Honor.

7 THE COURT: Well --

8 THE WITNESS: I'm reading from the timeline,
9 Your Honor.

10 THE COURT: He's reading from the timeline
11 which is apparently before the jury. That's
12 fine. You can read from the timeline. I don't
13 have a problem with that.

14 THE WITNESS: Thank you, Your Honor.

15 Q. So Mr. Reamer, based on your experience as
16 the business manager of the Destiny project, did Fred
17 DeLuca breach the operating agreement based on your
18 opinion as the businessman fer?

19 MR. HUTCHISON: Objection calls for a legal
20 conclusion.

21 THE COURT: Sustained.

22 Q. Based on your experience as a business
23 manager, did you feel that what you just mention when
24 the funding stopped, did that -- was that a breach?

25 MR. HUTCHISON: Objection.

1 THE COURT: Sustained. There's not going to
2 be an opinion by this witness as to whether or
3 not a breach of a contract occurred.

4 MS. HOFFLER: Okay. Thank you, Your Honor.

5 THE COURT: You may proceed.

6 Q. Based on your experience as the business
7 manager, did the lack of funding in September of 2007
8 cause disruption to the Destiny project?

9 A. Absolutely.

10 Q. And why do you say that, sir?

11 A. Because people were not being paid.

12 Q. And what was the impact and I know this is
13 probably object husband, but what was the impact of
14 the people not being paid?

15 A. They were upset to say the least.

16 Q. And how do you know that, sir?

17 A. Because they would come to me, they would
18 call me and say where is my check.

19 Q. And you say people, who are you referring
20 to, sir?

21 A. Employees, contractors, subcontractors.

22 Q. Now, let's talk about October of 2007. In
23 October of 2007 did Mr. DeLuca make up the amount in
24 arrears from September of 2007?

25 A. No.

1 Q. And what happened in October of 2007?

2 A. Mr. DeLuca did not fund the October capital
3 call.

4 Q. And in October when he didn't fund, what
5 impact if any, did that have on the employees or
6 families that were working for the Destiny project?

7 A. It was dent mental to the project, never
8 mind the employees, the subcontractors and the
9 contractors who were diligently working on the project
10 and didn't get a check.

11 Q. And do you know how many payments were
12 missed in October of 2007?

13 A. Yes in October there were 52 payments to
14 families and businesses, totaling 547,035 even.

15 Q. And was that in addition to the payments
16 that were missed in September?

17 A. Correct, there were still outstanding
18 payments for September that were never funded.

19 Q. Let's talk about November of 2007. What
20 happened in November of 2007 in terms of the funding
21 of the Destiny project?

22 A. Mr. Fred DeLuca did not fund the capital
23 call in November.

24 Q. And Mr. Reamer, based on your experience as
25 the business manager for the Destiny project, what

1 impact, if any, did that have on the Destiny project?

2 A. It was devastating.

3 Q. And why do you say that, sir?

4 A. Because now it had been three months,
5 September was in the paid, October was not paid and
6 November was not paid and it was devastating to the
7 employees, the contractors and the subcontractors.

8 Q. And could you explain to the jury in
9 November of 2007 the environment in the office based
10 on your testimony of this being the third month?

11 A. People were very concerned.

12 Q. And why do you say that, sir?

13 A. Because they weren't being paid.

14 Q. Do you have an understanding of what was
15 happening in terms of the Destiny project during
16 November of 2007?

17 MR. HUTCHISON: Objection foundation, I do
18 not understand this witness' job
19 responsibilities.

20 MS. HOFFLER: As the business manager.

21 THE COURT: Rephrase the question please.

22 Q. As the business manager in November of 2007,
23 did you have an understanding of how things were
24 evolving with the Destiny project?

25 MR. HUTCHISON: Same objection.

1 THE COURT: Overruled.

2 A. The project was moving full steam ahead even
3 though the employees, the contractors and
4 subcontractors were not being paid they were still
5 doing their believe job because they believed in the
6 project.

7 Q. I'm sorry, I didn't mean to cut you off?

8 A. Because they believed in the
9 professionalism.

10 Q. Now, during this period of time, you talked
11 about September, you talked about October, did
12 Mr. Pugliese, Anthony Pugliese do anything in terms of
13 funding in October of 2007?

14 A. Yes. In October of 2007 Mr. Pugliese
15 contributed \$1 million into the project to cover the
16 vendors who were not being paid.

17 Q. And did that amount cover all of the vendors
18 that were not being paid?

19 A. No it did not.

20 Q. And do you know, if you had discussions, why
21 did Mr. Pugliese do that?

22 A. Because he was concerned for the people.
23 Mr. Pugliese was the face of the Destiny project.
24 Mr. DeLuca was an absentee owner. Mr. Mug to face the
25 employees and the contractors on a daily basis. There

1 were constantly meetings in our office and they looked
2 to Mr. Pugliese for their payment, even though the
3 funds had to come from the Connecticut office.

4 MR. HUTCHISON: I'm going to object and move
5 to strike the gratuitous nonresponsive answer.

6 THE COURT: Motion is denied.

7 Q. Did Mr. Pugliese make any other
8 contributions to LCOC during the period of September,
9 October, November of 2006?

10 A. Yes. Thanksgiving was coming up in
11 November. People were still not paid and Mr. Pugliese
12 contributed \$500,000 to the bits project to pay
13 additional people.

14 Q. And can you explain to the jury during this
15 period of time, September, October and November of
16 2007, are you aware as the business manager of whether
17 there were communications between the LCOC offices in
18 Delray Beach and Connecticut?

19 A. Yes there were.

20 Q. And why do you say that, sir?

21 A. We were receiving phone calls from the
22 vendors asking where their payments were. So we would
23 then call Connecticut and say why are you not funding
24 the project and we were continuously put off and not
25 given a separate answer.

1 Q. And how long did that go on in terms of the
2 communication that you just referenced from
3 Connecticut?

4 A. It was on a weekly basis.

5 Q. And how long did it go on in terms of the
6 response from Connecticut that you received during the
7 period of September, October and November of 2007?

8 A. If you remember, at that time I didn't have
9 direct contact with Connecticut. I was reporting to a
10 man in my office who communicated with Connecticut,
11 but --

12 MR. HUTCHISON: Objection calls for hearsay,
13 Your Honor.

14 THE COURT: He's just indicating -- up to
15 that point it's okay. He's just indicating the
16 transmittal of the information and the continue
17 do it of information. That description is
18 admissible.

19 Q. So let's talk about December talk about
20 December of 2007. What happened in 2007 in terms of
21 fund portion the Destiny project?

22 A. Mr. DeLuca did not fund the capital call for
23 December.

24 Q. And can you share with the jury the impact
25 of Mr. DeLuca's failure to fund in December of 2007

1 had based on your experience as a business manager on
2 the Destiny project.

3 A. Yes as everyone knows, December is holiday
4 month. People were expecting their checks, they had
5 not been paid now for four months except you know,
6 obviously Mr. Pugliese had put the million and a half
7 dollars in so some people were paid, but a lot of
8 people were still not paid.

9 Q. And as business manager of the Destiny
10 project, did you have any observations as to the
11 impact of the fourth month of failure of Mr. DeLuca to
12 pay or to fund the Destiny project, the impact that it
13 had on the Destiny project itself?

14 A. Yes, it was crippling the project. You
15 know, people were still working diligently because
16 they believed in the project, yet they were not
17 getting paid, the money was not coming to cover to
18 checks.

19 Q. Was December the last month that Mr. DeLuca
20 didn't fund the Destiny project during the 2007 and
21 2008 period?

22 A. No.

23 Q. When was the next time that Mr. DeLuca
24 stopped funding?

25 A. Mr. Fred DeLuca did not fund the capital

1 call for January, 2008.

2 Q. I just wanted to go through I neglected to
3 do this, but in November of 2007, Mr. Reamer when
4 Mr. DeLuca failed to fund, how many payments do you
5 know were outstanding for just November?

6 A. In November there were 53 payments to
7 families and businesses, totaling \$506,937.46.

8 Q. How many payments were there in November?

9 A. 53. -- excuse me, 63.

10 Q. All right. And that would be 63 payments --
11 that was separate and party from the payments that
12 were due in October or September?

13 A. That is correct.

14 Q. And in terms of the September 2007 payment
15 or 2007 funding that Mr. DeLuca failed to make, are
16 you aware of how many days past due that September
17 payment was?

18 A. September was now four months past due.

19 Q. And what about October?

20 A. October was three months past due.

21 Q. And November?

22 A. November was two months past due.

23 Q. Now, in December you testified that in
24 December Mr. DeLuca failed to fund the Destiny project
25 as well. Do you know how many payments were

1 outstanding?

2 A. Yes there were 62 payments to families and
3 businesses, totaling \$603,249.28.

4 Q. You testified that in January Mr. DeLuca
5 failed to fund the Destiny project isn't that correct?

6 A. Yes.

7 Q. And can you explain to the jury what impact,
8 if any, did his failure to fund in January have on the
9 Destiny project?

10 A. Yes, the employees, contractors and
11 subcontractors started questioning if the Destiny
12 project was going to close down, was it gone to
13 continue, were they going to get paid and it was
14 turmoil to say the least.

15 Q. And why say it was turmoil to say the least?

16 A. Because people were very concerned about
17 their jobs.

18 Q. Did anyone from Connecticut ever communicate
19 any explanation of why they weren't funding?

20 A. No.

21 Q. Do you know just based on your experience as
22 the business manager of Destiny at that time, if
23 anyone was blaming Anthony Pugliese for these failed
24 payments?

25 A. No, but they were concerned and they were

1 also asking Mr. Pugliese why Mr. DeLuca was not
2 funding the project.

3 Q. Now, let's talk about January of 2008.
4 We're looking at the timeline here. What happened in
5 January 2008 in terms of the funding?

6 A. Mr. DeLuca did not fund the capital call for
7 January 2008.

8 Q. And in January 2008 do you know how many
9 payments were outstanding just for January of 2008?

10 A. Yes there were 40 payments to families and
11 businesses tolling \$337,958.92.

12 Q. Now, in January of 2008 did Mr. DeLuca make
13 up the arrears from the September of 2007 payment?

14 A. No.

15 Q. In January of 2008 did Mr. DeLuca make up
16 the arrears from October of 2007?

17 A. No.

18 Q. In January of 2008 did Mr. DeLuca make up
19 the arrears from November of 2007?

20 A. No.

21 Q. In January of 2008 did Mr. DeLuca make up
22 the arrears from December of 2007?

23 A. No.

24 Q. Let me ask you this, without going through
25 that same scenario for each month, did Mr. DeLuca at

1 any point during the period of September of 2007 and
2 January of 2008 make up any of the arrears to these
3 families that were expecting payments?

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

6 THE COURT: Overruled, but let's move
7 forward.

8 A. No.

9 Q. In February of 2008, Mr. Reamer, did you
10 have an understanding of a conversation that
11 transpired between Mr. Florio and Mr. Pugliese
12 relative to funding?

13 A. Yes.

14 MR. HUTCHISON: Objection, foundation and
15 calls for hearsay.

16 THE COURT: Well, the only question right
17 now pending was whether or not he witnessed --

18 MS. HOFFLER: He had an understanding of it.

19 THE COURT: Understanding. Well, there's no
20 out of court statement being made at this point
21 so the objection is overrule. Go ahead.

22 Q. In February of 2008, Mr. Reamer, did
23 Mr. DeLuca begin funding again for the Destiny
24 project?

25 A. Yes.

1 Q. And can you share with the jury in terms of
2 the monies that came in in February of 2008, what
3 happened so they can understand?

4 A. Yes. From the period of September 2007
5 through January of 2008 there was a total of
6 \$2.6 million and change due for the vendors.
7 Mr. DeLuca only paid 75 percent of the expenses and
8 sent a wire transfer to the LCOC bank account.

9 Q. And why was it important to you as the
10 business manager to know that Mr. DeLuca only sent
11 75 percent of those expenses?

12 THE COURT: Saying 75 percent of the
13 \$2.6 million so the jury is clear.

14 MS. HOFFLER: Yes, Your Honor.

15 A. Yes it was 75 percent of the \$2.6 million
16 from September of '07 through January of '08.

17 Q. Sir, why was that important to you as the
18 business manager of the Destiny project to know that
19 Mr. DeLuca only sent in 75 percent of the expenses for
20 the period of September, 2007 through February of
21 2008?

22 A. Mr. DeLuca was required to fund 100 percent
23 of the capital call since the mortgage, the principal
24 and interest accrued interest on the mortgage had not
25 met the threshold of \$140 million. So we were

1 expecting one hundred percent of the capital call.
2 Receiving 75 percent did not allow us to pay everyone
3 outstanding.

4 MR. HUTCHISON: Objection regarding the
5 interpretation, Your Honor.

6 THE COURT: Same ruling as I already made.
7 Just to remind the jury that this is this
8 gentleman's lay opinion as to what he believed
9 was required.

10 BY MS. HOFFLER:

11 Q. And did Mr. DeLuca for February of 2008, did
12 he pay for the -- did he fund the Destiny project for
13 2008? You talked about how he caught up with the
14 arrears for the 2007, but did he fund in February of
15 2008?

16 A. In February of 2008 Mr. DeLuca sent
17 100 percent of the capital call.

18 THE COURT: I'm sorry now, I'm confused.
19 When was the 75 percent sent.

20 THE WITNESS: In January of '08 Mr. DeLuca
21 paid 75 percent of the capital calls from
22 September of '07 through January of '08.

23 THE COURT: Okay. And that payment was made
24 in January of '08. So in February of '08 is when
25 you're stating that another payment was made.

1 MS. HOFFLER: Mr. Reamer I know you don't
2 have any documents in front of you. Let me just
3 ask you do you recall whether the February of
4 2008 Mr. DeLuca made two payments.

5 A. Yes he did. The first payment we received
6 was the 75 percent of all the arrearage and then we
7 received a separate wire transfer later in the month
8 for the February capital call of which he paid
9 100 percent.

10 THE COURT: Okay, now that's why I had the
11 question, okay. Let's make it clear so the jury
12 understands. The 75 percent of the \$2.6 million
13 was paid when.

14 A. February -- it was the beginning of
15 February. I don't recall the exact date.

16 THE COURT: but it was not.

17 THE WITNESS: No, it was February.

18 THE COURT: And then later in February the
19 other payment was made.

20 THE WITNESS: That is correct.

21 THE COURT: All right. Thank you for that
22 clarification, sir.

23 BY MS. HOFFLER:

24 Q. So when the payment was made, the second
25 payment, that was for 100 percent of the February

1 expenses. Is that correct?

2 A. That is correct.

3 MR. HUTCHISON: Leading.

4 THE COURT: I agree leading. I know you're
5 trying to summarize so I'm not as concerned, but
6 please don't lead.

7 MS. HOFFLER: Thank you, Your Honor. I'm
8 sorry.

9 Q. In February of 2008 did you have a
10 conversation with Mr. Pugliese about the funding?

11 A. Yes.

12 Q. In February of 2008 what was the environment
13 at The Pugliese Company and for those working on the
14 Destiny project, relative to the Destiny project?
15 What was the environment in the office?

16 A. We were relieved that Mr. DeLuca had begun
17 funding again, but our concern was he only funded
18 75 percent of the capital call, when he was required
19 to fund 100 percent of the capital call.

20 Q. And without discussing the substance of the
21 conversation between Mr. Pugliese and Mr. Florio that
22 you were aware of, what did Mr. Pugliese do as a
23 result of -- based on your understanding -- the
24 failure to fund over the period of five months by
25 Mr. DeLuca for the Destiny project?

1 A. Mr. DeLuca's failure to fund for that five
2 month period basically crippled the project and we
3 lost some respectability with our vendors who were
4 working for us. So Mr. Pugliese said that he would
5 have to --

6 MR. HUTCHISON: Objection, calls for
7 hearsay.

8 THE COURT: Sustained. Just indicate what
9 was done in response to that conversation or the
10 alleged lack of funding.

11 A. Mr. Pugliese start add reserve to protect
12 the project and the employees working on the Destiny.

13 Q. And if you could explain you what mean by he
14 started a reserve?

15 A. Mr. Pugliese submitted invoices to me that
16 were not related to the Destiny project and asked me
17 to keep a handwritten tally of any expenses that were
18 not associated with the project.

19 Q. And did you follow that direction?

20 A. Yes, I did.

21 Q. And Mr. Reamer, tell the jury, tell the jury
22 are you proud or tell the jury how you feel about
23 those actions?

24 A. I am very sorry for the way it was handled,
25 but we really felt we had no other option.

1 Mr. Pugliese could have filed a lawsuit against
2 Mr. DeLuca for not making the payments for that period
3 in time, but Mr. Pugliese wanted to move the project
4 forward. In filing a lawsuit would only stop the
5 project and we were at a very critical point in moving
6 forward. So Mr. Pugliese not only paid the 25 percent
7 contribution from September of 07 through January of
8 '08 to imagine us whole so that I could release all
9 the checks from that time period, he started making
10 his 25 percent contributions, although according to
11 the operating agreement, he was not required to do it.

12 MR. HUTCHISON: Objection, again.

13 THE COURT: Well, the objection again is
14 overruled and the jury is reminded of the earlier
15 instruction as to this gentleman's interpretation
16 as a lay witness.

17 Q. So let's talk about the reserves.

18 A. Yes.

19 Q. Were charges ultimately brought against you
20 and Mr. Pugliese in connection with actions that you
21 took from February of 2008 going forward?

22 A. Yes.

23 Q. And can you explain to the jury as relates
24 to you, what happened.

25 A. There was criminal charges brought against

1 myself and I had a detective come to my home at
2 8 o'clock in the morning and -- two detectives
3 actually, and they started interrogating me as to my
4 knowledge of the funds that they claimed were stolen.
5 I explained to the detectives that the funds were not
6 stolen, that --

7 MR. HUTCHISON: Objection, hearsay and Judge
8 quite frankly pretrial ruling on this issue.

9 THE COURT: Well, he's just explaining what
10 happened. I don't know what the relevance is.

11 MR. HUTCHISON: Well, relevance too,
12 certainly the pretrial ruling.

13 THE COURT: Well, the pretrial rule has
14 nothing to do with this. The pretrial ruling
15 only dealt with the issue concerning the
16 explanation as to the criminal charges.

17 MR. HUTCHISON: The estoppel.

18 THE COURT: And the estoppel issue as well,
19 I agree, but that's the explanation.

20 MR. HUTCHISON: I think that's what he's
21 getting into Your Honor.

22 MS. HOFFLER: Your Honor, can we approach on
23 this.

24 THE COURT: Sure.

25 (Whereupon counsel for the respective

1 parties approached the bench and the following
2 proceedings were had outside the presence of the
3 jury:)

4 MS. HOFFLER: The witness knows he cannot in
5 term of the explanation he cannot get into that.
6 He's just providing and I think he's almost
7 finished with this -- providing what happened and
8 then I'm moving on, frankly.

9 THE COURT: you know.

10 MR. HUTCHISON: What he's saying is they
11 claim that I stole. Well, he admitted that he
12 stole. For all intents and purposes he is
13 estopped from saying I didn't steal it.

14 THE COURT: Again I don't have a problem
15 with you dealing with that on cross in a limited
16 fashion just to clarify P, but I don't want to
17 get any explanations. I'm barring him from
18 trying to escape from his plea and the
19 adjudication on same.

20 So I don't want to get into anything further
21 on this.

22 MS. HOFFLER: Your Honor, if I can just say
23 he's not going to provide an explanation. What
24 I'd like to do then and I'll be done with this,
25 just publish those judgments which there's no

1 objection that I could publish or mark for
2 identification which basically says he pled no
3 contest to conspiracy to commit fraud and that's
4 it.

5 THE COURT: All right, but I don't want to
6 get into any explanations.

7 MS. HOFFLER: He's not going to get into
8 explanations.

9 THE COURT: And again, you know, to the
10 extent that the pretrial ruling make this
11 irrelevant I presume that's fine. But again,
12 albeit empathy aside, there's no reason to get
13 into his experience in being arrested or anything
14 like that.

15 MS. HOFFLER: We're not getting into that
16 at all.

17 THE COURT: Okay.

18 (Whereupon the following proceedings were
19 had within the presence of the jury:)

20 THE COURT: All right. You may proceed.

21 MS. HOFFLER: Thank you, Your Honor.

22 Q. And Mr. Reamer I think you were wrapping up,
23 your experience and I'm going to ask you to look at
24 Exhibit I think it's JR13. And I don't mean to cut
25 you off, but I just want to have you as you're talking

1 about it refer to Exhibit JR13?

2 A. I have the document.

3 Q. And could you please explain to the jury
4 what this document is and if you have knowledge of
5 this document.

6 A. Yes this was my plea agreement with the
7 prosecutor's office.

8 MR. HUTCHISON: May have a copy.

9 MS. HOFFLER: Yes.

10 MR. HUTCHISON: Thank you.

11 Q. Okay, I'm sorry.

12 A. This was my plea deal with the prosecutor's
13 office.

14 Q. And according to this document, what type of
15 plea did you take?

16 A. No contest.

17 Q. And what was the charge?

18 A. Conspiracy to commit organized scheme to
19 defraud.

20 Q. And what sentence did you get?

21 A. I received four years probation. After two
22 years I could petition the Court to have my probation
23 terminated.

24 Q. And have there been any developments with
25 that?

1 MR. HUTCHISON: Objection, relevance.

2 MS. HOFFLER: Actually, Your Honor, I'm
3 going to withdraw it. Let me move to the next
4 topic.

5 Q. So Mr. Reamer, in terms of -- I'd like you
6 to explain to the jury, if you could, how the
7 reserves, the reserve accounting was handled so that
8 they can understand. We talked about February of 2008
9 and how that was handled.

10 A. Yes. As I mentioned previously,
11 Mr. Pugliese would submit invoices to me to process
12 for payment for item that's were not part of the
13 Destiny project and as I explained to you he asked me
14 to keep a running total of those expenses so that we
15 could keep them segregated.

16 Q. And did you do that?

17 A. Yes, I did.

18 Q. And for how long or what period of time were
19 the reserves done, was there a reserve accounting?

20 A. The reserve accounting was from the period
21 of February of 2008 through May of 2009.

22 Q. And during that period, how much in reserves
23 accumulated?

24 A. \$2.6 million.

25 MR. HUTCHISON: Objection, Your Honor, again

1 pretrial ruling.

2 THE COURT: Overruled.

3 Q. Mr. Reamer, do you know how much money
4 during that period of time Mr. Pugliese put into the
5 Destiny project?

6 A. Approximately \$4 million.

7 Q. And just so the jury is very clear, during
8 what period of time are we talking?

9 A. From September of '07 through May of '09.

10 Q. There's been in terms of how those monies
11 were used, the \$2.6 million, could you share with the
12 jury how those monies were used?

13 A. The funds were used for non-Destiny matters
14 to develop credits for LCOC.

15 Q. And what do you have by that to develop
16 credits for LCOC?

17 A. Mr. Pugliese incurred expenses after
18 Mr. DeLuca stopped funding the project in April of '09
19 and those credits would be applied towards
20 Mr. Pugliese's expenses.

21 MR. HUTCHISON: Again, Judge I'm just going
22 to object for the record and the pretrial ruling
23 and we can discuss it at break.

24 THE COURT: All right. At this point the
25 objection is overruled. Try to be more timely

1 please on your objections as well. Please pry to
2 get them in before the witness answers and again
3 I'll just ask Mr. Reamer just to leave a beat,
4 but that one I don't find to be made in a timely
5 fashion.

6 Go ahead.

7 MS. HOFFLER: Thank you, Your Honor.

8 Q. So getting back to the roughly \$4 million
9 you said that Mr. Pugliese contributed to LCOC, were
10 those for LCOC expenses?

11 A. Yes.

12 Q. Did you do a reconciliation of the monies
13 that Mr. Pull contributed?

14 A. Yes.

15 Q. Can you share with the jury the
16 reconciliation you did and if you could I'd like the
17 write this on the board. Just hold on one second.

18 Okay.

19 A. I'm gonna give you round numbers.
20 Mr. Pugliese incurred expenses on behalf of the
21 partnership after Mr. DeLuca stopped funding in 2009
22 to approximately \$4 million.

23 Q. So these are expenses paid by Mr. Pugliese?

24 A. That is correct.

25 Q. What was the amount -- you testified about

1 an amount where there was reserve accounting?

2 A. The reserve totaled \$2.6 million.

3 MR. HUTCHISON: Judge, this line of
4 questioning, same objection.

5 THE COURT: Okay, same ruling.

6 Q. Were their other -- so how did you reconcile
7 the expenses paid by Mr. Pugliese with the reserve?

8 A. There was one additional item that was
9 added. As you know Meril Stumberger was an
10 independent consultant for the Destiny project and we
11 were accruing \$10,000 a month towards her bonus of
12 \$750,000 that would be earned upon completion of the
13 project or in the event the project was -- did not
14 move forward, you know.

15 Q. And what figure was that?

16 A. \$250,000.

17 Q. Were you familiar with the contracts -- were
18 you familiar with any contracts that Meril Stumberger
19 had with LCOC?

20 A. Yes I was.

21 Q. Did she have more than one contract?

22 A. Yes, she did.

23 Q. Can you summarize or tell the jury what you
24 know, what your understanding was as the business
25 manager of Destiny about her contracts?

1 MR. HUTCHISON: Objection, hearsay.

2 THE COURT: You know, you have to develop a
3 more specific foundation.

4 MS. HOFFLER: Yes, Your Honor.

5 Q. Mr. Reamer as the business manager for LCOC
6 did you get a copy of Meril Stumberger's contracts
7 with LCOC?

8 A. Yes, I did.

9 Q. Were you responsible for paying invoices to
10 Meril Stumberger in connection with her contracts?

11 A. Yes I was.

12 Q. How many contracts were there?

13 A. There were two contracts.

14 Q. Did you keep a tally of the monies that you
15 paid Meril Stumberger in relation to her contracts?

16 A. Yes, I did.

17 Q. Did you know the essence of both -- did you
18 know anything about both of those contracts?

19 A. Yes, I did.

20 Q. Can you share with the jury, let's take the
21 first contract what type of contract she had, first
22 contract?

23 A. The first contract required us to pay \$5,000
24 compensation per month and \$750 per month in expenses
25 for a total of \$5,750.

1 Q. Did you do that?

2 A. Yes, I did.

3 Q. For how long did you pay her for her
4 expenses \$5,750 and 750 a month in expenses?

5 A. Every month.

6 Q. And there was a second contract; is that
7 correct?

8 A. Correct. The second contract was for her
9 \$50,000 bonus that would be paid upon completion of
10 the project or in the event the project was with
11 drawn, she was still to be paid the \$750,000.

12 Q. So now, let's talk about that \$750,000. How
13 was that money to be paid to Meril Stumberger, what
14 did you all -- strike that.

15 What actions did you take if any relative to
16 the second contract to were Meril Stumberger?

17 A. Mr. Pugliese was concerned about
18 Ms. Stumberger. They were long time associates as you
19 heard through her testimony yesterday. Mr. DeLuca was
20 not a plan of his word. Mr. Pugliese was concerned
21 that Mr. DeLuca would not honor the contract for Meril
22 Stumberger. He requested me in 2007 to start accruing
23 \$10,000 per month on behalf of Meril for her bonus
24 that would be due in the future.

25 MR. HUTCHISON: Again move to strike the

1 part about the credibility of a witness.

2 THE COURT: Sustained the jury will
3 disregard the part about Mr. DeLuca as
4 nonresponsive.

5 Q. I'm going to ask Mr. Reamer, I'm going to
6 ask that you look at Exhibit Number --

7 A. 14 were 14.

8 THE COURT: We're going to have to close up
9 soon. I don't know if now is a good time or
10 that.

11 MS. HOFFLER: Before we go to
12 Exhibit Number 14 why don't I ask a couple of
13 questions.

14 THE COURT: Go right ahead.

15 Q. In terms of the reconciliation of the
16 expenses paid by Mr. Pugliese, roughly \$4 million, the
17 reserve of roughly \$2.6 million and the Meril
18 Stumberger amount that you said aside you indicated as
19 well, how did you reconcile the amount of monies that
20 were or the transactions between Mr. Pugliese and
21 LCOC?

22 MR. HUTCHISON: Same objection, Your Honor.

23 THE COURT: Overruled at this point.

24 A. I am an accountant and I know the math
25 doesn't add up because I rounded numbers, but there's

1 approximately \$600,000 still due to Mr. Pugliese by
2 Mr. DeLuca.

3 Q. And does that take into account -- you
4 indicated that Mr. Pugliese paid 25 percent of the
5 expenses before it was your understanding that he
6 needed to; is that correct?

7 A. Right. As I explained to the jury in May of
8 2008, the \$140 million threshold was met for the
9 principal balance of the loan and the accrued
10 interest. That caused Mr. Pugliese now to be required
11 to put 25 percent in from June of '08 through the end
12 of the project.

13 So since Mr. Pugliese had made his
14 25 percent contribution retroactive to September of
15 '07 through April of '08, those funds which totaled
16 \$1.2 million, were included in Mr. Pugliese's
17 \$4 million expenses to be reimbursed.

18 Q. And there's some documents that you have
19 that we can go through with the jury tomorrow that
20 would assist with this?

21 A. Yes.

22 Q. But just in round numbers, this is how you
23 get to a figure of roughly \$600,000 that is still owed
24 to Mr. Pugliese?

25 A. That's correct.

1 MS. HOFFLER: Your Honor, I think this is a
2 good time.

3 THE COURT: Thanks counsel and thanks to our
4 jury and we'll call it a day. Tomorrow we're
5 going to get started early. I'll probably have
6 to meet with counsel regarding some issues that
7 need to be addressed first, but we're going to
8 get started tomorrow at the attorneys will be
9 here at 8:30 and I'll ask you to be here, please,
10 by 8:50, ten of nine and in the interim of course
11 please don't talk about the case with anyone,
12 don't allow anybody to speak to you about it.
13 Again we're interested solely in your opinion and
14 your opinion only as collective body and please
15 don't do any research on your own or use any form
16 of electronic devices or do any type of
17 investigation concerning any of the parties any
18 of the people involved in the case or any of the
19 issues involved.

20 Thank you again for your service and
21 sacrifice I'll see you tomorrow at it 50
22 assembled. Have a very pleasant evening.
23 Counsel at 8:30. Have a good evening everyone.

24 In the meantime Mr. Reamer kindly do not
25 discuss your testimony with anyone. Do you

1 understand.

2 THE WITNESS: Yes, Your Honor. End end end

3 end end end

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