

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

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

Plaintiffs,

-vs-

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

Defendants.

FD DESTINY, LLC and FD DESTINY MANAGEMENT LLC,
and FREDERICK DELUCA,

Plaintiffs,

-vs-

AVP DESTINY, LLC, ANTHONY V. PUGLIESE, III,
ANTHONY V. PUGLIESE COMPANY, INC.,
d/b/a/ THE PUGLIESE COMPANY, and JOSEPH
REAMER,

Defendants.

CONTINUED VIDEOTAPED DEPOSITION
OF FREDERICK A. DELUCA

VOLUME 9

Wednesday, September 26, 2012
9:11 a.m. - 12:29 p.m.
444 W. Railroad Avenue
West Palm Beach, Florida 33401

Reported By: Barbara J. Shandell, RPR, FPR
Notary Public, State of Florida
US Legal Support, Inc.

1
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ALSO PRESENT: ANTHONY V. PUGLIESE
MICHAEL HOLLANDER,
VIDEOGRAPHER

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1 Continued Videotaped deposition taken
2 before Barbara J. Shandell, Registered Professional
3 Reporter and Notary Public in and for the State of
4 Florida at Large, in the above cause.

5 - - -

6 THE VIDEO TECHNICIAN: Good
7 morning. We're now on video record.
8 Today is Wednesday, the 26th day of
9 September 2012. The time on the monitor
10 is 9:11 a.m.

11 We're here at 444 Railroad Avenue,
12 West Palm Beach, Florida for the purpose
13 of taking the continued videotaped
14 deposition of Frederick DeLuca taken by
15 the Plaintiff in Case Number
16 502009CA029903XXXXMB, in the case of AVP
17 Destiny, et al. versus Frederick DeLuca,
18 et al, which is filed in the Fifteenth
19 Judicial Circuit, Palm Beach County,
20 Florida.

21 The court reporter is Barb Shandell
22 of U.S. Legal Support. The videographer
23 is Mike Hollander of U.S. Legal Support.

24 Would all counsel please announce
25 their appearance for the record.

1 MR. GARY: Willie Gary for the
2 Plaintiff.

3 MS. HOFFLER: C.K. Hoffler for the
4 Plaintiff.

5 MR. MAREK: Doug Marek for the
6 Plaintiff.

7 MR. BELAVAL: Edgar Belaval for the
8 Plaintiff.

9 MR. BUTTERWORTH: Bob Butterworth,
10 Plaintiff.

11 MR. HUTCHISON: Rick Hutchison,
12 John Chapman, John Pfannenbecker and
13 Robert Ray with the same -- on behalf of
14 the Plaintiffs in the September of '09
15 case and the Defendants in the December of
16 '09 case, and the same appearances as
17 yesterday.

18 MS. HOFFLER: Mr. Ray, is there
19 anybody else in the room with you?

20 MR. RAY: No.

21 MS. HOFFLER: And no one's on the
22 line with you, right?

23 MR. RAY: No one is on the line
24 with me.

25

1 Thereupon,

2 FREDERICK A. DELUCA,

3 having been previously duly sworn or affirmed, was
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. GARY:

7 **Q. You understand that you're under oath?**

8 A. Yes.

9 **Q. Okay. Good. And now, we left off**
10 **yesterday talking about an e-mail that you had**
11 **received from Fred Florio.**

12 **Do you remember that, that we were**
13 **discussing the e-mail that you received where he**
14 **resigned?**

15 A. I remember discussing two e-mails.

16 **Q. Now, I want you to look at Exhibit 13.**

17 **Do you remember discussing that?**

18 **MR. HUTCHISON: 13?**

19 MR. GARY: Is that 13? I'm sorry.

20 What number is that?

21 THE WITNESS: 15.

22 BY MR. GARY:

23 **Q. 15, sorry. Exhibit 15, do you remember**
24 **that -- discussing that yesterday?**

25 A. Yes.

1 Q. We got almost through it?

2 A. Yes.

3 Q. Well, I don't need to ask you any
4 questions about it right now.

5 A. Okay.

6 Q. But I want you to keep it because I want
7 to read from it and see if you understand this to be
8 what he said. And this e-mail was -- was in reference
9 to his resignation. He was quitting you, he was
10 leaving you; isn't that true?

11 A. Is this a question about the e-mail?

12 Q. Yes. It was in reference to his
13 resignation.

14 A. Let me just read it to refresh my memory.

15 Q. Look down at the last paragraph.

16 A. I'll read it. It's only a half page.

17 Q. Sir, you read it yesterday. I'll --
18 strike that.

19 Do you -- do you understand and did you
20 see the last paragraph where he said, my resignation
21 was based on the fact that I had stated -- the facts
22 as I have stated them before and no matter how many
23 times others try to turn things around, I don't think
24 they could convince me to see things any other way.

25 Who are the others that he's talking about

1 **in this case, the lawyers?**

2 A. Let me read the e-mail and I'll be able to
3 respond.

4 **Q. So who are the others he's talking about?**

5 A. I'm almost done here.

6 I don't know who the others were.

7 **Q. Well, he was talking about your lawyers,**
8 **weren't you, sir?**

9 A. I don't know who he was talking about.

10 **Q. But you do understand -- you said you'd be**
11 **able to respond. So tell me, do you understand that**
12 **he was saying that someone was trying to get him to**
13 **lie?**

14 A. No. That's not what I understand by this
15 e-mail at all.

16 **Q. He said that as he stated to them before,**
17 **he was talking about your lawyers, wasn't he?**

18 A. Look, no one has told --

19 **Q. Was he talking about your --**

20 A. No one has ever told Fred Florio --

21 MS. HOFFLER: Why are you pointing
22 your finger?

23 THE WITNESS: Because he's telling
24 me I'm -- he said -- it's annoying because
25 I never --

1 BY MR. GARY:

2 Q. How do you know what everybody told him?

3 MR. HUTCHISON: Just stop -- just
4 answer the question.

5 BY MR. GARY:

6 Q. How did you know what everybody told him
7 if you weren't there?

8 A. I know personally.

9 Q. How do you know if you weren't there?

10 MR. HUTCHISON: Willie, just let
11 him answer the question.

12 THE WITNESS: Yeah. I'm going to
13 answer the question, then you can ask it.

14 MR. GARY: I'll strike the
15 question. I don't want you to answer.

16 MR. HUTCHISON: Well, then strike
17 all the questions and the partial answers.

18 MS. HOFFLER: Don't tell him what
19 to strike.

20 MR. GARY: Strike all of it and let
21 me start over.

22 BY MR. GARY:

23 Q. Do you -- now, so am I clear that this
24 e-mail says to you, my resignation was based on the
25 facts that I have stated -- as I have stated them to

1 you before and no matter how many times -- and no
2 matter how many times others tried to turn things
3 around, I don't think they could convince me to see
4 things any differently.

5 Do you see that, sir?

6 A. Do I see those words?

7 Q. Yes.

8 A. I see those words.

9 Q. And that was directed to you, wasn't it?

10 A. That was in the e-mail to me.

11 Q. And let's go a step further. It said, due
12 to the fact that we don't see eye-to-eye on this
13 matter and that I have been told by you that nobody
14 else feels comfortable working with me, maybe they
15 could just all leave me alone.

16 You see that, sir?

17 A. I see that.

18 Q. And do whatever they want. After all,
19 they don't need me to agree. Please tell your lawyers
20 to stop calling me.

21 Do you see that, sir?

22 A. I see that.

23 Q. He was talking about the lawyers in this
24 litigation, wasn't he?

25 A. I don't -- well, I don't know what he was

1 talking about here.

2 **Q. Well, he was talking about lawyers,**
3 **though, wasn't he?**

4 A. Yeah. And I have a number of lawyers --

5 **Q. And he said your lawyers, didn't he?**

6 A. I have a number of lawyers that work for
7 me. I think we have two outside counsel, but in the
8 office there's about 25 lawyers that work at franchise
9 world headquarters. So I don't know which lawyer he
10 is referring to.

11 **Q. Well, what lawyers you had representing**
12 **you in this Destiny litigation?**

13 A. In the Destiny litigation, Rick Hutchison
14 and John Chapman.

15 **Q. And this letter is in reference to the**
16 **Destiny litigation, isn't it?**

17 A. No. This letter is in reference to him
18 resigning. And the reason why he resigned is not
19 because --

20 **Q. I didn't ask you the reason why he**
21 **resigned.**

22 MR. HUTCHISON: Let him finish his
23 answer, Willie.

24 BY MR. GARY:

25 **Q. I said this letter was in reference to the**

1 **Destiny litigation. I'm not asking you why he**
2 **resigned.**

3 MR. HUTCHISON: Let me finish his
4 answer, Willie.

5 MR. GARY: Move to strike the
6 question.

7 MR. HUTCHISON: Move the question
8 and the partial answer. I move to strike
9 all those questions regarding --

10 MS. HOFFLER: He's not moving to
11 strike all the questions.

12 MR. HUTCHISON: It's a partial
13 answer.

14 MR. GARY: He can move to strike
15 whatever he wants to. It's a waste.
16 Let's just move on.

17 BY MR. GARY:

18 **Q. Sir, this resignation -- this resignation**
19 **was in reference to an affidavit -- let me just back**
20 **up a second.**

21 **Yesterday you spoke about an affidavit, do**
22 **you remember that?**

23 A. Yes.

24 **Q. What was that affidavit about?**

25 A. I'm not sure what was in it.

1 **Q. I didn't ask you what was in it. I said**
2 **what was it about?**

3 A. It was -- I think it had something to do
4 with Fred Florio, said that he didn't know that
5 Anthony was taking any money, he wasn't involved in it
6 and he didn't know about the fraudulent invoices that
7 Anthony had produced and that he didn't know about the
8 fraudulent companies that Anthony had made and that he
9 didn't know that Anthony was hiring contractors to
10 work on his house --

11 **Q. That was the affidavit that your lawyers**
12 **prepared?**

13 A. You asked me what was in it.

14 **Q. Yeah. The affidavit -- Who prepared the**
15 **affidavit?**

16 A. Fred Florio prepared it with the lawyers.

17 **Q. Wait a minute.**

18 **Who typed the affidavit?**

19 A. I don't know who typed the affidavit.

20 **Q. Do you have a copy of it?**

21 A. I don't have a copy of it.

22 **Q. Have you ever seen it?**

23 A. I'm not sure if I saw it.

24 **Q. How do you know so much -- wait a minute.**
25 **Strike that. Strike that.**

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You've never seen it before?

A. I'm not sure if I've seen it.

Q. Well, who told you about it?

A. Rick Hutchison told me about it.

Q. That's your lawyer?

A. Yes.

Q. Did Mr. Florio sign the affidavit?

A. I am told that he signed it, yes.

Q. Where is the affidavit?

A. I don't know where it is.

Q. Your lawyers never presented it to you?

A. Not to my recollection.

Q. You never read it?

A. I don't recall reading it.

Q. Now, when did you or your Destiny LLC, when did you -- since you're talking about Anthony's taking money and what have you, when did you or Destiny, your LLC to be exact, FD Destiny, LLC when did you all stop funding, was that some time around April 2009?

A. It was after April 2009 when we had --

Q. When?

A. I'm going to finish my answer. It was after April 2009, when we were given reason to believe that there might be some fraudulent practices going

1 on. And what we decided to do was investigate them
2 before making any additional funding. So we met with
3 Anthony Pugliese.

4 So we learned of this in May of 2009, and
5 there was an invoice that had been submitted around
6 May 15th and we decided to wait to see what the
7 situation was and what Anthony had to say before
8 making any additional payments.

9 **Q. Now, with respect to the affidavit in**
10 **question that you've never seen before, has that**
11 **affidavit been given to the State Attorney's Office?**

12 MR. HUTCHISON: I object with
13 regard to anything with respect to the
14 State Attorney's Office. It's an ongoing
15 criminal investigation or I assume it's an
16 ongoing form of investigation.

17 MR. GARY: No.

18 MR. HUTCHISON: Other than being
19 irrelevant, I don't know what the law is
20 with respect to that and I don't want to
21 violate that. If there's a court order or
22 the State Attorney says it's okay, then
23 we'll answer questions.

24 BY MR. GARY:

25 **Q. I'm just saying, have you given that**

1 **affidavit to the State Attorney's Office, sir?**

2 MR. HUTCHISON: Again, he's not
3 going to answer any questions about the
4 State Attorney's Office.

5 BY MR. GARY:

6 **Q. Well, did you -- have you gone to the**
7 **State Attorney's Office?**

8 MR. HUTCHISON: Again, he's not
9 going to answer --

10 MS. HOFFLER: Excuse me. What
11 privilege are you asserting? You can't
12 just up in the air make an objection
13 that's full of nonsense?

14 What privilege are you asserting
15 that would -- and if you were going to
16 instruct your witness, your client not to
17 answer that, let's get on the phone with
18 Judge Crow because there's no -- there's
19 absolutely no privilege that you can
20 possibly assert that would prevent this
21 witness from testifying about what he
22 knows about that investigation, if he
23 knows anything. So --

24 MR. GARY: You want to get the
25 judge on the phone?

1 MS. HOFFLER: -- you want to get on
2 the phone with the judge, because there --
3 first of all, let's talk about the
4 privilege on the record so we can tell the
5 judge about this nonsense.

6 What is the privilege on the
7 record?

8 MR. HUTCHISON: There's an ongoing
9 criminal investigation of Anthony --

10 MS. HOFFLER: Are you involved in
11 the criminal investigation?

12 MR. HUTCHISON: No, we're not.

13 MS. HOFFLER: Okay. Well, then if
14 you're not involved in the investigation,
15 what is the privilege you're asserting --

16 MR. HUTCHISON: Can I finish
17 speaking?

18 MS. HOFFLER: -- for him not to
19 answer a question?

20 MR. HUTCHISON: Let me finish
21 speaking. I don't know if --

22 MS. HOFFLER: How do you know about
23 the criminal investigation?

24 MR. GARY: Let's call the judge.
25 Let's call the judge right now.

1 MS. HOFFLER: Yes.

2 THE VIDEO TECHNICIAN: Time on the
3 monitor is 9:24. We're going off video
4 record.

5 MR. GARY: Are you going to
6 instruct him not to answer any questions
7 about information that he may have one way
8 or the other as it relates to --

9 THE VIDEO TECHNICIAN: Do you want
10 the video on?

11 MR. HUTCHISON: As long as we're on
12 the court reporter's record.

13 MR. GARY: I don't need the video.

14 We want to ask questions of this
15 witness about the criminal complaint that
16 has been generated by his lawyers or
17 either by him. And I think that the state
18 attorney has a right to know about this
19 information -- has a right to know the
20 information that we are seeking to solicit
21 from this witness and not only the state
22 attorney, but -- because it's going to be
23 an issue in the case, it could be, to find
24 that somebody committed witness tampering.

25 THE VIDEO TECHNICIAN: Time on the

1 monitor is 9:37. We're back on video
2 record.

3 BY MR. GARY:

4 Q. Sir, let me ask you this question, who
5 prepared the notebook that was given to the State
6 Attorney's Office on this case?

7 MR. HUTCHISON: I'm going to
8 object. And let me make my objection very
9 clear. First of all, any information with
10 respect to communications with the State
11 Attorney's Office in an ongoing criminal
12 investigation he's not going to answer
13 questions to.

14 Other than being irrelevant, I
15 don't know the law with respect to
16 disclosing information with respect to an
17 ongoing criminal investigation, therefore,
18 I'm going to instruct the witness not to
19 answer questions about communications with
20 the State Attorney's Office.

21 The witness will answer any
22 question and provide facts about what he
23 knows about the civil theft claims that
24 are pending in this lawsuit or any of the
25 thefts that are alleged against

1 Mr. Pugliese in these pending lawsuits,
2 but we're not going into anything about
3 the criminal matter because there is an
4 ongoing criminal investigation. Other
5 than being irrelevant, I think that there
6 are protections regarding information on
7 ongoing criminal investigations.

8 And in addition, the judge issued
9 an order yesterday and it said that to the
10 extent, and I'm quoting, that counsel for
11 the witness believes that any question is
12 inappropriate under Florida Rules of Civil
13 Procedure as outlined above, counsel shall
14 object to same and shall be able to
15 instruct the witness not to respond to
16 questions and/or otherwise terminate said
17 deposition and seek rule from the court.

18 I'm not terminating the deposition.
19 We're willing to go forward on any
20 question regarding the civil litigation.
21 Any questions regarding the civil theft
22 Mr. DeLuca will answer.

23 MR. GARY: Will you please cite the
24 law and the Rules of Civil Procedure that
25 allows you to object?

1 Counsel, can you cite the portion
2 of the Rules of Florida Civil Procedures
3 that give you the right to instruct this
4 witness not to answer these questions,
5 since you said it was based on some rule
6 in Florida's Civil Procedures.

7 MR. HUTCHISON: I believe that
8 there is -- I don't know. I mean, you
9 have Bob Butterworth, former attorney --

10 MR. GARY: Well, you should know.

11 MR. HUTCHISON: Let me finish my
12 statement. You have Bob Butterworth,
13 former attorney general here, but I am
14 fairly confident or I believe, at least,
15 that there is a protection against
16 concealing or disclosing -- disclosing
17 information regarding an ongoing criminal
18 investigation.

19 If the judge orders Mr. DeLuca to
20 answer those questions, of course, he
21 would answer those questions, but at this
22 point in time regarding an ongoing
23 criminal investigation, we're not going to
24 answer questions. We will answer any
25 question -- Mr. DeLuca will answer any

1 question regarding the civil case or the
2 civil theft claims, just not what was
3 discussed, if anything, with the State
4 Attorney's Office.

5 MR. GARY: Well, we're not asking
6 for the information.

7 Let me ask you this question, are
8 you involved in that investigation?

9 MS. HOFFLER: He can answer that.

10 MR. HUTCHISON: Again, he's not
11 answering anything regarding that
12 investigation.

13 BY MR. GARY:

14 **Q. Have you given any information to the**
15 **State Attorney's Office? Have you given an affidavit**
16 **or a statement to the State Attorney's Office?**

17 MR. HUTCHISON: Again, he's not
18 going to answer those questions.

19 BY MR. GARY:

20 **Q. And if so, what was the statement that you**
21 **gave? What did you tell the state attorney about this**
22 **case?**

23 MR. HUTCHISON: Same question --
24 same objection, he's not going to answer.

25 BY MR. GARY:

1 Q. Did you tell the state attorney that Fred
2 Florio sent you an e-mail claiming that you all were
3 trying to tamper with him?

4 MR. HUTCHISON: Same objection
5 other than the form and relevance, but
6 same objection.

7 BY MR. GARY:

8 Q. Did you tell the State Attorney that Fred
9 Florio said that you sent -- he sent an e-mail to you
10 telling you to have your lawyer stop trying to get him
11 to change his testimony?

12 MR. HUTCHISON: Same objection.

13 BY MR. GARY:

14 Q. Did you tell the State Attorney that you
15 stole \$1.2 million from Anthony Pugliese?

16 MR. HUTCHISON: Same objection.

17 BY MR. GARY:

18 Q. Did you discuss with the State Attorney
19 the fact that you took \$1.2 million from Anthony
20 Pugliese and you never discussed or disclosed it with
21 him and you told him -- and when he questioned you
22 about it, you told him it was none of your business,
23 it was between you and the bank?

24 MR. HUTCHISON: Same objection.

25 BY MR. GARY:

1 **Q. Have you told the State Attorney that you**
2 **asked Fred Florio to tell a lie under oath in an**
3 **affidavit?**

4 MR. HUTCHISON: Same objection.

5 BY MR. GARY:

6 **Q. Mr. DeLuca, it was your intention and your**
7 **plan to steal this property from Anthony Pugliese from**
8 **the day that you learned that it had a value that was**
9 **100 worth -- the value of that was 100 times more than**
10 **what it was under contract for?**

11 MR. HUTCHISON: Object to the form.

12 BY MR. GARY:

13 **Q. Didn't you?**

14 A. Absolutely not. In fact, on many
15 occasions I offered to sell Anthony Pugliese the
16 property for exactly the money I had in it. I was
17 happy for him to pay me out and earn every single
18 penny.

19 **Q. Do you have one e-mail evidencing that?**

20 A. No. I have many e-mails.

21 **Q. Do you have a memo evidencing that?**

22 A. I'm going to finish the question -- the
23 answer. I have many e-mails that were sent to him
24 plus there were many conversations I had with him that
25 he could buy me out.

1 **Q.** **Now, let me ask you this question, back to**
2 **the State Attorney's Office, back to the State**
3 **Attorney's involvement, did you initiate or instigate**
4 **the State Attorney getting involved in this case?**

5 MR. HUTCHISON: Same objections.

6 He's not answering questions regarding the
7 criminal investigation.

8 BY MR. GARY:

9 **Q.** **Have you informed the State Attorney that**
10 **you together with Subway accountants and lawyers --**
11 **let me rephrase that.**

12 **Have you informed the State Attorney's**
13 **Office that you together with Subway's accountants**
14 **conspired to fraudulently profit from the financing of**
15 **the LCOC acquisition?**

16 MR. HUTCHISON: Same objections.

17 BY MR. GARY:

18 **Q.** **Did your lawyers know that you were taking**
19 **\$1.2 million out of the closing on this deal without**
20 **disclosing that information to Anthony?**

21 MR. HUTCHISON: I'll object to the
22 form, Willie, only because I just don't
23 want to get into privileged information.
24 If you're talking about -- you're talking
25 about back in August or summer of 2005?

1 MR. GARY: Yes.

2 MR. HUTCHISON: And what was
3 communicated between the lawyers?

4 MR. GARY: Yes.

5 MR. HUTCHISON: Yes, he can answer
6 that question.

7 BY MR. GARY:

8 **Q. Did your lawyers know that you were**
9 **stealing -- or taking \$1.2 million from Anthony from**
10 **this deal and that you were withholding this**
11 **information from him because you told him it was none**
12 **of his business?**

13 MR. HUTCHISON: Object to the form
14 of that question. Don't talk about
15 attorney-client privilege, but what -- you
16 can talk about what the lawyers exchanged.

17 BY MR. GARY:

18 **Q. Did they know you were taking that**
19 **1.2 million bucks?**

20 A. No. They knew that there was a fee of
21 \$1.4 million that was never paid, was rolled into the
22 loan. They knew this was disclosed to Anthony --

23 **Q. I didn't ask you --**

24 A. Let me finish my --

25 **Q. Wait a minute. Wait a minute.**

1 A. They knew that this was disclosed to
2 Anthony --

3 **Q. I don't want to hear that. I don't want**
4 **to hear that. I asked you did they know you were**
5 **taking the 1.2.**

6 Now, you can tell me -- you can plead your
7 whole case with unrequested or solicited information.

8 Did they know that you were taking the
9 \$1.2 million without having disclosed to Anthony the
10 dealings you had with the bank?

11 A. I'm going to finish my answer.

12 **Q. No. Well, strike the answer.**

13 MR. HUTCHISON: Strike the question
14 and the answer.

15 MR. GARY: Strike the question.

16 MR. HUTCHISON: And the partial
17 answer.

18 MR. GARY: And the partial answer
19 that you gave.

20 BY MR. GARY:

21 **Q. I'm going to restate it again.**

22 **Did they know that you were taking this**
23 **\$1.2 million?**

24 A. They knew that I was -- first of all, they
25 knew that I was charging a fee to LCOC of

1 \$1.4 million.

2 **Q. Thank you.**

3 A. That number was disclosed to all parties.
4 It was negotiated. Anthony was the manager of LCOC.
5 He had lawyers representing him. Their lawyers worked
6 with my lawyers. They knew it was \$1.4 million.

7 **Q. Why did your accountant tell him --**

8 A. I'm not done.

9 **Q. -- it was not --**

10 A. I'm not done.

11 **Q. Sir --**

12 A. I'm not done with my answer.

13 **Q. Strike it. Strike the question. Let's**
14 **move on. Let's strike -- strike that question and**
15 **that answer because I don't need the garbage that**
16 **you're giving us.**

17 MR. HUTCHISON: Move to strike
18 comment of counsel.

19 BY MR. GARY:

20 **Q. Now, when did you -- did you go to law**
21 **enforcement or the prosecutors to try to have Anthony**
22 **indicted?**

23 MR. HUTCHISON: Same objections.
24 He's not answering questions about the
25 ongoing criminal investigation.

1 BY MR. GARY:

2 Q. Have you ever talked to the prosecutor in
3 this case?

4 MR. HUTCHISON: Same objection.

5 BY MR. GARY:

6 Q. Have you ever seen the prosecutor?

7 MR. HUTCHISON: Same objection.

8 BY MR. GARY:

9 Q. Did you prepare the notebook that was
10 given to the prosecutor?

11 MR. HUTCHISON: Same objections.

12 BY MR. GARY:

13 Q. Do you have ongoing discussions with the
14 prosecutor as we go through your deposition?

15 MR. HUTCHISON: Same objection.

16 BY MR. GARY:

17 Q. Do your lawyers have ongoing discussions
18 with the prosecutor as we go through this deposition?

19 MR. HUTCHISON: Same objections.

20 BY MR. GARY:

21 Q. Have you ever had the opportunity to meet
22 with the prosecutor?

23 MR. HUTCHISON: Same objection.

24 BY MR. GARY:

25 Q. Had the prosecutor ever talked to you,

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sir?

MR. HUTCHISON: Same objection.

BY MR. GARY:

Q. Have you ever given the prosecutor a sworn statement?

MR. HUTCHISON: Same objection.

BY MR. GARY:

Q. Do you have knowledge of when your lawyers went to the prosecutor?

MR. HUTCHISON: Same objection.

BY MR. GARY:

Q. Now, let me ask you this question, when did your lawyers file this lawsuit that you filed against Anthony?

A. It was during 2009, maybe August or September.

Q. And did you read the complaint that was filed?

A. I don't --

MR. GARY: Wait a minute. You can't shake your head, sir.

MR. HUTCHISON: Who are you talking to?

MR. GARY: You.

MR. HUTCHISON: He's not even

1 looking at me and I wasn't shaking my head
2 to that. I wasn't shaking my head at all,
3 Willie.

4 MS. HOFFLER: It's interesting how
5 20 people in here saw you shake your head.

6 MR. HUTCHISON: Okay. Well, let 20
7 people say it on the record, but I'll tell
8 you I wasn't and he's not even looking at
9 me, C.K., so even if I was, which I
10 wasn't, he couldn't see it. He's on the
11 video.

12 BY MR. GARY:

13 **Q. Did you read the lawsuit before it was**
14 **filed?**

15 A. I don't recall reading it.

16 **Q. You mean you filed the lawsuit against**
17 **this man and you never read the lawsuit, is that**
18 **what you -- you just told this jury that. You want to**
19 **change that now?**

20 A. No.

21 MR. HUTCHISON: Objection.

22 THE WITNESS: I don't recall
23 reading it.

24 BY MR. GARY:

25 **Q. Have you read the lawsuit?**

1 A. I'm not sure that I have.

2 Q. Ever?

3 A. Correct.

4 Q. Well, do you know any reason why you
5 waited some four years to go to the State Attorney's
6 Office to try to get Anthony Pugliese indicted?

7 MR. HUTCHISON: He's not going to
8 answer. Objection, same objection. He's
9 not answering questions regarding the
10 State Attorney's Office or the criminal
11 investigation.

12 BY MR. GARY:

13 Q. Well, sir, you know that in the operating
14 agreement, and you can refer to -- I'm going to ask
15 you a couple of questions. You know that in the
16 operating agreement, don't you, the one that you
17 signed, you knew that if Anthony got charged or
18 indicted or convicted, that you would take all the
19 property and the entire business, you knew that,
20 didn't you?

21 A. Will you show me where it says that. I
22 don't know that.

23 Q. Look at page 11. This is the agreement
24 that you -- is that the agreement -- look and see if
25 that's the agreement that you put your John Doe on.

1 A. I think we went over this yesterday that I
2 had signed the operating agreement on behalf of
3 FD Destiny, LLC.

4 MR. HUTCHISON: What page, Willie?

5 MR. GARY: Page 11.

6 MR. HUTCHISON: What paragraph?

7 MR. GARY: One second. Let me see

8 here. I think it's page --

9 BY MR. GARY:

10 **Q. Let's look at page 11 of the operating**
11 **agreement.**

12 **Do you see where it says under 4.2, change**
13 **in management? Now this is the operating agreement**
14 **that you signed that you're looking at, right?**

15 **Whether you read it or not, you signed it,**
16 **didn't you?**

17 A. That's correct.

18 **Q. And you see on page 11?**

19 A. I see page 11.

20 **Q. Up top, 4.2, where it says change in**
21 **manager, right?**

22 **Now, Anthony was the manager, wasn't he?**

23 A. At one time he was the manager, but he
24 hadn't been the manager for several years.

25 **Q. Sir, I didn't -- I said at the time you**

1 **signed this operating agreement he was the manager,**
2 **right?**

3 A. He was the manager at the time --

4 **Q. At the time you signed the operating --**

5 A. -- of the signing of the operating
6 agreement, but he has not been the manager for
7 several --

8 **Q. Sir, I didn't ask you that. Move to**
9 **strike.**

10 **My question is, at the time that Anthony**
11 **signed this operating agreement, was he the manager?**

12 A. And as I said, he's no longer the manager,
13 but he was the manager at one time.

14 **Q. Move to strike.**

15 **Let me just ask you again, sir, and listen**
16 **to me, did you sign this operating agreement?**

17 MR. HUTCHISON: Objection, asked
18 and answered numerous times.

19 THE WITNESS: Yes.

20 BY MR. GARY:

21 **Q. When you put your John Doe on that**
22 **operating agreement, who was the manager then?**

23 A. The manager back several years ago was
24 Anthony Pugliese.

25 **Q. Thank you.**

1 And do you see where it says, in the event
2 of any of the following shall occur, any event -- any
3 of the following shall occur, Anthony B. Pugliese, III
4 shall no longer be the manager.

5 Do you see that?

6 A. I see that.

7 Q. And let's go down to F, see if you -- if
8 I'm reading -- tell me if I read this correctly. The
9 indictment of Anthony B. Pugliese that in the
10 reasonable opinion of Frederick A. DeLuca impacts the
11 project or the company.

12 Do you see that, sir? Did I read that
13 correctly?

14 A. You did.

15 Q. And then it goes further to say, he could
16 be removed if convicted of a felony that results --
17 I'm sorry, let me read that again. The conviction of
18 a felony that results in Anthony B. Pugliese being
19 required to be incarcerated.

20 Did I read that correctly?

21 A. Basically, yes.

22 Q. Now -- and you signed that operating
23 agreement, didn't you?

24 A. Yes, I signed the operating agreement.
25 And this clause is irrelevant because Mr. Pugliese --

1 Q. Sir --

2 A. -- is not the manager now.

3 Q. Sir, I just asked you did you sign the
4 op -- you know, that's not responsive. I move to
5 strike and it's not responsive. Okay. So let's move
6 forward.

7 Have you read the deposition of Anthony
8 Pugliese?

9 A. No.

10 Q. Did you read in his -- as a matter of
11 fact, have you discussed the deposition of Anthony
12 Pugliese?

13 A. I was told about it.

14 Q. Who told you about it?

15 A. I was told --

16 MR. HUTCHISON: You can tell him if
17 we discussed it, but don't go into any
18 discussions about what we said.

19 BY MR. GARY:

20 Q. Did your lawyers discuss the deposition of
21 Anthony Pugliese with you?

22 A. I talked to my lawyers about that.

23 Q. And after that discussion, did you take --
24 you still didn't take the time to read his deposition
25 to see what he had to say about the invoices?

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

3 BY MR. GARY:

4 Q. You didn't read his deposition yourself,
5 did you?

6 A. No. I talked to David Friedman and Bobby
7 Ray about it.

8 Q. Was David Friedman involved in the Destiny
9 project?

10 A. Yes.

11 Q. Was Bobby Ray involved in the Destiny
12 project?

13 A. Yes.

14 Q. Now, Anthony Pugliese talked to you about
15 the invoices, didn't he?

16 A. He did.

17 Q. He did, didn't he?

18 A. He did.

19 Q. And he told you -- as a matter of fact,
20 your operating agreement gives Anthony the power to do
21 whatever it takes to keep the business going or to
22 manage the business or to pay the employees or to make
23 sure that the operation works as smoothly as possible,
24 doesn't it?

25 MR. HUTCHISON: Objection.

1 THE WITNESS: That's not true at
2 all.

3 MR. HUTCHISON: Object to the form,
4 the agreement speak for itself.

5 BY MR. GARY:

6 Q. Would you agree that the operating
7 agreement speaks for itself even though you haven't
8 read it?

9 A. I would agree.

10 Q. And would you agree to be bound by what's
11 in the operating agreement if it's in the operating
12 agreement?

13 A. Well, I think FD Destiny as the member is
14 bound by the operating agreement.

15 Q. Now, the operating agreement also talks
16 about poor judgment being used by the manager and the
17 consequences of that, doesn't it?

18 A. I don't know.

19 Q. Well, you know that it says that if he
20 made bad judgments or made mistakes, if he made them
21 in good faith and made them in the best interests of
22 the company, that the company would understand that?

23 A. Where does it say that?

24 Q. Well, why don't you read the -- you want
25 to -- you haven't -- since we've been in this

1 deposition, have you thought that maybe it would be
2 good for you to read the operating agreement?

3 A. You haven't allowed me to read it.

4 Q. You had all last night to read it, didn't
5 you?

6 A. I had other things to do.

7 Q. So you had something to do that was more
8 important than reading the operating agreement?

9 A. Yes.

10 MR. HUTCHISON: If you have a
11 specific provision, you can read it, tell
12 him.

13 BY MR. GARY:

14 Q. Well, have you seen in the operating
15 agreement where it says, no member shall be liable to
16 any other member for honest mistakes in judgment?
17 Have you seen that?

18 A. I haven't seen it.

19 Q. You didn't read it?

20 A. I haven't read it.

21 Q. Even though it was in the operating
22 agreement?

23 A. Show me where it is.

24 Q. Well, why don't you -- sir, why didn't you
25 read it for yourself?

1 A. I didn't understand the question.

2 Q. Why don't you turn to page 30, so it will
3 be clear. Before we started this deposition, had you
4 read this operating agreement?

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

7 THE WITNESS: No.

8 BY MR. GARY:

9 Q. You never read it, okay.

10 Well, look at 13.11 and see if I'm reading
11 this right. Neither the managers or any of the
12 officers nor any of their affiliates shall be liable
13 to any member or the company for honest mistakes in
14 judgment.

15 Did I read that correctly?

16 A. Yes.

17 Q. For actions or inactions taken reasonably
18 and in good faith for the purpose that was reasonably
19 believed to be in the best interest of the company.

20 Did I read that correctly?

21 A. That's what it says.

22 Q. Provided that this paragraph 13.12, shall
23 not be extended to any action which constitutes fraud,
24 willful misconduct or gross negligence.

25 Did I read that correctly?

1 A. You did.

2 Q. The managers may consult with counsel and
3 accountants in respect -- in respect of the company
4 affairs and be fully protected, justified in any
5 action or inaction that is taken in accordance with
6 the advice and opinion of such counsel or accountants.

7 Do you see that? Did I read that
8 correctly?

9 A. Yes.

10 Q. Now, is this your first time reading this
11 document?

12 A. I looked at --

13 Q. It's your first time reading this
14 document?

15 A. I'm still not reading the document. I'm
16 just looking at pieces.

17 Q. Have you ever read this document before?

18 MR. HUTCHISON: Asked and answered.

19 THE WITNESS: For the tenth time,
20 no, I have not. And I'd like to finish
21 reading this one paragraph.

22 BY MR. GARY:

23 Q. No. Sir, I'm going on to my next
24 question.

25 Now, you never even stopped for one moment

1 to help Anthony with this project by devoting any of
2 your personal time to it, did you, sir? Did you?

3 A. No. I spent my personal time. I invested
4 money and I spent my personal time.

5 Q. So you invested personal time in this
6 project as well; is that correct?

7 A. Yes. I had numerous conversations with
8 Anthony which took up a considerable amount of
9 personal time.

10 Q. Now, in reference to the invoices that's
11 in question here, you never spoke to Anthony about any
12 invoices or you never bothered to ask him or get his
13 opinion as to why the invoices were done the way they
14 were done, did you?

15 MR. HUTCHISON: Object to the form.

16 THE WITNESS: That's not true. I
17 asked him about the invoices and he told
18 me that he was simply reimbursing himself
19 for political contributions.

20 BY MR. GARY:

21 Q. Now, when did you talk to -- Sir, you
22 understand you're under oath, right?

23 A. Yes.

24 Q. And that that's an indication that
25 whatever you say is the truth; is that correct?

1 A. Yes.

2 Q. But you're not telling the truth about
3 this, are you, sir? You never talked to Anthony about
4 these invoices, did you?

5 MR. HUTCHISON: Object to the form.

6 THE WITNESS: No, I did. I had a
7 meeting with him in his office with two
8 lawyers present that represented me and I
9 asked him about the invoices. And he told
10 me that he had taken \$1.8 million, but he
11 was simply reimbursing himself for
12 political contributions. As a result --

13 BY MR. GARY:

14 Q. Sir --

15 A. -- I had an investigation started and
16 tried to look into the accounting of what happened.

17 Q. Now, let me ask you this question, you saw
18 an opportunity to get Anthony out of the business and
19 to steal the property and you jumped on it, didn't
20 you?

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

23 THE WITNESS: Not at all. I simply
24 saw that Anthony Pugliese had done
25 irregular things that looked wrong and I

1 simply tried to investigate it. My first
2 stop was to meet with him personally to
3 hear what he had to say about it. He told
4 me that he had done things to reimburse
5 himself. And I said to him, okay, if you
6 think this is right, I'll take your word
7 for it, but I need to go into the books
8 and I need to have the books investigated.
9 And we tried to do that.

10 BY MR. GARY:

11 **Q. Okay. Now -- but the fact of the matter**
12 **is you saw an opportunity to take this property from**
13 **Anthony and you jumped on it, didn't you?**

14 A. Absolutely not.

15 **Q. That was your intent from the start,**
16 **wasn't it?**

17 A. That's absolutely ridiculous.

18 **Q. It was your intent to steal this --**

19 A. I'm not done.

20 **Q. -- valuable piece of property --**

21 A. That's absolutely ridiculous. When I met
22 with Anthony Pugliese, I was just trying to figure out
23 what was going on. He had full control of all of the
24 money. Every single month he sent me invoices that
25 were supposed to be true and honest --

1 Q. Sir --

2 A. He sent them to me, I paid them and I was
3 simply trying to figure out what was going on with the
4 money that he was entrusted with.

5 Q. Sir, why didn't you ask the treasurer what
6 was going on with the money?

7 You were trying to steal this property,
8 sir, and you know it, weren't you?

9 A. I went right to --

10 Q. And you stole it.

11 A. I went right to Anthony Pugliese and asked
12 him about what was going on --

13 Q. My question was, why didn't you talk to
14 the treasurer?

15 A. The treasurer didn't know anything about
16 the finances of the company.

17 Q. Well, let's look at the -- page 14 of the
18 operating agreement, since you say the treasurer
19 didn't know anything about the money.

20 MR. HUTCHISON: Which paragraph,
21 Willie?

22 MR. GARY: Page 14, paragraph
23 subsection D up top.

24 MR. HUTCHISON: Under 4.7?

25 MR. GARY: Yes.

1 BY MR. GARY:

2 Q. Now, I'm not suggesting that you read the
3 entire operating agreement, but yes, under -- on page
4 14, under 4.6. 4.6 starts on page 13 of the operating
5 agreement over the 14, D up top, the position of the
6 treasurer, unless otherwise provided by the members
7 shall have the custody of the corporate funds.

8 Did I read that correctly?

9 A. I don't know where you started from.

10 Q. On page 14, up top.

11 A. I heard you say 13. I was there.

12 Q. Page 14. Do you see C up top and then D
13 right below it?

14 A. I do.

15 Q. Okay. Tell the jury if I read this
16 correctly, as to what is the position of the
17 treasurer, the position of the treasurer unless
18 otherwise provided by the members shall have the
19 custody of corporate funds? Do you see that?

20 A. I see that.

21 Q. And your guy at that time, Fred Florio,
22 was the treasurer, wasn't he?

23 MR. HUTCHISON: Object to the form.

24 BY MR. GARY:

25 Q. Wasn't he the treasurer?

1 A. He did not have custody of the corporate
2 funds.

3 **Q. Sir, I said was he the treasurer?**

4 A. He was the treasurer, but he did not have
5 custody of the corporate funds.

6 **Q. But the operating agreement says, unless
7 otherwise provided by the members, shall have the
8 custody of the corporate funds.**

9 **Did I read that correctly, the treasurer?**

10 A. I know you read it correctly and what --
11 Anthony Pugliese had custody of the corporate funds as
12 we discussed and as we acted, that's what we did.

13 **Q. And let me read further, and securities
14 and shall keep full and accurate accounts and receipts
15 and disbursement in books belonging to the company and
16 shall deposit all monies and other valuable effects in
17 the name and to the credit of the company in such
18 depositories as may be designated by the manager.**

19 **Did I read that correctly?**

20 A. You did.

21 **Q. As a matter of fact -- as a matter of
22 fact, you designated Fred Florio as the treasurer,
23 didn't you?**

24 A. He was listed on the document.

25 **Q. And this is the same guy that worked for**

1 **you for 17 years, right?**

2 A. Yes. Fred Florio was listed as the
3 treasurer, worked for me for 17 years and did not have
4 custody of the corporate funds.

5 **Q. Well, this is the same Fred that said that**
6 **you or somebody tried to get him to lie. You read the**
7 **e-mail that he sent to you.**

8 A. That's not what he said there.

9 **Q. Well, he said that you were trying to get**
10 **him to change his story, didn't he?**

11 A. That's not what it said there.

12 **Q. You were trying to get him to change his**
13 **position about what happened.**

14 A. Look, that's not what he said and
15 that's --

16 **Q. Trying to get him to sign a false**
17 **affidavit?**

18 A. That's not what he said and that's not
19 what I --

20 MR. HUTCHISON: Let him finish.

21 BY MR. GARY:

22 **Q. Sir, did you try to get him to sign a**
23 **false affidavit?**

24 MR. HUTCHISON: Finish your answer.

25 BY MR. GARY:

1 **Q. Did you try to get him to sign a false**
2 **affidavit?**

3 THE WITNESS: Which question?

4 MR. HUTCHISON: The one that's
5 pending.

6 BY MR. GARY:

7 **Q. Did you try to get him to sign a false**
8 **affidavit?**

9 A. Absolutely not. I never --

10 **Q. Did you get him to sign an affidavit?**

11 MR. HUTCHISON: Let him finish his
12 answer.

13 THE WITNESS: Absolutely not. I
14 never asked him to sign a false affidavit.
15 I never asked him to lie. In fact, there
16 was no reason to ask him to lie because
17 nothing he ever told me was at all
18 inconsistent with the facts in this case
19 as I know them.

20 BY MR. GARY:

21 **Q. Why did he say you and your lawyers were**
22 **badgering him?**

23 A. What he -- in my opinion, he wrote that
24 letter because he did not want to give the statement
25 that we were asking him to give.

1 **Q. We, who?**

2 A. Rick Hutchison had asked him to give a
3 statement in March --

4 **Q. You had typed it out for him, hadn't you?**

5 A. No. A verbal statement --

6 **Q. No. You had typed out a statement that**
7 **you wanted him to sign that you put before him when**
8 **you got him down to the office; isn't that true, sir?**

9 MR. HUTCHISON: Objection.

10 THE WITNESS: Well, these are two
11 different things that we're talking about.

12 BY MR. GARY:

13 **Q. You were trying to get him set up --**

14 A. I'm going to --

15 **Q. -- to prosecute him --**

16 A. I'm going to explain the answer.

17 **Q. Were you trying to prosecute him?**

18 A. No. We simply wanted him --

19 **Q. Were you trying to get him to --**

20 A. Let me finish my answer. No. We simply
21 wanted him to say what the story was as he knew it
22 and --

23 **Q. And he told you --**

24 MR. HUTCHISON: Let him finish his
25 answer, Willie.

1 BY MR. GARY:

2 Q. Didn't he tell you to tell the lawyers to
3 stop calling him?

4 MR. HUTCHISON: Let him finish his
5 answer.

6 THE WITNESS: We simply wanted him
7 to come down and tell the story as he knew
8 it. And what he had told us previously we
9 wanted to have that under oath and --

10 BY MR. GARY:

11 Q. Were you there when he told your story --
12 when he told this story?

13 A. He refused to come in and he suddenly
14 quit.

15 Q. Now, were you there when he refused to
16 come in?

17 A. I talked to him about it.

18 Q. I said were you at the lawyer's office
19 when he refused to come in?

20 A. What, you mean was I there when he wasn't
21 there?

22 Q. No. Did he ever go to your lawyer's
23 office?

24 A. Yes, he did.

25 Q. Were you there?

1 A. On one or two occasions.

2 Q. Were you there when they tried to get him
3 to sign the affidavit?

4 A. No. I wasn't there.

5 Q. Were you there -- you saw in the e-mail
6 where he said to stop your lawyers from calling him,
7 did you see that?

8 A. And nobody has called him since.

9 Q. Did you see in the e-mail where he said,
10 you and your lawyers were trying to get him to change
11 his testimony?

12 A. I didn't see him say that.

13 THE WITNESS: Can we take a break
14 now?

15 MS. HOFFLER: Just one more
16 question.

17 THE WITNESS: It's 10:30.

18 MR. GARY: Just a couple more.

19 BY MR. GARY:

20 Q. You say that you were there on one
21 occasion when you all brought Fred Florio in.

22 What year was that? Was that this year?

23 A. No. Maybe more than a year ago or so.

24 Q. Sir, I'm asking you the question.

25 A. And I answered.

1 **Q. So it was from today a year ago?**

2 A. It feels like about a year ago. I don't
3 think I was in the office this year when he was there.

4 **Q. Do you know whatever happened to the**
5 **affidavit?**

6 A. No.

7 **Q. How did you know about the affidavit?**

8 A. Rick Hutchison told me about it.

9 MR. HUTCHISON: No discussions with
10 me.

11 BY MR. GARY:

12 **Q. Did you -- you had input in the -- did you**
13 **give any information in the preparation of that**
14 **affidavit?**

15 A. None at all.

16 **Q. So the lawyer just did it?**

17 A. No. Fred Florio did it.

18 **Q. He typed it up?**

19 A. No. Fred Florio told the lawyer what to
20 put in it, the lawyer --

21 **Q. Who typed up --**

22 A. -- the lawyer had his secretary type it
23 up. I don't know who in the office typed it up. And
24 then I was told that Fred Florio edited it several
25 times to make sure that it was accurate according to

1 his knowledge and totally right.

2 **Q. He changed --**

3 A. And then Fred Florio signed it.

4 **Q. He changed it a number of times because he**
5 **thought that you all were trying to get him to tell a**
6 **lie, didn't he, sir?**

7 A. Not at all. He just -- not to my
8 knowledge.

9 **Q. He told you that, didn't he?**

10 A. No, not at all.

11 **Q. He told you that in an e-mail, didn't he?**

12 A. Not at all. He signed an affidavit that
13 he signed voluntarily that he edited. I talked to him
14 about it. He said afterwards, he said that he signed
15 it. It was totally true everything he wrote down and
16 that's all I know.

17 **Q. Why did he say to stop your lawyers from**
18 **trying to get him to give a different version or**
19 **different story and to leave him alone?**

20 A. That's not what his e-mails say.

21 **Q. Well, you offered him a million dollars to**
22 **cooperate with you, didn't you, sir?**

23 A. Absolutely not. That is totally
24 ridiculous. What I --

25 **Q. Now --**

1 A. -- what I did was I offered him -- because
2 he wasn't doing much work at all working for me, I
3 offered him the opportunity to work in another
4 business. He would have to work hard, there was no
5 handouts and I expected to get a return if I was going
6 to invest in a business.

7 **Q. That's on the \$5 million deal that you**
8 **offered him, but on the million dollars you said under**
9 **oath yesterday, sir, you said that you were going to**
10 **just do that to help him get in business and get**
11 **going, didn't you say that?**

12 A. No.

13 MR. HUTCHISON: Misstates his
14 testimony.

15 THE WITNESS: Not at all.

16 MR. GARY: Well, your testimony
17 speaks for itself.

18 MR. HUTCHISON: It does. Let him
19 finish his answer.

20 MR. GARY: The testimony speaks for
21 itself.

22 THE WITNESS: No, not at all. What
23 I simply told him almost a year ago, maybe
24 it was a year ago now, I said to him,
25 Fred, you don't have a lot of work to do.

1 People don't enjoy working with you, let
2 me help you out, I felt bad for him, I had
3 known him a long time, I said maybe we
4 could find a business, and I gave him a
5 few months to go ahead and do some
6 research to see if there was a business
7 that he could find that he would enjoy
8 doing and be capable at, that I could
9 invest in so that he would have something
10 to do to be active and to make a return
11 and he would be able to earn money, too.
12 That was the concept.

13 BY MR. GARY:

14 Q. Okay. Good. So after 17 years, all of a
15 sudden when you filed this complaint, you'd been to
16 the State Attorney's Office, when did you -- when did
17 the State Attorney get involved in this case?

18 MR. HUTCHISON: Same objections as
19 before. He's not answering --

20 BY MR. GARY:

21 Q. So after 17 years you all of a sudden
22 decide that he can't get along with anybody anymore.

23 Now, at that point in time isn't it true
24 that you were contemplating trying to get Anthony
25 charged with some criminal charges so you could steal

1 **the business?**

2 A. Not at all. I talked to Fred Florio about
3 the problems with his work and -- over a year ago and
4 this is well before Anthony testified about what he
5 did. And I had Fred Florio looking for other
6 businesses last year.

7 Q. But you knew -- you knew in the operating
8 agreement that if you got Anthony charged -- just
9 charged, not even a conviction, that you could take
10 over, you could remove him as the manager and you
11 could steal the company, you knew that, didn't you?

12 A. That is totally ridiculous. He was
13 already removed a couple of years ago as the manager.
14 He hasn't been the manager for three years.

15 Q. Sir, but you knew that operating agreement
16 said that from day one that if the time ever came
17 where you could have him removed for criminal reasons,
18 that you were going to do it because even though he
19 did what he did in the best interests of the company,
20 you saw a chance to take this company by way of
21 organizing and setting up some trumped charges with
22 the State Attorney's Office, didn't you?

23 MR. HUTCHISON: Object to the form.

24 THE WITNESS: Not at all. First of
25 all, I never --

1 BY MR. GARY:

2 Q. Did you go to the State Attorney's
3 Office --

4 A. First of all, I never --

5 MR. HUTCHISON: Objection.

6 THE WITNESS: -- read the
7 agreement. I didn't know it talked about
8 he could be removed if he was arrested,
9 but that doesn't even matter because --

10 BY MR. GARY:

11 Q. Did your lawyers read the agreement?

12 A. -- he was removed a long time ago.

13 Q. Did your lawyers read the agreement?

14 A. I don't know if they read the agreement.
15 These lawyers?

16 Q. Did anybody on your team read the
17 agreement?

18 A. I don't know for sure. I believe my
19 lawyers who worked on this initially read the
20 agreement.

21 MR. GARY: Let's take a break.

22 THE VIDEO TECHNICIAN: Time on the
23 monitor is 10:25. We're going off video
24 record.

25 (A brief recess was taken.)

1 THE VIDEO TECHNICIAN: Time on the
2 monitor is 10:56. This begins tape number
3 two. We're back on the video record.

4 BY MR. GARY:

5 Q. Let me ask you this question in reference
6 to the issue with the State Attorney's Office, did
7 that -- did you represent FD Destiny or did FD Destiny
8 prepare a book or go to the State Attorney's Office in
9 reference to this state attorneys issue?

10 MR. HUTCHISON: Objection. That
11 was asked and answered and the same
12 objection with respect to anything with
13 regard to the State Attorney's Office and
14 the ongoing criminal investigation. He's
15 not answering it today.

16 If the judge orders it, obviously
17 he'll answer any questions the judge
18 orders. He will talk about the
19 complaints -- both complaints in the civil
20 theft claims to the extent he knows, but
21 not talking about the criminal
22 investigation.

23 MS. HOFFLER: Have you done any
24 further research -- Holland and Knight has
25 thousands of attorneys, have you done any

1 research as to what privilege you can
2 legitimately assert in connection with the
3 State Attorney contact?

4 MR. GARY: What privileges are you
5 asserting?

6 MR. HUTCHISON: I believe --

7 MS. HOFFLER: Have you done any
8 research?

9 MR. HUTCHISON: I'm telling you
10 that I don't have a statute or a rule.

11 MS. HOFFLER: Right.

12 MR. HUTCHISON: I don't believe
13 that we can discuss an ongoing criminal
14 investigation. Former Attorney General
15 Bob Butterworth is here and maybe he can
16 give an opinion on it, but either way,
17 until the judge orders it, Mr. DeLuca is
18 not answering questions about the criminal
19 investigation.

20 MR. GARY: Well, are you going to
21 respect his opinion?

22 MR. HUTCHISON: Maybe he can give
23 you an opinion on it.

24 MR. GARY: I'm not -- I don't need
25 an opinion.

1 MS. HOFFLER: Don't you think we
2 have an opinion?

3 MR. HUTCHISON: I'm telling you
4 either way --

5 MR. GARY: What are you trying to
6 do here? You want -- you referred to Bob
7 Butterworth as being here, former state
8 attorney. So why are you addressing that
9 issue with him if you're not going to
10 listen to what he has to say. And I don't
11 know what he's going to say, but you want
12 both of us to be guided by his decision?

13 MR. HUTCHISON: No, I want it to be
14 guided by the judge's decision.

15 MS. HOFFLER: Yeah. Kevin, why did
16 you mention it if for no other reason?

17 MR. GARY: You know, it appears to
18 me that you would want this -- as a State
19 Attorney issue, Bob, that you would want
20 them to be able to move forward having all
21 the facts before them.

22 I mean, what's the problem with
23 that? I mean, just having all the facts
24 before them as it relates to this incident
25 and how this matter got to the State

1 Attorney's Office. Why wouldn't you want
2 them to have all of the facts?

3 MR. HUTCHISON: Willie, we can have
4 this discussion in front of the judge. If
5 the judge orders it, obviously Mr. DeLuca
6 will answer the questions. He's here to
7 talk about the civil case and we'll talk
8 about the civil case to the extent he
9 knows.

10 BY MR. GARY:

11 **Q. Is FD Destiny a corporate entity, sir?**

12 A. I think FD Destiny is an LLC.

13 **Q. And you own the LLC; is that correct? You**
14 **own 100 percent of the stock in the LLC?**

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

17 Go ahead.

18 THE WITNESS: I believe that's
19 correct.

20 BY MR. GARY:

21 **Q. What's so hard? Why are you -- do you**
22 **know or you don't know whether you own 100 percent of**
23 **the stock? You're not sure?**

24 A. I believe it's correct.

25 MR. GARY: Let's take a moment.

1 THE VIDEO TECHNICIAN: Were you
2 going off the record?

3 MR. GARY: Yes.

4 THE VIDEO TECHNICIAN: The time on
5 the monitor is 11:00. We're going off
6 video record.

7 (Discussion off the record.)

8 THE VIDEO TECHNICIAN: The time is
9 11:01. We're back on video record.

10 MS. HOFFLER: Yes. I just want to
11 make a statement on the record as it
12 relates to Mr. Hutchison, a partner at
13 Holland and Knight, a law firm that has a
14 huge office here in the West Palm Beach
15 area, has multiple offices in Florida, is
16 not closed for a holiday, there are three
17 lawyers here in this room and there's one
18 person on the phone. Mr. DeLuca's office
19 evidently isn't closed either, he has 25
20 attorneys, he testified to. He's the
21 present CEO, 50 percent owner of Doctor's
22 Associates, he's testified that he has
23 multiple law firms that work for them,
24 most of them I'm certain are not closed
25 today, but yet an hour after Mr. Hutchison

1 has asserted a privilege that has no merit
2 in Florida law and where he has
3 erroneously used the judge's order,
4 Mr. Hutchison has undertaken no effort
5 with all the lawyers that are at Holland
6 and Knight, with the three lawyers that
7 are here on the phone, with all of the
8 legal power that Mr. DeLuca has at his
9 disposal to find out a simple question and
10 to assert a valid privilege under Florida
11 law.

12 I just want that on the record so
13 that when we do go to the judge to talk
14 about the obstructionist conduct of
15 Mr. DeLuca and his counsel, that the
16 record is very clear. Okay. And I'll
17 continue calling.

18 BY MR. GARY:

19 **Q. Sir, were you at the unveiling of the**
20 **Destiny project? Were you present?**

21 A. I don't understand the question.

22 **Q. Were you at the unveiling of the Destiny**
23 **project?**

24 A. I don't know what you mean by unveiling.

25 **Q. Well, when the press conference, when the**

1 reception took place where all the county
2 commissioners, city commissioners, state officials
3 from Tallahassee and all around the state came
4 together to witness the unveiling of the Destiny
5 project.

6 A. And the question is?

7 Q. Did you show up?

8 A. I was never at a reception or a press
9 conference for the Destiny project.

10 Q. You had promised to be there, hadn't you?

11 A. I don't recall.

12 Q. Does that ring a bell with you?

13 A. No.

14 Q. Do you remember it?

15 A. Do I remember what?

16 Q. The unveiling, the big day where all the
17 government officials came in, people for miles around
18 came in to witness the unveiling of the Destiny -- Do
19 you know what the Destiny project was? You do know
20 that. You've already given us your thoughts on that,
21 right?

22 A. Yes. I know about the Destiny project.

23 Q. Were you present when you all did the open
24 house to the world, here we come, the Destiny venture?

25 A. No. I was not present at that event that

1 you're referencing.

2 **Q. And you had told Anthony Pugliese that you**
3 **would be there, didn't you?**

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

6 THE WITNESS: I don't recall having
7 a conversation with Anthony where I said I
8 would be there.

9 BY MR. GARY:

10 **Q. Well, you knew it was in Orlando on**
11 **September the 8th and that they had -- was expecting**
12 **over 700 people, didn't you know that?**

13 A. I don't know the date that the reception
14 was held and I don't know the number of people that
15 Anthony was expecting.

16 **Q. What is Doctor's Associates, Inc.?**

17 A. Doctor's Associates, Inc. is a
18 corporation.

19 **Q. And beyond that?**

20 MR. HUTCHISON: Object to the form.

21 THE WITNESS: What about -- what do
22 you mean beyond that?

23 BY MR. GARY:

24 **Q. What is Doctor's Associates, Inc.? What's**
25 **the purpose? What do you do, what's the mission?**

1 A. What does Doctor's Associates do?
2 Doctor's Associates is the franchise -- is the holder
3 of the trademarks for the Subway Sandwich Company and
4 it's the franchisor of the Subway stores which are
5 operated by Subway franchisees.

6 **Q. And what's the business address for**
7 **Doctor's Associates?**

8 A. I'm not sure of the business address.

9 **Q. Is it 325 Bic Drive, Milford --**

10 A. No.

11 **Q. -- Connecticut?**

12 A. No.

13 **Q. Do you know what that address is? Whose**
14 **address is that, do you know?**

15 A. That address is for Franchise World
16 Headquarters, Inc.

17 **Q. You own 50 percent of that?**

18 A. I do own 50 percent of that.

19 **Q. And what's the home office for that**
20 **entity?**

21 A. Excuse me. I didn't --

22 **Q. What's the -- tell us the home office.**
23 **What's the home office address for that entity?**

24 A. Which entity are you --

25 **Q. The one you just made reference to.**

1 A. To Franchise World Headquarters,
2 Incorporated?

3 **Q. Yes.**

4 A. I believe the office address is 325 Bic
5 Drive, Milford, Connecticut for Franchise World
6 Headquarters, Incorporated.

7 **Q. And what's the address for Doctor's**
8 **Associates, Inc.?**

9 A. I'm not sure of the exact street address.

10 **Q. You own 50 percent of that corporation?**

11 A. I do.

12 **Q. What state is it?**

13 A. What state is it in?

14 **Q. Yes.**

15 A. It's in Florida.

16 **Q. What's the phone number for Doctor's**
17 **Associates?**

18 A. I don't know what the phone number is.

19 **Q. Could it be (800) 888-4848? Does that**
20 **ring a bell to you?**

21 A. It's not that number.

22 **Q. What number is that?**

23 A. That number is the -- rings at 325 Bic
24 Drive in Milford, Connecticut.

25 **Q. And what company is housed out of that**

1 **address?**

2 A. Franchise World Headquarters, Incorporated
3 is housed out of 325 Bic Drive in Milford,
4 Connecticut.

5 **Q. Sir, isn't it true that even though you**
6 **incorporated in Florida that your headquarters for**
7 **Subway is at -- in Milford, Connecticut on the 325 Bic**
8 **Drive?**

9 A. No. That's not accurate.

10 **Q. I guess, at the end of the day, you don't**
11 **even know what the address is for Doctor's Associates,**
12 **do you?**

13 A. I don't know the exact street address for
14 the headquarters office for Doctor's Associates,
15 Incorporated.

16 **Q. Now, at some point in time when this**
17 **project got off the ground, you knew that negotiations**
18 **were ongoing with IStar, didn't you?**

19 A. I didn't understand the question.

20 **Q. I'm saying that at some point in time when**
21 **you all were looking for financing for the project,**
22 **you knew that negotiations were ongoing with IStar,**
23 **didn't you?**

24 A. I was never looking for financing and I
25 never heard of IStar.

1 **Q. What about your folks, your people?**

2 A. They never looked for financing and they
3 never heard of IStar.

4 **Q. Well, how did they come up with the idea**
5 **that you were making a deal that was better than the**
6 **IStar deal?**

7 A. How did who come up with what?

8 **Q. Your Dave -- Dave Worroll?**

9 MS. HOFFLER: Worroll.

10 THE WITNESS: How did Dave Worroll
11 learn about IStar?

12 BY MR. GARY:

13 **Q. Yes.**

14 **Did he know about IStar?**

15 A. Not until I told him about it.

16 **Q. How did you find out about IStar?**

17 A. I found out about IStar from Tom San
18 Giacomo.

19 **Q. And now, did he tell you there were**
20 **negotiations going on with IStar? What did he tell**
21 **you about IStar?**

22 A. He told me that he had a lead on a
23 possible loan and that the company's name was IStar.

24 **Q. And what else did he tell you about them?**

25 A. He gave me the general terms of the loan.

1 **Q. So -- and you got that information as a**
2 **result of your involvement with the Destiny project in**
3 **general, right?**

4 A. Well, at the time he told me that, I was
5 not yet involved in the Destiny project, but I did
6 learn that because of speaking to Tom San Giacomo, who
7 worked with Anthony Pugliese, and I knew that they
8 were both looking for financing for the Destiny
9 project.

10 **Q. And he told you about the terms?**

11 A. Yes. When he called me, he gave me a
12 general idea of the terms.

13 **Q. Now, when you all finally put this loan**
14 **together, had you incorporated FD Destiny?**

15 A. I don't know.

16 **Q. Had Anthony incorporated his LLC?**

17 A. I don't know.

18 **Q. When did you all -- when did you**
19 **incorporate FD Destiny?**

20 A. I'm not sure of the date.

21 **Q. What was your understanding as to the**
22 **terms of the IStar deal?**

23 A. My understanding was that the discussions
24 were in a preliminary state, that there was suggested
25 terms that IStar had sent to Tom San Giacomo and that

1 there was an extensive due diligence period that IStar
2 would have to undergo if they were to consider
3 finalizing a loan.

4 **Q. At this time, did you own 50 percent of**
5 **the option that Anthony had to buy this 27,000 acres?**

6 A. What time -- what time are you referring
7 to?

8 **Q. I'm talking about at the time you're**
9 **talking about, the information you received from**
10 **IStar, were you already in business with Anthony?**

11 A. I never received any information from
12 IStar.

13 **Q. No. The information that was relayed to**
14 **you in reference to the IStar deal, were you already**
15 **in business and did you own 50 percent of the option**
16 **to buy the 27,000 acres in Central Florida?**

17 A. At the time Tom San Giacomo spoke to me, I
18 was not in business with the Destiny project in any
19 way. I didn't have any obligations to be in business
20 and --

21 **Q. So you had no interest in the option?**

22 A. I didn't finish my question.

23 **Q. You said enough.**

24 MR. HUTCHISON: He can finish his
25 answer. Finish your answer.

1 THE WITNESS: Yeah. I was simply
2 saying that at that time I didn't have an
3 interest in the option and I didn't have
4 an interest in the business of LCOC.

5 BY MR. GARY:

6 Q. So if an option existed at that time -- if
7 an option existed at that time on those 27,000 acres,
8 that would have been -- you had zero interest in that?

9 A. Yes. At the time that Tom San Giacomo
10 called me to tell me about his discussions with IStar,
11 I had zero interest in the option and I had no deal to
12 do anything.

13 Q. Did you later discover that Anthony did
14 have an option to buy that property?

15 A. Well, several months prior, Anthony told
16 me that he had an option on the property.

17 Q. And did IStar deal ever include a request
18 that they own 50 percent of the business?

19 A. I don't know what the IStar deal included,
20 but I don't think that it included that.

21 Q. And -- but your deal in getting the
22 financing included you taking 50 percent ownership in
23 the business as well as \$1.2 million as a commitment
24 fee for making the loan, didn't it?

25 MR. HUTCHISON: Objection to the

1 form, asked and answered.

2 THE WITNESS: No, that's not
3 correct. The deal that I made was through
4 FD Destiny. And FD Destiny has a specific
5 arrangement with LCOC. And FD Destiny
6 does not have anything to do with
7 providing any financing at all to the
8 project.

9 BY MR. GARY:

10 Q. So -- but you own 100 percent of FD
11 Destiny, right?

12 A. I believe that I do.

13 Q. You believe that you do? Tell the jury,
14 do you own 100 percent of FD Destiny?

15 A. Yes. As I said to you, I'm not exactly
16 sure how the corporate structures are. I believe that
17 the entity FD Destiny either belongs to me directly or
18 belongs to another company that would be holding it
19 for my benefit. I'm just not sure exactly if I
20 directly own the membership interest.

21 Q. Well, indirectly do you own the
22 membership -- I mean, do you own the stock,
23 100 percent of it?

24 A. Of FD Destiny?

25 Q. Yes.

1 A. I believe that I do.

2 Q. So if FD Destiny got 50 percent of the
3 entire investment, you then would be entitled to
4 100 percent of whatever FD Destiny received through
5 one of your corporations?

6 A. I didn't understand the question.

7 Q. In other words, I just want to make it
8 clear that it's not a shell game here.

9 Ultimately you were going to be entitled
10 to 100 percent of whatever FD Destiny received from
11 this deal.

12 A. Well, FD Destiny just had obligations and
13 it had an obligation to make an investment and to
14 provide additional funding. And if it's -- if the
15 investment would have been successful, then FD Destiny
16 would have made a profit and it would have -- and that
17 profit would have rolled up to me.

18 Q. It would have ended up in your pocket?

19 A. Yes. Yes. After making an assessment --
20 a sizeable investment and if the project was managed
21 properly and if a profit was made, the profit would
22 have gone to FD Destiny, which would have been to my
23 benefit.

24 Q. Well, IStar wasn't getting 50 percent of
25 the business, were they, sir?

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

3 BY MR. GARY:

4 Q. You know that much.

5 MR. HUTCHISON: And form.

6 BY MR. GARY:

7 Q. There was no deal where IStar was going to
8 get 50 percent of the business like you were going to
9 get through your company, FD Destiny; isn't that true,
10 sir?

11 A. No. That's not correct at all because
12 these were two totally separate transactions. The
13 loan that the company needed to acquire was separate
14 and different than the investment that had to be made.

15 The investment that had to be made was
16 governed by a certain agreement. And there was no
17 need or obligation for FD Destiny to provide any loan
18 whatsoever. FD Destiny could have -- I mean, LCOC
19 could have borrowed money from any source. So the
20 loan was totally different and not at all related to
21 the investment of FD Destiny.

22 Q. Let me ask you this, if you're trying to
23 contend that these loans were separate from the deal
24 of FD Destiny partnershiping with Fred -- Anthony
25 DeLuca -- I'm mean, I'm sorry, partnershiping with

1 **Anthony Pugliese, are you trying to say they were**
2 **separate deals?**

3 A. What is the question again?

4 **Q. Well, sir, isn't it true that the loan --**
5 **the mortgage of \$111 million was incorporated, it was**
6 **even incorporated in the operating agreement, wasn't**
7 **it?**

8 A. Yeah. Look, the -- yes. These were
9 separate transactions entirely. On the --

10 **Q. Well, why wasn't it a part of the**
11 **operating agreement?**

12 A. -- on the -- I'm not finished yet. On one
13 hand, there was an investment where capital had to be
14 put in to FD Destiny so that it could acquire its
15 membership interest in LCOC. So FD Destiny had an
16 obligation to make an investment, which it did, and
17 that was totally separate from any loan that would be
18 made.

19 **Q. Don't you think FD Destiny as well as Fred**
20 **DeLuca had an obligation to make full disclosure to**
21 **Anthony Pugliese concerning both of these loans in**
22 **this case?**

23 A. Well, in the terms are --

24 **Q. Since the mortgage was being used as**
25 **collateral?**

1 A. The obligations of FD Destiny were spelled
2 out in the operating agreement and that was what --

3 **Q. Show me an operating agreement where it's**
4 **spelled out.**

5 A. The -- you want -- well, FD -- okay. So
6 FD Destiny --

7 **Q. Show me an operating agreement where it's**
8 **spelled out.**

9 A. I'm doing that. FD Destiny signed the
10 operating agreement and this operating agreement has
11 34 pages plus exhibits, so there's about 40 pages in
12 total. And so I believe that the obligations of FD
13 Destiny as well as the obligations of AVP Destiny and
14 Anthony Pugliese as an individual are all spelled out
15 in this 40-page operating agreement.

16 **Q. You signed that operating agreement,**
17 **didn't you? That's your signature on there, right?**
18 **Fred DeLuca, right?**

19 A. Yes. On page 34 of the operating
20 agreement, I signed on behalf of FD Destiny, LLC, so
21 indeed my signature is on page 34 of this operating
22 agreement.

23 **Q. Because you own 100 percent of FD Destiny,**
24 **don't you?**

25 A. That's not the reason why I --

1 **Q. I didn't ask you the reason. I said you**
2 **own 100 percent of FD Destiny, don't you?**

3 A. Oh, I'm sorry. I thought you said because
4 I owned 100 percent of FD Destiny.

5 **Q. No. I said you do own 100 percent of it,**
6 **right?**

7 A. As I said before --

8 **Q. Sir, just answer the question for me so we**
9 **can move on.**

10 A. I'm answering it. As I said before to
11 you, either directly or through one of the corporate
12 corporations that I have --

13 **Q. Which one?**

14 A. I don't know. As I said -- we talked
15 about this earlier. What I said was I'm not sure
16 exactly how the structuring would be, but either I own
17 100 percent of FD Destiny or it's owned by another
18 company, but in any event, I believe that 100 percent
19 of the obligations of FD Destiny and any benefit from
20 FD Destiny would come -- would be -- would roll up to
21 me.

22 **Q. So it will be clear, you insisted that --**
23 **number one, that the mortgage on the FD Destiny land**
24 **be included in the operating agreement and that you be**
25 **able to use it as collateral to go out and get**

1 **personal money, didn't you?**

2 MR. HUTCHISON: Object to the form.

3 THE WITNESS: I didn't have a hand
4 in drawing the operating agreement.

5 BY MR. GARY:

6 **Q. Who had the hand in drawing the operating**
7 **agreement?**

8 A. Well, there were lawyers that represented
9 FD Destiny and other lawyers that represented AVP
10 Destiny and other lawyers that represented Anthony
11 Pugliese personally. So all of those lawyers working
12 together worked together, negotiated and made changes
13 and came up with the operating agreement.

14 **Q. Did your lawyers consult with you?**

15 A. About?

16 **Q. What they were doing?**

17 A. Not really.

18 **Q. And all these lawyers were employed by**
19 **Subway, weren't they --**

20 A. No.

21 **Q. -- your lawyers?**

22 A. Say the question again.

23 **Q. All these lawyers that you just made**
24 **reference to, they -- some were employed by**
25 **Mr. Pugliese and the rest were employed by either you**

1 **or Subway or one of your entities, right?**

2 A. I don't understand the question.

3 **Q. Well, did you hire lawyers?**

4 A. Yes. As we saw in one of the documents,
5 Adam Hodkin was one of the lawyers that was hired and
6 he did a substantial amount of work on this project.

7 **Q. Well, in terms of -- so we'll be clear, in**
8 **terms of putting together this operating agreement**
9 **which incorporated the mortgage on the Destiny land**
10 **and allowed you to use it as collateral, what**
11 **lawyers -- what lawyers were representing you?**

12 A. Working on the operating agreement?

13 **Q. Yes.**

14 A. I don't know who was working on the
15 operating agreement.

16 **Q. You don't know one single lawyer?**

17 A. Well, I don't know who was working on the
18 operating agreement, but I'm reasonably confident that
19 it was not any lawyer that was working for Subway that
20 was putting this together.

21 **Q. Well, who were the lawyers on your behalf?**

22 A. As I said to you earlier, I just can't
23 recall the names of the lawyers.

24 **Q. You couldn't name one single lawyer that**
25 **put together this multi-hundred million dollar deal --**

1 A. Well, who worked on --

2 Q. -- this operating agreement?

3 A. As I sit here, I can't think of the name
4 of the lawyers that worked on that operating
5 agreement.

6 Q. Now, there were two entities here, FD
7 Destiny and AVP Destiny; is that correct, sir?

8 A. When you say here, what are you
9 referencing?

10 Q. Well, involved in this transaction, this
11 deal, this project, whatever you want to call it, the
12 Destiny project?

13 A. No. That's not correct. There were three
14 entities --

15 Q. Let me strike that. I move to strike.
16 How many entities were involved to sign
17 off on the operating agreement?

18 A. There were three entities. There were --

19 Q. That signed the operating agreement?

20 A. Yes. I was explaining. There was AVP
21 Destiny, LLC, FD Destiny LLC and Anthony V. Pugliese,
22 III.

23 Q. Well, you consider Anthony an entity?

24 A. Yes.

25 Q. He's a human being, isn't he?

1 A. Certainly he's a human being, but for the
2 purpose of having responsibilities under this
3 agreement, there were three different parties. So one
4 party was AVP Destiny, LLC, another party was FD
5 Destiny, LLC and the third party was Anthony V.
6 Pugliese, III.

7 **Q. And that's individually?**

8 A. Yes.

9 **Q. You didn't sign it individually?**

10 A. No, I did not.

11 **Q. You were too smart for that?**

12 MR. HUTCHISON: Objection to form.

13 THE WITNESS: No. Anthony was the
14 one who found the project and brought me
15 the investment and said he was going to be
16 the manager because he knew how to do
17 this. He had put a lot of work into this
18 already. He had experts that he had
19 hired. He had done this before and he
20 said that he was in charge.

21 BY MR. GARY:

22 **Q. We know he was in charge based on the**
23 **operating agreement, but you didn't sign it**
24 **individually, you didn't get any personal liability,**
25 **but you insisted on Anthony having personal liability,**

1 **didn't you?**

2 A. I did not have personal liability, but
3 it's Anthony himself who insisted that he be the
4 manager, that he be in charge and that he be named in
5 the operating agreement as having full responsibility
6 under this project and that he was going to take care
7 of everything from soup to nuts. Anthony Pugliese --

8 **Q. Where does it say that in the agreement?**

9 A. Where does it --

10 **Q. That he was going to take everything --**
11 **take care of everything from soup to, what you call**
12 **it, nuts?**

13 A. Soup to nuts.

14 **Q. Look at the agreement and look this jury**
15 **in the face and tell them where you see that in the**
16 **agreement.**

17 A. I will do that for you.

18 **Q. Thank you.**

19 **Do you see it so far?**

20 A. Not yet.

21 **Q. Let me interrupt you here for a second.**
22 **I'm going to move to strike that question. Time is of**
23 **the essence and I know your scheme and your plot here**
24 **and that's not going to happen. You're not going to**
25 **sit here and take an hour to do that. So I'm going to**

1 ask that question in a different way.

2 So -- but you're saying that in that
3 agreement it says that Anthony is going to take care
4 of everything from soup to nuts?

5 A. Well --

6 Q. Yes or no?

7 A. Yes. Yes, because Anthony was the manager
8 and he was responsible for running the entire project,
9 as we discussed yesterday, and he was the one with the
10 knowledge and he was the one --

11 Q. I understand that, sir.

12 A. -- with the expertise.

13 Q. I'm talking about from soup to nuts now.

14 A. And he is the one that wanted to be in
15 charge.

16 Q. Sir, I'm talking about from soup to nuts.
17 You're saying that's in the agreement, right?

18 A. Yes. It says that he is fully responsible
19 for running the project as its manager.

20 Q. And that agreement speaks for itself,
21 right?

22 A. Yes.

23 Q. And it also says that he's responsible and
24 he is to do and can do whatever it takes to keep the
25 business going, doesn't it say that?

1 A. No. I don't think it says that.

2 **Q. But it says from soup to nuts?**

3 A. Well, he has certain obligations --

4 **Q. Well, what's from soup to nuts?**

5 A. Well, I'll tell you what it is. His job
6 was to run the company according to what is specified
7 in the operating agreement.

8 **Q. I said what's from soup to nuts, sir?**

9 A. I'm answering the question. His job is to
10 operate the company according to the operating
11 agreement. And the mission of the company was to
12 obtain entitlements for the land of -- owned by LC --

13 **Q. That's in the agreement? Is that in the**
14 **agreement, sir?**

15 A. I'm answering your question.

16 MR. HUTCHISON: Let him finishes
17 his answer.

18 MR. GARY: No. No. No. I
19 didn't --

20 MR. HUTCHISON: Let him finish the
21 answer. You're asking the questions --

22 MR. GARY: Move to strike again.

23 MR. HUTCHISON: You want to
24 withdraw the question?

25 MR. GARY: Withdraw the question,

1 move to strike because you're giving me
2 bogus answers and I'm ready -- I'm not up
3 with that today.

4 BY MR. GARY:

5 **Q. I'm saying that in this operating**
6 **agreement you made reference it covered everything**
7 **from soup to nuts; is that correct?**

8 A. The full management of the company.

9 **Q. Okay.**

10 A. And Anthony Pugliese was the manager and
11 he insisted upon being the manager and that's why he
12 signed the agreement.

13 **Q. Well, sir, until today you contend that**
14 **you had never read the agreement, right?**

15 A. I haven't read the agreement.

16 **Q. And you and Anthony at the end of the day,**
17 **so the jury will understand it, you all were partners**
18 **in this, weren't you, sir?**

19 A. No. Absolutely not. I formed an LLC with
20 my lawyers and he formed an LLC with his lawyers and
21 both --

22 **Q. Sir, I move to strike again. Move to**
23 **strike again, sir.**

24 You know, I asked you were you partners.
25 You can say yes or no and then you want to go on and

1 **on and on and I'm not for it. I move to strike. Let**
2 **me rephrase the question again.**

3 THE WITNESS: Excuse me. I need
4 some water so --

5 MR. GARY: It's 20 to 12:00.

6 I want to break here to see if we
7 can get to the bottom of -- find the
8 judge, locate a judge and see if we can go
9 into the inquiry about how that book got
10 prepared and who prepared this book for
11 the State Attorney's Office on this case
12 seeking to try to get who was it behind
13 this ordeal to try to trump up some
14 charges to get Anthony Pugliese indicted.

15 THE VIDEO TECHNICIAN: This is off
16 the video record?

17 MR. GARY: Yes.

18 THE VIDEO TECHNICIAN: Time on the
19 monitor is 11:40, we're going off video
20 record.

21 MR. GARY: We're going to make some
22 calls and try to find somebody.

23 (A brief recess was taken.)

24 THE VIDEO TECHNICIAN: Time on the
25 monitor is 11:52. We are back on video

1 record.

2 MR. GARY: Before you get started,
3 I want to go on the record to say I'm not
4 finished with my inquiry and we're
5 waiting -- we have made numerous attempts
6 to locate the judge to get a ruling on
7 this matter and see if we can get an order
8 to have the judge order this witness to
9 answer the questions that -- some I've
10 propounded to him and some I'm desirous of
11 inquiring about.

12 And so I'm not ending my inquiry in
13 this deposition at all. And I know today
14 is a holiday, so we have difficulties
15 locating the judge, but I want the record
16 to be clear that, one, the witness has
17 been advised not to answer questions, I
18 think they're relevant questions in light
19 of the total arguments in this case. And
20 I plan to pursue that with the judge as
21 soon as is possible. Today is a holiday
22 and he's not available today.

23 MR. HUTCHISON: Okay. And I just
24 want to put on the record that that is
25 your choice, Mr. Gary, and that the

1 witness is here to answer questions about
2 the pending complaints and the pending
3 civil lawsuit, including the civil theft
4 aspects of it. To the extent he can
5 answer those questions, he will and he's
6 here today to do that to you so --

7 MS. HOFFLER: And then I want to
8 put further on the record that now we're
9 two hours after Mr. Hutchison asserted a
10 privilege that doesn't exist under Florida
11 law and he has still not provided any
12 support case law, bupkis, zero, nothing to
13 support his privilege that he's asserted,
14 a privilege that doesn't exist frankly
15 under any law in the United States, but
16 since he's the one asserting the
17 privilege, he has a duty to state the
18 grounds for telling his client why he
19 shouldn't answer.

20 Now, if he said he should plead the
21 Fifth, that's legitimate, but just because
22 he doesn't want him to answer a question,
23 that certainly is not appropriate and
24 because even though today is a holiday,
25 his office is open and he has right here

1 lawyers that have computers that could do
2 the research. They've got iPads, iPhones,
3 all that kind of stuff, they can do the
4 research right here. It would take
5 15 minutes. They're seasoned lawyers.
6 They've got people on the phone.
7 Mr. DeLuca has a battalion of lawyers that
8 could do that research and yet they have
9 not done that.

10 So we want to make sure the record
11 is really clear.

12 CROSS EXAMINATION

13 BY MS. HOFFLER:

14 **Q. Mr. DeLuca, we've met before, right?**

15 A. Yes.

16 **Q. Of course, we have.**

17 A. We have met before.

18 **Q. And you'll never forget me, I dare say.**

19 **Now, I want to go back to -- I want to go**
20 **back to 2005 and 2006, when David Worroll was your**
21 **comptroller of Doctor's Associates.**

22 A. Okay.

23 **Q. I want to take you back there. And, by**
24 **the way, while we are talking about the monies that**
25 **exchanged hands during the closing period, when you**

1 closed on your loan with Wachovia, when you closed on
2 your loan with LCOC, while we're talking about that
3 and since we've already established that you met
4 Anthony DeLuca through your girlfriend, Fran Saavedra,
5 I think I pronounced her name correctly, did you at
6 any time funnel money to her, the money that you were
7 able to stash on the side and hide from Anthony, hide
8 from LCOC, did she get any of that money?

9 MR. HUTCHISON: Objection as to
10 form, move to strike, improper comment of
11 counsel, and it's also a violation of the
12 court's order, I believe, in a sense, but
13 to the extent you can answer that
14 legitimate part of that question, go
15 ahead.

16 THE WITNESS: It was such a long
17 speech that you gave --

18 BY MS. HOFFLER:

19 Q. Okay.

20 A. -- that I don't know --

21 Q. You want me to break it down?

22 A. -- what you were talking about.

23 Q. You have a girlfriend, her name was Fran
24 Saavedra, at the time she was your girlfriend. She
25 introduced you to Anthony Pugliese.

1 Follow me thus far?

2 A. I don't follow you.

3 Q. She was not your girlfriend, is that the
4 part you don't follow?

5 MR. HUTCHISON: He's not going to
6 answer any questions about that or about
7 any personal issues. They're here to
8 embarrass him --

9 MS. HOFFLER: It's not --

10 MR. HUTCHISON: -- and he's not
11 going to answer those questions.

12 BY MS. HOFFLER:

13 Q. It's not to embarrass you. We believe
14 that you have stolen money, that you stole money, you
15 had criminal intent in your mind when you entered into
16 an agreement with LCOC when you provided a loan to
17 them. That's our belief.

18 MR. HUTCHISON: Then ask him those
19 questions.

20 MS. HOFFLER: Excuse me.

21 BY MS. HOFFLER:

22 Q. That's our belief.

23 My question to you, Mr. DeLuca, is, the
24 one woman who you were sleeping with, did you give her
25 money, any part of that money --

1 MR. HUTCHISON: Don't answer the
2 question --

3 BY MS. HOFFLER:

4 Q. -- that you misappropriated in this case?

5 MR. HUTCHISON: -- regarding Fran
6 Saavedra in that vein and --

7 BY MS. HOFFLER:

8 Q. Did you --

9 MR. HUTCHISON: C.K., he's not
10 answering any question like that. And --

11 BY MS. HOFFLER:

12 Q. All right. Then let me ask it
13 differently, did anyone else, let's not mention
14 girlfriend or anyone's name, did anyone, did any
15 single person get any part of the money, sir, that you
16 misappropriated at the time of closing on your loan
17 with LCOC, that \$1.242.5 million?

18 MR. HUTCHISON: Object to the form.

19 BY MS. HOFFLER:

20 Q. Yes or no?

21 MR. GARY: Answer the question.

22 THE WITNESS: As we discussed
23 before --

24 BY MS. HOFFLER:

25 Q. No, we didn't discuss that before.

1 A. I'm answering the question. You have to
2 let me answer the question.

3 Q. And what I'd like is a yes or no. It's
4 late in the day and my -- I am beyond not tolerant of
5 nonsense.

6 So why don't you answer yes or no and then
7 you explain to your heart's content.

8 A. Well, you've asked a question that can't
9 be answered because you started out with a lie.

10 Q. Can you answer the question?

11 MR. HUTCHISON: Answer the
12 question.

13 BY MS. HOFFLER:

14 Q. You can say that you believe that I'm
15 mistaken. We believe you've lied throughout your
16 entire deposition. So my belief and our belief that
17 you are misrepresenting on the record under oath,
18 that's not really relevant, but you do have to answer
19 the question.

20 So if you want Madam Court Reporter to
21 read it again, then let's have her read it again so
22 you can answer the question, sir.

23 MS. HOFFLER: Would you be able to
24 read it back, Madam Court Reporter.

25 MR. HUTCHISON: And, C.K., I'm

1 going to warn you about that --

2 MS. HOFFLER: Don't warn me about
3 anything.

4 MR. HUTCHISON: You saw the judge
5 order us yesterday, the judge -- I
6 provided them a copy of the order
7 yesterday --

8 MS. HOFFLER: Who are you talking
9 to, because you're not talking to me.

10 MR. HUTCHISON: -- from the judge
11 and the judge served it to himself, I
12 assume. But I gave him a copy of Judge
13 Crow's order yesterday regarding --

14 MS. HOFFLER: If you feel there's a
15 violation of the order --

16 MR. HUTCHISON: -- the protective
17 order --

18 MS. HOFFLER: -- then you should
19 act pursuant to it.

20 MR. HUTCHISON: -- and regarding
21 this motion -- the motion for protective
22 order regarding this deposition.

23 MS. HOFFLER: If you believe, and
24 obviously you don't because you couldn't
25 possibly, but if you did, you'd get up and

1 walk out. Obviously, you're not going to
2 do it.

3 Now, Madam Court Reporter, would
4 you please read back the last question.

5 (Whereupon, the requested portion of the
6 record was read by the reporter as above
7 recorded.)

8 BY MS. HOFFLER:

9 **Q. Let me ask it again. That way we'll save**
10 **time.**

11 **Did anyone, Mr. DeLuca, share in the**
12 **\$1.242,500 misappropriation of funds that you received**
13 **at closing on the loan between you personally and LCOC**
14 **in August of 2005?**

15 MR. HUTCHISON: Objection.

16 BY MS. HOFFLER:

17 **Q. Did anyone share in that amount?**

18 MR. HUTCHISON: Object to the form.

19 THE WITNESS: There was no
20 misappropriation of funds, no cash that
21 came to me at the closing. The only thing
22 I did was put money in and so, therefore,
23 since there was no cash, I didn't get any
24 and no one else got any.

25 BY MS. HOFFLER:

1 Q. And so now let me just -- can we go back
2 to Exhibit Number 8. You got it in your pile, if not
3 your counsel can give it to you, Exhibit Number 8.

4 Now, you testified that David Worroll, he
5 was your trusted controller in 2005, 2006, right, you
6 trusted him?

7 MR. HUTCHISON: Give him Exhibit
8 Number 8.

9 MS. HOFFLER: No, I'm not giving --
10 I don't have Number Exhibit 8. I have my
11 copy.

12 MR. HUTCHISON: I have my copy. I
13 don't have the court reporter's copy.
14 It's your deposition.

15 MS. HOFFLER: Okay. Well, if you
16 want to do that, then I have to look over
17 your client's shoulder. I'm sure he
18 doesn't want that. I need to get close to
19 him. Do you want me to do that?

20 MR. HUTCHISON: You didn't bring
21 the deposition exhibits?

22 THE WITNESS: I'll look for
23 Exhibit 8 and then we can --

24 MS. HOFFLER: I didn't think he
25 wanted me to stand over his shoulder, but

1 I'll do it if that's what you insist, if
2 that's what you want me to do.

3 THE WITNESS: Where is Exhibit 8,
4 is it over here?

5 MS. HOFFLER: Do you want to take a
6 look at it? Take a good look at it, sir.
7 You can have my copy and then give it back
8 to me.

9 You should remember it by heart.
10 It's an e-mail from your comptroller at
11 the time, David Worroll, to Tom San
12 Giacomo related to the expenses and costs
13 that were incurred by you as a part of the
14 closing of your loan to LCOCL. And it was
15 an e-mail that was sent because he was
16 preparing your taxes.

17 And for this one, I want you to
18 take your time. You've read it about five
19 times, but take your time again.

20 BY MS. HOFFLER:

21 **Q. You read it?**

22 A. No. I just read the first e-mail. I'm
23 going to read Dave's. There's three e-mails here.
24 I'm going to read them all.

25 **Q. I wouldn't ordinarily let you do that, but**

1 because of the questions that I have about that, I
2 want you to take your time.

3 In fact, you know what, I just found a
4 copy. You can keep that one.

5 You already read that page?

6 A. No, I didn't read this top. I read the
7 e-mail down at the bottom.

8 Q. Oh, yeah, you need to read the numbers.
9 Please read the numbers because it's important for you
10 to read and read along with me, that on --

11 A. I haven't finished reading the e-mails.

12 Q. No. No. No. I'm going to talk you
13 through it, sir. I want to make sure you've read it.

14 A. No. I think I need to read it.

15 Q. No. No. I'm going to -- I can talk you
16 through it. It says, the following costs are included
17 in the loan from Fred to LCOCL?

18 A. I haven't finished reading it yet.

19 Q. I'm posing the question, sir, and you can
20 read it along with me.

21 A. But you presented me this document and all
22 I'm trying to do is read it.

23 Q. And all I want you to do is read it, sir,
24 but because I am asking the questions, I can ask it
25 how I feel is appropriate. And the way that I feel is

1 appropriate is I'm going to ask you, much as I have in
2 the past, to follow with me. So we will read this
3 together so we can put it into the record and then I
4 will ask you additional questions. That's permitted.
5 So read along with me --

6 A. You're not going to let me read the entire
7 document?

8 Q. Oh, yeah, you're going to read -- you've
9 already read two pages and it reads as follows --

10 MR. HUTCHISON: Let her finish the
11 question.

12 BY MS. HOFFLER:

13 Q. -- the following costs are included in the
14 loan from Fred to LCOCL. 07/05/05, appraisal fee paid
15 to Wachovia in the amount of \$38,650.00. 8/11/05,
16 Wachovia loan proceeds, totaling 104,864,870.10.
17 Closing cost filing fee, on 8/11/05, \$5,800. 8/11/05,
18 legal fees 49,829.90. 8/11/05, closing fees, filing
19 fees, \$750.

20 8/23/05, loan registration fee Florida
21 \$2,450. 09/16/05, closing costs. Legal fees,
22 \$55,000. Adjustment per above for ADJ equity share,
23 \$2,809,037.54. Initial loan balance, \$102,208,312.46.
24 One percent commitment fee, \$1.4 million. I'm going to
25 stop right there.

1 Have you had a chance to read the rest of
2 that paragraph, I think it's four lines, sir?

3 A. No, I haven't.

4 Q. Well, take your time to read the four
5 lines that are left, and please let me know when you
6 finish reading the four lines that you hadn't read.

7 A. And I'm just going to finish reading this
8 top section over here.

9 Q. Yeah, which you read before, but go ahead
10 and read the top section which is three lines.

11 A. I read it.

12 Q. So now, you see that your comptroller is
13 confirming in this e-mail information that he has
14 related to the costs that were included in the loan
15 from you to LCOC. And this is your accountant who is
16 preparing your taxes. And this is the information
17 that he wanted confirmed. And you see by this e-mail
18 that that information was confirmed.

19 So against that backdrop, you --

20 A. I don't --

21 Q. Excuse me.

22 A. Ask the question.

23 Q. I haven't posed the question, so let me
24 start again and don't interrupt me.

25 In this e-mail your comptroller, David

1 Worroll, sends an e-mail to representatives of LCOC
2 because they want to file your taxes because they have
3 to file something in connection with the loan that you
4 made to LCOC. In this e-mail, your comptroller says
5 these are the following costs included in the loan
6 from Fred to LCOCL. He does not say the following are
7 costs which would have, could have, should have, maybe
8 or halfway could be included in the loan. He says,
9 the following costs are included in the loan from Fred
10 to LCOCL.

11 So then when you look at this e-mail that
12 he's sending to LCOCL, he sets forth the details that
13 he has. And he merely wants them to confirm that this
14 is the information that you have because the tax
15 returns have to be finalized.

16 So your comptroller used this information
17 to file your taxes. You follow me?

18 A. No.

19 Q. That's what happened.

20 A. No, that's not correct. He didn't do this
21 information to file my taxes. What he said here is
22 that he needs information to file the taxes and that
23 someone has to provide him with some kind of legal
24 document called -- or a tax document, a K-1 and that
25 he is providing a list of items that he has available,

1 but he goes on to say the items that you and I need to
2 agree on is the cost to be included in the loan, the
3 closing costs and the capital contribution that was --

4 **Q. Are we reading the same document?**

5 A. Yes.

6 **Q. All right. Then let's read the same**
7 **document. The bottom of the first page --**

8 A. I haven't finished -- I haven't finished
9 answering my question. I'm just saying to you --

10 **Q. You said yes. I said are we reading the**
11 **same document and you said yes.**

12 A. No. You interrupted me because I was
13 reading it, explaining the answer that I had
14 previously.

15 **Q. You're not reading it correctly.**

16 MR. HUTCHISON: Let him finish
17 his --

18 MS. HOFFLER: You're not reading it
19 correctly.

20 MR. HUTCHISON: -- prior answer --

21 MS. HOFFLER: No. No. No. I'm
22 not going to let him finish.

23 You're not reading it correctly.

24 Just as when I was reading something, if
25 it was not correct, you said it was not

1 correct.

2 So we must be on the same page
3 because this jury needs to know the truth,
4 not your fabrication --

5 THE WITNESS: You asked me --

6 MS. HOFFLER: -- but the truth.

7 BY MS. HOFFLER:

8 **Q. So let me pose the question, Mr. DeLuca,**
9 **so that you can answer it truthfully. Don't read and**
10 **don't put words in this. Read it exactly as it is on**
11 **this sheet because this pertains to the money that you**
12 **stole. So we don't want there to be any confusion.**
13 **Let's start again.**

14 MR. HUTCHISON: You can answer --

15 MS. HOFFLER: So as it relates to
16 the -- and I'm going to ask the
17 question --

18 MR. HUTCHISON: -- when she's done
19 you can --

20 MS. HOFFLER: And he's whispering
21 and being obstructionist.

22 THE WITNESS: I haven't finished
23 the answer of my question.

24 MS. HOFFLER: So again, I'm going
25 to ask the question.

1 THE WITNESS: I haven't finished
2 yet. I need to finish.

3 MS. HOFFLER: Mr. DeLuca, I'm going
4 to ask the question again.

5 THE WITNESS: You already asked the
6 question.

7 BY MS. HOFFLER:

8 **Q. No. No. No. I'm going to ask the**
9 **question again. The question is --**

10 MR. HUTCHISON: So are you striking
11 your question?

12 BY MS. HOFFLER:

13 **Q. The question is this, did your -- your**
14 **comptroller, David Worroll, sent an e-mail to LCOCL**
15 **regarding tax returns and in that e-mail he stated --**
16 **he detailed a number of costs that were included in**
17 **the loan from you to LCOCL; isn't that correct,**
18 **Mr. DeLuca? Isn't that correct, Mr. DeLuca, yes or**
19 **no?**

20 A. I didn't hear the question.

21 MS. HOFFLER: Okay. Madam Court
22 Reporter, please repeat the question.

23 (Whereupon, the requested portion of the
24 record was read by the reporter as above
25 recorded.)

1 THE WITNESS: He did -- well, I --

2 BY MS. HOFFLER:

3 Q. Yes or no?

4 A. He did send this e-mail and in it he
5 included a list of costs that he had and he was
6 requesting confirmation from LCOC of the information
7 and that he said that he'll need a K-1. So this was a
8 discussion about finalizing something.

9 Q. Yes. And then at the bottom of the
10 e-mail, let's go to the first page, Dave Worroll, your
11 comptroller, from Doctor and Associates. By the way,
12 why was Doctor and Associates still involved in any
13 part of the dealings involved -- related to LCOC a
14 year after the closing? I mean, why were they still
15 involved in that?

16 MR. HUTCHISON: Object to the form.

17 THE WITNESS: Why was --

18 BY MS. HOFFLER:

19 Q. Doctor and Associates, why were any
20 employees from Doctor and Associates involved in any
21 of the LCOC transactions a year after the closing? I
22 mean, why was that?

23 A. Dave Worroll who was the comptroller of
24 Doctor's Associates would gather information from
25 various sources so that he could provide it to the

1 accountants so they could file my tax return. So in
2 this --

3 **Q. Well, let me just ask you why didn't --**

4 MR. HUTCHISON: Let him finish his
5 answer.

6 MS. HOFFLER: No. No. No.

7 THE WITNESS: In this e-mail --

8 MS. HOFFLER: No. No. No.

9 MR. HUTCHISON: Let him finish his
10 answer.

11 THE WITNESS: In this e-mail Dave
12 Worroll --

13 MS. HOFFLER: Excuse me. I asked
14 you a question of why --

15 MR. HUTCHISON: Let him finish his
16 answer.

17 MS. HOFFLER: -- why was anyone
18 from Doctor's Associates involved.

19 BY MS. HOFFLER:

20 **Q. My follow-up question to that is, did you**
21 **have --**

22 A. I didn't finish the answer to my question.

23 **Q. No. No. No. No. You did answer the**
24 **question.**

25 A. I did not finish the answer to your

1 question.

2 Q. My follow-up question to you is this,
3 didn't -- after you had created FD Destiny at that
4 point, why didn't you have FD Destiny employees
5 involved in preparing this information or did you not
6 have employees at FD Destiny?

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

9 BY MS. HOFFLER:

10 Q. Were there any employees at FD Destiny
11 that could have prepared this?

12 A. Well, the --

13 Q. Yes or no?

14 A. People at FD Destiny --

15 Q. Yes or no?

16 Who were the people at FD Destiny?

17 A. Which question do you want me to answer
18 now?

19 Q. Who were the people at FD Destiny that
20 could have helped?

21 A. Well, I don't know that there were
22 employees at --

23 Q. Right. There were no employees at FD
24 Destiny.

25 A. So what's the question?

1 **Q. I want you to confirm there were no**
2 **employees at FD Destiny; isn't that right, Mr. DeLuca?**

3 A. We discussed this last time.

4 **Q. I'm not concerned about what we discussed**
5 **last time.**

6 A. As I said --

7 MR. HUTCHISON: Let him finish his
8 answer, C.K.

9 BY MS. HOFFLER:

10 **Q. Were there any employees at FD Destiny,**
11 **Mr. DeLuca, yes or no?**

12 A. As we discussed last time, I don't think
13 there were employees of FD Destiny.

14 **Q. And so that's why you had your folks from**
15 **Doctor's Associates still involved in the transactions**
16 **and preparing information for the LCOCL business;**
17 **isn't that right?**

18 MR. HUTCHISON: Object to the form.

19 THE WITNESS: No. As I was
20 answering before when you interrupted me,
21 that David Worroll was in the practice of
22 gathering information from various sources
23 to provide to the accountant so that he
24 could prepare my tax return.

25 David Worroll was not supposed to

1 issue a K-1. That was supposed to come
2 from LCOC. And Anthony was supposed to
3 provide the information and issue a K-1 --

4 BY MS. HOFFLER:

5 **Q. Right.**

6 A. -- but as we see here, the information
7 wasn't forthcoming on a timely basis and so --

8 **Q. That is absolutely --**

9 A. -- David was just trying to track it down.

10 **Q. Right. And he was trying to track it**
11 **down, but you're 1,000 percent incorrect that it**
12 **wasn't put forth in a timely basis.**

13 Where do you have that it wasn't put forth
14 in a timely basis? There's nothing in this e-mail
15 that says Anthony was responsible for doing it,
16 Anthony didn't provide it on a timely basis, nothing.
17 You just fabricated that under oath in front of the
18 jury.

19 You find a single sentence in here that
20 says this was not on a timely basis, Anthony had the
21 responsibility and that's why David stepped in.
22 Anywhere, I challenge you, read that again, take your
23 time to read it because it's not in here.

24 A. Okay. I will do that --

25 **Q. So you just lied again in front of the**

1 **jury.**

2 MR. HUTCHISON: Objection to form,
3 move to strike comment by counsel.

4 THE WITNESS: It says it right
5 here. Let me know who was handling this
6 so we can get this wrapped up as it's only
7 a month away when Anthony and Fred will
8 need to file their personal returns, which
9 would need to include the LCOCL activity.
10 And I will have to get Fred's share of the
11 land company details to Fred's tax
12 preparers before the end of this month so
13 that the federal and all the state returns
14 for Fred can be prepared, mailed to us and
15 then have Fred sign by October 15th.

16 And that was sent on
17 September 13th. And David Worroll did not
18 get a response to that e-mail, so he had
19 to e-mail again about a week later, trying
20 to get information.

21 And so on September 19th, he sent
22 the e-mail again to Tom San Giacomo trying
23 to get the information from Tom, but he
24 did not get any response again.

25 So ten days later on September 29,

1 2006, towards the end of the business day
2 Tom -- Dave again went to Tom saying, here
3 is the details I have on the loan and
4 contribution amounts. If you agree, then
5 please finalize the tax return and get me
6 the K-1s as soon as possible.

7 So as it says right here on the
8 face of this e-mail, that the documents
9 that Dave was trying to gather from LCOC
10 were not being provided. And he could not
11 even get a single response to any of his
12 e-mails.

13 BY MS. HOFFLER:

14 **Q. Move to strike, not only was -- actually,**
15 **I don't want to strike it. I want the jury to hear**
16 **your lies. I want them to hear that you sat here in**
17 **front of them, read an e-mail, and remember, your**
18 **first premise was Anthony dropped the ball, he didn't**
19 **do what he was supposed to do, they were not providing**
20 **information timely. They did not miss a deadline,**
21 **Mr. DeLuca. You simply interpreted and read into**
22 **this.**

23 And you know what's amazing about that,
24 you said you never saw this e-mail before. So all of
25 a sudden now you are surmising what David Worroll was

1 saying. That is disingenuous and you know it, and
2 you're saying that under oath to a jury.

3 So let me ask you another question that
4 perhaps I'd like you to answer honestly if you could,
5 I really would. That would make this deposition go
6 further as opposed to surmising and trying to
7 interpret things that you know don't exist.

8 Now let me -- but one thing you did
9 confirm, and fortunately you did, is that he did set
10 forth the costs included in the loan from you to LCOC.
11 So you're going to confirm that, aren't you?

12 A. No.

13 Q. If that is what --

14 A. No.

15 Q. Excuse me. That is what is --

16 A. I'm trying to answer. You asked me a
17 question. I said, no --

18 Q. No, I have not finished my question.

19 MR. HUTCHISON: Let her finish the
20 question.

21 C.K., enough lecturing. Ask
22 questions.

23 MS. HOFFLER: Be quiet. Just be
24 quiet.

25 BY MS. HOFFLER:

1 **Q. So Mr. DeLuca, let me --**

2 MR. HUTCHISON: And you're going to
3 act professionally, please.

4 MS. HOFFLER: Be quiet.

5 MR. HUTCHISON: Just act
6 professionally.

7 MS. HOFFLER: You need to act
8 professionally and be quiet.

9 Anyone who has the gall to set
10 forth a privilege that doesn't exist under
11 Florida law doesn't need to lecture me on
12 anything.

13 Anyone who has the gall to tell me
14 that something is protected by the Florida
15 Constitution, which is beyond laughable,
16 does not have the right to tell me a
17 single thing about Florida law and not any
18 law in this jurisdiction.

19 And thank you, I'm licensed in five
20 states. So don't lecture me on a single
21 thing until you've read your rule books
22 and come up with a valid objection for a
23 privilege.

24 MR. HUTCHISON: Please answer the
25 question --

1 BY MS. HOFFLER:

2 Q. Now, Mr. DeLuca, let me go forward with my
3 questions.

4 Now, you are not going to, are you,
5 challenge information that David Worroll, your
6 comptroller, during the 2006 period, you're not going
7 to challenge what he provided and used as a basis of
8 any tax returns being filed, are you? You have no
9 ability to challenge that, do you?

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

11 Q. Well, if your comptroller set out
12 information that he believed to be true that was used
13 for purposes of filing taxes, you're not in a position
14 to refute that information, are you?

15 A. Are you referring about this letter or the
16 taxes?

17 Q. I'm just saying in general, you're not in
18 a position to refute that, right?

19 A. Well, to my knowledge for the taxes --

20 Q. Are you in a position to refute that?

21 A. I'm trying to answer the question.

22 Q. Okay.

23 A. So, to my knowledge, for the taxes that
24 were filed for this year, when he finally filed the
25 taxes and got the K-1s that he was asking for, so

1 under this --

2 **Q. Okay. Answer the question.**

3 A. I don't know of a problem with the
4 information that he finally gathered.

5 **Q. Right. There was no problem. And**
6 **certainly the reason why you need to take that**
7 **position is because you certainly would not encourage**
8 **your comptroller to furnish information to your**
9 **accountants that was false. You wouldn't encourage**
10 **that, would you?**

11 A. No. I certainly would not encourage --

12 **Q. The answer is no?**

13 A. -- him to provide information that was
14 false, but I do know that sometimes in the compilation
15 of the documents, they could make a mistake.

16 **Q. Certainly, but you have no evidence**
17 **whatsoever, not a shred or scintilla of evidence that**
18 **would suggest to you that your comptroller made an**
19 **error in assembling information. None, do you? No,**
20 **you don't.**

21 A. Well, this information here, he's not
22 confident it's correct.

23 **Q. Excuse me. Do you or do you not have any**
24 **evidence whatsoever that would support any notion that**
25 **the information that your comptroller used that served**

1 **as a basis for taxes was in error in any way?**

2 MR. HUTCHISON: Objection to form.

3 Are you referring to this e-mail?

4 THE WITNESS: Are you referring to
5 this or are you referring to the K-1 that
6 was received later?

7 BY MS. HOFFLER:

8 **Q. I'm referring to this e-mail and then we**
9 **can refer to the K-1.**

10 **So let me pose the question --**

11 A. Okay. What's the question about --

12 **Q. -- so it's very clear.**

13 **You, Mr. DeLuca, as we sit here today**
14 **since you said a couple of days ago you had never seen**
15 **this document are not in possession of any**
16 **information, sir, any information that would confirm**
17 **that your -- the information that your comptroller,**
18 **David Worroll, submitted and used for purposes of**
19 **taxes being prepared was erroneous, do you?**

20 A. Yes, I do. It says right here that he
21 does not know if these numbers are correct and he's
22 seeking to speak to somebody from LCOC so that they
23 could agree on the numbers so that LCOC could then
24 subsequently provide a K-1.

25 **Q. And LCOC did subsequently provide a K-1,**

1 didn't they?

2 A. I don't know that they did.

3 Q. You don't -- you see, that's the point.
4 You've never seen this e-mail until a couple of days
5 ago, right? That's what you testified; isn't that
6 right?

7 A. I didn't see it.

8 Q. You didn't see it until a couple of days
9 ago. You never undertook any investigation on your
10 own to confirm whether the information in this e-mail
11 was accurate, right, because you hadn't seen it?

12 A. I never did.

13 Q. And up until this day as we sit here now,
14 you still haven't undertaken any efforts to try to
15 confirm whether what your comptroller put in this
16 e-mail is accurate, right?

17 A. I never did.

18 Q. And you have no reason to believe,
19 Mr. DeLuca, that these numbers that your comptroller,
20 your comptroller confirmed based on the costs that
21 were included in the loan that you made to LCOC were
22 inaccurate, right? You had no reason to believe they
23 were inaccurate unless you're making up stuff again --

24 A. No. Look --

25 Q. -- which is your prerogative, you've been

1 **doing it all day.**

2 MR. HUTCHISON: Object to the form,
3 move to strike comment of counsel.

4 THE WITNESS: As it says right
5 here, he's not using --

6 BY MS. HOFFLER:

7 **Q. Whoa. Whoa. Answer my question.**

8 A. What was your question?

9 MS. HOFFLER: Let's -- can we read
10 back the question because every time you
11 do not answer my question, I'm going to
12 stop you and I'm going to make you answer
13 the question because that's what you have
14 to do, every single solitary time. So
15 either -- and I got you the rest of the
16 day, sir. So either we're going to
17 operate and you're going to answer my
18 questions or we're going operate and
19 you're going to answer my questions.

20 Either way, you're going to answer
21 the questions I pose, not what you invent
22 in your mind, not what you want to see on
23 the record, not what you want to obstruct,
24 but the questions that I ask.

25 So Madam Court Reporter, could you

1 please pose the question so that he can
2 answer it.

3 MR. HUTCHISON: Read it slowly so I
4 can get you, too, will you please.

5 (Whereupon, the requested portion of the
6 record was read by the reporter as above
7 recorded.)

8 MR. HUTCHISON: Objection as to
9 form and move to strike comments of
10 counsel.

11 You can answer the question.

12 BY MS. HOFFLER:

13 **Q. Do you understand the question?**

14 A. I do. I do have reason to believe that --

15 **Q. I'm sorry. Did you understand the**
16 **question?**

17 A. Yes.

18 **Q. Now you can answer the question.**

19 A. Okay. I do have reason to believe that
20 these numbers could be inaccurate based upon exactly
21 what Tom -- what David Worroll wrote to Tom San
22 Giacomo. What he did was he tendered up a list of
23 numbers of what he thought might be accurate, but that
24 he needed to confirm these numbers with someone and so
25 these numbers weren't confirm or necessarily any

1 numbers that would be used in the tax returns.

2 Q. I'm sorry.

3 A. This is -- this is why I would not be
4 confident that these numbers are the final numbers.

5 Q. And I would -- I could see why you would
6 want to take that position, but let's read what your
7 comptroller said, not what you weren't putting in.

8 A. Okay. What did he say?

9 Q. And he says, if you have any questions on
10 the above, he is asking that of Tom San Giacomo,
11 please do not hesitate to call me if you need more
12 details on the closing costs or the interest
13 calculation, I can get you an additional information.

14 Do you see that, Mr. DeLuca?

15 A. I see that.

16 Q. So your comptroller was in possession of
17 the information related to the closing costs and the
18 interest calculations, not vice versa. So he
19 submitted to LCOC via Tom San Giacomo that information
20 and said and if you need more information please call
21 me because I got it on behalf of Mr. DeLuca because I
22 prepare his taxes, I'm responsible for his
23 information.

24 So what you said was completely erroneous,
25 but of course, it's your prerogative to disagree with

1 the comptroller that you had and you paid in September
2 of 2006. It's your prerogative.

3 Now, Mr. DeLuca, let me ask you --

4 MR. HUTCHISON: Objection to form,
5 move to strike comments of counsel.

6 BY MS. HOFFLER:

7 Q. -- another question -- let me ask you
8 another question.

9 All of the companies, Mr. DeLuca, that you
10 created in connection with this LCOC project for every
11 single one of those companies there were no employees,
12 right? FD Destiny Credit had no employees, right?

13 A. I don't know.

14 Q. You don't know if FD Destiny Credit, a
15 company that you own 100 percent, had any employees,
16 you're saying you don't know?

17 A. I don't think they had employees, but I
18 don't know.

19 Q. FD Destiny Management employees, no?

20 A. I don't know.

21 Q. You don't -- so your testimony under oath
22 in this case on your fifth day of deposition that you
23 prepared for is that you don't know whether any of the
24 companies associated with this litigation that you
25 owned had employees, is that your testimony?

1 MR. HUTCHISON: Objection, asked
2 and answered in the form and move to
3 strike comment of counsel.

4 BY MS. HOFFLER:

5 Q. Is that your testimony, Mr. DeLuca?

6 A. The answer is I don't know.

7 Q. You don't know if that's your testimony?

8 A. No. The answer is I don't know if they
9 had employees.

10 Q. And who would know? If you don't know --
11 if you're the owner -- 100 percent owner of those
12 companies don't know, who would know?

13 A. I think there's a good chance that David
14 Friedman would know.

15 Q. And who is David Friedman? Tell the jury
16 who David Friedman is and why he would know?

17 A. David Friedman is the manager of my family
18 office. And I believe that the LCOC investment is
19 handled in the family office.

20 Q. And so you created these companies for the
21 sole purpose of insulating you from liability, right?

22 A. No.

23 MR. HUTCHISON: Object to the form
24 and it calls for a legal conclusion.

25 BY MS. HOFFLER:

1 Q. I mean, why would you create these
2 companies? They had no employees. You certainly
3 weren't paying anyone a salary if they didn't have
4 employees, right?

5 A. I don't know if they had employees.

6 Q. Let's just say they didn't have employees,
7 and we have it on good authority that there were no
8 employees, let's say, FD Destiny, the creation of FD
9 Destiny when there were no employees, when there was
10 no office, there was no office of FD Destiny, was
11 there?

12 MR. HUTCHISON: Object to the form,
13 move to strike comments of counsel.

14 It's 12:30, C.K. Finish up your
15 answer.

16 BY MS. HOFFLER:

17 Q. There was no office of FD Destiny, was
18 there?

19 A. No. I think there was an office address
20 and an office.

21 Q. Who sat in that office if there were no
22 employees? Did you sit in that office?

23 A. I didn't sit in that office.

24 Q. Who sat in the office?

25 A. That's the office address.

1 **Q. And what about the bank account, to that**
2 **office address, were there, like, checkbooks?**

3 A. I don't know about the bank account.

4 **Q. You don't know, okay.**

5 **Did you sign the checks if there were?**

6 A. I don't recall signing checks.

7 MS. HOFFLER: Okay. Let's go to
8 lunch.

9 MR. HUTCHISON: Let's take a lunch
10 break.

11 THE VIDEO TECHNICIAN: Time on the
12 monitor is 12:29. We're going off video
13 record. This ends tape number two.

14
15 (Proceedings continued in Volume 10)

C E R T I F I C A T E

- - -

1
2
3
4 I, Barbara J. Shandell, Registered
5 Professional Reporter, State of Florida at Large,
6 certify that I was authorized to and did
7 stenographically report the foregoing proceedings and
8 that the transcript is a true and complete record of
9 my stenographic notes.

10
11 Dated this 25th day of September, 2012.



12
13
14 Barbara J. Shandell

15
16 Barbara J. Shandell, RPR, FPR

A			
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