

**TESTIMONY OF DEREK ELLIOTT
MIAMI DEPOSITION**

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 MIAMI DIVISION

4 CASE NO: 09-20526-CIV-GOLD

5 KLAUS HORMANN, an individual,
6 Plaintiff,

7 vs.

8 EMI RESORTS, INC., a foreign corporation
9 et al.,

10 Defendants.

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DIAZ, REUS, & TARG LLP
100 SE 2nd Street
2600 Bank of America Tower
Miami, Florida 33131
Saturday, March 28, 2009
1 :08 p.m - 4:26 p.m

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15 VIDEOTAPE DEPOSITION OF DEREK ELLIOTT

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18 Taken on behalf of the Plaintiffs before

19 Diana Santos, Shorthand Reporter and Notary Public

20 in and for the State of Florida at Large, pursuant

22 to Notice of Taking Deposition filed in the above

23 cause.

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1 APPEARANCES:

2 MICHAEL DIAZ, JR., ESQUIRE
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13 Attorneys for Defendants.

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ALSO PRESENT:

16 Albert Xiques, Paralegal
17 Klaus Hofmann
Wendy Bentley
18 Robert J. Jones, Investigator/Consultant

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1 THE VIDEOGRAPHER: Good afternoon. We are
2 now on the record for the videotape deposition
3 of Derek Elliot in the matter of Hoffman Klaus
4 versus EMI Resorts. Today is Saturday, March
5 the 28th, 2009. The approximate time is 1:08.
6 Counsel, please introduce themselves for the
7 record and after this the court reporter will
8 swear the videographer and then the witness.

9 MR. DIAZ: Michael Diaz on behalf of the
10 Aguilar, Plaintiffs, along with our paralegal
11 Albert Xiques, attorney Gerardo Rodriguez, Gary
12 Davidson and investigator Bob Jones.

13 MS. PILOTO: Hilda Piloto on behalf of the
14 Plaintiff Klaus Hofmann. Mr. Hofmann is
15 present and so is his fiance Wendy Bentley.

16 MR. MARTINEZ: Elio Martinez on behalf of
17 majority of the defendants. To my right is my
18 partner Carlos Concepcion also here on behalf
19 of the majority of the defendants.

20 Thereupon,

21 ALEX MONTALVO

22 Was called as the videographer and was first duly sworn and

23 responded, "I do".

24 Thereupon:

25 DEREK ELLIOTT

1 Was called as a witness and, having been first duly
2 sworn and responding, "I do," was examined
3 and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. DIAZ:

6 Q Madame Court Reporter, could?

7 THE COURT REPORTER: The time is now 1:08
8 p.m.

9 MR. DIAZ: This is a three-hour
10 deposition.

11 BY MR. DIAZ:

12 Q Mr. Elliot, good afternoon. Welcome.

13 A Good afternoon.

14 Q Could you please state your full name and
15 give us your date of birth?

16 A My name is Derek Elliott. I was born
17 July 29th, 1970.

18 Q You are a citizen of what country?

19 A I am a citizen of Canada.

20 Q Do you have any other citizenship?

21 A No.

22 Q And you are a resident of what country?

23 A I reside in the Dominican Republic.

24 Q Do you have any citizenship from the

25 Dominican Republic?

1 A I do not.

2 Q Are you a permanent resident of the
3 Dominican Republic?

4 A I spend most of my time in the Dominican
5 Republic.

6 Q Are you legally -- do you have a permanent
7 residency card from the Dominican Republic?

8 A No.

9 Q Have you ever been convicted of a felony
10 or a crime of moral turpitude?

11 A I don't understand the question.

12 Q Have you ever been convicted of a crime?

13 A No.

14 Q Other than this lawsuit have you ever been
15 accused of a fraud in connection with the sale of
16 any real estate products?

17 A I'm not sure if I understand that
18 question.

19 Q Have you ever been accused of fraud?

20 A No.

21 Q In a lawsuit?

22 A Have I been accused of fraud in a lawsuit?

23 Q Yes, sir.

24 A No.

25 Q Other than this lawsuit?

1 A No.

2 Q What about the state of Idaho? Been
3 accused of fraud in the state of Idaho through a
4 lawsuit?

5 A There is a lawsuit in Idaho. I do not
6 have the full details with me.

7 Q Dominican Republic, have you ever been
8 accused of a fraud in the Dominican Republic?

9 A Can you be more specific?

10 Q Have you ever been accused of a crime in
11 the Dominican Republic?

12 A When you say "accused" be more specific,
13 please.

14 Q Okay. I want you to look -- and I'm going
15 to show you an exhibit. And we will mark it as one.
16 It will be in your packages, ladies, gentlemen. I
17 believe Exhibit I, which we will mark -- no my
18 apologies. It's not I. It should be K, which will
19 be Exhibit 1.

20 (Thereupon, the said document was marked
21 for identification as Plaintiff's Exhibit Number 1.)

22 MR. DIAZ: It's premarked K. It will be

23 Exhibit 1 for purposes of the deposition.

24 BY MR. DIAZ:

25 Q I'm showing you what's been marked as

1 Plaintiff's Exhibit No. 1, for purposes of this
2 deposition, and ask you if you are familiar with
3 that newspaper article in the Dominican Republic
4 accusing you of a fraud?

5 MR. MARTINEZ: Objection to form.

6 MR. DIAZ: You may answer.

7 BY MR. DIAZ:

8 Q Have you had an opportunity to look at
9 Plaintiff's Exhibit No. 1?

10 A I have, yeah.

11 Q Do you recall the events, with respect to
12 the contents of Exhibit No. 1, specifically the
13 newspaper article accusing Derek Elliot of a fraud?

14 Does that help refresh your recollection
15 about whether you have ever been accused for fraud
16 in the Dominican Republic?

17 A I do recall this article.

18 Q Were you ever accused of a fraud in the
19 Dominican Republic?

20 A It's accusing Derek ^Frederick of a fraud.

21 I'm not sure if that's me.

22 Q You are not sure if that's you?

23 A I am aware of this article.

24 Q My question is: Does that article pertain
25 to you?

1 A I am not sure.

2 Q Okay. So you don't know if you have ever
3 been accused of fraud in the Dominican Republic?

4 MR. MARTINEZ: Objection. Asked and
5 answered.

6 BY MR. DIAZ:

7 Q You may answer.

8 A I recognize this article.

9 Q Is the article regarding yourself?

10 A Supposedly.

11 Q Okay. Do you have a twin?

12 A No.

13 Q Is there somebody else using your name?

14 A I have no idea if someone else has my
15 name.

16 Q Have you ever filed a report regarding a
17 false ID or stolen identification? Is there someone
18 out there impersonating Derek Elliot?

19 A Not to my knowledge.

20 Q Okay. Mark this as Plaintiff's 2.

21 (Thereupon, the said document was marked

22 for identification as Plaintiff's Exhibit Number 2.)

23 MR. DIAZ: -- for purposes of this

24 deposition. You have it in front of you,

25 Mr. Martinez.

1 BY MR. DIAZ:

2 Q Take a look at Plaintiff's 2 for purposes
3 of this deposition.

4 MR. DIAZ: Did you mark that court
5 reporter?

6 THE COURT REPORTER: Uh-huh.

7 BY MR. DIAZ:

8 Q In the lawsuit that we are here on,
9 Mr. Elliot, with respect to each of those defendants
10 that are listed there, specifically the
11 corporations, had a chance to look at it?

12 A Yes.

13 Q Do you and your father have an ownership
14 interest and/or control those corporations listed in
15 Plaintiff's Exhibit 2?

16 A Some of the corporations.

17 Q Which ones do you not have an ownership
18 interest or have a control over?

19 A You know, I'm not sure because there are
20 trustees in some of the companies.

21 Q Okay. You are not sure whether you have

22 an interest -- you or your father have a controlling

23 interest or ownership interest in ^Aviate?

24 A I know that we do not have a controlling

25 interest in Aviate.

1 Q Any other corporations there where you are
2 absolutely sure you don't have an ownership interest
3 or a controlling interest?

4 A Could you be more specific?

5 Q Sure. Can I see Plaintiff's Exhibit 2?

6 Do you have an ownership interest or a
7 controlling interest in Cell -- you or your father,
8 Cell Wave Networks Limited?

9 A Us personally? Frederick Derek
10 personally?

11 Q Not personally. In any form. Directly or
12 indirectly, do you have an ownership interest or a
13 controlling interest in Cell Wave Networks Limited?

14 MR. MARTINEZ: Objection to form.

15 MR. DIAZ: You may answer.

16 THE WITNESS: We are supposed to.

17 BY MR. DIAZ:

18 Q Okay. Who prepared that for you?

19 A It would have been our CFO ^Greg Clark.

20 Q Did that on his own or with a lawyer?

21 A I'm not sure.

22 Q Do you have an ownership interest or a
23 controlling interest in De Marchena Kaluche &
24 Asociados at all?

25 A No.

1 Q What about DCS, Dominican Republic
2 Construction Services?

3 A No.

4 Q Are you sure about any other companies in
5 Plaintiff's Exhibit No. 2 or would you like me to go
6 through all 36 of them?

7 MR. MARTINEZ: Objection to form.

8 BY MR. DIAZ:

9 Q Are you sure that you have no ownership
10 interest or controlling interest in the remaining
11 corporations as listed in Plaintiff's Exhibit No. 2?

12 A I am not sure.

13 Q Okay. What would help refresh your
14 recollection?

15 A What is Kahembra, SA.

16 Q Why don't you tell me?

17 A I don't know.

18 Q What would assist you in determining if
19 any -- if you had an ownership or a controlling
20 interest, you or your father, in anyone of those
21 corporations including the one that you just

22 mentioned?

23 A I believe some of these companies are

24 holding companies and I don't know if we own or

25 control those.

1 Q Who would know?

2 A I don't know.

3 Q Greg Clark? Would he be in the best

4 position to know?

5 A I don't know.

6 Q Is he your former CFO?

7 A Yes.

8 Q Was he -- did he have the responsibility

9 for setting up these corporations?

10 A He had the responsibility of what a CFO is

11 supposed to do.

12 Q Does that include setting up these

13 corporations?

14 A Corporations are generally formed by law

15 firms.

16 Q Did Greg Clark use a law firm?

17 A I hope so.

18 Q Which law firm would that have been?

19 A That would depend on the jurisdiction.

20 Q Talk about Dominican Republic.

21 A About the Dominican Republic?

22 Q Yes.

23 A Specifically?

24 Q Yes. Did Mr. Clark and/or any lawyers on
25 behalf of the Elliots, you and your father, set up

1 any corporations in the Dominican Republic?

2 A Yes, we had lawyers set up corporations in
3 the Dominican Republic.

4 Q Which lawyers?

5 A We've used different firms.

6 Q Name them.

7 A I don't know all the firms.

8 Q Name one. Name two.

9 A I can name De Marchena Kaluche &
10 Asociados.

11 Q So they helped you set up some
12 corporations in the Dominican Republic?

13 A Yes. Yes.

14 Q Did they also help you set up corporations
15 outside of the Dominican Republic?

16 A I don't know.

17 Q Who would know that, Mr. Clark?

18 A He may.

19 Q Okay. Now do you and your father own real
20 estate in the Dominican Republic, land, real
21 property?

22 A No.

23 Q You do not?

24 A No.

25 Q You don't have any ownership interest over

1 any property in the Dominican Republic, you or your
2 father?

3 A Personal interest?

4 Q Yes. Not in your name. Do you own or
5 control any real estate in the Dominican Republic?

6 MR. MARTINEZ: Objection to form.

7 BY MR. DIAZ:

8 Q You or your father?

9 MR. MARTINEZ: Objection to form.

10 MR. DIAZ: Noted.

11 BY MR. DIAZ:

12 Q Answer.

13 A Can you clarify the question for me
14 please?

15 Q Sure. Do you own any real estate, you or
16 your father, in the Dominican Republic?

17 MR. MARTINEZ: Same objection.

18 THE WITNESS: Do I own any real estate
19 personally in the Dominican Republic?

20 BY MR. DIAZ:

21 Q Yes.

22 A No.

23 Q Do you have a controlling interest, an
24 ownership interest, in a corporation or a trust that
25 may own real estate in the Dominican Republic?

1 A I believe so.

2 Q And who would have set those corporations
3 or trusts up for you?

4 A It depends on the jurisdiction.

5 Q Okay. Name one.

6 MR. MARTINEZ: Objection to form.

7 BY MR. DIAZ:

8 Q Name a jurisdiction where you have opened
9 up corporations and/or trusts in order to own real
10 estate in the Dominican Republic. Name one
11 jurisdiction for me.

12 A The Turks and Caicos.

13 Q Bingo. So you recall that. Who set that
14 up for you?

15 MR. MARTINEZ: Objection to form.

16 BY MR. DIAZ:

17 Q Who set those corporations up in the
18 Dominican -- in the Turks and Caicos where you have
19 an ownership interest or controlling interest in
20 real estate in the Dominican Republic? Who set
21 those corporations up in the Dominican Republic

22 and/or trust?

23 MR. MARTINEZ: Same objection.

24 BY MR. DIAZ:

25 Q You may answer.

1 A It would have been our lawyers or our
2 trust company in the Turks and Caicos.

3 Q And who are they? Can you name them?

4 A I can.

5 Q Please.

6 A Our lawyers in the Turks and Caicos are
7 ^Missic & Standbrook.

8 Q Anybody else?

9 A We have used the law firm of ^Miller
10 Simons O'Sullivan.

11 Q What real estate or real property interest
12 do those corporations own in the Dominican Republic?

13 A Which corporations?

14 Q The ones you set up in the Turks and
15 Caicos by your law firm Missic in that jurisdiction?

16 A I -- I'm not sure. You would have to be
17 more specific.

18 Q Do -- you please be specific. Is there
19 any -- what property do those corporations, which
20 are set up in the Turks and Caicos have in the
21 Dominican Republic?

22 MR. MARTINEZ: Objection of form.

23 BY MR. DIAZ:

24 Q Do you understand the question?

25 A Not entirely, no.

1 Q Okay. Let's see if we can slow it down
2 then. We've established that your law firm ^Missic
3 in the Turks and Caicos have set up corporations
4 and/or trusts for you to own property in the
5 Dominican Republic, have we not?

6 A I did not say they have established a
7 trust for us no.

8 Q Okay. What about corporations?

9 A They have formed corporations, yes.

10 Q And those corporations own property in the
11 Dominican Republic, correct?

12 A You would have to look at the offering
13 memorandums that are approved by the financial
14 services commissions of the Turks and Caicos.

15 Q So you don't know whether you own the
16 property -- any property in the Dominican Republic
17 through any of the corporations set up by your law
18 firm in the Turks and Caicos as you sit here today?

19 A I'm not sure of the full ownership
20 structure. However, if you could be more specific I
21 would be more than happy to answer the question.

22 Q And I appreciate that, but I didn't ask
23 you about the full ownership. I asked you whether
24 the corporations that were formed in the Turks and
25 Caicos by your law firm ^Missic owned property in

1 the Dominican Republic for which you have an
2 interest?

3 A Yes.

4 Q What property is that?

5 A There are several properties in the
6 Dominican Republic. Could you please be more
7 specific?

8 Q Tell me which those -- which properties --
9 are we talking about, those corporations of the
10 Turks and Caicos -- what property interest do they
11 own in the Dominican Republic?

12 A I do not know what specific corporation
13 you are talking about.

14 Q Do you have any idea, the names of the
15 corporations, that you and your father own real
16 estate property through in the Dominican Republic?

17 MR. MARTINEZ: Objection to form.

18 BY MR. DIAZ:

19 Q You may answer.

20 A You are talking about corporations that
21 have multiple shareholders?

22 Q I didn't ask you that. Why don't we move

23 on. Who owns the Juan Dolio?

24 A Who owns the Juan Dolio?

25 Q Yes. What is the Juan Dolio?

1 A The Juan Dolio?

2 Q You can keep repeating it but, yes, that
3 one.

4 A Juan Dolio is a real estate project on the
5 south coast of the Dominican Republic.

6 Q Whose real estate project?

7 A The company of ^Promotora Zara.

8 Q Do you have an interest ownership interest
9 or otherwise in Promotora?

10 A No.

11 Q Who does?

12 A I believe it's a Turks and Caicos
13 corporation.

14 Q Is that -- and that Turks and Caicos
15 corporation do you have an ownership or controlling
16 interest in?

17 A Not to my knowledge.

18 Q Who does?

19 A I believe it's a parent corporation.

20 Q What's the name of that parent
21 corporation?

22 A I believe that to be ^Cell Wave Networks.

23 Q Who has an ownership interest in Cell

24 Wave?

25 A We are supposed to.

1 Q Who is "we", you and your father?

2 A Fred Elliot.

3 Q Who is your father.

4 A Yeah. Derek Elliot, James Catledge, ^Earl
5 Gales.

6 Q Anybody else?

7 A Ralph Lean.

8 Q Anyone else?

9 A I believe it is controlled by Greg Clark.

10 Q What is controlled by Greg Clark?

11 A Greg Clark set this up.

12 Q Set what up?

13 A Cell Wave Networks.

14 Q How did he do that?

15 A I don't know.

16 Q He would know?

17 A I don't know.

18 Q He set it up so presumably he would know.

19 You still don't know?

20 Did you sell any investment -- did you

21 sell any real estate products regarding the Juan

22 Dolio?

23 A All of the sales were done by James

24 Catledge and IMPACT.

25 Q You did not sell Juan Dolio products?

1 A We had a exclusive sale's contract with
2 James Catledge and IMPACT. All sales all marketing.

3 Q You did not sell you, Derek Elliot, or
4 your father, Fred Elliot, did not sell any real
5 estate investment products in the Dominican Republic
6 relating to the Juan Dolio?

7 A Not to my knowledge.

8 Q Who is ^Aviate?

9 A ^Aviate is a financial company.

10 Q Yes. What do they do?

11 A I'm not sure to the full extent what they
12 do.

13 Q Have you ever communicated with them?

14 A Yes.

15 Q What did you communicate about?

16 A The sale of promissory notes from
17 purchasers at Juan Dolio.

18 Q Who were the purchasers at Juan Dolio?

19 A Who were the purchasers at Juan Dolio?

20 Q Yes.

21 A Can you clarify that question?

22 Q Yes, to whom did you sell at Juan Dolio,

23 the real estate products at Juan Dolio?

24 A I did not do any selling at Juan Dolio.

25 That was done by IMPACT and James Catledge.

1 Q Did IMPACT and James Catledge have an
2 ownership interest in the Juan Dolio?

3 A I understand that James Catledge is
4 supposed to.

5 Q How much?

6 A I believe that is 38 percent.

7 Q What's your percent?

8 A I don't know.

9 Q You know his but you don't know yours?
10 You can answer.

11 A Yes.

12 Q You know his but you don't know your
13 father's interest in the Juan Dolio?

14 A Yes.

15 Q Yes, you do know. Tell us.

16 MR. MARTINEZ: Objection to form.

17 THE WITNESS: Yes, I don't know.

18 MR. DIAZ: Yes, you don't know. All

19 right. Let's have this marked as Plaintiff's

20 Exhibit 3 and 4. Gentlemen, it's your F and G.

21 (Thereupon, the said document was marked

22 for identification as Plaintiff's Exhibit Number 3.)

23 (Thereupon, the said document was marked

24 for identification as Plaintiff's Exhibit Number 4.)

25 BY MR. DIAZ:

1 Q I'm going to show you what's been marked
2 for purposes of this deposition as Plaintiff's 3 and
3 4. Take a moment, read it. Now reviewing
4 Plaintiff's Exhibit 4.

5 Have you had an opportunity, Mr. Elliot,
6 to review Plaintiff's Exhibit No. 3 and number 4?

7 A Yes, I have.

8 Q Do you recognize Plaintiff's Exhibit No.
9 3?

10 A Yes, I do.

11 Q What is it?

12 A It is a letter that I sent to clients.

13 Q Whose clients?

14 A This was sent to condo owners at Juan
15 Dolio.

16 Q You said "clients", my question was whose
17 clients?

18 A IMPACT's clients. James Catledge's
19 clients.

20 Q So you wrote to James Catledge's clients?

21 A We are a hotel developer and operator.

- 22 Q Who is "we?"
- 23 A The sun Village Juan Dolio, Inc.
- 24 Q Who owns that?
- 25 A Cell Wave Networks.

1 Q Who owns Cell Wave?

2 A I am not entirely sure, but I believe

3 we've addressed this question.

4 Q Do you own Cell Wave?

5 A Does Derek Elliot own Cell Wave? No.

6 Q Do you own any interest in Cell Wave?

7 A I believe I do.

8 Q Why would you be communicating with

9 Mr. Catledge's or IMPACT's clients?

10 A We are the developer of the Juan Dolio

11 hotel.

12 Q Who is "we?" Fred and Derek Elliot?

13 A I'm not sure what company.

14 Q You are not sure what company what?

15 MR. MARTINEZ: Objection to form.

16 BY MR. DIAZ:

17 Q What are you not sure of?

18 A Maybe I'm not sure of your question.

19 Q Well, let's do it again. Are you sure you

20 wrote Plaintiff's Exhibit No. 3?

21 A Yes.

22 Q It was directed to clients you said,

23 correct?

24 A It was directed to owners at the Juan

25 Dolio Hotel. It says here at the top, "Announcement

1 to all Juan Dolio fractional owners."

2 Q Who are they?

3 A Individuals, companies, trusts.

4 Q Is Mr. Hoffman one of those who is present
5 here today?

6 A I am not sure.

7 Q You didn't look before you came here
8 today?

9 A I am not entirely sure what Mr. Hoffman
10 owns.

11 Q So prior to today's deposition you didn't
12 look or determine whether Mr. Hoffman was one of
13 the -- what do you call it, fractional owners at
14 Juan Dolio?

15 A That's what the legal documents also call
16 it.

17 Q Okay. What do you call it?

18 A In this letter I call it Juan Dolio
19 fractional owners.

20 Q Is Mr. Hoffman one of those folks?

21 A I am not sure.

- 22 Q Because you didn't check.
- 23 A I have had 48 hours to check.
- 24 Q You just found out about this lawsuit --
- 25 MR. CONCEPCION: Mr. Elliot, he didn't ask

1 you how much time you had to check. He only
2 asked you if you checked.

3 THE WITNESS: I checked. I cannot
4 remember.

5 BY MR. DIAZ:

6 Q Did you check whether Mr. Hoffman was a
7 fractional owner?

8 A I saw Mr. Hoffman's purchase agreement and
9 I cannot recall if it was at Cofresi or Juan Dolio.
10 Perhaps you could assist me with that.

11 Q In your letter, Plaintiff's Exhibit No. 3,
12 are you telling the Juan Dolio investors that if
13 they did not prepay more money they would -- their
14 notes would be sold to a third party?

15 MR. MARTINEZ: Objection to form.

16 BY MR. DIAZ:

17 Q You may answer.

18 A You have what I said in the letter in
19 front of you, right?

20 Q I'm asking you. You had an opportunity to
21 read it, did you not?

22 A I did.

23 Q Your letter, correct?

24 A My letter.

25 Q So you would know what it says, correct?

1 A Yes.

2 Q My question to you again, sir, is: Did
3 you tell Juan Dolio investors, to whom you sent this
4 letter, that if they did not prepay more money their
5 notes would be sold to a third party?

6 MR. MARTINEZ: Objection to form.

7 BY MR. DIAZ:

8 Q Answer the question.

9 A I'm looking for what I said here. "We
10 have been able to find a solution to the request of
11 many clients to avoid the sale of the leverage notes
12 of their fractional interests."

13 Q And the solution was to pay you more
14 money?

15 A No.

16 Q It doesn't say that in Plaintiff's No. 3,
17 the options that you provided folks? On the second
18 page of Plaintiff's Exhibit No. 3 look at numbers
19 one through five where it says, "These further
20 options include" -- can you take a look at that?

21 A This is not payable to me.

22 Q Who is it payable to?

23 A I don't know.

24 Q You don't know who it's payable to, but

25 you are the one writing the letter?

1 A Do I say who it's payable to in this
2 letter?

3 Q I don't know. Do you?

4 MR. MARTINEZ: Objection. I am going to
5 object at this point. The document speaks for
6 itself. The language is there. If you want to
7 point him to some language where you can help
8 him with respect to it that fine but --

9 MR. DIAZ: He has been pointed to the
10 language.

11 BY MR. DIAZ:

12 Q I directed you to one through number five
13 where it says, "These further options include". You
14 have had ample opportunity to read and reread that
15 and my question to you now, Mr. Elliot, is the
16 following: Is the options that you provided the
17 Juan Dolio investors, in order to resolve their
18 situation, was to prepay additional monies?

19 A To discharge their promissory note at a
20 discount in advance.

21 Q So the only way to avoid their notes being

22 sold, their promissory notes being sold was to pay

23 more money?

24 MR. MARTINEZ: Objection to form.

25 BY MR. DIAZ:

1 Q Answer.

2 A The letter is self evident.

3 Q So the answer is yes?

4 MR. MARTINEZ: Objection to form.

5 BY MR. DIAZ:

6 Q You may answer. You equate self evident

7 with the positive response of yes?

8 MR. MARTINEZ: Objection to form.

9 BY MR. DIAZ:

10 Q You may answer.

11 A No.

12 Q No what?

13 A Look to point number five in the letter.

14 Q I am looking at it.

15 A "Clients with three or more fractions we

16 would allow a combination of surrendering some

17 fractions to apply toward their leverage notes."

18 Q Keep reading. "And choosing options one

19 through four for payment of the remaining notes,

20 right?

21 A Right.

22 Q Options are to always pay. That's the
23 only option they have to avoid their note being sold
24 was to pay one way or the other, correct?
25 MR. MARTINEZ: Objection of form.

1 THE WITNESS: It's not correct. We were
2 allowing clients to turn in fractions that we
3 had already paid on.

4 BY MR. DIAZ:

5 Q If the promissory notes were sold who got
6 a percentage of the sale?

7 MR. MARTINEZ: Objection to form.

8 THE WITNESS: I don't understand the
9 question.

10 BY MR. DIAZ:

11 Q Sun Village Juan Dolio, Inc., whom you are
12 writing this letter on behalf of; is that true?

13 A Yes.

14 Q Okay. Did they get a percentage of the
15 promissory notes when it was sold to ^Aviate?

16 MR. MARTINEZ: Objection to form.

17 BY MR. DIAZ:

18 Q Answer.

19 A Did they get a percentage of what?

20 Q The sale. When the notes -- when the
21 notes were sold to ^Aviate, did Sun Village Juan

22 Dolio, Inc. get a percentage? Did it get money?

23 Did it get compensation in return for the sale of

24 those notes?

25 A Yes.

- 1 Q Thank you. What percentage was that?
- 2 A I don't know.
- 3 Q And these notes were sold, were they not,
4 to ^Aviate?
- 5 A Some of the notes were sold.
- 6 Q Do you know how many were sold?
- 7 A I'm not 100 percent sure.
- 8 Q Give me an approximation.
- 9 A Approximation of what?
- 10 Q How many were sold?
- 11 A How many notes were sold?
- 12 Q Yes, sir.
- 13 A I don't know how many notes were sold.
- 14 Q Who would know?
- 15 A ^Aviate.
- 16 Q How about somebody from Sun Village Juan
17 Dolio, Inc.? Do you think someone from there would
18 know?
- 19 A Yes.
- 20 Q Maybe the guy writing the letter?
- 21 MR. MARTINEZ: Objection to form.

22 THE WITNESS: How many notes were sold?

23 BY MR. DIAZ:

24 Q Yeah.

25 A I don't know how many notes were sold.

1 Q Who would know?

2 MR. MARTINEZ: Asked and answered.

3 BY MR. DIAZ:

4 Q Who works or representative of Sun Village

5 Juan Dolio, Inc.?

6 MR. CONCEPCION: Answer the question if

7 you know --

8 MR. MARTINEZ: Answer the question.

9 MR. CONCEPCION: -- if you know what the

10 answer is.

11 THE WITNESS: I don't know how many notes.

12 I know the value of what was sold.

13 MR. MARTINEZ: His question to you is --

14 his question to you was who would know? Who at

15 Sun Village would know?

16 BY MR. DIAZ:

17 Q Tell me what the --

18 MR. MARTINEZ: Are you changing the

19 question?

20 MR. DIAZ: No. I'm the one -- I'm the one

21 asking the question, not you.

22 MR. MARTINEZ: I'm trying to make it

23 easier for you.

24 MR. DIAZ: It's one lawyer per witness.

25 MR. MARTINEZ: I'm trying to make it

1 easier for you.

2 MR. DIAZ: I don't need your help.

3 MR. MARTINEZ: Okay.

4 MR. DIAZ: Thank you. Go back.

5 BY MR. DIAZ:

6 Q What value was sold?

7 A I believe it was \$13.5 million.

8 Q Of promissory notes that were sold to

9 Aviate?

10 A Yes, 13.2 million maybe. It's 13.2 or

11 13.5.

12 Q Were these promissory notes sold,

13 notwithstanding that the investors had not received

14 their NUFs, non-used fees?

15 MR. MARTINEZ: Objection of form.

16 THE WITNESS: One does not relate to the

17 other.

18 BY MR. DIAZ:

19 Q Explain that. What is a non-use fee?

20 A It is associated to a timeshare product

21 known as residents.

22 Q Who created that?

23 A That was designed by James Catledge.

24 Q Who else created that?

25 A His former CFO.

1 Q For the benefit of whom?

2 MR. MARTINEZ: Objection to form.

3 THE WITNESS: The benefit of James

4 Catledge and IMPACT.

5 BY MR. DIAZ:

6 Q Did he receive the revenue generated from

7 that?

8 A Most of it.

9 Q In what form?

10 A Commissions.

11 Q Other than commissions, did he receive any

12 other revenue?

13 A Yes.

14 Q Such as?

15 A Expenses for his jet or his airplane,

16 travel for executives to the resort, food and

17 beverages at the resort, marketing materials,

18 helicopters to take Mr. Catledge golfing.

19 Q What else?

20 A Travel expenses, Villa rentals.

21 Q Did any of the revenue go towards

22 purchasing any real estate products?

23 MR. MARTINEZ: Objection to form.

24 THE WITNESS: The Residence go towards

25 purchasing real estate product?

1 BY MR. DIAZ:

2 Q Isn't the Residence a real estate product?

3 A No, it's a timeshare product.

4 Q Who received the revenue from the sale of
5 the timeshare product?

6 A Whatever company the Residence was payable
7 to.

8 Q And who was that?

9 A There were two projects for that Cofresi
10 and Juan Dolio.

11 Q Did they both receive the revenue from the
12 sale of those timeshares?

13 A They received the initial funds from the
14 sale of those timeshares.

15 Q Less all those expenses that you just
16 outlined regarding Mr. Catledge?

17 A Regarding Mr. Catledge and IMPACT.

18 Q Correct. So, yes, other than those you --
19 who received the balance of that revenue?

20 A Either Cofresi or Juan Dolio.

21 Q Prior to the sale of these promissory

22 notes to Aviate, did you offer any money back to the

23 investors, Juan Dolio investors?

24 A Juan Dolio fractional owners?

25 Q Let's use the name that you use on Exhibit

1 No. 3. "Dear Juan Dolio promissory note owner";

2 isn't that what you call them, yes?

3 A Yes.

4 Q That's in Plaintiff's Exhibit No. 3.

5 Prior to selling the notes, did you offer the Juan

6 Dolio promissory note owners their money back?

7 A No.

8 Q Did folks -- did any Juan Dolio promissory

9 note owners request their money back?

10 A I don't know.

11 Q Who would know?

12 A James Catledge and IMPACT.

13 Q Anybody else?

14 A They had most contact with purchasers.

15 They would know.

16 Q Speaking of purchasers, regarding the sale

17 of the Juan Dolio products, what percentage of the

18 sales were towards the United States?

19 A You would have to ask Mr. Catledge and

20 IMPACT. They had an exclusive sales agreement.

21 Q You wouldn't be in a position of knowing

22 what percentage of the Juan Dolio investment

23 products were sold to the United States?

24 A Seeing that Mr. Catledge had an exclusive

25 sales and marketing agreement, he would have the

1 exact details on that.

2 Q Who received the revenue from these sales,
3 excluding commissions of course?

4 A Sun Village Juan Dolio, Inc.

5 Q And who -- and Sun Village Juan Dolio,
6 Inc. what percentage of the sales were made to
7 United States?

8 A I don't have that number with me.

9 Q Did you spend any marketing dollars
10 marketing these Juan Dolio products to the United
11 States?

12 MR. MARTINEZ: Who is "you?" Objection to
13 form.

14 MR. DIAZ: Don't coach the witness.

15 MR. MARTINEZ: Objection to form.

16 THE WITNESS: Who?

17 BY MR. DIAZ:

18 Q Derek or Fred Elliot or any of the Elliot
19 Group companies?

20 A Regarding marketing --

21 Q Yes.

22 A -- of Juan Dolio?

23 Q Yes.

24 A We created the original sales product

25 description for IMPACT.

1 Q You created it for IMPACT?

2 A We created it with IMPACT.

3 Q No you created it for IMPACT is what you

4 said, right?

5 A And you corrected me. I created it with

6 IMPACT.

7 Q All right. Then we are going to look at

8 and we are going to mark Plaintiff's Exhibit No. 5

9 which is your, folks, J.

10 (Thereupon, the said document was marked

11 for identification as Plaintiff's Exhibit Number 5.)

12 BY MR. DIAZ:

13 Q Is that what you created for IMPACT?

14 MR. MARTINEZ: Objection to form.

15 Mischaracterizes his testimony.

16 BY MR. DIAZ:

17 Q You may answer.

18 MR. DIAZ: Okay. Let's take a break and

19 change tapes.

20 THE VIDEOGRAPHER: All right. Let me go

21 off the record. The time is 2:07 p.m.

22 (Thereupon, a recess was taken at 2:07

23 p.m. to 2:16 p.m., after which the following

24 proceedings were had.)

25 THE VIDEOGRAPHER: All right. We are now

1 back on the record on the videotape number two.

2 The time is 2:16.

3 MR. DIAZ: Thank you.

4 BY MR. DIAZ:

5 Q Mr. Elliot, before the break to change the

6 tape the videographer's tape and the court

7 reporter's tape, we were looking at Plaintiff's

8 Exhibit No. 5, I believe, that you currently have in

9 front of you, correct, sir?

10 A Correct.

11 Q Could you please turn to that portion of

12 Plaintiff's Exhibit No. 5 which says, "EMI Residence

13 Certification Guide?" Do you have that in front of

14 you, sir?

15 A I do.

16 Q Could you please read the first three

17 sentences out loud?

18 A Welcome to the EMI Residence Certification

19 Guide. The certification guide has been created

20 specifically for IMPACT America Associates.

21 Q Thank you. Let me show you what's been

22 marked -- we are going to mark as Plaintiff's

23 Exhibit No. 6 for purposes of this deposition. It

24 is H for you premarked as H, number six.

25 (Thereupon, the said document was marked

1 for identification as Plaintiff's Exhibit Number 6.)

2 BY MR. DIAZ:

3 Q Please take a moment and read plaintiff's

4 Exhibit No. 6 for purposes of this deposition.

5 A I'm sorry. Say that again.

6 Q Plaintiff's Exhibit No. 6 what you have

7 before you.

8 A Yes.

9 Q Please take a moment and read it.

10 Finished?

11 A Yes.

12 Q Okay. Regarding Plaintiff's Exhibit No.

13 6, Mr. Elliot, do you recognize that document?

14 A Yes, I do.

15 Q What is it?

16 A This is a series of e-mails.

17 Q From whom to whom?

18 A The first one is from myself to Brent

19 Goodrich and Tom O'Hagan.

20 Q Okay. Let's talk about that one.

21 MR. MARTINEZ: Make sure that you are

22 talking about the same one because he's looking

23 at the third page -- the second page.

24 MR. DIAZ: Yes, let's go to the first

25 page.

1 MR. MARTINEZ: He's looking at the second
2 page. He's looking at the second page.

3 MR. DIAZ: Okay.

4 THE WITNESS: This one.

5 BY MR. DIAZ:

6 Q Let's talk about the last page.

7 A The last page which is the first e-mail.

8 Q Okay. Let's go to the first page of

9 Plaintiff's Exhibit No. 6.

10 A So the end of the e-mail string?

11 Q Absolutely. What is that e-mail?

12 A That is from myself to Brent Goodrich and

13 Tom O'Hagan.

14 Q Okay. In that -- this e-mail from you to

15 Brent Goodrich and Tom O'Hagan, could you please

16 read the second sentence out loud of that paragraph

17 in that e-mail?

18 A Just the second sentence?

19 Q That's all I'm asking for now.

20 A "Of course Elliot entities own and control

21 both hotels. This is obvious from our day-to-day

22 occupation of our properties."

23 Q Let me ask you about that first sentence.

24 Which Elliott entities are you referring to?

25 A Are we talking about the first sentence or

1 the second sentence?

2 Q The first sentence. The one that you just
3 read out loud.

4 A Well, that's not the first sentence.
5 That's the second sentence.

6 Q Okay. Let's call it the second sentence.
7 The one that begins with, "Of course Elliot entities
8 own and control both hotels". Do you know which one
9 we are talking about now?

10 A I do.

11 Q Plaintiff's Exhibit No. 6?

12 A Yeah.

13 Q They are all on the same page. Which
14 Elliot entities are you referring to?

15 A Entities that have ownership or management
16 at the Cofresi Hotel or the Juan Dolio Hotel.

17 Q What are their names?

18 A I am not entirely sure. I don't know.

19 Q Which hotels are you ref -- making
20 reference to in that same sentence?

21 A Sun Village Cofresi and Sun Village Juan

22 Dolio.

23 Q Staying on the same sentence. "This is
24 obvious from our day-to-day occupation of our
25 properties". Which properties are you referring to?

1 A Sun Village Cofresi and Sun Village Juan

2 Dolio.

3 Q Moving onto the next paragraph. "However,
4 on the advice of our legal counsel William Lambert,
5 we cannot provide you with detail information on our
6 ownership structure". Who is we?

7 A I don't know.

8 Q You don't know who "we" is?

9 A I wrote this e-mail August 15th. I am not
10 sure who we was.

11 Q The next sentence: "The reason is that we
12 have a complex structure designed to insulate these
13 properties from claims and lawsuits". Who is "we?"

14 A I don't know.

15 Q What are "these properties?"

16 A Sun Village Cofresi and Sun Village Juan
17 Dolio.

18 Q Moving to the next paragraph. "With this
19 said, we are very enthusiastic about our sales and
20 resales program". Who is "our?"

21 A Sun Village Cofresi and Sun Village Juan

22 Dolio.

23 Q Did they have sales and resale programs?

24 A Cofresi does not have a resale program.

25 Q So what is "our" referring to?

1 A Sun Village Juan Dolio.

2 Q And?

3 A Sun Village Juan Dolio.

4 Q That's it?

5 A (Nods head.)

6 Q Okay. As we sit here today, Mr. Elliot,
7 has anything that's occurred with respect to the
8 legal actions taking place in the United States or
9 the Turks and Caicos prevented you or the Elliot
10 Group from restructuring the properties?

11 A What do you mean by "restructuring the
12 properties?"

13 Q You don't know what restructuring means?
14 You don't know what restructuring means?

15 A It can be personnel. It can be
16 corporations. It can be --

17 MR. DIAZ: Let's have this marked as
18 Plaintiff's No. 7. I am going to help you
19 here.

20 (Thereupon, the said document was marked
21 for identification as Plaintiff's Exhibit Number 7.)

22 MR. MARTINEZ: What are you marking?

23 MR. DIAZ: That would have been Exhibit C.

24 BY MR. DIAZ:

25 Q Are you ready?

1 A Yes.

2 Q Plaintiff's Exhibit No. 7, Diana?

3 THE COURT REPORTER: Uh-huh.

4 BY MR. DIAZ:

5 Q Are you familiar with it? Do you

6 recognize it?

7 A Yes.

8 Q Who sent it or what is it?

9 A This is a fractional owner and resident

10 client update.

11 Q Who is sending it?

12 A This came from myself.

13 Q First sentence of this update, Plaintiff's

14 Exhibit No. 7, begins with a sentence, "We were

15 recently advised that a group known as the ECC had

16 filed lawsuits against our company and the

17 jurisdictions of Florida and the Turks and Caicos

18 Islands". You wrote that, correct?

19 A Yes.

20 Q Who is "we"?

21 A Our companies.

22 Q Who is "our companies?"

23 A The hotels of Sun Village Cofresi and Sun

24 Village Juan Dolio.

25 Q Anybody else?

1 A Any company named in the lawsuits.

2 Q Okay. Last paragraph of your letter or
3 your update I should say on Plaintiff's Exhibit No.

4 7. "As you know, our restructuring efforts have
5 resulted in high occupancy at Cofresi and
6 construction has resumed at Juan Dolio". What is --
7 who is "our" in that last sentence?

8 A That's specifically speaking to the
9 operations of the Cofresi Hotel and Juan Dolio.

10 Q What type of restructuring efforts are you
11 making reference to?

12 A First of all terminating our sales
13 agreement with James Catledge and IMPACT Group of
14 companies.

15 Q That happened when?

16 A I believe it was June of 2008 or July 2008
17 we moved them off our property, asked them to leave.

18 Q Okay. And this update is March 17th of
19 2009?

20 A Yes, we've done other personnel
21 restructuring that was critical.

22 Q Last sentence; Who are you referring to
23 when you say, "We appreciate your continued support
24 while we achieve our collective goals". Who is we?
25 A That would refer to any fractional owner

1 or Residence client.

2 Q "We refer to fractional owners", the last
3 sentence.

4 A Yeah, people who are appreciating support
5 to complete the property.

6 Q Who are you appreciating?

7 A Supporting fractional owners and
8 Residence's clients.

9 Q So you are appreciating them, correct?
10 You are appreciating their support, yes?

11 A Yes.

12 Q Who is "we?"

13 A The Sun Village Hotel at Cofresi and the
14 Sun Village Hotel at Juan Dolio.

15 Q Okay. Obviously in Plaintiff's Exhibit
16 No. 7 you are advising the fractional owners and
17 Residence clients that construction has resumed.

18 A Yes.

19 Q And the date of that is March 17th, 2009,
20 correct?

21 A Yes.

22 Q Nothing with respect to the injunction in
23 the Turks and Caicos has prevented you from resuming
24 construction, correct?
25 A Incorrect.

1 Q How so? So this is inaccurate?
2 Plaintiff's Exhibit No. 7 is inaccurate the
3 statement where you say, "Construction has resumed
4 in Juan Dolio"; that's not true?

5 A Construction resumed in Juan Dolio over
6 three weeks ago.

7 Q The date of this update is March 17th.

8 A And I felt it important to let people know
9 that construction had previously resumed at Juan
10 Dolio.

11 Q Where does it say previously?

12 A I don't know.

13 Q Has the restraining order in the Turks and
14 Caicos in any way prevented you from resuming
15 construction at the Juan Dolio?

16 A It has hindered our progress.

17 Q Has it prevented you --

18 MR. MARTINEZ: Objection to form.

19 BY MR. DIAZ:

20 Q -- from resuming construction at the Juan
21 Dolio?

22 A It has hindered the progress with the

23 contractor.

24 Q Notwithstanding the hindrance construction

25 has resumed?

1 A Construction resumed at Juan Dolio over
2 three weeks ago.

3 Q Is it currently going on right now,
4 construction, as we sit here today?

5 A I am not there. I don't know.

6 Q Before you -- when was the last time you
7 were there?

8 A The last time I was at Juan Dolio? Today
9 is the 28th, right? Today is the 28th?

10 Q I don't know.

11 A You don't know?

12 Q No. Let's say it is. When is the last
13 time you were at Juan Dolio?

14 A Either the 16th, 17th, or 18th of March.

15 Q Was construction --

16 A It was roughly a week and a half ago.

17 Q Okay. So you would have to be personally
18 there to know whether construction is going on or
19 not?

20 A For me to be absolutely certain yes.

21 Q Okay. So when you wrote Plaintiff's

22 Exhibit No. 7 to the fractional owners and

23 Residence's clients, construction had not already

24 resumed at Juan Dolio?

25 MR. MARTINEZ: Objection.

1 THE WITNESS: I don't understand what you
2 are saying.

3 BY MR. DIAZ:

4 Q Is Plaintiff's Exhibit No. 7 an accurate
5 statement as to when construction resumed at Juan
6 Dolio?

7 A I don't refer to when construction resumed
8 at Juan Dolio.

9 Q What's the date of Plaintiff's Exhibit No.
10 7?

11 A What's the date of what?

12 Q Of Plaintiff's Exhibit No. 7?

13 A That's March 17th, 2009.

14 Q Had construction resumed on that day?

15 A It had resumed previously.

16 Q Had it resumed on this date?

17 MR. MARTINEZ: Objection to form.

18 BY MR. DIAZ:

19 Q March 17th, 2009?

20 MR. MARTINEZ: Objection of form.

21 THE WITNESS: Construction resumed over

22 three weeks ago at Juan Dolio.

23 BY MR. DIAZ:

24 Q Is it ongoing right now?

25 A I don't know. I am not there.

1 Q Have you stopped construction in Juan
2 Dolio?

3 A I am not doing the construction at Juan
4 Dolio.

5 Q Have you ordered -- do you have any
6 control over the construction in Juan Dolio?

7 A I speak with the contractor.

8 Q Do you have any control over the
9 contractor?

10 A Do I have control over the contractor?

11 Q Yes.

12 A I don't have control over anybody.

13 Q Does the contractor work for you?

14 A The contractor does not work for me.

15 Q Who does he work for?

16 A I'd have to check to see what company
17 hired him.

18 Q Would it be a company that you have an
19 involvement with?

20 A Yes.

21 Q That would be the reason that you would be

22 talking to him, correct?

23 A Yes.

24 Q Did you instruct him to stop construction

25 at the Juan Dolio?

1 A Am I supposed to?

2 Q I don't know. My question is: Have you
3 instructed him to stop construction at the Juan
4 Dolio?

5 A Why are you asking that question?

6 Q You need to answer my questions. You
7 don't have -- I question, you answer.

8 Have you asked him to stop construction at
9 the Juan Dolio, yes or no?

10 A No.

11 Q Is construction going on right now at the
12 Juan Dolio --

13 MR. MARTINEZ: Objection. Asked and
14 answered.

15 BY MR. DIAZ:

16 Q -- to your knowledge?

17 A To my knowledge?

18 Q Yes.

19 A I understand it is.

20 Q Does the Elliott Group have control over
21 Aviate?

22 MR. MARTINEZ: Objection of form.

23 BY MR. DIAZ:

24 Q You may answer.

25 A No.

1 Q Are you the president and CEO of the
2 Elliott Group of companies?

3 A No.

4 Q Who is? Who is?

5 A The CEO is Fred Elliot.

6 Q Who is the president?

7 A Of which company?

8 Q Of the Elliott Group of companies?

9 A I am not sure.

10 MR. DIAZ: Let me have this marked as

11 Plaintiff's Exhibit No. 8.

12 (Thereupon, the said document was marked

13 for identification as Plaintiff's Exhibit Number 8.)

14 BY MR. DIAZ:

15 Q I will show you what's been marked as

16 Plaintiff's Exhibit No. 8 to this deposition. Take

17 a look at that, please.

18 BY MR. DIAZ:

19 Q Ready?

20 A Yeah, go ahead.

21 Q Have you had an opportunity to review

22 Plaintiff's Exhibit 8?

23 A Not in detail, but I have skimmed through

24 it.

25 Q Okay. Do you recognize it?

1 A Do I recognize this exhibit?

2 Q Yes, have you ever seen it before?

3 A Have I ever seen this exhibit before.

4 Q What's depicted in the contents of

5 Plaintiff's Exhibit No. 8, have you ever seen it

6 before?

7 A I have seen some of the contents.

8 Q Okay. What is plaintiff's Exhibit No. 8?

9 A Some of it is a owner's website materials.

10 Q Is there a reference to the Elliot

11 Foundation? It would be on the first page of

12 Plaintiff's Exhibit No. 8. The top left-hand

13 corner.

14 A I don't see any reference to the Elliot

15 Foundation.

16 Q Do you see where a box says, "JessTalk?"

17 A Okay. Sorry. I see it now.

18 Q Okay. What is the Elliot Foundation?

19 A The Elliot Foundation is a program that we

20 created years ago to assist the needs of children in

21 the Dominican Republic.

22 Q Next page of Plaintiff's Exhibit No. 8,

23 top of the page. What is Elliot real estate?

24 A Elliot real estate is a brand name for our

25 real estate products.

1 Q Who is "our?" Who are you referring to as
2 our real estate products?

3 A I don't know.

4 Q Do your real estate products also include
5 what's referenced on the second page, The Bungalows
6 at Cofresi?

7 A Yes.

8 Q Does it include The Bungalows at Juan
9 Dolio?

10 A Yes.

11 Q Does it include Treasure Bluff?

12 A Yes.

13 Q Is Plaintiff's Exhibit No. 8 -- let's go
14 to the next page, the third page. That may be a
15 duplicate. I believe it is -- no, it's not.

16 Fourth page of Plaintiff's Exhibit No. 8.

17 Top right-hand side where it says September 2008
18 pricing. Are you with me?

19 A Yes.

20 Q What are The Bungalows at Cofresi?

21 A Pardon me?

22 Q What are The Bungalows at Cofresi? What

23 are they?

24 A The Bungalows are a collection luxurious

25 condominium and hotel units.

1 Q And who is selling those?

2 A Who is selling those right now?

3 Q No, in this exhibit. There is pricing up

4 there. Whose pricing document is this?

5 A The pricing document is published by

6 Elliot Hospitality and Real Estate.

7 Q Who is Elliot Hospitality and Real Estate?

8 A It is a brand name for hotel and real

9 estate products.

10 Q Is that being sold today?

11 A It's being offered for sale today.

12 Q Okay. Who is Tippy Tan Lawter?

13 A Who is she?

14 Q Yes.

15 A Tippy Tan Lawter is a person.

16 Q How do you know her?

17 A I met Tippy Tan Lawter through James

18 Catledge and the IMPACT Group.

19 Q What does she do?

20 A What does she do?

21 Q For a living?

22 A For a living?

23 Q Yeah.

24 A She's a partner in a company called Net

25 Wealth Navigators, I believe.

1 Q What does Net Wealth Navigators do?

2 A I don't fully know.

3 Q Does Tippy Tan Lawter and Net Wealth

4 Navigators sell any of the Elliot real estate

5 products in the United States?

6 A I don't know.

7 Q Who is Michael Lawter?

8 A Michael is Tippy Tan Lawter's husband.

9 Q What does he do for a living?

10 A Michael is a partner of Net Wealth

11 Navigators.

12 Q And what does Net Wealth Navigators do?

13 A I am not fully up to speed with the full

14 scope of their business.

15 Q Does Net Wealth Navigators sell any of the

16 Elliot real estate products in the Dominican

17 Republic?

18 MR. MARTINEZ: Objection. Asked and

19 answered.

20 BY MR. DIAZ:

21 Q You may answer.

22 A Answer again?

23 Q Yes.

24 A Net Wealth Navigators has represented --

25 Q Who?

1 A -- real estate products in the Dominican
2 Republic.

3 Q From whom?

4 A I know that they have represented products
5 for Sun Village Cofresi and Juan Dolio.

6 Q You say "have." Do they currently
7 represent those products?

8 A Represent in what manner are you referring
9 to?

10 Q It was your words. You said they have
11 represented. In which capacity did they represent
12 Cofresi?

13 A In what capacity have they represented
14 Cofresi?

15 Q Yes.

16 A They have represented Cofresi with client
17 services and with sourcing compliant real estate
18 companies.

19 Q What else?

20 A Client communications and sourcing
21 compliant real estate companies.

22 Q Did they engage in any sales on behalf of

23 the Elliot -- on behalf of the Elliot real estate?

24 A Net Wealth Navigators?

25 Q Or Tippy Tan Lawter and Michael Lawter?

1 A I know that they have represented the
2 products.

3 Q Do they currently represent the products?

4 A In a client services capacity.

5 Q Do they continue to sell the products?

6 A I don't know.

7 Q Have in the past they sold the products?

8 A Yes.

9 Q When did it stop?

10 MR. MARTINEZ: Objection of form.

11 THE WITNESS: I don't know.

12 BY MR. DIAZ:

13 Q As Elliot -- does Elliot -- do the Elliot
14 real estate -- are the Elliot real estate products,
15 including The Bungalows at Cofresi, The Bungalows at
16 Juan Dolio and Treasure Bluff currently being sold?

17 A Can you please repeat that question?

18 Q Sure. The real estate products at Elliot
19 Real Estate which include, as you previously
20 testified to, The Bungalows at Cofresi, The
21 Bungalows at Juan Dolio and Treasure Bluff; are they

22 currently for sale?

23 A They have been listed for sale.

24 Q Are they being -- are those products

25 currently being sold?

1 A They have been listed for sale.

2 Q Are you marketing -- is Elliott Real

3 Estate entity or Elliott Real Estate marketing the

4 sale of those products?

5 A I don't know.

6 Q Who sold the timeshare products in Sun

7 Village Cofresi and at Juan Dolio?

8 A That was done exclusively by James

9 Catledge and IMPACT America, IMPACT Net Worth, Net

10 Worth Solutions.

11 Q And you indicated earlier that that

12 relationship ended in June of 2008, correct?

13 A June or July of 2008.

14 Q That's when that relationship ended,

15 correct yes?

16 A Yes.

17 Q Who has been selling the timeshare

18 products at Sun Village Cofresi and Juan Dolio since

19 June or July of 2008?

20 A Which specific product are you referring

21 to?

22 Q The timeshare product in Sun Village

23 Cofresi and Juan Dolio.

24 A We discontinued the sale of timeshare

25 products when we ended our relationship with James

1 Catledge, Net Worth Solutions, IMPACT America and
2 IMPACT Net Worth.

3 Q What products did you sell then, after you
4 ended that relationship with Mr. Catledge and those
5 entities?

6 A We have offered since then the sale of
7 fractional interest and we have created a new
8 vacation club product.

9 Q What is the vacation club product?

10 A What is the vacation club product?

11 Q Yes. Is it a timeshare? Is it a
12 fractional ownership interest? What is it?

13 A It's a right to use product that gives a
14 person a membership to vacation at our properties or
15 other properties through an exchange network.

16 Q When you are referring to "our
17 properties", who is "our?"

18 A This specifically refers to Sun Village
19 Resort at Cofresi.

20 Q Isn't it true that the Elliott Group of
21 companies used monies from the later sales of

- 22 timeshare and fractional products at Sun Village
- 23 Cofresi to pay non-use fees to earlier purchasers of
- 24 the timeshare product?
- 25 A I don't know.

1 Q Who would know?

2 A I don't know.

3 Q Would Greg Clark know?

4 A I don't know.

5 Q Isn't it true that EMI -- do you know what

6 EMI Sun Village is?

7 A Yes, I do.

8 Q What is it?

9 A Are you referring to EMI Sun Village,

10 Inc.?

11 Q Yes. What is it?

12 A EMI Sun Village, Inc. is the parent

13 company that owns the Sun Village resort at Cofresi.

14 Q Do you have an ownership interest in EMI

15 Sun Village, Inc.?

16 A Derek Elliot personally?

17 Q Or indirectly through another trust or

18 entity.

19 MR. MARTINEZ: Objection of form. You can

20 answer.

21 MR. DIAZ: Read the last question back.

22 (Thereupon, the portion referred to was

23 read by the reporter as above recorded.)

24 BY MR. DIAZ:

25 Q Do you?

1 A Yes.

2 Q Isn't it true that EMI Sun Village, Inc.,
3 when it did not have sufficient funds from its own
4 operations to pay the non-use fee, it used monies
5 from Juan Dolio sale to fund the payments of those
6 non-use fees?

7 A I don't know.

8 Q Who would know?

9 A I don't know.

10 Q Greg Clark know?

11 A I don't know.

12 Q How long have you and Frederick Elliot
13 been developing real estate property in the
14 Dominican Republic?

15 A Personally?

16 Q Or indirectly through a trust or company?

17 A I don't know what year we started.

18 Q Has it been more than ten years?

19 A Yes.

20 Q What were the nature -- what was the
21 nature of that development?

22 A Of what development?

23 Q Real estate development.

24 MR. MARTINEZ: Objection of form.

25 THE WITNESS: I'm not sure I understand

1 the question.

2 BY MR. DIAZ:

3 Q How long have you been involved in real

4 estate development in Dominican Republic?

5 A I believe -- I am not going to guess. I

6 don't know.

7 Q Has it been more than ten years?

8 MR. MARTINEZ: Objection. Asked and

9 answered.

10 MR. DIAZ: He hasn't answered.

11 BY MR. DIAZ:

12 Q Has it been more than ten years?

13 MR. MARTINEZ: That's okay. You can

14 answer again.

15 THE WITNESS: Yes.

16 BY MR. DIAZ:

17 Q What were the nature -- what was the

18 nature of that real estate development?

19 A The first development that was done in the

20 Dominican Republic?

21 Q I didn't ask you what the first one was.

- 22 What's the nature of the development? What type of
- 23 development was it? Was it residential? Was it
- 24 commercial? Was it hotel? Was it resorts? What
- 25 type of development were you engaged in?

1 MR. MARTINEZ: Objection of form.

2 THE WITNESS: I don't understand what you
3 are asking me.

4 BY MR. DIAZ:

5 Q You have been -- you've testified that you
6 have been involved in real estate development in the
7 Dominican Republic for more than ten years, correct?

8 A Yes.

9 Q What type of real estate development?

10 A What type of real estate development were
11 we doing ten years ago?

12 Q For the last ten years, correct?

13 A For the last ten years predominantly
14 resort development.

15 Q And in those ten years have you completed
16 any real estate development in the Dominican
17 Republic?

18 A Yes.

19 Q Which one?

20 A The Sun Village Resort at Cofresi.

21 Q Isn't that incomplete?

22 A No.

23 Q Don't you need about \$400,000 to complete

24 the interiors of the two buildings at the Sun

25 Village Cofresi Resort?

1 A I believe so, yes.

2 Q So it's not complete, is it?

3 A Our resort is complete.

4 Q Even though it needs interior for two
5 buildings, correct?

6 MR. MARTINEZ: Objection of form.

7 BY MR. DIAZ:

8 Q Mr. Elliot, in your mind it's complete?

9 MR. MARTINEZ: Same objection.

10 BY MR. DIAZ:

11 Q Sir, is it complete? Are you having
12 difficulty hearing?

13 A Is the Sun Village Resort complete? Yes,
14 it is.

15 Q Sun Village Cofresi Resort is complete.
16 Other than the Sun Village Cofresi Resort, in the
17 last ten years, what other development in the
18 Dominican Republic have you completed?

19 A I don't know.

20 Q Isn't it a fact that you haven't completed
21 any other development in the Dominican Republic?

22 A What development are you referring to?

23 Q Any that you have been involved in for the

24 last ten years?

25 A The question was is the Sun Village Resort

1 complete?

2 Q No, that wasn't the question.

3 MR. DIAZ: Why don't you read back the

4 question for him, Diana?

5 (Thereupon, the portion referred to was

6 read by the reporter as above recorded.)

7 THE WITNESS: I don't know.

8 BY MR. DIAZ:

9 Q Did you ever tell investors, purchasers of

10 the Juan Dolio, that all prepayments would be used

11 to complete the Juan Dolio Resort?

12 A I don't know.

13 Q Going back to what's been previously

14 marked as Plaintiff's Exhibit No. 4, and I direct

15 your attention to the third page of that document.

16 Do you have number four in front of you?

17 A I do.

18 Q Turn to the third page, please. Do you

19 see where it says prepayment discount information

20 update?

21 A Yes.

22 Q Could you please read the first sentence
23 under the prepayment discount information update out
24 loud?
25 A "Prepayment discount information update.

1 We have arranged for all funds to flow toward the
2 completion of The Bungalows at Juan Dolio, together
3 with the payment of hard and soft costs arrears,
4 through our Dominican legal counsel Enrique De
5 Marchena Kaluche and his firm. When choosing any
6 prepayment option please send as follows."

7 Q So I will ask you again, and by the way,
8 what you've just read is something that you wrote,
9 correct?

10 A I don't know.

11 Q Look at the fourth page. Don't you sign?

12 A Yes, I sign that.

13 Q So isn't that what you wrote?

14 A I don't know.

15 Q What you just read out loud you don't know
16 whether you wrote? That's your testimony?

17 A It could have been written by legal
18 counsel. I'm not sure. I -- we are looking at a
19 letter that was sent September the 4th.

20 Q So you are disavowing now -- yeah, we need
21 a break to change discs?

22 THE VIDEOGRAPHER: We still have five more

23 minutes.

24 MR. DIAZ: Okay. Let's do it now. Let's

25 break now.

1 THE VIDEOGRAPHER: All right. Let me go
2 off the record. The time is 3:10.

3 (Thereupon, a recess was taken from 3:10
4 p.m. to 3:19 p.m., after which the following
5 proceedings were had.)

6 THE VIDEOGRAPHER: All right. We are now
7 back on the record on the videotape number
8 three. The time is 3:19.

9 BY MR. DIAZ:

10 Q Showing you Plaintiff's Exhibit No. 9,
11 Mr. Elliot. Can you please take a look at it. Tell
12 me if you recognize it.

13 (Thereupon, the said document was marked
14 for identification as Plaintiff's Exhibit Number 9.)

15 THE WITNESS: Yes, I recognize this.

16 BY MR. DIAZ:

17 Q What is it?

18 A This is a promotional article.

19 Q About?

20 A The Dominican Republic.

21 Q Promoting any of the Elliott Real Estate

22 products?

23 A They are mentioned among other products.

24 Q Bottom of the first page highlighted

25 section, paragraph that begins with, "Canadian Real

1 Estate Developer Derek Elliot."

2 A Yes.

3 Q If you keep reading down that paragraph.

4 It quotes you as saying, "The Dominican Republic has

5 grabbed more attention in the spotlight in the last

6 18 months than it has in the last 18 years",

7 correct?

8 A Yes.

9 Q It refers to you also as the CEO of the

10 Elliott Group, correct?

11 A Yes.

12 Q What is the Elliott Group?

13 A The Elliott Group is a brand name.

14 Q For what?

15 A For our companies, our -- the Elliott

16 Group is not a company.

17 Q What is -- what was formally EMI Group?

18 A Well, it says there it was formally the

19 EMI Group.

20 Q What was formally the EMI Group?

21 A We are looking at the same article here?

22 Q Yeah.

23 A It says the Elliot -- it says in the

24 article, "the Elliott Group or what was formally the

25 EMI Group name was changed to avoid confusion."

1 Q Okay. My earlier question was: What was
2 the Elliot -- what is the Elliott Group and you said
3 it's a brand name, correct?

4 A Yes.

5 Q It is a brand name for what?

6 A For any group of companies that the
7 Elliots are associated with.

8 Q Groups of companies involved in real
9 estate sales in the Dominican Republic?

10 A No, regarding development.

11 Q What kind of development, real estate
12 development?

13 A Yes.

14 Q Is that why the article would say real
15 estate in the top-right hand section?

16 A It says Canadian real estate developer
17 Derek Elliot.

18 Q Do you see the big letters up here in red
19 that say real estate?

20 A I don't think that has anything to do with
21 our article.

22 Q Okay.

23 A I don't know. I would have to see the

24 whole magazine.

25 MR. CONCEPCION: There is no question

1 pending. Wait for the next question.

2 THE WITNESS: Yeah.

3 BY MR. DIAZ:

4 Q Are you still the CEO of the Elliott
5 Group?

6 A No, I'm not.

7 Q What are you today of the Elliot Group?

8 A I am the vice president of business
9 development.

10 Q Of the Elliott Group?

11 A I don't know.

12 Q You are the vice president of business
13 development of what?

14 A I guess it would be the Elliott Group.

15 Q Isn't it true that the Elliott Group took
16 approximately seventy -- seven and a half million
17 dollars as advanced profits from the Juan Dolio
18 project to use as funds for the acquisition of the
19 ^Michis land?

20 A No.

21 Q Isn't it also true that the Elliott Group

- 22 did not give investors or owners or purchasers of
- 23 the Sun Village Juan Dolio products any ownership
- 24 interest in the ^Michis land?
- 25 A Could you please repeat that question?

1 Q Yes. Isn't it also true that the Elliott
2 Group did not give the owners investors or
3 purchasers of the Sun Village Juan Dolio products
4 any ownership interest in the ^Michis land?

5 MR. MARTINEZ: Objection to form.

6 THE WITNESS: Yes.

7 BY MR. DIAZ:

8 Q Did the Elliott Group take any money from
9 the Juan Dolio and use it to buy the ^Michis
10 property?

11 A No.

12 Q Did any company that is part of the
13 Elliott Group take money from the Juan Dolio and use
14 it to buy the ^Michis property?

15 A When you say "take money from Juan Dolio",
16 what do you mean by that?

17 Q What is the Juan Dolio?

18 A It's a hotel.

19 Q Did you take any money from the Juan Dolio
20 Hotel and use it to buy the ^Michis property?

21 A No.

22 MR. DIAZ: Exhibit I, which is now ten.
23 (Thereupon, the said document was marked
24 for identification as Plaintiff's Exhibit Number
25 10.)

1 BY MR. DIAZ:

2 Q I show you what's been marked as
3 Plaintiff's Exhibit No. 10, Mr. Elliot. I ask you
4 to flip through it and tell me if you recognize it.

5 A I'm sorry?

6 Q Plaintiff's Exhibit No. 10. I've asked
7 you to take a look at it and tell me if you
8 recognize it.

9 A I recognize parts of this.

10 Q Who prepared it?

11 A Some of these slides were provided by us.

12 Q Who is "us?"

13 A Sun Village Cofresi, Sun Village Juan
14 Dolio.

15 Q How about the Elliott Group; did they
16 prepare this?

17 A No.

18 Q On the first page why does it say the word
19 Elliot?

20 A I don't know.

21 Q Did you prepare that slide?

22 A I did not.

23 Q Did the -- did the Sun Village folks

24 prepare that slide?

25 A I don't know.

1 Q What was the purpose -- what is the
2 purpose of Plaintiff's Exhibit No. 10? Is it a
3 marketing tool?

4 A I don't know.

5 Q Look at page 1. Did you prepare that
6 slide?

7 A I did not prepare that slide.

8 Q Did anyone in the Elliott Group prepare
9 slide number one?

10 A I don't know.

11 Q Anyone in the Elliott Group prepare slide
12 number two, the next page?

13 A I don't know.

14 Q Look at all the pages of Plaintiff's
15 Exhibit No. 10 and identify for me which page or
16 slide was prepared by the Elliott Group.

17 A Again, I don't know who has prepared
18 slides here.

19 Q Isn't it a fact that you used Plaintiff's
20 Exhibit No. 10 as part of a Power Point presentation
21 at various seminars where you spoke at?

22 A I believe this -- I believe some of this

23 has been used at a presentation where I was a guess

24 speaker at.

25 Q And you were a guess speaker for purposes

1 of selling Elliott Real Estate products?

2 A No, I was there as the developer at the
3 request of James Catledge and IMPACT Net Worth and
4 Net Worth Solutions and IMPACT America.

5 Q As the developer of real estate products,
6 isn't the objective, your objective, to develop
7 products for sale? Do you want to hear the question
8 again?

9 A Yes, please.

10 MR. DIAZ: Diana?

11 (Thereupon, the portion referred to was
12 read by the reporter as above recorded.)

13 THE WITNESS: It's our objective to build
14 products for sale.

15 MR. DIAZ: Let me have this marked Exhibit
16 N the next exhibit.

17 (Thereupon, the said document was marked
18 for identification as Plaintiff's Exhibit Number
19 11.)

20 MR. MARTINEZ: That's eleven?

21 THE COURT REPORTER: Yes.

22 BY MR. DIAZ:

23 Q Please take a moment, Mr. Elliot, to

24 review Plaintiff's Exhibit No. 11. Let me know when

25 you are ready. Have you completed reading

1 Plaintiff's Exhibit No. 11, Mr. Elliot?

2 A Yes, I have.

3 Q What is it?

4 A This is a letter to Juan Dolio fractional
5 interest owners.

6 Q A letter prepared by whom?

7 A I don't know.

8 Q Is that your name at the bottom

9 Plaintiff's Exhibit No. 11?

10 A Yes, it is.

11 Q Where it says per Derek F.C. Elliot; is
12 that you?

13 A Yes.

14 Q Would that indicate to you that perhaps
15 you are the one that prepared Plaintiff's Exhibit
16 No. 11?

17 A Yes.

18 Q Right above, "respectfully yours", that
19 paragraph which begins with, "if you have any
20 questions or require further information"; do you
21 see which paragraph I'm talking about?

22 A Paragraph 7?

23 Q Let me read the paragraph for you. Right

24 above the words, "respectfully yours", the paragraph

25 right above it begins with, "If you have any

1 questions or require further information, please do
2 not hesitate to contact our central master agency
3 NWN-Net Wealth Navigators or by e-mail
4 nwnelliotsupport@gmail. Who is Net Wealth
5 Navigators?

6 A They are a company in Las Vegas Nevada.

7 Q That's Tippy Tan and Michael Lawter?

8 A Yes.

9 Q Thank you.

10 MR. DIAZ: Mark this.

11 (Thereupon, the said document was marked
12 for identification as Plaintiff's Exhibit Number
13 12.)

14 BY MR. DIAZ:

15 Q Please take a moment and take a look at
16 Plaintiff's Exhibit No. 12 and ask you, Mr. Elliot,
17 if you recognize it?

18 A No, I don't.

19 Q What is it?

20 A This is an e-mail.

21 Q From whom?

- 22 A From Derek Elliot.
- 23 Q Is that you?
- 24 A That's me.
- 25 Q Who is it directed to?

1 A This is sent to Will ^Lambert and Greg
2 Clark.

3 MR. MARTINEZ: I'm going to object to this
4 as attorney/client privilege to the extent that
5 it's been provided by a former employee of the
6 company or any of the companies involved in
7 this litigation that was done so without
8 authorization of the company, and as such it is
9 attorney/client privilege and all copies must
10 be returned to us immediately. Privilege has
11 not been waived.

12 BY MR. DIAZ:

13 Q Well, why don't you establish who William
14 Gardner is before we determine that it is a
15 attorney/client privilege document. Who is William
16 Gardner?

17 A I don't know William Gardner.

18 Q Who is William Gardner Roberts?

19 A I don't know who William Gardner Roberts
20 is.

21 MR. MARTINEZ: Will Gardner Roberts the

22 name of the law firm.

23 BY MR. DIAZ:

24 Q Who is Brenda Overland?

25 A Brenda Overland?

1 Q Uh-huh.

2 A Is my assistant.

3 Q Who is Jason Burley?

4 A A friend and business associate.

5 Q Is he still a business associate?

6 A Yes.

7 MR. MARTINEZ: Again, I reiterate my
8 request that all copies of this document be
9 returned to us, pursuant to the federal rules
10 of procedure.

11 MR. DIAZ: Duly noted.

12 BY MR. DIAZ:

13 Q Who prepared the marketing materials on
14 behalf of the Elliott Group?

15 A What specific marketing materials are you
16 referring to?

17 Q Any marketing material prepared by the
18 Elliot Group?

19 A That would depend.

20 Q On?

21 A Time period, project, person.

22 Q Did the Elliott Group prepare its own

23 sales material and brochures?

24 A Can you be more specific on that, please?

25 Q Sure. Did the Elliott Group prepare it's

1 own real estate product sales material?

2 A When you say "prepare" do you mean print
3 or design and produce?

4 Q Both.

5 A I would have to see something specific.

6 MR. DIAZ: Exhibit number?

7 THE COURT REPORTER: Thirteen.

8 (Thereupon, the said document was marked
9 for identification as Plaintiff's Exhibit Number
10 13.)

11 BY MR. DIAZ:

12 Q I'm showing you what's been marked as
13 Exhibit No. 13. Take a look at it. Tell me if you
14 have ever seen it before and do you recognize it?

15 Regarding Plaintiff's Exhibit No. 13,
16 Mr. Elliot, have you seen that before?

17 A I have seen part of this.

18 Q Was that prepared by the Elliott Group?

19 A No, it was not.

20 Q Who was it prepared by?

21 A This was prepared by James Catledge and

22 ^Levi Rogers.

23 Q All of it?

24 A Most of it.

25 Q Was any part of it prepared by the Elliott

1 Group.

2 A We provided some of the development
3 information but very little.

4 Q Mr. Elliot, do you like to gamble at
5 casinos?

6 A No, I do not.

7 Q Have you ever gambled at casinos?

8 A I have.

9 Q In fact, isn't it true that you have used
10 investor money to float and pay some of your
11 gambling debts?

12 A No, that is not true.

13 Q Isn't it a fact that in June of 2008 your
14 father, Frederick Elliot, called a meeting with you,
15 Mr. Burley, and Mr. Clark regarding your gambling
16 problem?

17 A That is not correct.

18 Q And your father at that meeting demanded a
19 reconciliation or report of your gambling
20 activities.

21 A That is correct.

- 22 Q And a report was prepared.
- 23 A An incorrect report was prepared.
- 24 Q A report was prepared?
- 25 A I don't know.

1 Q Isn't it true that over the period of
2 between December of 2003 and May of 2008 you had
3 gambling losses of approximately \$905,000?

4 A That is not correct.

5 Q What is the WWIN bank account, Mr. Elliot?

6 A I don't know.

7 Q WWIN spelled W-I-N-N. You are not
8 familiar with the WWIN bank account?

9 A I don't know anything spelled that way.

10 Q W-I -- W-W-I-N. I have been corrected.
11 Are you familiar with a bank account called WWIN
12 spelled W-W-I-N?

13 A Am I familiar with a bank account called
14 WWIN?

15 Q Yeah.

16 A I am familiar what WWIN is.

17 Q What is it?

18 A WWIN is a financial company.

19 Q Where?

20 A I am not sure where it conducts its
21 business.

22 Q Who owns it?

23 A I believe WWIN is owned by Greg Clark.

24 Q Anyone from the Elliott Group own any

25 portion of WWIN?

1 A Not to my knowledge, no.

2 Q Did investor monies used to purchase

3 Elliott Group real estate products go into the WWIN

4 bank accounts?

5 MR. MARTINEZ: Can you repeat that? Read

6 that back, please?

7 MR. DIAZ: Sure.

8 (Thereupon, the portion referred to was

9 read by the reporter as above recorded.)

10 THE WITNESS: I don't know.

11 BY MR. DIAZ:

12 Q Do you know where the bank account was

13 located, the WWIN bank account?

14 A No, I do not.

15 Q You said that Mr. Clark owned WWIN the

16 financial company, correct?

17 A That's what I understand, yes.

18 Q Is he an owner or just merely a trustee?

19 A I don't know.

20 Q What is a non-use fee?

21 A A non-use fee is part of the Residence

22 agreement whereby if someone decides not to use
23 their timeshare and it is successfully rented out at
24 a profit, they would share in that revenue, the
25 owner of the timeshare of the resort.

1 Q Which Elliott Group real estate products
2 were the non-use fees related to?

3 A Those are related to Sun Village Cofresi
4 and Sun Village Juan Dolio.

5 Q Who created the non-use fee?

6 A James Catledge.

7 Q Did anyone at Elliott Group create the
8 non-use fee?

9 A No.

10 Q Who was responsible for making payments on
11 the non-use fees?

12 A I don't know.

13 Q Was it the Elliott Group of companies?

14 A It would be whatever company was in the
15 Residence contract.

16 Q And that particular company would be part
17 of the Elliott Group of companies?

18 A I don't know.

19 Q Well, it certainly wouldn't be
20 Mr. Catledge or his companies, would it?

21 A I don't know.

22 MR. DIAZ: Composite 14.
23 (Thereupon, the said document was marked
24 for identification as Plaintiff's Exhibit Number
25 14.)

1 BY MR. DIAZ:

2 Q Please take a look at Plaintiff's Exhibit?

3 THE COURT REPORTER: Fourteen.

4 MR. DIAZ: Fourteen.

5 MR. MARTINEZ: I'm going to go on the
6 record and object, as I sift through this
7 thing. I do see that the name Will Lambert who
8 was an attorney for defendant companies is
9 involved in some of the e-mails that are
10 referenced in this particular exhibit. As I
11 indicated previously, to the extent that
12 documents have been turned over to you all by a
13 former employee of the defendant companies,
14 which would be otherwise subject to
15 attorney/client privilege, that's been turned
16 over without the authorization of the companies
17 privilege is not waived. And so therefore once
18 again, I would ask that these documents be
19 turned over to us and not be referred to in
20 this deposition.

21 MR. DIAZ: Which companies are you

22 referring to, Counsel?

23 MR. MARTINEZ: I'm looking at Will Lambert

24 right here (indicating).

25 MR. DIAZ: Which companies are you

1 referring to?

2 MR. MARTINEZ: Defendant companies and the
3 Elliots.

4 MR. DIAZ: All defendant companies?

5 MR. MARTINEZ: The defendant companies
6 that we represent.

7 MR. DIAZ: Which defendant companies,
8 specifically?

9 MR. MARTINEZ: The defendant companies
10 that we represent, Counsel.

11 MR. DIAZ: I'm trying to figure out which
12 one, because it doesn't say on this document,
13 which you claim there is an attorney/client
14 privilege to a specific defendant company.

15 Which one --

16 MR. MARTINEZ: Sir, if this document was
17 turned over to you by Mr. Clark or someone
18 else, who was at some point employed by these
19 defendant companies, what I am telling you is
20 that we are not waiving attorney/client
21 privilege. And we ask that these documents be

22 returned over to us immediately and that these

23 documents not be referred to in this

24 deposition.

25 MR. DIAZ: All right. Let's not refer to

1 it.

2 BY MR. DIAZ:

3 Q Are you familiar with First American Title

4 Insurance Company?

5 A Yes, I am familiar with them.

6 Q And let's not even look at Plaintiff's

7 Exhibit No. 14. Let's go back to this article which

8 was nine. Nine? Plaintiff's Exhibit No. 9. Take a

9 look at Plaintiff's Exhibit No. 9. Look at the

10 third page, the bottom of the page highlighted where

11 it states "Elliot", referring to you, "points out

12 that it's possible to get American Title Insurance

13 on properties in the Dominican Republic". Do you

14 see that statement?

15 A Yes, I do.

16 MR. MARTINEZ: Where is this? I'm sorry.

17 MR. DIAZ: Bottom of the third page.

18 MR. MARTINEZ: Sorry.

19 MR. DIAZ: Highlighted.

20 MR. MARTINEZ: Got you.

21 BY MR. DIAZ:

22 Q Starts out with, "Elliot points out that
23 it's possible to get American title insurance on
24 properties in the Dominican Republic". What
25 American title insurance are you referring to?

1 A I don't know. I did not write this
2 article.

3 Q Would you be referring to First American
4 Title Insurance Company?

5 A Not necessarily.

6 Q Did you do business with First -- the
7 Elliott Group of companies do business with First
8 American Title Insurance Company?

9 A I don't know.

10 MR. DIAZ: Fifteen.

11 (Thereupon, the said document was marked
12 for identification as Plaintiff's Exhibit Number
13 15.)

14 MR. MARTINEZ: This one?

15 MR. DIAZ: Yes.

16 BY MR. DIAZ:

17 Q Okay, sir. Plaintiff's Exhibit No. 15,
18 have you had an opportunity to review it?

19 A Yes, I have.

20 Q Have you ever seen it before?

21 A I don't know.

22 Q Do you know who created it?

23 A I would assume James Catledge or Tom

24 O'Hagan.

25 Q I wouldn't want you to assume. Do you

1 know who created it?

2 A James Catledge or Tom O'Hagan.

3 Q So you have never seen it before but you

4 know who created it?

5 A I know who creates their announcements.

6 Q Is Elliot TM a U.S. registered trade mark?

7 A I don't know.

8 Q Who would know?

9 A A trademark lawyer.

10 Q Representing the Elliott Group of

11 companies?

12 MR. MARTINEZ: Objection. Form.

13 MR. DIAZ: Take a five-minute break -- two

14 minute break.

15 THE VIDEOGRAPHER: Let me go off the

16 record. The time is 4:05.

17 (Thereupon, a recess was taken at 4:05

18 p.m. to 4:12 p.m., after which the following

19 proceedings were had.)

20 THE VIDEOGRAPHER: Okay. We are now back

21 on the record. The time is 4:12.

22 MR. DIAZ: Okay. We are limited to a
23 three-hour deposition. How much time,
24 Mr. Videographer, do I have left for three
25 hours?

1 THE VIDEOGRAPHER: You have left 18
2 minutes.

3 MR. DIAZ: Okay. Let me see if we can
4 wrap it up before that.

5 BY MR. DIAZ:

6 Q Mr. Elliot, when is the last time that you
7 communicated with Mr. or Mrs. Lawter?

8 A I think Wednesday or Thursday.

9 Q How did you communicate with them?

10 A By telephone.

11 Q What did you talk about?

12 A I asked if they had --

13 MR. MARTINEZ: We are asserting the joint
14 defense privilege, so please do not disclose
15 what you discussed with them. We are
16 representing all parties, codefendants in the
17 lawsuit.

18 MR. DIAZ: It's communication between them
19 two. It's not communication with counsel.

20 MR. MARTINEZ: Go ahead and answer it. We
21 will see how the questions go. You can answer.

22 BY MR. DIAZ:

23 Q What did you discuss with the Lawters?

24 A We discussed several things.

25 Q Such as?

1 A We talked about our upcoming homecoming
2 week for clients.

3 Q Which is when?

4 A It's sometime in June. I can't recall the
5 exact date.

6 Q Homecoming week for clients is for
7 purposes of making additional sales?

8 A No.

9 Q For marketing Elliott Group real estate
10 products?

11 A No.

12 Q What's it for?

13 A To provide the clients an opportunity to
14 come down and be updated and see the properties.

15 Q What else did you discuss?

16 A I don't know. I can't remember.

17 Q Did you discuss the marketing or sale of
18 any Elliott Group real estate products?

19 A No.

20 Q When was the last time that Mr. or
21 Mrs. Lawter were in the Dominican Republic to your

22 knowledge?

23 A To my knowledge Mrs. Lawter's last time in

24 the Dominican Republic was August of 2008.

25 Q And Mr. Lawter?

1 A Mr. Lawter was there last weekend.

2 Q And who did he meet with?

3 A I don't know who he met with.

4 Q Did you meet with him?

5 A Yes, I met with him.

6 Q Did your father meet with him?

7 A I don't know. I know they were supposed
8 to meet, but I did not see them meet.

9 Q When you met with Mr. Lawter last week in
10 the Dominican Republic what did you discuss?

11 A We discussed Juan Dolio. We discussed
12 Cofresi.

13 Q What did you discuss about Juan Dolio and
14 Cofresi?

15 A Numerous things.

16 Q Did it also include sales and marketing of
17 the Juan Dolio and Cofresi real estate products?

18 A I am sure it was touched on.

19 Q Do you recall anything else you touched
20 on?

21 A The basis of our meeting was surrounding

22 client services.

23 Q Did he discuss with you any complaints he

24 had been receiving from clients?

25 A No.

1 Q And when you say "clients", which clients
2 are we talking about?

3 A I'm speaking specifically about fractional
4 owners and Residence timeshare.

5 Q And those are clients of whom, the Elliott
6 Group of companies?

7 A Well, we are service providers to those
8 people, yes. I don't know who they are clients of.

9 Q Does Mr. Lambert have any -- William
10 Lambert, who is he?

11 A Who is William Lambert?

12 Q Yes, sir.

13 A He's a lawyer at Gardner Roberts.

14 Q Does he have any ownership interest in any
15 of the Elliott Group of companies?

16 A No, he does not.

17 Q Does he have any ownership interest in any
18 of the Elliot Group of Company real estate products?

19 A No, he does not.

20 Q Does he sit on any boards of directorships
21 in any of the Elliott Group of companies?

22 A No.

23 Q Who is Pablo Chavez ^Block?

24 A Pablo Chavez Block was a former employee
25 of our company.

1 Q Why -- what happened to him? Did he quit?

2 Was he fired? Did he resign?

3 A I don't know.

4 Q What was his position with the company?

5 A I believe he held a few positions.

6 Q Such as?

7 A General manager.

8 Q Uh-huh. Anything else?

9 A Vice president of finance.

10 Q Anything else?

11 A Financial controller or director of

12 finance -- correction, director of finance.

13 Q Uh-huh. Yes? Any other titles?

14 A No.

15 Q What was the highest position he obtained

16 with the Elliott Group of companies?

17 A Vice president of finance.

18 Q And how long was he with the Elliott Group

19 of companies?

20 A I don't know.

21 Q Do you know when he departed?

22 A No, I don't.

23 Q Do you know the reasons for his departure?

24 A Incompetency.

25 Q Regarding what?

1 A Running a finance department.

2 Q Was there anything specific that he did

3 that was incompetent in running the finance

4 department?

5 A Yes.

6 Q What was that?

7 A Cost controls.

8 Q Anything else?

9 A Producing financial statements.

10 Q What was wrong with the financial

11 statement production?

12 A Not timely.

13 Q Anything else?

14 A We found after audits they were

15 inaccurate.

16 Q Who conducted your audits?

17 A For which company?

18 Q For the Elliott Group of entities. Who

19 did your audits?

20 A For what specific company?

21 Q Let's talk about the one that Mr. Chavez

22 got fired for. Who did that audit?

23 A That company has been audited by a few

24 different companies.

25 Q Let's hear them.

1 A ^Earnston Young.

2 Q Uh-huh. Who else?

3 A ^Sallace Piantini & Asociados.

4 Q Who else?

5 A I don't know.

6 Q The auditing company that determined that
7 Mr. Chavez's financial statements were inaccurate,
8 after the audit, what was the name of that company?

9 A I don't know.

10 Q Over the years how many titles have you
11 had with the Elliott Group of companies?

12 A I don't know.

13 Q Well, let's look at Exhibit No. 9, shall
14 we, the one with your picture in it. There you were
15 CEO in 2006, correct? That should help you refresh
16 your recollection, the first page of Exhibit 9. CEO
17 of Elliot Group. What other positions or titles did
18 you have with the Elliott Group of companies?

19 A I have held the position of vice
20 president.

21 Q What's the highest position you've ever

22 attained at the Elliott Group of companies?

23 A The Elliott Group of companies is a brand;

24 not a company.

25 Q What were you vice president of?

1 A Elliot management.

2 Q In this article, Exhibit No. 9, what were
3 you CO of -- CEO of?

4 A Sun Village Resorts.

5 Q Okay. Was that the highest level you ever
6 achieved at the Elliott Group of companies?

7 A Yes.

8 Q Were you ever fired from any of your
9 positions by your father for incompetence?

10 A No.

11 Q Were you ever demoted from any position at
12 the Elliott Group of companies, regardless of their
13 names or entities, for your incompetence?

14 A No.

15 Q For mismanagement?

16 A No.

17 MR. DIAZ: No further questions.

18 MR. MARTINEZ: Okay. We will read.

19 Before we go off though, I want to make a

20 comment about -- and put it on the record,

21 Exhibit L. Now that we have identified Exhibit

22 L, particularly, as a document that is
23 protected by attorney/client privilege, I
24 understand that before today that was not made
25 known to you all. I would like all copies of

1 this document returned to us by 12 noon on
2 Monday. And I would like you to confirm that
3 you will turn over those copies for the record.

4 MR. DIAZ: I will confirm that we will
5 research it to make sure that your
6 representation is accurate. And if in fact
7 your statement is correct, you will have it by
8 noon on Monday.

9 MR. MARTINEZ: The same thing I will say
10 for Exhibit No. 14. And if in fact -- I would
11 also like a representation that if in fact you
12 are not returning any of these documents to us,
13 please let us know by then as well.

14 MR. DIAZ: You will know by 12 o'clock, if
15 you don't get the document.

16 MR. MARTINEZ: Okay. All right. Good
17 enough.

18 MR. DIAZ: Thank you.

19 THE VIDEOGRAPHER: We are going off the
20 record. The time is 4:26.

21 (Thereupon, the taking of the deposition

22 was concluded at 4:26 p.m.)

23

24

25

1 RE :
DEPO OF:
2 TAKEN :

3

4 EXCEPT FOR ANY CORRECTIONS
MADE ON THE ERRATA SHEET BY
5 ME, I CERTIFY THIS IS A TRUE
AND ACCURATE TRANSCRIPT.
6 FURTHER DEPONENT SAYETH NOT.

7

8

STATE OF FLORIDA)
9) SS:
COUNTY OF MIAMI-DADE)

10

11 Sworn and subscribed to before me this

12 _____ day of _____,

13 year .

14 PERSONALLY KNOWN _____ OR I.D. _____

15

Notary Public in and for
16 the State of Florida at
Large.

17

My commission expires:

18