

**TESTIMONY OF FREDERICK ELLIOTT
MIAMI PRELIMINARY HEARING**

MR. MARTINEZ: Your Honor, we call Frederick Elliott.

11:06:12 23 THE COURT: All right. Mr. Elliott, please come

11:06:14 24 forward.

25 FREDERICK ELLIOTT, DEFENDANT'S WITNESS, SWORN.

April 2, 2009

Elliott - Cross

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1 DIRECT EXAMINATION

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BY THE COURT:

Q. Mr. Elliott, you have signed a declaration in this matter?

A. Yes, I have.

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Q. And you've been in court and listened to these proceedings,
so you understand you have to speak directly into the

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microphone?

A. Clear.

Q. You will be turned over for cross-examination. You have to

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answer the questions that are posed to you.

A. Yes.

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Q. All right. If you could raise the microphone a little bit.

Oh, I neglected to ask: Everything in your affidavit true and correct?

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A. Yes, it is.

CROSS EXAMINATION

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[Beginning at 11:07 a.m., 4/2/09.]

BY MR. DAVIDSON:

Q. Good morning, sir. My name is Gary Davidson. Actually,

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sir, I guess you completed several affidavits and filed them with the Court.

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For the moment, I'm going to focus on an affidavit, which was Docket Entry 131-3 that was signed by you on March 26, 2009. I guess that was introduced already. If you wouldn't mind taking a look at that. I'll hand that to you

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11:08:33 1 now.

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If I may approach, Your Honor?

THE COURT: Yes, sir.

MR. DAVIDSON: [Handing].

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BY MR. DAVIDSON:

Q. I've handed you a copy of the affidavit which, as I said,

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was dated March 26, 2009. You're familiar with that affidavit, aren't you, sir?

A. Yes.

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Q. Mr. Elliott, you're chairman of the Elliott group of companies; is that correct?

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A. Yes.

Q. When did you first meet James Catledge? What year?

A. I believe 2004.

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Q. But you were in the real estate development business well before then?

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A. I started development in '95.

Q. And is it fair to say that the concept of real estate development is you develop product and you sell it to people in

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its most simple form?

A. In a fee simple, but you might stay in the project, develop

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it for your own management purposes.

Q. Fair enough. And you've done both of those things, right?

A. Yes.

11:10:16 25 Q. Now, I noticed in Paragraph 2 of your affidavit that you

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11:10:23 1 said you made this declaration, based upon your personal

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knowledge, after review of financial documents relating to the defendant companies, but you didn't attach any of those financial documents to your affidavit; isn't that so, sir?

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A. You're referring to Paragraph 2?

Q. Yeah.

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A. Yeah, I did not attach any, no.

Q. Why was that?

A. Well, I believed that our audited statements are probably

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available on our corporate web site.

Q. But you didn't attach them to your affidavit; is that

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correct, sir?

A. No.

Q. Okay. Now, as I understand it -- and I think we're going

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to try and simplify this here today, and I think we can do that.

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As I understand it, at issue here are two projects.

One project is called -- an correct me if I'm wrong -- one project is called Cofresi, and it's approximately 104 units in

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one part of the island; is that right?

A. Correct.

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Q. So, we've got 104 units on one part of the island. And the other project is called Juan Dolio. And that's about 241 units. And that's on the other part of the island. Have I got

11:11:55 25 that right?

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11:11:56 1 A. Yes.

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Q. And these projects have been going since about 2004. Do I have that right so far?

A. No.

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Q. All right. Correct me where I'm wrong.

A. Well, the one at Cofresi, development first started there

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in 1994, not under our management, but development on those lands first started in 1994. And I believe that Mr. Catledge and Mr. Derrick Elliott announced to me in '05 that they were

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buying a hotel on the south coast, so I would -- I would believe that Juan Dolio was '05 and that Cofresi, shovels first

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went in the ground in '94, 1994.

Q. And neither one, sitting here today, almost at the beginning of April 2009, is finished; is that correct?

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A. Did you say none of them are finished?

Q. Yes, sir.

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A. That's not correct.

Q. Which one is finished?

A. Sun Village Cofresi was finished -- opened its doors in

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February 2002. An annex to Sun Village, which is an expansion, is 400,000 away from being opened.

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Q. That's the 104 units?

A. I beg your pardon?

Q. That's the 104 units?

11:13:46 25 A. That's right.

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Q. Okay. So those two projects, Juan Dolio and the 104 unit annex are not finished?

MR. MARTINEZ: Objection. Mischaracterizes his testimony.

THE COURT: I think I heard what he said. Overruled.

BY MR. DAVIDSON:

Q. Now, while the 104 units were being built, the NUFs, you know what those are, were being paid; is that correct?

A. I believe they were, yes. Yeah, of course, they were.

Q. Okay. But the last payment on those NUFs were made around sometime in 2008; is that correct?

A. Yes.

Q. And you do concede in Paragraph 19 that the marketing materials were developed by Elliott Group for that project, right?

A. I do not concede that in 19. Where do you see that I concede that in 19?

Q. Well, you know what, I'll let your affidavit speak for itself.

By the way: When was the start of those 104 units at Cofresi?

A. When was the start of them?

Q. Yes.

A. When did -- like the ground-breaking ceremony? I can't give you the date. I don't know.

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11:15:15 1 Q. How about the year?

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A. I would say the year was either late '04 or early '05, and the reason I am not clear on the dates, in 2003, I made the conscious decision to become the chairman of the company and

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was not on the ground on a daily basis until June of last year.

Q. I'm sorry. Did you say 8-'04 as in August '04?

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A. I said "late." "Late."

Q. I'm sorry. Late '04 or early '05?

A. Yeah.

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Q. All right. And that project's still not done today; is that correct?

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A. Yeah.

Q. And now let's talk about the Juan Dolio project. You talk extensively about that project in your affidavit beginning in

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Paragraph 23.

A. 22?

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Q. 23. The Juan Dolio projects, which began in late 2004, that incorporated both the fractional ownership as well as the

residence concept, correct?

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A. Whatever concept was created there was created by James Catledge and by Derrick Elliott, and I was not aware at the

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time of what concept was created to complete that project.

Q. Different question, sir. My question's very simple.

My question is: Sitting here today, you know that at

11:17:17 25 Juan Dolio today there is or was at least being marketed in the

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11:17:23 1 past, both the residence and a fractional ownership concept,

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sir, isn't that so?

A. Yes.

Q. All right. Now, the fractional ownership concept was a

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concept created by James Catledge, according to your affidavit;

isn't that so?

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A. The which concept?

Q. The fractional ownership concept.

A. Yes.

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Q. The concept created by James Catledge; isn't that so?

A. Yes, sir.

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Q. And the notion behind a fractional ownership concept was that you would sell a unit within the hotel in 13 increments; isn't that so, sir?

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A. Yes.

Q. And the advantage of -- one of the advantages to the

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developer of selling it that way is there were no nonuse fees associated with the sale of the fractional increment; isn't that so?

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A. Every advantage has a liability. That's one advantage.

Q. And, in fact, the fractional ownership share would not

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incur a liability until it came on line, at which point the fractional ownership would be rented out perhaps or used by the owner perhaps, correct?

11:18:42 25 A. Yes.

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Q. Now, in the case of the Juan Dolio, the arrangement was with the buyers, many of whom were located in the United States, that they would sign a reservation form to reserve their interest in the Juan Dolio fractional share product, correct? That's initially what happened?

A. That's what happened.

Q. Thereafter, they were told that they could come to the Dominican Republic, unless, of course, they lived in California, to close on their interest. That's the next thing that happened, right?

A. Yes.

Q. And if they came to the Dominican Republic to close on their interest, they'd sign all their papers in the Dominican Republic at the Elliott Group properties, right?

A. Yes.

Q. But they didn't close at Juan Dolio, did they?

A. They didn't what?

Q. They didn't close at Juan Dolio, did they, at the property itself? They didn't make the closing at the property itself. They closed at Cofresi, right?

A. They closed in the Impact Real Estate office at Cofresi, yes.

Q. And when they closed at Cofresi, they got all their paperwork with the understanding that they would make no payments, as specified in writing, until the Juan Dolio, of

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11:20:06 1 course, was opened, correct?

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A. Is that what the document says?

Q. You tell me, sir.

A. Do you have the document here?

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Q. Sir, you tell me what representations were made by the seller of the real estate with respect to those promissory

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notes.

Isn't it a fact, sir, that Elliott Group made the representation in writing to the sellers -- excuse me, in

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writing to the buyers, that they would not have to make payments until Juan Dolio opened?

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A. I can't confirm that.

Q. All right. Previously Ms. Margaret Currie testified in this case. Do you know Ms. Currie?

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A. Do I know Ms. Currie? Yes.

Q. She supplied an affidavit to this Court. Let me show you a

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copy of a document and ask you if you recognize not necessarily her closing documents but the outlines of this document.

[Handing].

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Yours is not so marked, but Plaintiffs' Exhibit 2 was previously --

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THE COURT: I assume you don't want me to look at anything since you didn't --

MR. DAVIDSON: Your Honor, I'm just asking if he
11:21:55 25 recognizes the type style on the document.

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11:21:57 1 THE WITNESS: If I recognize the what on the document?

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I'm sorry.

Q. If you recognize the type style to be Plaintiffs' 2, what
was previously introduced as Plaintiffs' 2. Is this a document

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that's produced by your company, sir?

A. I have no idea whether that was produced by our company or

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not.

Q. Thank you, sir.

Sir, it's your testimony, sir, that you don't know one

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way or the other whether promissory note holders were in
writing told by the Elliott Group whether, in fact, they would

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be expected to close -- excuse me. Strike that.

It's your testimony that you don't know one way or the
other whether when folks came down from the United States to

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close early on Juan Dolio, whether they were told that they

could not -- did not have to make payments on their notes until

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Juan Dolio opened? You don't know one way or the other?

A. That's right.

Q. Let me ask you this: Different question. Would it make

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sense to you for a purchaser in a fractional interest product that's not constructed to close on that product and agree to

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start making payments on that product when the product wasn't open for business?

A. For me personally? For me?

11:24:10 25 Q. For the average reasonable American consumer.

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11:24:14 1 A. I can't speak for the average anybody. I can speak for

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myself.

Q. No. For your customers, sir. In your experience as a developer for your customers, would it make sense for them to

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do that?

A. In my experience as a developer, the greater majority of

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the people I've done business with over the years have looked at the property before they purchased.

Q. But isn't it a fact, sir, that your staff wouldn't allow

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customers to visit Juan Dolio at the time that these signings occurred at Cofresi?

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A. That's not true.

Q. Were you there?

A. Mr. Catledge asked me to take a Mr. Thompson, a Mr. Steve

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Thompson to tour the hotel way back in probably mid-'05, and I agreed to.

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Q. So, you took one person to the Juan Dolio?

A. I was asked to take one person, and I took them.

Q. Was that at a time of the closings?

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A. I don't know the date. Mr. Thompson could probably confirm that date. I would say it was sometime in the year '05.

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Q. The NUF fees, who paid those fees? Was it the Elliott Group or was it Mr. Catledge?

A. The NUF fees were paid out of the development and
11:25:50 25 construction of the project. It was a form or a frame of a

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11:25:54 1 financing package. The cost of doing the project.

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Q. So, that means the Elliott Group paid it; is that right,
sir?

A. Well, the business model, I believe, is -- has been a

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little sketchy. Mr. Catledge's idea was that we would build
the product out of residence and then at the time of completion

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convert the residence to fractions to clean up the balance
sheet. That was the business model.

Q. Sir, I asked you a very simple question, I thought, and

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that was: Who paid the NUFs? You know what a NUF is, don't
you?

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A. Yes, a nonuse fee. It came out of the development budget
of the project. Who issued the checks?

Q. Well, you are the developer, right?

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A. I'm the what?

Q. You are the developer, right?

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A. I'm the developer.

Q. Okay. So, let's talk about Cofresi. On Cofresi, you guys paid a NUF fee, "you guys" being Elliott Group, didn't you?

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Didn't you write checks? Didn't you write checks, NUF checks to your purchasers?

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A. Well, I didn't, but the company did. Someone from the company.

11:27:25 Q. "The company" being an Elliott Group company; isn't that

11:27:28 25 correct, sir?

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11:27:30 1 A. Are you saying -- an Elliott Group company issued the

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checks for the nonuse fee, yes, they did.

Q. Thank you. That was my question.

A. Oh, okay. Sorry.

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Q. Now, on Juan Dolio, your affidavit indicates that as follows: To date the Juan Dolio Hotel has been completed or

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officially reopened. Strike that.

Paragraph 29: "To date the Juan Dolio Hotel has not been officially completed, has not been completed or officially

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reopened. Although the defendants, via the Impact sales organization, have collected almost \$36 million in cash from

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sales, most of this has been paid out in commissions and legal costs."

Do you see that in Paragraph 29 of your affidavit?

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A. 29?

Q. Yes.

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A. I'm looking at it right now.

Q. First sentence.

A. Yes.

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Q. Now, with respect to the commissions paid to the Impact organization, you've been in the courtroom for the last day or

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so. You've heard the testimony. The commissions were approximately 20 percent paid to the Impact organization based on sales; is that correct, sir?

11:28:53 25 A. Yes.

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11:28:55 1 Q. So, 20 percent of 36 million collected, that's about 7.5

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million or so. Is my math right?

A. Well, 20 percent is --

Q. Of 36 million.

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A. Well, 20 percent is what was paid to Impact on straight commission, but I believe there was money paid to DRCl. I

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believe there was commissions paid to Impact Air. I believe there were fees paid to the general manager of hospitality and real estate, like a .25 percent. I don't think you're getting

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the whole picture here. And then there was management fees that was taken out by us.

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Q. Oh, yes. Oh, we're going to get there. I just want to understand what the customers got, sir. I want to understand today what the customers got, what your buyers got for their

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\$36 million, because after all, it's their money, right?

A. Yes.

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Q. Okay. So, Impact got 20 percent. That's seven-and-a-half million. That leaves us about what, about 27-and-a-half million in cash. Now, I know there was money that had to be

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spent to buy the land. That was about three-and-a-half million, based on your testimony also in your affidavit. That

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was cash paid. So that leaves about 24 million in cash. Where did all that go?

A. Well, the financial statements would suffice where that

11:30:34 25 went.

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11:30:35 1 Q. No, I'm asking you today. Where did it go?

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A. Went into bank payments, went into development fees.

Q. I think you said "management fees."

A. Development.

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Q. No, earlier you said "management fees." You said management fees to pay what?

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A. To pay for our management time to develop the project.

Q. Management fees to develop a project that was started years ago with \$36 million from folks that have testified here over

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the last day, who have spent hard earned money and have nothing to show for it?

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MR. MARTINEZ: Your Honor, objection. This is argumentative.

MR. DAVIDSON: Withdrawn.

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BY MR. DAVIDSON:

Q. Juan Dolio is not open yet?

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A. Juan Dolio is not open yet, no.

Q. But you want to borrow more money from a bank now to finance continued -- continued improvements on Juan Dolio; is

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that correct?

A. Where did you get the idea we're trying to borrow money

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from a bank to continue improvement on Juan Dolio?

Q. Your affidavit.

A. A bank. What paragraph?

11:32:11 25 Q. Who came up with the idea of paying nonuse fees? Was it

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11:32:15 1 you or Mr. Catledge?

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A. Well, it certainly wasn't me. I wasn't around at the time the product was designed. That product was designed by Mr. Catledge and Derrick Elliott.

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Q. So, the idea for nonuse fees was a Catledge idea?

A. It certainly wasn't my idea, and it's something I was not

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familiar with. It was new to the company.

Q. Elliott Group has never used anything like that concept before; is that so?

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A. Like a nonuse fee?

Q. A nonuse fee. That's something that's foreign to the

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Elliot group of companies?

A. I have no recollection of ever using a nonuse fee, no.

Q. Has the Elliott group of companies ever done any projects

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or attempted any projects outside of the Dominican Republic?

A. When you make reference to "project" or "projects," what do

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you mean?

Q. Real estate projects.

A. As a developer?

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Q. As a developer, as a management company in the development area.

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A. Yes.

Q. How about in Mexico?

A. Never.

11:34:37 25 MR. DAVIDSON: May I approach, Your Honor? [Handing].

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11:34:44 1 THE COURT: This is identified as Plaintiffs' what?

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MR. DAVIDSON: Plaintiffs' 10, Your Honor, for identification. I thought it was 10. I thought we were up to 10.

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THE COURT: I'm sorry. Is it 9?

MS. PILOTO: 9, Your Honor.

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MR. DAVIDSON: Sorry.

THE COURT: Very well. Go ahead.

BY MR. DAVIDSON:

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Q. Taking a look at Plaintiffs' Exhibit Number 9, Mr. Elliott, have you ever heard of Sun Village Palms Beach Resort Phase 2,

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a foundation investment?

A. Yes.

Q. Turning to the first page text, I see some words that I

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recognize like Hacienda Sun Village, Inc. Was this a project that you were involved in in Mexico at some point?

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A. No.

Q. Who was involved in it?

A. In Mexico? Who was involved in a project in Mexico that I

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was involved with?

Q. Let me restate the question. Was the Elliott group of

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companies or any of them, or you or your son, at any time involved in a project referred to as Sun Village Palms Beach Resort?

11:36:21 25 A. Sun Village Palms Beach Resort is a marketing name of a

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11:36:59

11:37:04

11:37:04

11:37:08

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property in the Dominican Republic.

Q. Do you recognize this document, sir?

A. Yes.

Q. Is this a document that you had some role in preparing?

A. Yes.

MR. DAVIDSON: Move for introduction of Plaintiffs' Exhibit 9.

THE COURT: Any objection?

MR. MARTINEZ: No objection.

THE COURT: Entered.

[Plaintiffs' Exhibit 9 received in evidence at 11:36 a.m.]

BY THE COURT:

Q. Mr. Elliott, are you having difficulties understanding the question?

A. No, I'm not, Your Honor.

Q. Were you around while all this was going on? It sounds like you're trying to say that your son was running things and you were just sort of off someplace else, or were you actually in charge?

A. No. In '03, in 2003, I made the decision to pull out of the company and operate as the chairman's capacity, the chairman level, and let the new young guard run the company, and I stepped back into the company full-time in mid-June, early June, 2008. For a period of time, I was not involved on

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11:37:53 1 a day-to-day intricate part of management decisions.

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Q. This is not taking your time, but I'm trying to understand. You're saying that you sort of retired back in 2003 and gave the everyday management control of the company to your son,

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what's his name, Derrick?

A. Derrick became the president and chief executive officer.

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Q. So, is that your understanding, he was running it?

A. Yes.

Q. And then are you saying between the time you stepped down

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in 2003 from the active management until June '08, he was running it, making the decisions?

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A. Well, in reality, the way I see it at this point in time, it was he and Mr. Catledge.

Q. Okay. So, but not you?

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A. Not me.

Q. So, when a decision was made to proceed with the Juan Dolio

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project, did you participate in that decision in some manner or another, or were you uninvolved?

A. I was not involved. The announcement was made to me about

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the --

11:39:20 Q. I can't hear you, sir.

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A. The announcement was made to me that the purchase was being made.

Q. So, what happened for you to step back -- excuse me, come 11:39:32 25 back into active management in June '08?

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11:39:38 1 A. I've always had an interest in what I've done all my life,

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and in April '08, I became aware that real estate prices in the United States had continuously declined for 19 consecutive months. I also became aware that auto sales out of Detroit,

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across America and Canada, were off like 16 percent, and I had heard that the company, our company, had had difficulty paying

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the nonuse fee for the end of the first quarter of '08. So I started to get involved in investigating the health of the company, and the time that I was gone, you know, Mr. Catledge

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is a very, very powerful personality.

Q. Let me -- I'm sure we're all going to get there, but let me

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ask this: Between '03 and '08, were you physically in the Dominican Republic on or about the project grounds or were you elsewhere?

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A. Well, I would -- I would come on site once a quarter for a few days.

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Q. But where were you primarily residing?

A. In Canada.

Q. And so this was your routine up through June '08,

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approximately?

A. My routine?

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Q. Yes, to come down once in a while.

A. Yes.

Q. So, how did you hear that there were difficulties?

11:41:14 25 A. I walked into Mr. Burley's office one day in April.

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Q. Tell me who he is again.

A. He was the executive vice president of the company at the time.

Q. So, was this down in the Dominican Republic that you did this?

A. Yes.

Q. And then what happened?

A. Well, I walked into his office just in a routine walk-in. He slumped back in his chair and said that the company is in a very tight financial position, and moments after that, Greg Clark happened to walk in, and I asked him the financial position of the company, because at that time he was the CFO.

And he said the company is technically insolvent.

Q. Now, did you have ownership interest in the company during this period from the time you retired initially and became chairman until this period in April-June, '08?

A. Well, between -- like in my family, not just in my name, but I guess between Derrick and I and my younger son, we owned 20 percent, almost 20 percent -- well, 18 percent of the stock of the company.

Q. So, you owned stock, and were you getting retirement benefits as a result?

A. I was taking a chairman's fee.

Q. What was that?

A. I believe it was \$20,000 a month.

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11:43:08 1 Q. Were you getting dividends on a regular basis, some kind of

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return on your investment?

A. No.

Q. Were you sharing in the profits?

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A. No.

Q. There wasn't any kind of buy-out or anything for you, no

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golden parachute?

A. Not even a watch, no.

Q. So, was this all like a gift you gave to Derrick?

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A. No. It was a transitional thing. Derrick started with the company in '94, and it was a transitional growth. I've been

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doing this since 1977, and it was time to hand it off to Mr. Clark and Mr. Burley and Derrick Elliott.

Q. So -- well, Clark didn't have an ownership interest in it?

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A. No, but I'm talking about on the management -- on the management side it was a hand-off. There was no hand-off in

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the ownership.

Q. So, weren't you carefully monitoring the financial well-being of this company while you're off in Canada as well

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because you owned 20 percent of the stock?

A. Of course I was.

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Q. And weren't you getting reports?

A. I was getting reports.

Q. So, until you walked in the door on the day you were

11:44:34 25 telling us about, are you saying you didn't have any concerns

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11:44:39 1 about the financial wherewithal of the company?

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A. I did have concerns.

Q. As of what year? Which year. Sorry.

A. Well, the original build-out at Cofresi was a build-out

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plan designed between James Catledge or Impact and Derrick.

From the time the plans were set until the project got

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underway, they did a contract with Maxim, Maxim Magazine, a marketing contract, a labeling contract.

Because of that contract with Maxim, there was a total

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change on the quality that had to be put in every single room, which changed the budgets dramatically. That deal went

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sideways with Maxim. There was also a contract done with Shatero restaurants, Jeffrey Shatero, which was expensive, which necessitated many changes on the original design of the

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restaurant, like 19 changes I found out last December.

Q. So, were these matters reported to you at the time they

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were occurring?

A. Not at the time they'd occur. I would get information on this after the fact.

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Q. But you were not sufficiently concerned to take over the management role again until this time in June '08?

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A. That's correct.

Q. Okay. I'll let counsel deal with that in a moment.

But let's talk about '08. What was your assessment of

11:46:35 25 the situation in '08?

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11:46:39 1 A. The assessment of the situation in '08, Your Honor, was

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that I saw some real serious economic storm clouds gathering on the horizon, and I decided if I didn't step back in, that the company would not survive the 2009-2010 and beyond.

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Q. So, at that point, who did you understand was actually running the show? Was it your son Derrick or was it

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Mr. Catledge, some combination? How did that work?

A. It would have been a combination, and I know that -- I know that Derrick on occasion would hire consultants, like qualified

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consultants, but I also believed from the consultants themselves that Mr. Catledge would not take the advice of the

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consultants.

Q. Well, was there -- let me ask this: What was your understanding of Mr. Catledge's ownership interest in all of

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your Elliott companies at that time?

A. His ownership interest?

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Q. Yes. Did he have one?

A. Not in any of the Elliott Companies that -- no, to my knowledge, no.

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Q. And you were here when there was discussion about that Catledge owned 38 percent of something?

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A. Yes.

Q. What was that?

A. That would have been Juan Dolio. I had people tell me that

11:48:12 25 Catledge told them that he owned property, but he never owned

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11:48:16 1 any property with us, to my knowledge.

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Q. To your knowledge, did he own 38 percent of Juan Dolio?

A. No.

Q. You never -- would you have known about this because shares

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would have to be approved by the board of directors or something?

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A. Yes, of course.

Q. So, to your knowledge, Catledge had no ownership?

A. To my knowledge, Mr. Catledge had no ownership.

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Q. In either project on either shore?

A. Either project.

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Q. So, all that has been said about ownership is something of surprise to you here?

A. It's not a surprise because I've heard it before, but it's

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not true.

Q. Okay. So, you come back, and you just tell everybody

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you're taking over? You get Catledge and Derrick and the rest of them in the room and say, "The fun's over, I'm back"?

A. In June, June 8 and 9th, I had meetings in my home with a

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part of my team. On June 10th, I had a meeting with all of my team, announcing to them what I saw coming down the pipe in the

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future and how we had to prepare for it.

On June 11th, I had a meeting with the Catledge

executives, being Mr. Catledge and Mr. Goodrich and my

11:49:53 25 executives in Toronto and told them what I saw coming down in

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11:49:57 1 the future and what we had to do to handle it, and needless to

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say, I didn't get much cooperation. No one wanted to hear it.

Q. So, what did you do?

A. I had to start stepping in and releasing people who I felt

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were going to get in the way of saving the company going forward.

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Q. So, what was your plan for the company?

A. The plan for the company was, first of all, to restructure the management. Secondly, was to effective cost cutting. And

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thirdly was to take the exclusive contract away from Impact and

open up the market so we could sell product.

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Q. When you came back in '08, what was your assessment about the situation with your customers, first, on Juan Dolio? You weren't even involved with Juan Dolio in an active way, right?

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A. I was not, no.

Q. So, did you say, all right, now, I want all the information

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on Juan Dolio, A to Z. I want to understand exactly what our financial situation is, how much money has come in, the people have paid, what they're getting for their money, what we need

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to do to finish this up. What did you ask them?

A. Well, the first thing I did is I made an on-site visit

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because I had heard how much of progress had been accomplished and how much was left to be done, so I had an on-site visit with our in-house engineer to do an inspection. To do an

11:51:42 25 evaluation of where it was.

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11:51:43 1 Q. So, this was four years, right, after the project was

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supposed to have started?

A. Oh, I had been on site probably once a year. Pardon me.

To be totally accurate, I don't believe I was on-site for two

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years.

Q. What was the percentage of completion when you took a look

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in '08?

A. The assessment that I agree with is 60 percent completed.

Q. 60 percent?

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A. 60 percent.

Q. Okay. So, what was the cost of completion?

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A. We had an engineering company, who is on site there now, who are doing a initial final phase plan for completion, and it appears that the cost to completion will be about \$9 million.

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Q. So, counsel had asked you about the amount of money that your customers put in; \$64 million, correct?

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A. Yes.

Q. So when you came back on site, and you took a look, did you

say, well, how come it's taken four years, and the money that

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was paid to us -- let me strike that.

What was your understanding of the original estimate

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to complete this hotel? How much would it cost?

A. I really can't recall the estimated number in the original budgets.

11:53:37 25 Q. Well, was it going to be paid for from the investments of

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11:53:40 1 your purchasers or was it going to be financed in part with

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loans?

A. I believe that the promissory note that has been talked about for the last day-and-a-half, that it was expected to be

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sold to a factoring company to complete the capital raised, which never got done.

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Q. Well, let's drop back for a second. What was the business plan, as you understood -- or did you understand it was a business plan when construction started on that hotel?

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A. My understanding of the business plan was that the residents would raise capital for the development and cover the

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cost of development, and when completed, that the residents would be converted by Impact or Mr. Catledge's team to fractional ownership.

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Q. So, you're saying that the cost of the development, which means completing the hotel and all the amenities on the outside

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and the inside, would be totally financed by the monies paid in by the customers?

A. Yes.

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Q. So, you weren't looking, and you didn't look to borrow any money from anyone to start up the construction?

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A. No. We have recently been looking for --

Q. No. No. I'm talking about as you understood the deal when it started.

11:55:17 25 A. That's correct.

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11:55:18 1 Q. So, it was important that the monies paid in by the

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customers were actually used to do the construction and complete the hotel?

A. Yes.

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Q. So, when you came back there in '08, what did you find in terms of where all that money went?

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A. Well, there was money that was spent on -- there was also a Maxim contract that went into Juan Dolio, which changed -- it caused a major delay.

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Q. Well, let me ask this: Were you aware at any time before '08 of the fees that were going to be paid out on commissions

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or management fees?

A. Yes, I was.

Q. Okay. Were there any financial projections made that you

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were aware of as to whether or not, given all the fees, there would be enough money to do the construction?

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A. I believe there was.

Q. Well, did you see them, and, if so, when?

A. I did not see any of the projections for Juan Dolio until

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recently. I did see the projections for Cofresi.

Q. Now, let's stay with Juan Dolio.

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A. Okay. I didn't see the projections for Juan Dolio until

August '08, August '08.

Q. Okay. When you saw the projections, were they consistent

11:57:06 25 with reality?

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A. They were consistent with reality if the model could put together a -- a successful time-sharing program. They were consistent with reality if you're willing to give the resort, as a resort, five to seven years to establish itself and build up its cash flow, but for the first year, no.

Q. Okay. So, what steps did you implement?

A. We launched an on-site time-sharing sales force for the first time in years at the north property, the property that's completed.

Q. You've heard much that has been discussed here about the promises and the documents. Now, you're really telling us you weren't actively involved in the marketing, original marketing of Juan Dolio.

A. I was not.

Q. Okay. But when you got back into this situation as the now -- the active manager of the company, did you verify whether or not there were representations made to your purchasers that, you know, they wouldn't have to pay anything on the note until the hotel was finished?

A. Well, I certainly know I didn't.

Q. I'm sorry?

A. I certainly know I didn't make any of those recommendations.

Q. I didn't say whether or not you personally made those representations. I'm asking you whether or not when you got

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11:58:50 1 back into active management, you gained any information as to

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whether representations were made, either orally or in your documents, to your purchasers that no payments would have to be made on the note until the hotel was finished?

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A. No, I was not.

Q. Well, isn't that important?

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A. Well, the document that's produced is the document that's produced.

Q. Well, what's your -- did you have any understanding of that

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issue? I mean, that was -- that was important because you took steps with regard to the ,notes right?

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A. Yes.

Q. So before you took those steps, did you do your own due diligence on whether or not any customer had to pay anything

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until the hotel was finished?

A. No, I did not.

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Q. Did you seek any legal counsel on that issue?

A. On the obligation? No, I did not.

Q. Okay. What was the -- did you -- were you the one

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responsible for implementing the plan with regard to the project after June '08?

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A. Yes.

Q. So, what was your plan?

A. Well, the plan was to deliver.

12:00:30 25 Q. I understand. Let me narrow it down. I understood you

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12:00:33 1 wanted Impact out. I'll get to that in a second. But with

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regard to your customers, what was your plan?

A. The plan was to survive. The plan was to survive on the existing property and to deliver on the property that we had

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not delivered on yet, being the one in Juan Dolio. That was the plan. But the first plan was to survive with what was on

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the ground.

Q. Well, what was the plan with regard to the notes?

A. We could not factor the notes. There was no factoring

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available. By the time I got back in my company, any operation of financing, any opportunity of financing anything was gone

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with the economy.

I decided that we would call the people who owned the notes and offer them a discount for changing, for changing the

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contract in the note, a substantial discount. The notes that were on file, there were about 29 million of them logged.

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16 million worth of those notes took advantage of our option one way or another by turning in some fractions to giving up an obligation and to the point where we had 13

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million left, which were offered to be purchased by a domestic and international investment company in the Dominican Republic.

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Q. Well, did you have any understanding at the time as to

whether or not those notes could be sold to some factoring company if, in fact, nobody was responsible to pay until the 12:02:41 25 hotel was completed?

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12:02:43 1 A. Oh, it was very clear to me that it could be sold to a

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factoring company. I was informed that in '06 or '07 when this started to come together that these -- the program would be to sell these notes to a factoring company.

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Q. Did you consider what the effect might be on your purchasers if you sold it to a factoring company?

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A. It would have nothing but positive effects on the purchasers because they would get the project completed.

Q. But was it your understanding that the factoring company

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would then take steps to try to force people to pay on the note?

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A. No, no, the factoring company would buy the discount and wait out the completion, and then upon completion and when you deliver the keys, the notes are due.

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Q. Well, you have to forgive me about this. I've heard these allegations or read them somewhere that some collection group

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was put in here to start forcing customers to pay or threatened them on these notes before it was due. Do you know anything about that?

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A. I don't know of any threats. I know that the company that bought the notes had reached out to work with a partnership

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arrangement with all of the people that owe money on the notes.

THE COURT: All right. I've taken a lot of your time.

When we return from lunch, I'm going to let you start again,

12:04:32 25 but I hope that has been helpful.

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12:04:35 1 MR. DAVIDSON: I thought it was later than that, Your

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Honor, but that's fine.

THE COURT: Sorry?

MR. DAVIDSON: I'm happy to continue after lunch, Your

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Honor.

THE COURT: All right. Please don't talk to anybody

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about your testimony or let anybody talk to you.

THE WITNESS: I'll be alone until I come back.

THE COURT: We'll be back at, let's say, 1:30.

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MR. DAVIDSON: Thank you, Your Honor.

THE COURT: I have to break tonight at 5:15, and I

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need at least five o'clock to give you directions on where we're going.

MR. DAVIDSON: Thank you, Your Honor.

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[There was a recess for the noon hour at 12:05 p.m.]

AFTER RECESS

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[Proceedings in this cause resume at 1:29 p.m.]

THE COURT: Good afternoon. Be seated, please. I'm going to give you another twenty minutes on your examination.

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MR. DAVIDSON: Thank you very much, Your Honor.

BY MR. DAVIDSON:

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Q. Mr. Elliott, prior to the break, you testified, I believe, that you retired in 2003; is that correct?

A. Semiretirement.

13:30:00 25 Q. Semiretirement. All right. You were up in Canada

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semiretired in 2003; is that right?

A. Yes.

Q. But in 2001, you were actively managing your real estate products, right?

A. Yes.

Q. And the sales and marketing techniques that you ascribe to your son Derrick and Mr. Catledge at that time were actually yours; that is, in 2001, right?

A. In 2001, yeah, Mr. Catledge was not on the scene.

Q. Right. And in June 2001, as reflected in Plaintiffs' Exhibit 9 -- you remember that was the Sun Village Palms Beach Resort Phase 2, that document was used in order to induce investors to purchase your products at that time; is that right?

A. Yes.

Q. Okay. And, specifically, you have that in front of you, don't you, Exhibit Number 9?

A. No.

Q. No. All right. Let me give you another copy of it.

A. Well, I can find it in here.

MR. DAVIDSON: May I approach, Your Honor?

THE COURT: Yes.

BY MR. DAVIDSON:

Q. Here is another copy.

A. Thank you.

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Q. Now, open up to the first page of Exhibit Number 9. Down on that second paragraph on the left-hand side of Exhibit Number 9, do you see where it starts: "Your investment includes." Do you see that?

A. Yes.

Q. Do you see where it says: "Your investment includes daily net revenue from operations distributed quarterly"?

A. Yes.

Q. That was your idea in 2001, right?

A. That was a dividend. These were stock purchases.

Q. Right. Daily net revenue from operations distributed quarterly. That was an idea presented to investors by the Elliott Group, right?

A. For stock purchasers. This was equity.

Q. Right. Presented by the Elliott Group, right?

A. Yes.

Q. Right. And then you go to the top on the right-hand side, it gave investors a three-year investment projection, didn't it?

A. Yes.

Q. And under Number 1 on the right-hand side, it said "projected earnings from operations," right?

A. Yes.

Q. And it said "projected earnings for 2001, 18 percent"?

A. Yes.

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13:33:05 1 Q. For 2002, 20 percent. For 2003, 22 percent, right?

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A. Yes.

Q. And then if you go down on the right-hand side to the bottom, it says, and I quote: "Your investment in EMI Resorts

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Sun Village Palms is as secure as the land it's built on, and you will receive your income on the calendar quarter every 90

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days."

Do you see that, sir?

A. Yes.

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Q. There's no James Catledge in 2001, right?

A. That's correct.

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Q. No Impact Net Worth in 2001, right? Isn't that so, sir?

A. Yes.

Q. Thank you.

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Now, let's turn our attention to some of the questions that Judge Gold had asked you and the timeframes referenced in

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those questions that you mentioned. You specifically mentioned going back to the hotel in or around April 2008, and your reference was to learning at that time for the first time, I

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believe you had indicated, that technically Elliott Group was, in your words, insolvent. Technically insolvent, I think, was

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the terminology you used. Do you remember that answer?

A. That's what I was told by our CFO, yes.

Q. All right. So, at least as of April 2008, you believed in

13:34:49 25 your mind that it was urgent to raise capital; fair enough?

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13:34:56 1 A. No, not urgent to raise capital.

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Q. All right. Let me change my question. Is it fair to say

that as of April 2008 Elliott Group, you, specifically believed that it was urgent to raise cash?

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A. No. That was the last thing we needed to do in April 2008.

Q. Well, certainly one of the options that you considered, as

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you indicated to Judge Gold, was factoring, and specifically, selling the notes on Juan Dolio to a third party, right?

A. No, sir. That was the plan back in two years before that,

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to factor those notes.

Q. Did you, sir, or not testify in this courtroom before the

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lunch hour that one of the things that you considered back in or around April 2008 was factoring the Juan Dolio notes in order to raise cash in or around the year 2008?

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A. I believe what I said was that the business plan on the residence was to factor them, and at the time I got back on the

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scene, there was no factoring availability.

Q. Right. So you didn't -- you did not factor the notes on Juan Dolio; is that right?

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A. No.

Q. There was no viability to factor, right? I'm sorry. Let

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me withdraw the question.

There was no ability for Elliott Group to factor the notes on Juan Dolio as of April 2008 or thereafter; is that

13:36:25 25 correct?

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13:36:25 1 A. Well, there were no factoring companies available,

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interested.

Q. So, the notes weren't factored. The notes were not sold on Juan Dolio; is that correct?

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A. They were eventually sold.

Q. Really. Who were they sold to?

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A. Avati.

Q. Right. So let's go to Exhibit Number 2. You have that in front of you, sir.

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A. You're going to have to help me.

Q. Sure. Let me give you an extra copy.

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I will give one to the Court, unless Your Honor has an extra copy in front of you.

THE COURT: If you have one, it would save me from

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having to look through this long list.

MR. DAVIDSON: It's already in evidence.

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THE WITNESS: Oh, I have that. Thank you.

THE COURT: Thank you.

BY MR. DAVIDSON:

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Q. So, Elliott Group didn't factor, but supposedly Elliott Group sold the Juan Dolio notes.

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And this, Exhibit 2, is a letter from you. In

September 2008, who did this letter go to, sir, Exhibit Number

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13:37:55 25 A. This letter is not from me.

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13:37:59 1 Q. Sorry. I apologize. This is a letter from your son, but

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you saw it in or around September 2008, didn't you?

A. I believe I did, yes.

Q. And you were aware in or around September 2008 that it was

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being sent out to owners at Juan Dolio, didn't you?

A. Yes.

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Q. All right. And let's see what your son was saying in 2008; specifically, in September 2008, to the owners at Juan Dolio, Page 2, under sale of Juan Dolio promissory notes.

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Here's what he says: "Once again, we wish to remind you that the promissory notes that financed nearly all of the

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purchasers of fractional interest in the bungalows at Juan Dolio have been sold to a third party. We have clearly spoken to all selling agencies about this and have provided an

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opportunity for owners to take advantage of an early buy-out discount of 25 to 30 percent prior to these notes being assumed

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by the purchaser. While many owners have already taken advantage of this opportunity, we have extended this offer to September 30th, 2008, as we know that Impact Net Worth

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Solutions have created a great deal of confusion in order to deflect attention and blame away from themselves and from James

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Catledge."

Blame for calling the notes?

A. No, blame for confusion.

13:39:42 25 Q. Let me make sure I understand. Mr. Catledge didn't call

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13:39:46 1 the notes, did he?

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A. No.

Q. The notes were not issued by Mr. Catledge or Net Worth -- Mr. Catledge's organization, were they?

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A. Designed by them, but issued by --

Q. Designed by them?

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A. -- our company.

Q. What does that mean, "designed by them"? Mr. Catledge's organization did not design the actual note, the promissory

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notes? Is that your testimony, sir?

A. Mr. Catledge was very involved in all of our structures.

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Q. Different question, sir. The promissory notes themselves, did Mr. Catledge design those notes?

A. I believe he had a major input in the design of it.

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Q. The notes themselves, the actual legal documents, did he design those notes?

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A. I believe he had a major participation in the design of the notes.

Q. Hummm. These are the notes that were issued by and for the

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benefit for the Elliott Group; were they not?

A. For the benefit of both parties.

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Q. No, sir. You've already testified that Juan Dolio was owned by the Elliott Group; did you not?

A. Yes.

13:41:04 25 Q. Well, why would Mr. Catledge be designing your promissory

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13:41:07 1 notes for you? Is he an attorney?

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A. I don't believe he's an attorney.

Q. In any event, let's see if I can follow this now. In April 2008, you determined that there's a major cash flow problem.

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The company is insolvent, in your words, or technically insolvent, and in September 2008, at least at that point, you

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are pressuring people -- your son is pressuring people with a collection agency, are you not, to pay off these notes; is that correct?

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A. No. There was an offer went out to every single note holder to restructure the note.

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Q. What number are we up to on exhibits, sir? 14, 13?

MR. DIAZ: 13.

BY MR. DAVIDSON:

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Q. Sir, have you ever heard of a company called Palm Grove Assets Group, Inc.?

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A. Palm Grove Assets Group, Inc.

Q. Palm Grove Assets Group, Inc. Have you ever heard of it?

A. I can't recall.

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Q. Well, let me hand you a document marked Plaintiffs' Exhibit 13 and see if you recognize this document. [Handing].

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MR. MARTINEZ: Thank you.

A. I don't recognize this document.

BY MR. DAVIDSON:

13:43:22 25 Q. Sun Village JD Holdings, Inc., do you recognize the name of

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that company?

A. Yes.

Q. Is that an Elliott Group company?

A. Yes.

Q. Did Sun Group JD Holdings, Inc. transfer any assets to Inversiones Avati, S.A, an entity incorporated under the laws of the Dominican Republic?

A. Yes, they bought 13 million, approximately 13 million of the notes.

Q. Did you ever come to learn, sir, that in the context of collection efforts Avati, S.A. had retained an organization called Palm Grove Assets Group, Inc. in order to make collection efforts against customers of the Elliott Group in the United States?

A. I can't confirm the entity that they used for that. I don't recognize that name.

Q. Has any customer ever -- strike that.

Has any customer of yours, the Elliott Group, ever complained to the Elliott Group about receipt of such correspondence?

A. If they have, it has not come to my attention.

Q. So, you know nothing of Exhibit 13. Is that your testimony, sir?

A. I have never seen this document.

Q. You've never seen this document, and you've never heard

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13:44:58 1 anything about such an effort on behalf of any such collection

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agency such as Palm Grove Assets Group, Inc.; is that correct, sir?

A. That's correct.

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Q. This \$13 million you spoke of, where did it go to, that was collected on these notes?

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A. Where did it go to?

Q. Yes, sir. You collected \$13 million by selling these notes. Where did it go to? Did it go to the resort? Did it

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go to conclude the construction on Juan Dolio?

A. We did not collect \$13 million from the sale of these

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notes.

Q. What did you collect? What did Elliott Group collect on the sale of these notes?

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A. We got a deposit of \$450,000.

Q. Where did that money go?

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A. To the two banks that are financing the Juan Dolio Hotel.

Q. Has any other money been collected on these notes?

A. No.

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Q. Since you've come back into the operations of the company, since April 2008, you've been actively sending correspondence

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to various purchasers of product, haven't you, sir?

A. Like written correspondence?

Q. Yes, sir.

13:46:41 25 A. If I have, it's been limited. I possibly have. I can't

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confirm.

Q. Take a look at Exhibit Number 10 and 11.

MR. MARTINEZ: Did you mark this as an exhibit? Did you mark it? Was it 8 or 9? I guess 9. Okay. Thank you. Which is 10 and which is 11?

[Counsel confer sotto voce at 1:48 p.m.]

THE COURT: Which is which, please?

MR. DAVIDSON: I'm sorry, Your Honor. Elliott conference call for all agents is 10, and Elliotts' clients committee is 11.

Are there any objections to the introduction of 10 or 11?

MR. MARTINEZ: Has he identified them at this point?

BY MR. DAVIDSON:

Q. Do you recognize Exhibits 10 and 11, sir?

A. I looked at 10. I recognize it. Yes.

Q. Both of these documents, sir, are documents that you prepared and sent out to owners, correct?

A. Yes.

THE COURT: Any objection?

MR. MARTINEZ: No objection.
THE COURT: Both are entered. 10 and 11.
[Plaintiffs' Exhibits 10 and 11 were received in
evidence at 1:49 p.m.]
THE COURT: 9 has not been entered yet.

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MR. DAVIDSON: Move for entry of 9, Your Honor.

THE COURT: I'm sorry?

MR. DAVIDSON: I move for entry of 9, Your Honor.

THE COURT: There's no foundation for it.

MR. DAVIDSON: I agree, Your Honor. I assumed the other side will object.

THE COURT: I'm sorry?

MR. DAVIDSON: I assumed that the other side would so object.

THE COURT: Is there an objection to 9?

MR. MARTINEZ: Yes, there is, Your Honor.

THE COURT: I just marked it subject to further foundation.

BY MR. DAVIDSON:

Q. In reference to Exhibits 10 and 11 --

MR. DIAZ: Your Honor, could we get a clarification, please, on the number of the exhibit? I think it's 13.

THE COURT: I have no idea what you just asked me.

MR. DIAZ: Yes, I know. I'm having the same difficulty.

MS. PILOTO: Your Honor, the exhibit that's not admitted is Number 13, not Number 9.

THE COURT: Oh, no. The one I have that I was referring to was the Palm Grove Assets Group offer, which I thought was Number 9.

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MS. PILOTO: It's out of order.

THE COURT: Okay. So, perhaps you could help me on this. What was the last one that was admitted, 9?

MS. PILOTO: 9 was admitted.

MR. DAVIDSON: Your Honor, 9 is the Sun Village Palms documentation. That was admitted.

THE COURT: So let's mark the Palm Grove Assets Group as Number 12?

MS. PILOTO: 13.

THE COURT: What's 12?

MS. PILOTO: In his hand.

MR. DIAZ: GE has 12 in his hand, Your Honor.

THE COURT: We're out of sync here, so perhaps, Mr. Davidson, I have the conference call is 10; is that correct?

MR. DAVIDSON: 10 is the Elliott conference call, and 11 is the Elliott clients committee.

THE COURT: Okay. What's 12?

MR. DAVIDSON: I'm not sure.

MR. DAVIDSON: 9 is Sun Village Palms. 12 would presumably have been --

THE COURT: The Palm Grove Asset Group?

MR. DAVIDSON: Correct.

THE COURT: All right. I'm marking that as 12, which is not yet admitted. Thank you for the clarification.

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13:51:58 1 MR. DAVIDSON: Thank you. I apologize.

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THE COURT: It's all right.

MR. DIAZ: Thank you, Your Honor.

BY MR. DAVIDSON:

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Q. Let's turn to Exhibit 10, shall we, first?

A. Yes.

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Q. Mr. Elliott. This document, is there a date on it?

A. October 14th.

Q. Okay. And in the first paragraph of this letter that you

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wrote, you're advising owners that their notes at Juan Dolio have been sold; is that correct?

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A. Yes.

Q. And then in the third paragraph, you say the following:

"It is our intention to resume residence nonuse fees. In order

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to achieve this, funds need to be collected on the notes to complete the hotel. If you are a residence purchaser and you

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contribute toward a lawsuit against the resort, you will not only be delaying your nonuse fees, you will also be undermining the value of your asset."

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MR. MARTINEZ: Your Honor, in all fairness, he began that quote in the middle of a sentence. I think the whole

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sentence should be read in.

THE COURT: Well, you can bring that up. Go ahead.

What's your question?

13:53:30 25 BY MR. DAVIDSON:

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13:53:30 1 Q. My question is: Are you referring here to those initiating

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suit in this case, sir?

A. Which paragraph are you on there? You said the third paragraph, I believe, or was it the second ?paragraph.

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Q. I'm referring to the second paragraph under: "Dear residence, purchasers and fractional owners," sir.

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A. And how does it start, is it "it is very important"? Does it start off with "it is very important" or does it start off with "it's the only solution"?

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Q. It starts off: Once the Juan Dolio Hotel is open and stabilized, it is our intention to resume residence nonuse

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fees. Do you see that, Paragraph 2, under "Dear residence, purchaser and fractional owner" as the headline?

A. Yes, I see that headline, but that starts off "your

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promissory notes."

MR. DAVIDSON: May I approach? Now, we're all on the

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same paragraph, right?

A. Yes.

Q. Okay. So, in effect, you're telling the Juan Dolio note

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owners, don't sue us. If you sue us, then there's going to be trouble, correct?

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A. We're going to have difficulty completing the project.

Q. And then you go on to say in the next paragraph: "The only solution for everyone is to complete the Juan Dolio resort and

13:55:06 25 have it operating. Whether you're a fractional owner or a

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13:55:10 1 residence purchaser pursuing a lawsuit against us will only

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drain our financial resources and undermine our efforts to complete our collective hotel. If we are tied up in litigation, you can be certain that the banks will foreclose

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and all purchasers will lose everything."

So, the intention of this letter is to essentially,

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sir, threaten those who might sue the Elliott Group. Is that a

correct assessment of this letter?

A. Not correct at all.

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Q. Turning to Exhibit 11, sir, the Elliott clients committee, ECC, another letter you sent out in October 2008, another

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threatening letter, yes? Yes?

A. No.

Q. Take a look at the second paragraph, second sentence. Are

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you there?

A. Yes.

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Q. I quote: "Any monies that you provide to the committee" -- the committee is the ECC, right?

A. Yes.

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Q. "Any monies that you provide to the committee will be wasted because: A. If the committee is successful, the

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projects will go down, and you will lose all of your money or;

B. The more likely scenario, we will exhaust the

committee's resources, using monies otherwise earmarked for

13:56:51 25 Juan Dolio construction and finishing, in which case you

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13:56:57 1 effectively loss again. Either way, everyone loses."

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You wrote that letter, correct, sir?

A. Yes, I did.

Q. Your intention was to intimidate owners not to pursue legal

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remedies against the Elliott Group, correct, sir?

A. Absolutely not correct.

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MR. DAVIDSON: No further questions, Your Honor.

THE COURT: All right. Redirect.

MR. MARTINEZ: Sure.

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REDIRECT EXAMINATION

13:57:26 [Beginning at 1:57 p.m., 4/2/09.]

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BY MR. MARTINEZ:

Q. Mr. Elliott, would you explain to me why that last statement was not correct?

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A. There was no threat of any nature intended here. This was reality. If we were left to complete the project, everybody

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wins. If we get involved in a lawsuit, it's going to eat up management time, and it's going to eat up capital that could go into finishing the project.

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If the ECC were successful with their lawsuit, the first people that would step in there would be the banks. This

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lawsuit has already caused us undue harm in the press releases that they send out on a regular basis, maybe daily basis, and I've already been in contact with the banks, and they are getting nervous.

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13:58:45 1 Q. So, how would you describe the situation today versus back

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in October 2008 when you wrote that letter?

A. The situation of what?

Q. The situation with respect to the banks and with respect to

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how the lawsuit is affecting the companies?

A. Well, the banks -- the banks are back in full support of

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us, and in spite of the headwind we've had economically, the property, Sun Village Cofresi, which is open, is making money.

And we're starting to get on top of our cash flow and our

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obligations, and now we have a new challenge here in dealing with the banks on this lawsuit.

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Q. Explain what you mean by that, the fact that you're starting to get on top of your obligations and your cash flow.

A. We ran into a very difficult earnings year in '08, and in

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September, October, November, December, our occupancy was averaging less than 15 percent. And in that same period of

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time, there were four hotels in our community who closed. So we are getting caught up on past due payments to purveyors, people who provide supplies to us for October, November and

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December.

Q. And are you achieving success in getting caught up?

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A. Yes, we are.

Q. Sir, you were asked about the marketing material for Cofresi. Who prepared the marketing material for Cofresi?

14:00:31 25 A. Mr. Catledge and Impact. He wouldn't allow a single

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14:00:35 1 document to move without his design on it.

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Q. Explain to the Court how that would work. How would he get involved from his offices in Nevada?

A. We would provide him with the product information, and he

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would design the marketing and the sales input, and then I believe that our company would do the printed hard copy. But

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it was totally his design.

Q. Sir, were you ever asked by anyone -- other than in connection with Mr. Thompson, who you testified previously you

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took to the Juan Dolio property, were you ever asked by Impact or by anyone else to take a prospective purchaser of Juan Dolio

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property to the property?

A. No.

Q. Okay. Had you been asked, what would you have done?

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A. I would have taken them.

Q. Okay. Sir, you were shown earlier Plaintiffs' Exhibit

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Number 9, Sun Village Palms Beach Resort. And there was an allusion made that this had something to do with your development of a project in Mexico.

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Could you clarify to the Court -- when you testified that that was incorrect, could you clarify for the Court

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exactly what you meant by that?

A. We've never done a project in Mexico.

Q. So, what was the purpose of Plaintiffs' Exhibit Number 9?

14:02:29 25 A. This was a capital raised under a prospectus offering to

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14:02:35 1 shareholders.

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Q. And where was the project going to be developed?

A. Cofresi in the Dominican Republic.

Q. I believe you testified on cross-examination that

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Mr. Catledge was a powerful personality. I think that was your quote. Could you explain to the Court what you mean by that?

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A. Well, Mr. James Catledge is a very powerful personality.

He's an extremely influential individual, and in coming back into my company on a full-time basis in June, I wasn't there

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very long before I realized that the company had lost candor.

I became aware that when Mr. Catledge would run a

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sales training session, he wouldn't allow questions and answer,

and I believe he had a large impact or a large influence on

Derrick Elliott as operating the property and the management

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decisions made on the property.

Q. You have indicated that when you came back into the company

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the middle of last year, you felt that the company had lost candor. Have you taken any steps to rectify that situation?

A. Yes, I have.

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Q. Could you explain to the Court what those steps are?

A. Well, the first introduction to my executive team was the

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value of candor in a corporation. It's the best kept secret in business, and when you have candor in a company, you have every brain in the game.

14:04:28 25 And when you don't have candor in the company, you

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have a dictatorship. People are afraid to speak up. People are afraid to give their opinion. People are afraid to bring forth their ideas.

Q. And is that what had happened when Mr. Catledge became involved?

A. Yes.

Q. Okay. What was Mr. Catledge's role, as you understand it, with respect to Juan Dolio?

A. He, as I understood, was he was going to become a partner in Juan Dolio on the original purchase, an equity partner. I don't believe he ever put up the money for that equity purchase.

Q. Is that the reason why you testified a little earlier that he was never actually made an owner of record?

A. Yes. No, I have never seen his name on any ownership document in any company in our group.

Q. And is that because he didn't come up with the equity that he needed to?

MR. DIAZ: Objection. Calls for speculation, foundation.

MR. MARTINEZ: Do you have any --

THE COURT: Just a moment, please.

BY THE COURT:

Q. Do you know why he was not made an equity partner one way or the other?

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14:05:45 1 A. Lack of function.

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Q. Do you know how much equity he was supposed to have? Is that something that you were knowledgeable about when you came back or is this something that happened before?

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A. Something that happened before.

Q. Okay. Go ahead.

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BY MR. MARTINEZ:

Q. What was Mr. Catledge's role with respect to the marketing of the Juan Dolio project?

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A. His role was to lead the sales and marketing program of the project.

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Q. And what about with respect to creating and development of marketing material? Was it the same with Juan Dolio as it was with Cofresi?

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A. Now, you have to remember I was not on the ground full-time, and I can only tell you what I know for sure.

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Q. What do you know for sure?

A. I know for sure that Mr. Catledge was a major influence on the sales and marketing materials.

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Q. You testified a little earlier. Some questions were posed to you with respect to the Juan Dolio promissory notes. Do you

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recall that series of questions, sir?

A. I'm sorry. I didn't quite understand.

Q. Sorry. I will get closer. A series of questions were

14:07:21 25 posed to you by counsel with respect to the Juan Dolio project

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promissory notes. Do you remember those questions?

A. Yes.

Q. Okay.

MR. MARTINEZ: May I approach, Your Honor?

THE COURT: Yes.

THE WITNESS: I'm sorry. I can't hear you.

MR. MARTINEZ: Do we know what Defendant's Exhibit we have at this time. Mr. Bellido, do you know? Would the Court object at this point if we make it Exhibit A? I don't have it in front of me, Your Honor.

THE COURT: Why don't you leave it for that at the moment, and I'll take a look.

MR. MARTINEZ: Thank you, Judge.

BY MR. MARTINEZ:

Q. Sir, are you familiar with the promissory notes, the style and content of promissory notes issued in connection with the Juan Dolio project?

A. Yes.

Q. Okay. Take a look at the document.

THE COURT: I'm going to mark this Defendants' 12. I think that's your next one.

THE COURT: Thank you, Judge.

BY MR. MARTINEZ:

Q. Take a look at the document that's been marked Defendants' 12 for identification, and please tell me what that document

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14:09:12 1 is.

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A. I'm sorry. Say again.

Q. Take a look at the document that has been marked
Plaintiffs' Exhibit 12 for identification, the document I just

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handed you.

A. Yes.

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Q. And could you explain to me what that document is?

A. This is a secured promissory note to Juan Dolio purchasers.

Q. Have you ever seen this form of document before?

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A. Yes.

Q. Okay.

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MR. MARTINEZ: Your Honor, I would like to introduce
it then as Exhibit 12.

THE COURT: Any objection?

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MR. DAVIDSON: No objection.

THE COURT: 12 is admitted.

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MR. MARTINEZ: Thank you, Judge.

[Defendants' Exhibit 12 was received in evidence at

14:09:46 2:09 p.m.]

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BY MR. MARTINEZ:

Q. There has been an awful lot of talk with respect to

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representations made to prospective purchasers as to when these notes would be payable, sir. Looking at the note, can you tell me what it says as to when the note payments begin on the note?

14:10:10 25 MR. DAVIDSON: Objection. Foundation.

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14:10:14 1 THE COURT: Overruled. I mean, it says what it says.

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What's your understanding of what it said?

MR. DAVIDSON: Sorry, Your Honor, my objection was as to the scope. The note does say what it says.

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THE COURT: I understand but what -- what is your understanding of the obligation?

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THE WITNESS: My understanding of the obligation is that there was interest due at a period of time after the note was executed and then the note due and payable in full when the

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project was completed.

BY MR. MARTINEZ:

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Q. And when were the interest payables to begin, as you understand it?

A. Well, it would depend on the signing of the note itself.

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Q. On this particular note?

A. On this particular note, the first installment being due

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and payable May 1, 2008.

Q. Is there anything in this document that says no payments will be due until the Juan Dolio project --

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MR. DAVIDSON: Objection, leading.

THE COURT: Overruled.

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BY MR. MARTINEZ:

Q. You can answer.

A. No.

14:11:47 25 BY THE COURT:

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14:11:48 1 Q. Well, did you ever come to learn whether or not

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representations of that kind were being made to your customers?

A. I was obviously not on any of the presentations. I can give you what I was told.

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Q. Well, when you came back and you were doing your own investigation as to what was going on, why the company was in

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financial distress, did you find out whether or not either Elliott people or Impact people were telling purchasers: "If you sign up, you don't have to repay until the hotel is

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finished"?

A. I received feedback from purchasers that was totally

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removed from the product. There was obviously gross misrepresentation on the product.

Q. By whom?

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A. By whoever the selling agent was, whoever it was that was selling the project.

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BY MR. MARTINEZ:

Q. Sir, you've been fighting this lawsuit now for about a month or so; is that correct?

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A. Yes.

Q. Okay. And in that time, are you aware of any press

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releases or press conferences that have been called by the ECC
in connection with this lawsuit?

A. I'm aware of what I've seen in newspapers and press

14:13:45 25 releases that I have observed on the Internet.

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14:13:48 1 Q. Okay. And what has all of this adverse publicity created

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by the ECC done to your projects?

A. Extremely damaging.

Q. How so?

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A. Well, first thing we're looking at is stabilization by the
cash flow with the hospitality side of the business, because

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the real estate side of the business is pretty well gone awash
with the economy, and even our most loyal tour operators are
questioning whether or not it's safe to send people to the

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property.

They get a press release that ex-patriot, Frederick

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Elliott, duped, or whatever the word is, 170 -- bilked \$170 million and alleged -- and points out that I've been involved in money laundering and racketeering and fraud and an expensive

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lifestyle. I've lived in the same house for 28 years.

14:14:56 I've got a big television, but it's 18 years old. I

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drive a F150 Ford pickup truck. That I used it to live a Hollywood lifestyle and a private airplane. I've owned a single-engine four-seater airplane since 1977.

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I also bought a motor home. I've owned motor homes for 30 years and never a new one. I do not live a lavish and

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expensive lifestyle, and it has painted a very bad picture on who we really are. And it's very damaging.

We also were a few days away from getting a refinance,

14:15:38 25 a private refinance in the Dominican Republic on a finance

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14:15:45 1 that's costing us 20 percent interest, and the time limit on it

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is coming up. And, of course, the news has shut that down. It's also handicapped our ability with our contractor to move

forward on Juan Dolio, who's been in there since March 4. It's

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been very damaging.

Q. Do you think that the interest of the investors is being

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served by all of this adverse publicity?

A. Absolutely not.

Q. Okay. Whose interest do you think is being served?

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A. I have no idea who would benefit from that type of false, misleading information.

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MR. MARTINEZ: May I take a second, Your Honor?

THE COURT: Yes, sir.

MR. MARTINEZ: I have no further questions, Judge.

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THE COURT: All right. Thank you. Recross.

REXCROSS EXAMINATION

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[Beginning at 2:16 p.m., 4/2/09.]

BY MR. DAVIDSON:

Q. Mr. Elliott, you said that you're making money on the

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Cofresi side, and yet none of the financials that you've talked

about were attached to your affidavit; isn't that so, sir?

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A. Yes.

Q. So, we're supposed to take your word for it; is that right?

A. No. We could produce financials to you tomorrow if you

14:17:40 25 want them.

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14:17:46 1 Q. You referenced Mr. Thompson with respect to the request to

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visit the Juan Dolio property. Mr. Thompson was a purchaser --

A. Yes.

Q. -- of the Juan Dolio property, wasn't he?

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A. Yes.

Q. But he wasn't allowed to visit the Juan Dolio property, was

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he?

A. Yes, he was.

Q. And what did he see when he visited the Juan Dolio

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property, sir? Did he see a hotel that was close to being completed?

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A. A lot of this misleading information here, if Mr. Steve Thompson would tell the truth, and I believe he will, the day that Mr. Thompson and I went to visit the hotel, it was fully

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operational. This was not a shut-down, abandoned hotel.

It was in bank foreclosure, and they had leased it out

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to a tour operator group for four months during the winter of '04-'05. So the day Mr. Thompson was there, there were guests in the hotel.

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Q. As of September 2008, sir, the Juan Dolio had been gutted; isn't that a fact, sir?

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A. That was the business plan, to renovate it.

Q. Sir, September 2008 was several months ago. The Juan Dolio Hotel had been gutted. It was in that state of repair as of

14:19:13 25 September 2008; was it not, sir?

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A. Let me tell you what I saw the last time I was there.

Q. Sir, if you wouldn't mind answering my question. As of September 2008, the Juan Dolio Hotel was in a state of having been gutted?

A. No.

Q. What do you mean Mr. Catledge came back into the Elliott Group of companies and wouldn't allow questions and answers. Are you suggesting that Mr. Catledge was a member of your executive committee?

A. I never said Mr. Catledge came back to the company and wouldn't allow questions and answers.

Q. Isn't it a fact, sir, that Mr. Catledge had his own company, sir?

A. Yes, he did.

Q. Isn't it a fact that you had a contractual relationship; "you" being the Elliott Companies, with Mr. Catledge and his companies?

A. Yes.

Q. And isn't it a fact that you had a contractual relationship; "you" being the Elliott companies, to pay Mr. Catledge a fee which approximated 20 percent for his services and his full services in selling this product to thousands of people in the United States of America?

A. But not to lie about everything he did.

Q. Sir, isn't it a fact that the Elliott Companies had a

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contract with the Catledge folks to sell this product and to pay them fees approximating 20 percent? Isn't that a fact?

A. We had a contract for them to sell the product.

Q. First we hear it's Mr. Catledge who has caused all the problems. Then we hear it's Derrick's mismanagement. Then it is a combination of the two.

Do you take any responsibility for the mismanagement that occurred down at the Elliott properties?

MR. MARTINEZ: Objection, Your Honor.

THE COURT: Sustained.

MR. DAVIDSON: Withdrawn.

THE COURT: No. It's sustained.

MR. DAVIDSON: Sorry, Your Honor.

BY THE COURT:

Q. What do you mean not to lie? What are you suggesting that Mr. Catledge lied about to your knowledge?

A. Mr. Catledge is a compulsive liar.

Q. When did you find this out, at what stage of your business relationship?

A. I spent very little time around the man. I was invited to

very few functions that Impact put on as sales and training programs. I attended maybe three of them as a guest speaker. He insisted that I have no contact with his agents.

If he saw me talking to any of his agents, he would get very upset with me, and we were on the -- the first time I was ever

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14:22:24 1 with him alone would be 2007, I would say late 2007, and it was

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on a helicopter ride in the Dominican Republic looking at properties.

And there were four people in that aircraft, and he

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was explaining about what they were looking at. And I, after half an hour, got tired of correcting him. That's not true.

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That's not the way it is. I found out that he told people that I built Canada's largest and most successful investment company. That is not true. I did not build an investment

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company in Canada. I worked in one.

Q. So, when you were saying before that there were

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misrepresentations made to your customers, are you attributing this to Impact or did you find that some of your own people were doing that?

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A. When I got back into the company full-time in June, we decided we would run agent owners forum, inviting all of these

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Impact people on a monthly base to come and see the progress, to see what we were doing, and from that moment on, we took people to Juan Dolio Hotel on a bus.

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And this is an example of a hands-on experience.

Mr. Jerry Harris was at the first agent owners forum at the

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property, and he wanted some time with me alone.

Q. Who is Harris?

A. He is an Impact customer. And he said, "How is the Juan

14:24:36 25 Dolio Hotel doing?"

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14:24:37 1 And I said, "Construction has been shut down there for

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14 months."

And he said, "I met Mr. Catledge in church six weeks

ago, and Mr. Catledge told me everything is going ahead full

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bore and that the project in Juan Dolio will be opening in the next few months."

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And I said, "Jerry, nothing could be further from the truth. You'll see when you go down there where it's at."

Q. So, my question is: Do you attribute the misstatements to

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Impact or your own people or both?

A. I have to attribute it to the person who ran the sales

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organization is who you have to attribute it to. An apple is a apple. A hotel room is a hotel room.

MR. DAVIDSON: If I may approach the witness.

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BY MR. DAVIDSON:

Q. I have handed you an exhibit from our complaint. It is

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Exhibit B from our verified complaint. On the top -- forgive me -- I only have one copy of it at the moment.

MR. MARTINEZ: Okay. Can we see it?

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MR. DAVIDSON: Exhibit B?

14:26:04 THE COURT: Yeah. What is it?

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MR. DAVIDSON: It's Exhibit B to our verified complaint.

THE COURT: Yes, but what is it?

14:26:09 25 MR. DAVIDSON: That's my question.

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MR. DIAZ: I can provide a copy to counsel, Your Honor.

MR. MARTINEZ: Thank you.

MR. DIAZ: [Handing].

THE COURT: Thank you.

MR. DAVIDSON: And I'll go ahead if I might approach the witness and read over his shoulder.

THE COURT: Well, I's give it to him. I just want to see what you're referring to. This is the deposit agreement?

MR. DAVIDSON: Yes, Your Honor.

THE COURT: It's marked as Exhibit B from the

complaint, so I'll leave it that way for the moment.

BY MR. DAVIDSON:

Q. This is -- this document, this deposit agreement, Mr. Elliott, this is an agreement prepared by the Elliott Group; is it not?

A. I'm not familiar with this agreement.

Q. Well, Sun Village Juan Dolio, Inc., that's not a Catledge company, is it?

A. No.

Q. That's an Elliott Company, correct?

A. Yes.

Q. Did the Elliott Group ever authorize the Catledge group to produce a document on its face, which said "Sun Village Juan Dolio Inc. deposit agreement"?

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14:27:42 1 A. I can't verify whether they did or they didn't.

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Q. Turning to Page 3, paragraph numbered 7C, do you see where it says: "All principle and interest payments are waived until the hotel opens in the summer of 2008"?

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A. Yes, I do.

Q. Isn't it a fact, sir, that that representation was made by

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Elliott Group to all purchasers and protective purchasers before they made reservations and before they closed on their contracts?

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A. I'm not familiar with this document.

Q. If, in fact, this document was provided to purchasers and

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prospective purchasers by the Elliott Group, would you stand by it, sir?

MR. MARTINEZ: Objection, Your Honor. Speculative.

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THE COURT: Well, I don't know that that is a question in proper form, so you can rephrase.

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BY MR. DAVIDSON:

Q. There has been testimony, sir, that this document has been provided and was provided to purchasers at Juan Dolio. If the

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Court were to find that that was the case, would the Elliott Group stand behind that obligation?

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MR. MARTINEZ: Your Honor, there's a mischaracterization of testimony. I don't think that testimony has come in.

14:29:16 25 MR. DAVIDSON: I'll withdraw the question. I'll

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1 withdraw the question, Your Honor.

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BY THE COURT:

Q. Let me ask you this: You said you have never seen this before?

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A. I have not seen this document before, no.

Q. So, you don't know if this is a document that was developed

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during the gap; that is, before you left the project and when you returned?

A. Correct.

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Q. So, is it your testimony that you can't attest one way or another as to how it was developed, who developed it, who

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approved it or anything of that nature?

A. This document?

Q. Yes.

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A. That's correct.

THE COURT: All right. May I have it back, please?

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Are you offering this? I don't know. Has this --

MR. DAVIDSON: It's already in -- well, presumably it's already in. It's a verified complaint, but I believe it

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already came in, I believe it came in with another witness. Am I wrong on that?

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THE COURT: I don't remember at this point.

MR. DAVIDSON: It did not come in?

MS. PILOTO: It did not come in. It's attached to the

14:30:24 25 verified complaint of Hoffmann.

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14:30:28 1 THE COURT: Well, he hasn't seen it, so I don't know

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that he can qualify it. This wasn't offered through any other witness yet?

MS. PILOTO: I'm sorry?

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THE COURT: This wasn't offered through any other of the plaintiff witnesses?

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BY MR. DAVIDSON:

Q. Well, let me clarify something, sir. My colleague just points out in Paragraph 27 of your affidavit, you reference the

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deposit agreements with respect to Juan Dolio. What deposit agreements were you referring to in Paragraph 27 of your

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affidavit, which is dated March 26, 2009?

A. 27?

Q. Paragraph 27.

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A. I'm referring there to the money we spent in structuring -- the money that I know the corporation spent on the structure.

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I did never see -- I never did see the final result of the structure, the actual document that was produced.

Q. I think you must be referring to a different paragraph.

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Turn to Paragraph 27, which is on Page 8 of your affidavit.
Let me read it to you to make sure we're on the same page and

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paragraph. Do you have your paragraph -- do you have your affidavit?

A. Okay. I got it now. Yeah. Yes.

14:32:40 25 Q. Okay. Paragraph 27 says the following; does it not: "The

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14:32:46 1 deposit agreements were not developed with the benefit of

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counsel." Do you see that?

A. Yes.

Q. You're referring to the very same documents we've just been

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talking about; are you not, sir?

A. No, I'm referring to the fact that subsequently we retained

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highly experienced U.S. counsel who were assisted by so on and so on.

Q. Yeah. What do you mean by "deposit agreements" in

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Paragraph 27, sir, if you're not referring to Exhibit B to the complaint that we filed. What deposit agreements are you

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referring to?

A. I'm telling you that the deposit agreement that you had up here in front of me I have not seen. That's what I'm telling

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you.

Q. Sir, in the subsequent sentences in Paragraph 27, it says:

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"SVJD subsequently retained highly experienced U.S. counsel who were assisted by Canadian counsel to fully structure the fractional interest and develop the fractional interest

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purchase documentation."

In fact, sir, the deposit agreements that you're

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referencing in Paragraph 27 are the very documents that I just showed you, which are Exhibit B to our complaint; are they not, sir?

14:34:09 25 A. All I'm telling you is I never saw that document.

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14:34:12 1 Q. There are no other deposit agreements for SVJD, sir, that

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you know of, are there?

A. Not to my knowledge.

Q. So, by process of elimination, SVJD is Juan Dolio, right?

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A. Yes.

Q. There's only one set of deposit agreements that you're

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familiar with, right?

A. Why would I ever see that deposit agreement?

Q. Sir, you wrote the affidavit, didn't you? You provided

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the -- strike that.

You provided the information to your counsel to put

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into this affidavit that went on Page 8, Paragraph 27, right?

A. Yes.

Q. Okay. So when you said the deposit agreements, referencing

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Juan Dolio, you were talking about the very same documents,

Exhibit B to the complaint that I just put in front of you;

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isn't that so, sir?

A. I was talking about the deposit document that was used for the initial purchase of Juan Dolio was not designed by counsel.

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Q. Right.

A. And never was designed by counsel.

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Q. And those are the same documents, sir -- those deposit agreements are the same documents that I just put in front of you that you said you did not recognize; isn't that so, sir?

14:35:20 25 A. That's right.

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14:35:21 1 Q. All right. So, now we can introduce this as an exhibit.

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What number are we up to, please?

MR. DIAZ: 13.

MR. MARTINEZ: He's still testifying that he's never

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seen it, Judge, so the objection still stands.

THE COURT: I'm going to admit this as 13, based upon

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reference in the affidavit to a deposit agreement, and I think there's enough authenticity and foundation. Of course, the issue still is who came up with this and who used it for what

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purpose.

[Plaintiffs' Exhibit 13 was received in evidence at

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2:35 p.m.]

THE COURT: You have a few more minutes.

BY MR. DAVIDSON:

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Q. I'm -- going back to Paragraph 27, so let's see if we can tie this all up. If I understood your testimony earlier today,

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while it was your understanding that at one point Mr. Catledge was supposed to become a partner in SVJD, that never happened, correct?

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A. I've never seen his name on any of our corporate documents as ownership.

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Q. So, is it fair to say that then all of the SVJD documentation and everything done by SVJD, as far as you know, was done by Elliott people?

14:37:00 25 A. No.

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14:37:00 1 Q. With respect to creation of the documentation, for example,

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promissory notes and so forth, the documentation of the sale for purchasers, was that done by Elliott Group lawyers to your

knowledge?

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A. Done by lawyers that we paid. I'm not sure whether the lawyers were picked jointly by Mr. Catledge and Derrick

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Elliott. I'm sure they were.

Q. Do you know which law firm did that work?

A. I believe it was Greenberg Traurig in California. I also

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believe that Mr. Catledge and Mr. Derrick Elliott attended the offices of Greenberg Traurig on more than one occasion, the

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documents, I believe.

Q. I'm going to wrap this up shortly, sir, but I thought I heard you say earlier in response to the Judge's question that

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at some point you advised a purchaser that construction on the Juan Dolio had been shut down for 14 months.

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A. Yes, I did.

Q. Was that a decision that Mr. Catledge made?

A. Jointly Mr. Catledge and Derrick made that decision.

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Q. Was that while you were in Canada?

A. It was when I was off property and out of the company. I

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might not have been specifically in Canada.

Q. Derrick and Mr. Catledge made that decision. How did you come to find out that the two of them made that decision, sir?

14:38:56 25 A. I know I did not make the decision.

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Q. No, no, no, sir. You just testified that the two of them made that decision. I want --

A. I believe they did.

Q. Okay. So, under oath, do you know for a fact that the two of them made the decision or are you just guessing?

A. Under oath, I can't confirm that the two of them were the only two people that made that decision. I can confirm that I was not part of the decision.

Q. All right. Let me see if I understand now. SVJD is the owner of the property; is that right?

A. Yes.

Q. And, presumably, the owner of the property controls the construction on the property. Is that a fair statement?

A. Yes.

Q. The developer controls the development of the property, correct?

A. Yes.

Q. Okay. And, presumably, the developer pays the contractor to work on the property, correct?

A. Yes.

Q. Okay. And, presumably, if the developer doesn't want the contractor to work on the property, it's the developer who tells the contractor, you stop work on the property, right?

A. Yes.

Q. So, it would have been Mr. Derrick Elliott, would it not

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14:40:02 I have been, sir, who would have told the contractor to stop work

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for 14 months on the property, sir? Isn't that a fact?

A. It's not a fact.

MR. MARTINEZ: Objection. Speculative.

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THE COURT: Sorry?

MR. DAVIDSON: I have really no further questions for

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this client -- this witness.

THE COURT: All right. Sir, you can go back with your counsel. Call your next witness, please.

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THE WITNESS: Do I leave the courtroom now? Or is it my option?

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MR. BELLIDO: You can stay in the courtroom.

THE COURT: No, you're here as the representative; is that true?

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THE COURT: Thank you.

DIRECT EXAMINATION

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BY THE COURT:

Q. You have prepared an affidavit in this matter?

A. Yes, sir.

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14:42:00 25 Q. And this affidavit was dated March 26, 2009?

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Lawter - Cross

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14:42:11 1 A. Yes, sir.

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Q. Is everything in the affidavit true and correct?

A. Yes, sir.

Q. I'm going to at this time allow cross-examination. Please

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answer the questions that are asked of you and allow the question to be asked before responding so Mr. Millikan, our

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court reporter, can accurately transcribe.

A. Okay. Thank you.

THE COURT: Very well. Proceed, please.

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MR. DAVIDSON: Thank you, Your Honor.

CROSS EXAMINATION

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[Beginning at 2:42 p.m., 4/2/09.]

MR. DAVIDSON: We're going to at some point need that easel to put a poster board up on it. I don't want to --

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THE COURT: Well, let's do this. I know you just arrived, but let's take a ten-minute recess. I'll let you set

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up.

MR. DAVIDSON: I guess the point of my question, Your Honor, was I didn't want to block anything so -- I didn't want

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to block the view of anybody, so I guess my question was, where did you want me to put it in the courtroom to avoid blocking?

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THE COURT: I'll allow the lawyers to relocate on the defense side if they need.

MR. DAVIDSON: Okay. Thank you, Your Honor.

25 THE COURT: Joe, you need a break? Let's take ten

April 2,